



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 14, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v.
Pittsburgh Water and Sewer Authority
Docket Nos. R-2021-3024773 (Water), R-2021-3024774 (Wastewater)
and R-2021-3024779 (Stormwater)

I&E Statement in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing please find **The Bureau of Investigation and Enforcement's (I&E) Statement in Support of Joint Petition for Settlement** in the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read 'Gina L. Miller', is written over a light blue horizontal line.

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Bureau of Investigation and Enforcement
PA Attorney ID No. 313863
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GLM/ac
Enclosures

cc: Administrative Law Judge Eranda Vero (*via email only*)
Pamela McNeal, Legal Assistant (*via email only*)
Per Certificate of Service (*via email only*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al</i>	:	R-2021-3024773
	:	C-2021-3025473
v.	:	C-2021-3025516
	:	
Pittsburgh Water and Sewer Authority - Water	:	
Pennsylvania Public Utility Commission, <i>et al</i>	:	R-2021-3024774
	:	C-2021-3025471
v.	:	C-2021-3025517
	:	
Pittsburgh Water and Sewer Authority –Wastewater:	:	
Pennsylvania Public Utility Commission, <i>et al</i>	:	R-2021-3024779
	:	C-2021-3025474
v.	:	C-2021-3025521
	:	
Pittsburgh Water and Sewer Authority -Stormwater :	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

Gina L. Miller
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Harrisburg, Pennsylvania 17120

Dated: September 14, 2021

TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. REASONS FOR SUPPORT OF SPECIFIC ISSUES..... 6

A. Revenue Requirements and Quarterly Reporting
(Joint Petition, Section III.A)..... 6

B. Cost Allocation and Rate Design (Joint Petition, Section III.B)..... 13

C. Stormwater (Joint Petition, Section III.C)..... 16

D. COVID-19 Expenses, Funding, and Pandemic Measures
(Joint Petition, Section III.D)..... 18

E. Customer Service/Quality of Service (Joint Petition, Section III.E)..... 22

F. Low-Income Customer Assistance Programs
(Joint Petition, Section III.F)..... 26

G. Miscellaneous Fees (Joint Petition, Section III.G)..... 27

H. Future Notice of Proposed Rate Changes (Joint Petition, Section III.H)..... 27

I. Additional Terms and Conditions (Joint Petition, Section I)..... 28

III. CONCLUSION..... 29

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
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TO ADMINISTRATIVE LAW JUDGE ERANDA VERO:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Gina L. Miller, hereby respectfully submits that the terms and conditions of the Joint Settlement Petition (“Joint Petition” or “Settlement”) filed in this proceeding on September 7, 2021 are in the public interest and represent a fair, just, and reasonable balance of the interests of Pittsburgh Water and Sewer Authority (“PWSA”), and its customers.

I. INTRODUCTION

A. Background Information

I&E's charge in this case was to represent the public interest, which involves balancing the interests of PWSA, its ratepayers, and the regulated community as a whole. In order to fulfill its duty to represent the public interest in this case, I&E has spent over four months investigating PWSA's complex and unprecedented filing. PWSA's filing, which requested phased-in increases to water and wastewater total annual operating revenues of approximately \$32.2 million, or by 17.1%, also included the first jurisdictional stormwater fee subject to Commission review; accordingly, it warranted close scrutiny, investigation, and development of a comprehensive record that I&E provided in this case.

Despite the challenges and complexity of PWSA's filings, I&E avers that the parties' investigations of PWSA filings, development of the record for this case, and continued settlement discussions have culminated in a Settlement that is in the public interest. I&E notes that the Settlement achieved by the parties represented a difficult balance of many competing interests and PWSA's operational obligations. Accordingly, for the reasons I&E will explain more fully below, I&E respectfully requests that the ALJ recommend, and the Commission approve, the terms and conditions contained in the Settlement without modification.

B. Procedural History

The procedural history of this proceeding is set forth in Appendix A of the Joint Petition, which I&E herein adopts and incorporates. In addition, I&E offers the following additional procedural history specific to its participation in this proceeding: I&E attended all of the telephonic Public Input Hearings held in this proceeding: June 28 at 1:00 and 6:00

p.m., June 29 at 1:00 and 6:00 p.m., and June 30 at 1:00 and 6:00 p.m. In accordance with the litigation schedule in this rate case, I&E served its testimonies and exhibits in this case as listed below:

- I&E Statement No. 1: the Direct Testimony of Anthony Spadaccio
- I&E Exhibit No. 1: the Exhibit to accompany the Direct Testimony of Anthony Spadaccio
- I&E Statement No. 1-SR: the Surrebuttal Testimony of Anthony Spadaccio
- I&E Exhibit No. 1-SR: the Exhibit to accompany the Surrebuttal Testimony of Anthony Spadaccio
- I&E Statement No. 2: the Direct Testimony of D.C. Patel
- I&E Exhibit No. 2: the Exhibit to accompany the Direct Testimony of D.C. Patel
- I&E Statement No. 2-R: the Rebuttal Testimony of D.C. Patel
- I&E Statement No. 2-SR: the Surrebuttal Testimony of D.C. Patel
- I&E Statement No. 3: the Direct Testimony of Ethan H. Cline
- I&E Exhibit No. 3: the Exhibit to accompany the Direct Testimony of Ethan H. Cline
- I&E Statement No. 3-SR: the Surrebuttal Testimony of Ethan H. Cline
- I&E Exhibit No. 3-SR- the Exhibit to accompany the Surrebuttal Testimony of Ethan H. Cline
- I&E Statement No. 4: the Direct Testimony of Israel E. Gray
- I&E Exhibit No. 4: the Exhibit to accompany the Direct Testimony of Israel E. Gray
- I&E Statement No. 4-SR: the Surrebuttal Testimony of Israel E. Gray
- I&E Exhibit No. 4-SR- the Exhibit to accompany the Surrebuttal Testimony of Israel E. Gray

