

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Implementation of Chapter 32 of the Public | : | M-2018-2640802 (Water) |
| Utility Code Regarding Pittsburgh Water and | : | M-2018-2640803 (Wastewater) |
| Sewer Authority – Stage 2 (Stormwater) | : | |

RECOMMENDED DECISION

Before

Eranda Vero
Administrative Law Judge

and

Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This Recommended Decision recommends that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve without modification the “Joint Petition for Settlement Regarding PWSA’s January 20, 2022 Stage 2 Compliance Plan: Stormwater (Revised)” executed by the Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”), the Office of Consumer Advocate (“OCA”), Pittsburgh United, and the City of Pittsburgh (“City”) (collectively, the “Joint Petitioners” or “Settling Parties”), and filed with the Commission’s Secretary on June 9, 2022. The Settling Parties represented in the Settlement that the Commission’s Bureau of Investigation and Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) do not oppose the Settlement. We recommend approval because the Settlement is unopposed and in the public interest.

This decision is issued pursuant to the Commission’s Opinion and Order entered on March 7, 2022, directing that the Office of Administrative Law Judge (“OALJ”) issue a Recommended Decision pertaining to PWSA’s Stage 2 Stormwater Compliance Plan on or before July 25, 2022.

HISTORY OF THE PROCEEDING

On September 28, 2018, PWSA filed its Compliance Plan in response to the Final Implementation Order laying out the process for implementing Act 65 of 2017 (“Act 65”) and the amendments to Chapter 32 of the Public Utility Code (Code). Pursuant to Act 65, the Commission has jurisdiction over the utility service of water, wastewater, and stormwater provided by Pennsylvania cities of the second class, and such jurisdiction is applicable to PWSA. *See* 66 Pa.C.S. § 3201 *et seq.*; *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Tentative Implementation Order, Docket Nos. M-2018-2640802 and M-2018-2640803 (Order entered January 18, 2018).

On February 4, 2021, the Commission issued an Order addressing a partial settlement and resolving Stage 1 Compliance Plan issues. In that Order, the Commission also deferred certain issues to Stage 2 of the Compliance Plan proceeding and reiterated directives previously set forth in a Secretarial Letter dated January 24, 2020. Those directives set forth the process for Stage 2 of the Compliance Plan and included specific time frames and deadlines for the filing of the Stage 2 Compliance Plan by PWSA, comments by stakeholders, and the assignment of the Stage 2 Compliance Plan to the OALJ, including Commission Staff’s directed questions to PWSA compliance with Chapter 14 of the Code and Chapter 56 of the Commission’s Regulations, and PWSA operations as a regulated stormwater utility, for the purpose of conducting evidentiary hearings and issuing a Recommended Decision.

Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Docket Nos. M-2018-2640802 and M-2018-2640803, *Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, Docket Nos. P-2018-3005037 and P-2018-30055039 (Opinion and Order entered February 4, 2021) (*February 2021 Order*).

On April 9, 2021, PWSA filed its Stage 2 Compliance Plan for Customer Service Issues, and on April 12, 2021, PWSA filed its Stage 2 Compliance Plan for Stormwater Issues. Also, on April 9, 2021, PWSA filed a Petition to Amend the Commission’s *February 2021, Order* requesting a modified procedural process for customer service issues.

On April 13, 2021, PWSA filed a combined base rate case at Docket Nos. R-2021-3024773 (water), R-2021-3024774 (wastewater), and R-2021-3024779 (stormwater), which included a proposed stormwater tariff and a request to implement stormwater rates for the first time (collectively, “2021 Rate Case”). PWSA also filed a Motion to Hold in Abeyance the Stage 2 Stormwater Compliance Plan pending resolution of the 2021 Rate Case to allow for the full range of stormwater issues to be addressed as part of that case, and then to proceed with any remaining issues regarding the Stormwater Compliance Plan after the 2021 Rate Case was concluded.