During the course of this proceeding, I&E and other parties engaged in substantial formal and informal discovery. In accordance with Commission policy favoring settlements,¹ I&E participated early and consistently in multiple extensive settlement

¹ 52 Pa. Code § 5.231.

discussions with PWSA and other parties to the proceeding. Following extensive settlement negotiations, PWSA, I&E, OCA, OSBA, UNITED, and the City (collectively, the “Joint Petitioners”) reached a global settlement. While the global settlement was pending, the ALJ held an evidentiary hearing in this case on September 13, 2021. At the hearing, parties moved for the admission of their testimony into the record, and all of I&E’s above-referenced testimony and exhibits were admitted into the record. On August 18, 2021, after continued settlement discussion resulted in a global resolution of all issues, the parties agreed that a full settlement was achieved and PWSA’s counsel informed the ALJ of that fact.

C. Overall Reasons in Support of the Settlement

It is the policy of the Commission to encourage settlements.² The Commission issued the following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission’s judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission’s judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.³

The above-referenced policy statement highlights the importance of settlement in Commission proceedings. The instant rate case was filed on April 13, 2021; therefore, for over four months, the parties engaged in extensive formal and informal discovery,

² 52 Pa. Code § 5.231.

³ 52 Pa. Code § 69.401.

preparation of testimony, and lengthy settlement discussions. All signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, the issues raised by I&E have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding.

From a revenue perspective, I&E avers that the Settlement rates, which will provide PWSA with additional annual revenue of \$20.998 million, with \$16.996 million effective on January 12, 2022, and the remaining \$4.002 million being phased-in on January 1, 2023, is only approximately 65% of PWSA's initially-requested \$32.2 million.⁴ Additionally, I&E notes that the total increases for 2022 and 2023 still remain less than that which PWSA initially proposed just for 2022, which was \$22 million.⁵ From I&E's perspective (and apparently PWSA's as a Joint Petitioner), and consistent with the outcome of I&E's investigation, this increase will provide PWSA with sufficient revenue to fulfill its obligation to provide safe and effective service to ratepayers. Beyond revenue, the Joint Petition provides for important safety, customer service, and program enhancements that will significantly benefit PWSA's ratepayers while also imposing additional accountability upon PWSA as it continues to transition to the Commission's jurisdiction.

⁴ Joint Petition, Appendix A, ¶74.

⁵ Joint Petition, Appendix A, ¶51.

II. REASONS FOR SUPPORT OF SPECIFIC ISSUES

A. Revenue Requirements and Quarterly Reporting (Joint Petition, Section III.A)

1. Rates (Joint Petition, Section III.A.1)

At the outset of this case, PWSA originally requested a total \$32.2 million overall revenue increase for its water, wastewater, and stormwater operations. PWSA further proposed to phase in the total 32.2 million increase over 2 years, with \$22 million to be recovered in 2022, and an additional \$10.2 million to be recovered in 2023.⁶ Broken down, PWSA's complex proposal was spread across its three services: water, wastewater, and stormwater. First, PWSA proposed a phased-in rate increase that would increase its total annual operating revenues for water service by approximately \$12.6 million, or 10%, through rates effective January 12, 2022, and by approximately \$12.9 million, or 9.3%, through rates effective January 12, 2023.⁷ Next, PWSA proposed a phased-in rate decrease that would reduce its total annual operating revenues for wastewater service by approximately \$7.8 million, or 10.6%, through rates effective January 12, 2022, and by approximately \$7.5 million, or 11.4%, through rates effective January 12, 2023.⁸ Finally, PWSA proposed a phased-in increase that would raise its total annual operating revenues for stormwater service by approximately \$17.8 million, or 3,118.3% through rates effective January 12, 2022, and by approximately \$5.9 million, or 32.3%, through rates effective January 12, 2023.⁹

⁶ PWSA St. No. 2, p. 4.

⁷ See the Commission Order entered in this case on May 20, 2021 which suspended PWSA's water rate request for investigation.

⁸ See the Commission Order entered in this case on May 20, 2021 which suspended PWSA's wastewater rate request for investigation.

⁹ See the Commission Order entered in this case on May 20, 2021 which suspended PWSA's stormwater rate request for investigation.

However, pursuant to the Joint Petition, the Settlement Rates are designed to produce additional annual operating revenue of only \$16.996 million for 2022 and 4.002 million starting on January 1, 2023. I&E notes that Settlement provides PWSA with only about 65%, of the increase that it requested in its original filing.¹⁰ The Settlement increase is comprised of the following: (1) an increase in annual revenue for water service by approximately \$5.56 million for 2022 and by 9.5 million for 2023; (2) a decrease to PWSA's total annual revenues for wastewater conveyance service by approximately \$6.33 million for 2022 and by 11.45 million for 2023; and (3) implementation of new stormwater rates at approximately \$17.76 million for 2022 and at \$5.93 million for 2023.¹¹ Appendix F of the Joint Petition provides a summary that compares the water, wastewater, and stormwater customer billing impacts at the revenue increase requested by PWSA, and the agreed upon increase contained in the Settlement.

In arriving at the Settlement Rates, I&E, along with the other Joint Petitioners, analyzed the ratemaking claims contained in PWSA's base rate filings including its operating and maintenance expenses, debt service coverage ratio, and rate structure. The Settlement represents approximately \$11.2 million in savings for PWSA's customers compared to proposed rates, which is approximately 35% less than PWSA proposed. I&E notes that its initial recommendation in this case was largely predicated upon adjustments to PWSA's operating and expense claims.¹² As I&E's revenue position evolved over the course of this

¹⁰ Joint Petition, Appendix A, p. 17, ¶74.