The Commission issued an Order on May 20, 2021, suspending PWSA’s stormwater tariff until January 12, 2022, and issuing the Technical Staff Report and Directed Questions on Stage 2 stormwater issues. Also, that same day, the Commission entered a separate Opinion and Order granting the Motion to hold the Stormwater Compliance Plan in abeyance, directing PWSA to file a revised Stormwater Compliance Plan, and providing revised deadlines for the filing of the revised Stormwater Compliance Plan, a second set of Directed Questions from the Commission’s Bureau of Technical Utility Services (“TUS”) identifying any remaining issues, and the assignment to OALJ with a Recommended Decision due by May 25, 2022. *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802 and M-2018-2640803, *Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, Docket Nos. P-2018-3005037 and P-2018-30055039 (Order entered May 20, 2021) (*May 2021 Order*).

On August 5, 2021, the Commission issued a Secretarial letter assigning the Stage 2 Compliance Plan for Customer Service Issues to the OALJ, including the Commission’s Bureau of Consumer Services (“BCS”) Report and Directed Questions Stage 2, which focused only on customer services issues.

On September 28, 2021, we issued a Prehearing Order which established a litigation schedule for Stage 2 and included dates for the submittal of testimony and briefs, evidentiary hearings, and a Recommended Decision. The schedule also included estimated dates for PWSA's revised Stormwater Compliance Plan filing, responses to TUS Directed Questions on the Stormwater Compliance Plan, and a Prehearing Conference to address Stormwater Compliance Plan litigation.

On November 18, 2021, the Commission approved a full settlement of the 2021 Rate Case, including approval of PWSA's initial stormwater tariff, stormwater rates, stormwater credit program, and a broad range of items related to stormwater service. PWSA's stormwater rates and stormwater tariff became effective on January 12, 2022.

On January 20, 2022, PWSA submitted its revised Stormwater Compliance Plan, which reflected stormwater-related issues addressed through the 2021 Rate Case and provided updated information on remaining issues to be addressed through the Stage 2 proceeding.

On February 3, 2022, PWSA filed with the Commission an unopposed petition to separate stormwater issues from other Stage 2 Compliance plan issues.

On February 22, 2022, TUS submitted its Technical Staff Report and Directed Questions Stage 2, Set 2, as directed by the Commission. That same day, a Secretarial Letter (*February 2022 Secretarial Letter*) was also issued, assigning the review of PWSA's Revised Stormwater Compliance Plan from TUS to OALJ, pursuant to the *May 2021 Order*. The *February 2022 Secretarial Letter* directed the OALJ to incorporate the Stage 2, Set 2 Report into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein, culminating with a Recommended Decision to be issued by OALJ on the PWSA Stage 2 Compliance Plan issues pertaining to stormwater compliance by May 25, 2022.

By Opinion and Order entered March 7, 2022, the Commission granted, in part, PWSA's petition to separate stormwater issues from other Stage 2 Compliance Plan issues. The Commission extended the issuance of a Recommended Decision by the OALJ pertaining to

Stage 2 Stormwater Compliance Plan issues by 60 days—i.e., from May 25, 2022, to July 25, 2022.

Thereafter, after an exchange of emails with the parties, on March 16, 2022, we issued a Prehearing Order modifying the litigation schedule, by agreement of the parties, for review of the Stormwater Compliance Plan to reflect the additional 60 days granted by the Commission’s March 7, 2022, Order. As part of this modified schedule, an evidentiary hearing was scheduled for May 19, 2022.

In accordance with the modified litigation schedule, on March 22, 2022, PWSA submitted its direct testimony in response to the TUS Directed Questions, Set 2 that were issued on February 22, 2002. No other party submitted testimony regarding PWSA’s Revised Stormwater Compliance Plan or in response to PWSA’s testimony.

On May 13, 2022, counsel for PWSA advised us via email that the parties had reached a settlement in principle of the remaining stormwater issues. The parties also agreed to stipulate into the record PWSA’s testimony that was submitted in the stormwater phase, as well as certain testimony from the 2021 Rate Case. Accordingly, the parties jointly requested that the May 19, 2022, evidentiary hearing be cancelled.

On May 19, 2022, we issued a Recommended Decision on Stage 2 Compliance Plan concerning customer service issues.¹

On June 9, 2022, the Settling Parties filed the “Joint Petition for Settlement Regarding PWSA’s January 20, 2022, Stage 2 Compliance Plan: Stormwater (Revised).” As indicated above, the Joint Petition was signed by PWSA, OCA, Pittsburgh United, and City. The Settlement also included a Statement in Support of the Settlement by each Settling Party. Also on June 9, 2022, I&E filed a letter of non-opposition to the Settlement, and the Settlement represents that OSBA, and I&E do not oppose the Settlement.

¹ On July 14, 2022, the Commission entered an Order adopting this Recommended Decision.

As discussed below, we recommend approval of the Joint Petition because it is unopposed and in the public interest.

TERMS AND CONDITIONS OF THE SETTLEMENT

The Joint Petition is a 14-page document signed by PWSA, OCA, Pittsburgh United and the City. The Joint Petition represents that I&E and OSBA do not oppose the Settlement. Attached to the Joint Petition are Appendices A-E. Appendix A is a list of the preserved testimony and exhibits of the parties. Appendices B-E are the Statements in Support of Settlement of PWSA (Appendix B); OCA (Appendix C); Pittsburgh United (Appendix D) and the City (Appendix E), respectively.

The essential terms of the Joint Petition for Settlement are set forth on pages 7-9 in Section III of the Settlement. These terms are stated below verbatim and, for ease of reference, retain the same numbers² and headings as they appear in the Settlement.

III. TERMS AND CONDITIONS OF SETTLEMENT

The Settling Parties support approving PWSA's January 20, 2022, Revised Stage 2 Compliance Plan – Stormwater subject to the following terms and conditions:

A. Updated Stage 2 Compliance Plan: Stormwater

1. Within 60 days after entry of a final order in this proceeding, PWSA will file an updated version of the Stage 2 Compliance Plan: Stormwater incorporating the responses to the TUS Directed Questions, Set 2 that PWSA provided through its direct testimony in this proceeding.

B. Stormwater Planning Public Engagement

1. PWSA is in the process of finalizing a Stormwater Strategic Plan in the Summer, 2022.³ Once a draft Plan is approved

² The numbering of the original footnotes has been changed herein to keep in sequential order within this decision.

³ The Stormwater Strategic Plan referenced here replaces the former "Stormwater Master Plan," as explained in the Revised Stormwater Compliance Plan, Appendix 1 at 12.

by PWSA it will circulate the Draft Plan publicly, including to the Parties to this proceeding and take comments. It will also convene a community meeting at which the draft Plan will be discussed and comments from the public taken. PWSA will respond to all material and appropriate comments and explain how and/or to what extent the comment is addressed in the final Strategic Plan.

2. Upon finalization of the Strategic Plan, PWSA will initiate a process of developing a long-term public engagement process for implementation of the Strategic Plan as well as the subsequent Wet Weather Plan, and additional strategic planning initiatives related to stormwater.
 - a. PWSA will consult with its existing Stormwater Partners Group in the development of its long-term public engagement process. The consultation shall include regular progress reports from the Authority on PWSA's stormwater infrastructure development, public engagement plans and other relevant topics. The first consultation will occur no later than three months after PWSA finalizes the Strategic Plan.
 - b. The Parties to this Proceeding will be invited to join the Stormwater Partners group.⁴

C. Compliance Tariff

1. The parties propose that the Commission grant a period of 60 days after entry of its final order for PWSA to prepare and submit its Compliance Tariff.

I. ADDITIONAL TERMS AND CONDITIONS

23. Appendix A attached hereto includes a listing of relevant testimony submitted by the Settling Parties in the *PWSA 2021 Rate Case*. The Settling Parties hereby request that the listed testimony and exhibits be admitted to the record in this proceeding pursuant to 52 Pa. Code § 5.407. Appendix A also includes a reference to the Final Order of the PUC in the *PWSA 2021 Rate Case*. The Settling Parties hereby request that the ALJs and the Commission take administrative notice of the November 18, 2021, Final Order approving the rate case settlement pursuant to 52 Pa. Code § 5.406.