¹¹ Joint Petition, ¶III(A)(1).

¹² I&E St. No. 2, p. 6.

case,¹³ the Settlement achieved and the rates it adopted represent a compromise of its overall revenue position.

The Settlement in this case considers, among other things, PWSA's debt service obligations as well as its need to provide safe and effective service. I&E notes that PWSA is unique in that the General Assembly has imposed a specific statutory obligation upon the Commission to ensure that PWSA is permitted to impose, charge or collect rates or charges as necessary to permit it to comply with its covenants to the holders of any bonds or other financial obligations.¹⁴ Accordingly, I&E, and apparently PWSA and all other Joint Petitioners, believe that the Settlement will provide PWSA with sufficient revenue to protect its financial health while providing safe and effective service.

It is important to note, however, that due to the "black box" nature of the Settlement, there is no agreement upon individual issues. Instead, the Joint Petitioners have agreed to an overall increase to base rates that is less than what was requested by PWSA. Line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement satisfies the public interest nor could such a result be achieved as part of a settlement. Black box settlements benefit ratepayers because they allow for the resolution of a contested proceeding at a level of increase that is below the amount requested by the regulated entity and in a manner that avoids the significant expenditure of time and resources related to further litigation. Black box settlements are not uncommon in

¹³ I&E St. No. 2-SR, p. 13.

¹⁴ 66 Pa. C.S. § 3208 (c)(1); I&E St. No. 1, p. 10.

Commission practice. Indeed, the Commission has endorsed the use of black box settlements.¹⁵

I&E individually, and the Joint Petitioners collectively, considered, discussed, and negotiated all issues of import in this Settlement. From a holistic perspective, each party has agreed that the Settlement benefits its particular interest. The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”¹⁶ The Settlement in this proceeding promotes the public interest because a review of the testimony submitted by all parties demonstrates that the Joint Petition reflects a compromise of the litigated positions held by those parties. Therefore, I&E submits that the Settlement balances the interests of PWSA and its customers in a fair and equitable manner.

2. Base Rate “Stay Out” Provision (Joint Petition, Section III.A.3)

Absent the exigent circumstances noted in the Settlement, PWSA will not file for a general rate increase under Section 1308(d) of the Public Utility Code prior to March of 2023. The exceptions to this “stay out” provision are those that (1) allow PWSA to file for a change in rates if it must pursue extraordinary or emergency rate relief pursuant to 66 PA. C.S. ¶ 1308(e), or, (2) account for either the Commission ordering, or industry-wide changes resulting in, regulatory policy changes which effect PWSA’s rates. This stay out provision provides stability and certainty to ratepayers who will experience rate continuity, as they have borne consistent, and almost annual, rate increases over the past few years. At the same time, PWSA will not be prejudiced, as in the event that it experiences unforeseeable hardship

¹⁵ *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013).

¹⁶ *Pa. P.U.C. v. C S Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

beyond its own control, warranting a rate change, it would be able to seek a rate relief. For these reasons, the stay out provision of the Settlement is in the public interest and it should be approved.

3. Revenue Accountability (Joint Petition, Section III.A.4-III.A-5)

Importantly, the Settlement also includes a safeguard to ensure that any excess revenue that may result if PWSA's actual 2022 revenue net of expenses produce a surplus greater than its FPFTY projections is prudently spent and that PWSA accounts for that spending. More specifically, the Settlement provides that any surplus revenue may be devoted only to the following enumerated uses for PWSA: 1) to add to its year end "days cash on hand"; 2) to pay down its construction line of credit; and/or 3) to repay an item in PWSA's borrowing portfolio.¹⁷ Additionally, PWSA has committed to providing a report to the parties in this case, by no later than May 31, 2023, that will identify the amount of the surplus revenue, the use for which the surplus revenue was devoted, and the rationale for the use of the funds. I&E submits that these commitments were important in order to secure its agreement to this Settlement and necessary to protect the public interest for several reasons.

First, while these term ensure that while PWSA will retain managerial discretion in the form of selecting which of the three enumerated uses would most benefit PWSA's operations, it also ensures that any surplus revenue is put to a use designed to stabilize PWSA's operations. With this in mind, each of the prospective uses identified above are targeted either to reducing PWSA's debt and improving its liquidity, as I&E avers that the

¹⁷ Joint Petition, ¶III(A)(2)(4).

public interest is served when PWSA takes steps to improve its credit rating in order to increase its access to financing necessary capital improvements.¹⁸

Additionally, compelling PWSA to report the use for which it devoted any surplus revenues and the rationale for its selection of that use will ensure that PWSA is accountable to its ratepayers and to the Commission for the use of any surplus. I&E submits that ensuring that PWSA is completely accountable to ratepayers for the use of all revenue is not only in the public interest, but it is consistent with addressing the concerns regarding the demonstrated need for accountability that I&E witness Patel's analysis recognized.¹⁹

4. Quarterly Reporting Obligations (Joint Petition, Section III.A.6)

PWSA's commitment to submit quarterly reporting on items such as PENNVEST funding, COVID-19 Funding, and valve issues is necessary to ensure that PWSA is accountable to its ratepayers for responsibly tracking and reflecting funding it may receive, and for ensuring safety of operations. Noting that the record in this case identifies two PENNVEST funding awards totaling over \$70 million that were made just during the four months of the litigation schedule,²⁰ and that PWSA has three additional PENNVEST funding requests totaling over \$200 million pending as of August 2021,²¹ I&E submits that the record supports a need for reporting. From I&E's perspective, PWSA's agreement to provide quarterly reporting on PENNVEST grants that impact its revenue requirement, including the amount of the award and how it will impact PWSA's debt service coverage, will enable

¹⁸ I&E St. No. 1-SR, p. 5.