⁴ The existing members of the Stormwaters Partners include: the Pittsburgh Parks Conservancy, Pittsburgh United, Grounded, Penn State Master Watershed Stewards and PWSA.

24. The Commission's approval of the Settlement shall not be construed as approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Settlement.
25. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any party in this or any other proceeding if it were fully litigated.
26. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement represents a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.
27. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, PWSA or any Joint Petitioner may withdraw from this Settlement, upon written notice to the Commission and all parties within five (5) business days following entry of the Commission's Order, and, in such event, the Settlement shall be of no force and effect. In the event that the Commission disapproves the Settlement or PWSA or any other Joint Petitioner elects to withdraw from the Settlement as provided above, each of the Joint Petitioners reserves their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination, and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.
28. All Joint Petitioners shall support the Settlement and will make reasonable and good faith efforts to obtain approval of the Settlement by the ALJs and the Commission without modification. The Joint Petitioners agree that such good faith efforts do not necessarily include opposing or

responding to comments or oppositions to the Settlement. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated the issues resolved by the Settlement and will result in the establishment of terms and conditions that – until changed on a going-forward basis as provided in the Public Utility Code – are in accordance with the law and in the public interest.

29. If the ALJs, in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions with respect to any issues addressed by the Settlement. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to: (a) any modifications to the terms and conditions of this Settlement; or (b) any additional matters proposed by the ALJs in their Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.
30. This Settlement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

Joint Petition, at 7-9.

LEGAL STANDARDS

Chapter 32 of the Public Utility Code gives the Commission jurisdiction and oversight over PWSA. Under Chapter 32, the provisions in the Public Utility Code apply to PWSA in the “same manner as a public utility.”⁵ Therefore, the Commission has jurisdiction over the provision of water and wastewater⁶ service by PWSA.

⁵ 66 Pa.C.S. § 3202(a)(1).

⁶ The term “wastewater” includes (but is not limited to) sewage, infiltration or inflow into sewers, and storm water which is or will become mixed within a combined sewer system. *See* 66 Pa.C.S. § 102. The term does not include storm water collected in a (stand-alone) municipal separate storm sewer. *Id.*

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁷ Settlements eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the Parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.⁸ In fact, parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.⁹ In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves all of the contested issues in this case, fairly balances the interests of the company and its customers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

After a full consideration of the terms of the Joint Petition and the Statements in Support, we recommend that the Commission adopt the terms of the Settlement as set forth in the Joint Petition without modification.

DISCUSSION OF THE JOINT PETITION

Each of the Joint Petitioners submitted thorough and well-written Statements in Support of the Settlement. Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners’ Statements in Support did not necessarily address each and every

⁷ See 52 Pa. Code § 5.231.

⁸ *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). See also *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm’n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

⁹ *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861, at 8 (Opinion and Order entered Dec. 5, 2013).

aspect of the Settlement. The position of each party is summarized briefly here. The reader is directed to the Statements in Support for a more detailed discussion of each Joint Petitioner's position.

A. Updated Stage 2 Compliance Plan: Stormwater (Settlement ¶ III.A)

Pursuant to the Settlement, PWSA will file an updated version of its Stormwater Compliance Plan that incorporates its responses to the TUS Directed Questions, Set 2 that PWSA provided in its testimony in this proceeding. The Authority will submit this updated Compliance Plan within sixty days of the final order in this proceeding.¹⁰

According to PWSA, these settlement terms are in the public interest because the proposed filing will provide the Commission and the parties with a single, complete Stormwater Compliance Plan that incorporates PWSA's responses to both sets of TUS Directed Questions and addresses all aspects of stormwater compliance.¹¹ OCA agrees with PWSA that these settlement terms help ensure that the final Stormwater Compliance Plan is fully developed and complete, by addressing the remaining issues raised by the Commission and the parties following the 2021 Rate Case.¹²

On the other hand, Pittsburgh United notes that the Compliance Plan and PWSA's testimony do not propose any significant stormwater measures beyond those already discussed at length, and approved by the Commission, in PWSA's 2021 Rate Case.¹³ In Pittsburgh United's view, PWSA's Compliance Plan is limited in scope and does not confront key stormwater challenges facing the Authority and its customers including surface flooding, basement backups, and water pollution. PWSA intends to address these challenges through its ongoing development

¹⁰ Joint Petition at 8, ¶ III.A.1.