¹⁹ I&E St. No. 2, pp. 4-6.

²⁰ I&E St. No. 1, p. 21; I&E Exhibit No. 1, Sch 5; PWSA St. No. 2-RJ, pp. 5-6.

²¹ PWSA St. No. 2-RJ, p. 6.

parties and the Commission to be aware of the funding and to ensure that it is appropriately reflected and utilized to maximize the ratepayers' benefit.

Additionally, PWSA has committed to report on any available status of COVID-19 funding awards it seeks. I&E supports this quarterly reporting to ensure that the Commission and parties are informed about PWSA's attempts and progress in seeking COVID-19 relief funding so that the funding can be tracked and appropriately recognized for ratepayers' benefit. In fact, during the pendency of this case, I&E's investigation discovered that PWSA was seeking Coronavirus Local Fiscal Recovery Funds from the City of Pittsburgh, which culminated in a \$17.5 million award that it is earmarked to be used to expand its lead line replacement program beyond that which was budgeted for 2022.²² As I&E witness Cline explained, PWSA did not voluntarily report or provide any updates on its efforts to obtain any funding, as it admitted to efforts only after I&E's investigation uncovered efforts to obtain funding through the discovery process.²³ I&E submits that the public interest requires that ratepayers receive the benefit of COVID-19 relief funding consistent with the type, amount and designated purpose for which it was intended.²⁴ Accordingly, and largely consistent with witness Cline's recommendation,²⁵ PWSA's commitment to timely report its efforts obtain funding and the progress of those efforts will empower parties and the Commission to ensure that PWSA is accountable to ratepayers for any funding awarded; therefore, PWSA's quarterly reporting commitment is in the public interest.

²² I&E St. No. 3, p. 4; I&E Exhibit No. 3, Sch. 1; PWSA St. No. 2, p. 58.

²³ I&E St. No. 3-SR, p. 7.

²⁴ I&E St. No. 3, pp. 3-7.

²⁵ I&E St. No. 3-SR, p. 7.

Finally, as explained more thoroughly in Section III.E below, I&E submits that PWSA must develop a record keeping procedure for valve maintenance and develop a prioritization plan for the repair and replacement of the valves in its system to ensure the safety and integrity of its operations. With that in mind, PWSA's commitment to include quarterly reporting on the status of developing these important protocols is necessary to ensure that parties and the Commission are apprised of the status of PWSA's efforts. Accordingly, the quarterly reporting is in the public interest because it ensures that PWSA's efforts can be evaluated for effectiveness and compliance with applicable standards, thereby providing an additional layer of oversight into PWSA's valve maintenance protocol.

B. Cost Allocation and Rate Design (Joint Petition, Section III.B)

1. Overall Allocation (Joint Petition, Section III.B.1)

The Joint Petitioners agree to the class revenue allocations consistent with Appendix C to the Joint Petition. The rates to collect the settlement level of water, wastewater, and stormwater revenues from each class are shown on Appendix D to the Joint Petition. All parties have agreed that water and wastewater conveyance cost allocation adjustments are made such that no class increase is above 1.5 times of the overall annual increases, and I&E avers that this agreement is equitable and in the public interest.

2. Minimum Charge (Joint Petition, Section III.B.3)

While I&E supports all of the terms, two were essential elements of I&E's agreement to the Settlement. The first of these are PWSA's commitments regarding its Minimum Charge. PWSA has agreed not only to transition away from its reliance on a minimum usage allowance, but to propose the first stage of that plan in its next base rate case. PWSA's commitment here is consistent with I&E witness Cline's recommendation. Specifically,

witness Cline noted that since PWSA came under the Commission's jurisdiction in 2018, I&E noted concerns about the charge,²⁶ including that it is inconsistent with more recent Commission precedent, it operates as a detriment to low usage customers, it disincentivizes conservation efforts, and is a barrier to clear and direct price signals.²⁷ As a result, I&E witness Cline recommended that PWSA be required to provide a plan to transition its rate design away from the minimum usage allowance with the first state of that plan occurring in its next base rate case.²⁸ The Settlement memorializes PWSA's commitment to propose that first step, and as I&E has produced evidence to demonstrate the detriment of the existing minimum charge, I&E submits that PWSA's commitment is necessary to protect the public interest.

Additionally, I&E witness Cline also recommended that in its next base rate case, PWSA provide a customer costs analysis as part of its CCOSS that demonstrates PWSA's factoring of direct costs, including but not limited to meter reading expenses, supervision, customer records and collections, and employees' pension and benefits. Witness Cline testified that this information is necessary to facilitate I&E's complete analysis of the impact of PWSA's removal of the minimum charge in the future.²⁹ Through the Settlement, PWSA has committed to providing a customer cost analysis in its next base rate case that will include, *inter alia*, costs of meters and services, customers installations, meter reading, customer records and collections, other customer accounting expense, employee pension and benefits, and maintenance of meters and services. I&E submits that this term, which will

²⁶ I&E St. No. 3, p. 12, citing *Pa. PUC v. Pittsburgh Water and Sewer Authority*, R-2018-3002645 et al., I&E St. No. 3, pp. 30-32.

²⁷ I&E St. No. 3, pp. 16-17.

²⁸ I&E St. No. 3, p. 21.

²⁹ I&E St. No. 3, pp. 20-22; I&E St. No. 3-SR, pp. 8-9.

ensure that I&E, other parties, and the Commission have adequate information to analyze the costs and impact of PWSA's next proposal, which is necessary to ensure that any rates established are just and reasonable. Accordingly, this term is in the public interest.

Importantly, the Settlement also establishes a process to address the important concerns of customers like Travis Evans, who testified at the public input hearing held in this case on June 28, 2021. Mr. Evans testified that although he only uses about 1,200 gallons of water per month (based on PWSA's own estimates), he is billed a minimum usage charge for 5,000 gallons per month based on the size of his water meter. Additionally, Mr. Evans testified that the basis for his charges is unfair, as it exists solely because his townhouse is compliant with building code provisions that require him to have a one inch meter consistent with fire sprinkler regulations, but his usage is only a fraction of the imputed 5,000 gallons. Furthermore, Mr. Evans does not use water conservation measures, as he noted that conservation would not do anything to address his complaint, which is based upon an inaccurate and overstated 5,000 gallons per month usage assumption.³⁰

I&E's case highlighted the testimony of Mr. Evans because it demonstrated the inequitable result of the minimum charge.³¹ Here, the Settlement offers some relief to Mr. Evans and similarly situated customers in that it provides a process for customers with newly constructed townhomes who are required to install a meter greater than 5/8" for fire protection to seek a reduction of their minimum charge allowance. Upon receipt and review of an eligible residential customer's request, PWSA will assess the customer the 5/8" minimum rate instead of the 1 inch rate. Furthermore, PWSA has committed to performing

³⁰ Tr. at 146-150.

³¹ I&E St. No. 3, pp. 17-1.

outreach to attempt to ensure that eligible customers are apprised of this opportunity. I&E fully supports this outcome as an additional and important step towards addressing the demonstrated detrimental impact of the minimum charge, as I&E looks forward to PWSA's upcoming commitment to propose and begin to implement a plan to continue addressing that impact until the minimum charge is eliminated.

C. Stormwater (Joint Petition, Section III.C)

1. Stormwater Credit Program (Joint Petition, Section III.C.1)

This rate case included the first jurisdictional stormwater fee proposal before the Commission. I&E thoroughly investigated PWSA's stormwater rate proposal, including the proposed tariff fees, cost allocations, credit program, and fee structure.³² I&E witness Cline recognized that PWSA's system is a combined system that inherently overwhelms capacity and can cause localized flooding, basement sewer backups and other problems that requires PWSA to undertake capital projects and maintenance.³³ In this case, PWSA proposed to stop recovering the costs of those requirements through sewer conveyance fees and to instead propose a more equitable stormwater fee to be charged to customers based on their property's impervious surface area.³⁴ After extensive review, I&E largely supported PWSA's proposal,³⁵ with the exception of PWSA's proposed recovery for its stormwater credit program.³⁶ While I&E conceptually supported PWSA's stormwater credit program,³⁷ I&E contested PWSA's assumption that the cost of the credit program would be equal to 5%

³² I&E St. No. 3, p. 22.

³³ I&E St. No. 3, p. 23.

³⁴ PWSA St. No. 8, p. 7.

³⁵ I&E St. No. 3, pp. 22-28.

³⁶ I&E St. No. 3, pp. 28-32.

³⁷ I&E St. No. 3, p. 29.

of the non-single family residential charges; however, this issue was resolved through the black-box settlement and I&E therefore remains supportive of the stormwater settlement terms as reasonable and appropriate.

2. Stormwater Master Plan (Joint Petition, Section III.C.2)

An important caveat is that PWSA's Stormwater Master Plan was not available for this proceeding, meaning that I&E's positions were based only upon the limited information available in this rate case, without the benefit of not only the Stormwater Master Plan, but also without the ability to review PWSA's pending agreement with the City for stormwater management responsibilities.³⁸ According to PWSA, the forthcoming Stormwater Master Plan will be a strategic plan for stormwater management that will provide a comprehensive approach for PWSA and the City of Pittsburgh to manage stormwater.³⁹ Additionally, PWSA has advised that along with the City, it will be entering an agreement taking to define their respective roles for stormwater-related activities that include commitments to address joint MS4 Permit requirements that result from an Administrative Order on Consent with the Environmental Protection Agency, among other responsibilities. As neither the Stormwater Master Plan, nor the pending agreement with the City were available for review, they could not be considered here.

I&E has not conceded that either the Stormwater Master Plan or the pending agreement with the City will be authoritative, let alone determinative, in future rate and compliance proceedings. Importantly, in light of the fact that questions have been raised before the Commission as to PWSA's relationship with the City as it pertains to stormwater

³⁸ I&E St. No. 3, pp. 3-4.

³⁹ PWSA St. No. 7, p. 28.

operations and obligations,⁴⁰ I&E required that the Settlement's acknowledgment of PWSA's Stormwater Master Plan not be construed as preapproval of it or as any determination that it is somehow compliant with applicable legal and regulatory standards. Instead, the Settlement expressly states, as it must, that nothing in the Settlement should be construed so as to preclude any party from challenging the basis for and prudence of the Stormwater Master Plan, or its conformance with the Public Utility Code, Commission regulations, Commission orders, or any other applicable authorities, in any future proceeding. The public interest requires that parties and the Commission have an opportunity to review PWSA's pending Stormwater Master Plan and its pending agreement with the City for compliance with all of PWSA's obligations as a jurisdictional utility; accordingly, because the Settlement preserve this ability, it is in the public interest.