¹¹ PWSA St. in Supp. at 3. Given that the parties' investigation into stormwater service was conducted across various proceedings, PWSA provides a list identifying evidentiary support for the compliance items addressed in the Revised Stormwater Compliance Plan. *Id.* at 6-8.

¹² OCA St. in Supp. at 2.

¹³ Pittsburgh United St. in Supp. at 3.

of a separate Stormwater Strategic Plan.¹⁴ Nevertheless, Pittsburgh United supports the proposed Settlement in this proceeding because it builds on the settlement of PWSA’s 2021 Rate Case, which required the Authority’s Stormwater Strategic Plan to “comprehensively state PWSA’s criteria for selecting and prioritizing stormwater projects.”¹⁵

B. Stormwater Planning Public Engagement (Settlement ¶ III.B)

Under the Settlement, once PWSA has prepared a draft of the Stormwater Strategic Plan¹⁶, the Authority will circulate the Draft Plan publicly, including to the parties in this proceeding, and will take public comments on the Draft Plan. PWSA will also convene a community meeting at which the Draft Plan will be discussed, and public comments will be taken. The Authority will respond to the comments received and will explain how and to what extent the comment is addressed in the final version of the Stormwater Strategic Plan.¹⁷

Once the Stormwater Strategic Plan has been finalized, the Settlement provides that PWSA will develop a long-term public engagement process for implementation of the Stormwater Strategic Plan, as well as the subsequent Wet Weather Plan and other strategic planning initiatives related to stormwater.¹⁸ To develop this engagement process, PWSA will work with its existing Stormwater Partners Group, which currently includes PWSA, Pittsburgh United, the Pittsburgh Parks Conservancy, Grounded, and Penn State Master Watershed Stewards as members, and the parties to this proceeding will also be invited to join.¹⁹ The Authority will consult with the Stormwater Partners group by providing regular progress reports

¹⁴ *Id.*

¹⁵ *Id.*, referring to *Pa. Pub. Util. Comm’n v. Pittsburgh Water & Sewer Auth.*, Recommended Decision, Docket No. R-2021-3024773 at 20 (Joint Settlement ¶ III.C.2.b) (Order entered October 6, 2021).

¹⁶ The Stormwater Strategic Plan referenced here and, in the Settlement, replaces the former “Stormwater Master Plan,” as explained in the Revised Stormwater Compliance Plan, Appendix 1 at 12. *See also* Joint Petition at 8, fn. 13.

¹⁷ Joint Petition at 8, ¶ III.B.1.

¹⁸ Joint Petition at 8, ¶ III.B.2.

¹⁹ Joint Petition at 9, ¶ III.B.2.b.

on stormwater infrastructure development, public engagement plans and other relevant topics. The first consultation with this group will occur within three months after PWSA finalizes the Stormwater Strategic Plan.²⁰

PWSA supports these terms as a reflection of its ongoing commitment to public engagement and outreach. According to the Authority, these settlement terms are in the public interest because they provide a process through which the parties, community groups, members of the public and other stakeholders can provide input to PWSA's ongoing stormwater planning and implementation processes and help ensure that the Authority's stormwater service meets the needs of the community.²¹

OCA agrees. According to OCA, the development of processes for short-term and long-term public engagement related to PWSA's stormwater planning is in the public interest because it provides the opportunity for consumers and the Pittsburgh community to have an active role in developing and implementing initiatives that address their needs and ideas.²²

The City of Pittsburgh also believes that the collaborative nature of PWSA's proposed public engagement process is in the public interest. The City argues that the proposed process will allow PWSA to develop an engagement plan that meets important objectives and incorporates helpful feedback to effectively reach PWSA customers.²³

Lastly, Pittsburgh United argues in its Statement in Support that, because PWSA's customers bear the burden of flooding, basement backups, and creeks and rivers polluted by stormwater, the Authority must engage in meaningful, sustained consultation with community members in order to craft and implement a successful Strategic Plan.²⁴ To that end,

²⁰ Joint Petition at 8, ¶ III.B.2.a.