D. COVID-19 Expenses, Funding, and Pandemic Measures (Joint Petition, Section III.D)

1. COVID-19 Expenses (Joint Petition, Section III.D.1)

The Joint Petition includes terms that describe how PWSA will record and reflect COVID-19 expenses, as well as terms that memorialize its commitment to track and report upon its attempts to obtain COVID-19 relief funding, and to provide further information if such funding is ultimately awarded. For I&E, these terms were an extremely important part of

⁴⁰ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority-Stage 2-Stormwater*, Pennsylvania Public Utility Commission Technical Staff Report and Directed Questions Stage 2, Docket No. M-2018-2640802 et al., pp. 12-13 (Issued on May 20, 2021). I&E recognizes that the Directed Questions raise important issues that I&E could not comprehensively address in the timeframe allotted, and considering the format of PWSA's filing and with the information available for this rate proceeding. So while PWSA has submitted supplemental direct testimony in relation to some of the Directed Questions, I&E's responses, or non-responses to the Directed Questions, regardless of whether PWSA has elected to address them in this proceeding, should not be interpreted as being determinative of I&E's position in the Stage 2 Stormwater Compliance Plan case or in any other PWSA proceeding in any forum.

the Settlement. While the unprecedented COVID-19 pandemic has imposed hardship upon PWSA and its customers, the public interest requires that PWSA treat its extraordinary expenses in the manner prescribed by the Commission. To that end, consistent with the Commission’s May 13 Secretarial Letter “COVID-19 Cost Tracking and Creation of Regulatory Asset,”⁴¹ and in order accurately account for prudently incurred incremental extraordinary, nonrecurring expenses related to COVID-19, PWSA will be permitted to track and to maintain detailed accounting records of all COVID-19 Pandemic expenses. Additionally, PWSA is limited to defined categories of COVID-19 costs, as enumerated in Section III.D.1.b, so that there is a clear delineation of qualifying costs when they are claimed.

Pursuant to the Settlement, PWSA shall be permitted to claim COVID-19 Pandemic Costs for ratemaking purposes in its next general rate proceeding. Aside from just tracking its expenses, PWSA will be obligated to track any cost savings as credits to the corresponding categories of deferred costs, which I&E submits is necessary to provide a full picture of the COVID-19 impact upon PWSA. Importantly, as part of the Settlement, parties have reserved the right to challenge the prudence and reasonableness of any claimed expenses so that PWSA still remains accountable for establishing the viability of its claims, as is appropriate.⁴²

⁴¹ “COVID-19 Cost Tracking and Creation of Regulatory Asset,” Secretarial Letter, Docket No. M-2020-3019775 (May 13, 2020).

⁴² 66 Pa. C.S. §315(a).

2. Future COVID-19 Funding (Joint Petition, Section III.D.2)

Importantly, the Settlement contains terms regarding COVID-19 funding that PWSA may receive, which are directly responsive to the concerns I&E raised during the pendency of this case. Significantly, I&E's investigation discovered that PWSA was seeking Coronavirus Local Fiscal Recovery Funds from the City of Pittsburgh, which culminated in a \$17.5 million award that it is earmarked to be used to expand its lead line replacement program beyond that which was budgeted for 2022.⁴³ As I&E witness Cline explained, PWSA did not voluntarily report or provide any updates on its efforts to obtain that funding, as it admitted to it only after I&E's investigation uncovered PWSA's attempts to obtain funding through the discovery process.⁴⁴

While there is no guarantee that PWSA will obtain additional funding, the record also indicates that PWSA intended to request an additional \$100 million in relief funding from the Coronavirus State Fiscal Recovery Fund ("CSFRF"), a program existing under the American Rescue Plan Act.⁴⁵ As of July 29, 2021, PWSA indicated that by then it had submitted a request, but that it had not yet received a response from the Commonwealth regarding its CSFRF funding request.⁴⁶ Nevertheless, I&E submits that it is in the best interest of PWSA and its ratepayers to attempt to receive the funding and for any funding award to be used appropriately. To be sure, at the public input hearings in this case, State Representative Lindsey M. Williams submitted a statement read by her aid Rebecca Boyle urging PWSA to pursue federal and state funding instead of pursuing a rate increase. Representative

⁴³ I&E St. No. 3, p. 4; I&E Exhibit No. 3, Sch. 1; PWSA St. No. 2, p. 58.

⁴⁴ I&E St. No. 3-SR, p. 7.

⁴⁵ PWSA St. No. 2-R, pp. 57-58.

⁴⁶ PWSA St. No. 2-R, p. 58.

Williams' statement noted that a substantial state surplus may be available to help.⁴⁷ I&E commends PWSA's efforts to seek relief funding, and it wholeheartedly encourages PWSA to pursue the potential funding opportunities noted by Representative Williams; however, the public interest requires that PWSA be accountable for making and reporting the fruits of those attempts. Pursuant to the Settlement, PWSA has agreed that it will be accountable.

Significantly, the Settlement memorializes PWSA's obligation to maximize its utilization of government benefits and to track them as well. Additionally, PWSA has agreed to report its efforts, including the amount obtained as part of its efforts, as well as their intended use, as part of its next base rate case. Importantly, if PWSA is awarded COVID-19 funding, after closing it must promptly file a report with the Commission, at this docket number, to notify the Commission and parties of the following information: (1) awarding entity; (2) amount awarded; (3) the timeline for funds being available; (4) and the intended purpose of the award. To the extent that COVID-19 relief funds that PWSA receives are directly connected to projects or budgets contemplated within the context of this rate case, PWSA must file a petition to propose a plan to address the impact of the receipt of such funding. I&E notes that these terms are largely consistent with the recommendations that I&E witness Cline supported in this case,⁴⁸ and they represent a compromise of PWSA and I&E's positions in a manner that will still ensure that the public interest is protected.

I&E submits that the public interest requires that parties and the Commission are apprised of PWSA's receipt of COVID-19 funding, and that ratepayers receive the benefit of COVID-19 relief funding consistent with the type, amount and designated purpose for which

⁴⁷ Tr. at 219-220.

⁴⁸ I&E ST. No. 3, pp. 4-8; I&E St. No. 3-SR, pp. 2-8.

it was intended.⁴⁹ Accordingly, and largely consistent with witness Cline’s recommendation,⁵⁰ timely reporting efforts to obtain funding and its status will empower parties and the Commission to ensure that PWSA is accountable to ratepayers for any funding awarded. The public interest requires no less; accordingly, these Settlement terms are necessary, appropriate, and they should be approved.

3. Customer Protections (Joint Petition, Section III.D.3)

The Joint Petition includes terms intended to assist payment-troubled and low-income customers, including waiver of reconnection fees, extended payment arrangements, and increased targeted customer outreach. I&E did not submit any testimony related to these measures. However, I&E was involved in the discussion of these terms, and it does not oppose them as they were not only necessary for a collective resolution of this case, but they also promote customers’ access to service, which is in the public interest.

E. Customer Service/Quality of Service (Joint Petition, Section III.E)

1. Valves (Joint Petition, Section III.E.1)

For I&E, the Settlement terms regarding PWSA’s water valves were of critical importance. During the investigation in this case, I&E witness Israel E. Gray identified concerns regarding PWSA’s apparent lack of a prioritization for exercising its valves, noting that PWSA did not appear to have any criteria for which if its valves should be exercised each year.⁵¹ Noting that valve maintenance should be prioritized to account for the valves most critical to distribution system performance and sensitive populations, witness Gray

⁴⁹ I&E St. No. 3, pp. 3-7.

⁵⁰ I&E St. No. 3-SR, p. 7.

⁵¹ I&E St. No. 4, pp. 3-4.

recommended that valve maintenance schedules should be based on criteria such as size, location, age, and operational history. Additionally, witness Gray recommended that PWSA develop a comprehensive record keeping procedure for valve maintenance to provide important insight, including tracking the following information: age, size of valve, valve manufacturer, valve serial number, number of rotations to fully open and close the valve, and the overall condition of the valve.⁵² In response, PWSA indicated that witness Gray's valve prioritization recommendation was not feasible because it would require PWSA to compile information and develop a plan to inspect/exercise its valves more frequently, which would be time-consuming and costly.⁵³ Additionally, while PWSA agreed with witness Gray's record-keeping recommendation, it did so only on a going-forward basis. Finally, PWSA indicated, for the first time in its rebuttal testimony, that it "recently learned" that over 6,000 of the 26,000 valves in its system are privately owned. Using that newly discovered information, PWSA then proposed to adjust its internal target for valve exercising to only 4,000 valves per year.⁵⁴

I&E found PWSA's response unacceptable. First, noting that critical valves on water mains serve critical infrastructure such as hospitals, schools, and nursing homes, I&E witness Gray testified that safety considerations warrant PWSA's implementation of valve prioritization measures. Since I&E's revenue recommendation was revised to ensure that PWSA would have adequate revenue to hire all staff contemplated in PWSA's filing, I&E was not persuaded that its recommendation would be too onerous or costly.⁵⁵ Furthermore,

⁵² I&E St. No. 4, p. 5.

⁵³ PWSA St. No. 5-R, p. 7.

⁵⁴ PWSA St. No. 5-R, p. 3.

⁵⁵ I&E St. No. 4-SR, pp. 5-8.

while I&E conceded that PWSA may not be able to implement all of its record-keeping information in areas where historical information simply is not available, I&E rejected the wholesale notion that no historical records of any kind could be tracked.⁵⁶ Finally, noting that PWSA disavowed ownership of 6,000 valves in its system for the first time in rebuttal testimony, comprising 23% of the 26,000 valves initially claimed, witness Gray determined that further investigation into the basis for and safety consequences of that claim was warranted.⁵⁷

Through continued negotiations, PWSA and I&E were able to agree on a framework that may be used to address I&E's concerns and to recognize I&E's intention to conduct additional investigation beyond this rate case. PWSA has agreed to develop Standard Operating Procedures and planning efforts to develop a valve prioritization plan to be implemented in 2022, and it will both report on the progress of the implementation timeline and coordinate a meeting with I&E's Safety Division to discuss the final plan. Furthermore, the Settlement memorializes PWSA's commitment to create a plan to implement a record-keeping procedure for valve maintenance, including valve location (GPS coordinates), age, size manufacturer, serial number (when available from the manufacturer), number of rotations to fully open and fully close valve, and overall condition of valves for all new valve installations beginning in 2022.

Additionally, PWSA has agreed to meet with I&E's Safety Division within 30 days of the full Settlement package being submitted. At the meeting, which has already been scheduled, PWSA, I&E's Safety Division and other interested parties will do the following:

⁵⁶ I&E St. No. 4-SR, pp. 8-9.

⁵⁷ I&E St. No. 4-SR, pp. 9-10.

(1) discuss PWSA's plan to develop a record-keeping procedure for valve maintenance; (2) provide more detail regarding the recent determination that 6,000 valves within its system are privately owned; and (3) provide information related to the private ownership (rights to valve operation, need for additional valves, PWSA's ability to isolate valves). Importantly, in the interim, PWSA will continue to attempt to exercise 5,000 isolation valves annually instead of adjusting its target downwards to 4,000 valves as proposed in this case.⁵⁸

I&E submits that the above terms are represent important steps towards ensuring the integrity and safety of PWSA's distribution system. First, PWSA's commitment to develop a record keeping process for valves is of paramount importance, because the records will provide valuable insight when it comes to scheduling future valve maintenance, valve replacement, and highlight any reliability issues with specific valve manufacturers and/or models.⁵⁹ Additionally, PWSA's commitment to developing a valve prioritization plan is necessary to avoid flooding and to ensure that safe and continuous service is available at all locations, including critical locations like hospitals, dialysis centers, schools, and assisted living facilities.⁶⁰ Finally, PWSA's agreement to provide I&E's Safety Division with further information about the 6,000 valves it has recently alleged are private owned is necessary to facilitate I&E's investigation into the safety of PWSA's operations in light of this new information.⁶¹ Accordingly, I&E submits that these terms are necessary to protect public safety; accordingly, they are in the public interest.

⁵⁸ PWSA St. No. 5-R, p. 3.

⁵⁹ I&E St. No. 4-SR, pp. 1-2.

⁶⁰ I&E St. No. 4-SR, pp. 6-7.

⁶¹ I&E ST. No. 4-SR, p. 10.

F. Low-Income Customer Assistance Programs (Joint Petition, Section III.F)

1. Bill Discount Program/Hardship Grant (Joint Petition, Section III.F.1 – III.F.2)

The Joint Petition includes terms related to low income customers, including increased data tracking and reporting, expansion of the Arrearage Forgiveness Program, enhancements to PWSA’s various customer assistance programs, and increased customer outreach. I&E did not submit any testimony related to these measures. However, I&E was involved in the discussion of these terms, and it does not oppose them as they were not only necessary for a collective resolution of this case, but they also promote customers’ access to service, which is in the public interest.

2. Winter Shut Off Moratorium (Joint Petition, Section III.F.3)

I&E submitted testimony in opposition to PWSA’s proposal to expand the winter shut-off moratorium to customers who are 65 years of age or older regardless of their income level. As I&E witness Patel indicated in his testimony, PWSA’s proposal was objectionable on multiples bases, including the following: (1) it was not at all based on customers’ financial need; (2) it was not supported by any surveys or studies; (3) it was incompatible with the Commission’s policy statement regarding customer assistance programming being targeted to low-income customers; (4) its reliance on age as the defining criteria for eligibility was discriminatory; and (5) it would result in unwarranted uncollectible expenses for customers.⁶²

For these reasons, from both a public interest and regulatory perspective, I&E opposed PWSA’s proposal to extend the winter moratorium protection based on age in lieu

⁶² I&E St. No. 2, pp. 53-56.

of demonstrated need. As part of the Settlement, PWSA has agreed to withdraw its proposal, and I&E submits that the public interest requires that it be withdrawn. I&E notes that the Settlement reserves PWSA's right to file a separate petition with the Commission to seek approval of its proposal, or a similar proposal, and if PWSA elects to do so, I&E is committed to evaluating whatever proposal is made and responding appropriately. At present, PWSA's agreement to withdraw this proposal was a condition necessary for I&E to join the Settlement, as the public interest demands that ratepayers' access to winter shut off protections not be predicated on age, but instead upon demonstrated financial need.

G. Miscellaneous Fees (Joint Petition, Section III.G)

As part of the Settlement, PWSA agreed to, inter alia, reduce its returned check charge to \$20, remove tariff language permitting adjustments to miscellaneous charges and fees on an annual basis, and to provide cost-based support for its proposed fees and charges in its next base rate filing. These terms represent a compromise intended to address the concerns of the OCA.⁶³ Although I&E did not submit testimony regarding them, I&E avers that the terms will serve to protect PWSA's customers from unwarranted charges; therefore, they are in the public interest.

H. Future Notice of Proposed Rate Changes (Joint Petition, Section III.H)

Through the Settlement, PWSA has committed that its future notices of proposed rate changes will both include language to indicate that the bill impacts do not include ALCOSAN charges for wastewater treatment and will also reference "wastewater conveyance" instead of just "wastewater." These terms represent a compromise intended to

⁶³ OCA St. No. 3, p. 32; OCA St. No. 5, pp. 28-30.

address the concerns of the OCA.⁶⁴ Although I&E did not submit testimony regarding them, I&E avers that the terms will serve to ensure that PWSA's customers are better informed about how ALCOSAN charges are reflected; therefore, they are in the public interest.

I. Additional Terms and Conditions (Joint Petition, Section I)

The Joint Petition includes various additional terms and conditions, including that the Settlement represents a balance of Joint Petitioners interests and therefore should not be construed as approval of any Joint Petitioner's position. I&E agrees with these terms because, as noted above, this is a black box settlement, and therefore there is no resolution of individual issues except to effectuate the terms and agreements of the settlement. Additionally, I&E agrees it will waive the filing of Exceptions if the ALJ adopts the Settlement without modifications and will otherwise support the terms and conditions of the Settlement if unmodified by the ALJ and the Commission.

⁶⁴ OCA St. No. 5, pp. 3-4.

III. CONCLUSION

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition for Settlement as being in the public interest and respectfully requests that Administrative Law Judge Eranda Vero recommend, and the Commission approve, the terms and conditions contained in the Settlement without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gina L. Miller', written in a cursive style.

Gina L. Miller
Prosecutor
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Dated: September 14, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos.: R-2021-3024773 (Water)
	:	R-2021-3024774 (Wastewater)
Pittsburgh Water and Sewer Authority	:	R-2021-3024779 (Stormwater)

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Statement in Support** dated September 14, 2021, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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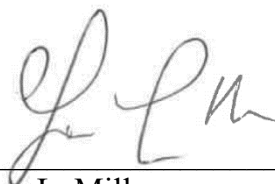
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