²¹ PWSA St. in Supp. at 4.

²² OCA St. in Supp. at 3.

²³ City St. in Supp at 3.

²⁴ Pittsburgh United St. in Supp. at 4.

Pittsburgh United believes that these settlement terms are in the public interest because they will increase the likelihood that PWSA's stormwater operations are informed and improved by the perspectives of its customers – while preserving the rights of the parties to engage in a thorough review of PWSA's forthcoming Stormwater Strategic Plan and to raise any issues related thereto in an appropriate forum.²⁵

C. Compliance Tariff (Settlement ¶ III.C)

Under the Settlement, PWSA will file a Compliance Tariff within sixty days after entry of the final order in this proceeding incorporating any necessary changes from the Compliance Plan into the stormwater tariff.²⁶ In support of this settlement term, PWSA explains that its Stormwater Tariff does not currently provide for line extensions for bona fide or non-bona fide service applicants. However, the Revised Stormwater Compliance Plan states that the Authority has reconsidered its position and now believes the Stormwater Tariff should include line extension provisions that follow the general rules and conditions applicable to wastewater line extensions under PWSA's PUC-approved Wastewater Tariff. PWSA supports Section III.C of the Settlement noting that the Compliance Tariff filing will incorporate language from the Wastewater Tariff to make stormwater line extensions available in instances in which PWSA currently has the necessary facilities and capacity to accommodate the extension.²⁷ In the Authority's view, this Compliance Tariff filing will result in aspects of the Stormwater Compliance Plan, once approved, being reflected in PWSA's Stormwater Tariff.²⁸

²⁵ Pittsburgh United St. in Supp. at 4-5, referencing *Pa. Pub. Util. Comm'n v. Pittsburgh Water & Sewer Auth.*, Recommended Decision, Docket No. R-2021-3024773, at 65 (Order entered Oct. 6, 2021) (finding rate case settlement terms regarding customer education and outreach and preserving the Commission's and the Parties' ability to review the Strategic Plan to be in the public interest).

²⁶ Joint Petition at 9, ¶ III.C.1.

²⁷ PWSA St. in Supp. at 5, referencing PWSA's January 20, 2022 Stage 2 Compliance Plan: Stormwater (Revised), Appendix 1 at 13-15; see also *2021 Rate Case*, PWSA St. No. 7-SD at 11-12.

²⁸ PWSA St. in Supp. at 5.

In its Statement in Support, OCA supports these settlement terms because they will afford PWSA a reasonable amount of time to prepare its Compliance Tariff and for the parties to review and comment. This, in turn, will help to ensure that the filed tariff accurately and fully represents the final Plan approved by the Commission.²⁹ The City of Pittsburgh also agrees that the request of a 60-day period after the entry of the Commission’s final order for PWSA to prepare and submit its Compliance Tariff is reasonable in light of the other terms of the settlement.³⁰

D. Recommendation

This Settlement was agreed to by the Settling Parties after review of PWSA’s January 20, 2022, Stage 2, Compliance Plan: Stormwater (Revised) (“Stormwater Compliance Plan”), PWSA’s responses to the first set of TUS Directed Questions (attached as an appendix to the Stormwater Compliance Plan), and PWSA’s supporting testimony reflecting the Authority’s responses to the second set of TUS Directed Questions.³¹

The Stormwater Compliance Plan provides detailed information about PWSA’s stormwater operations and addresses specific compliance items that are unique to stormwater service. In general, because PWSA operates its stormwater operations as part of its “combined” water and wastewater operations, its stormwater operations are and will be consistent with the Public Utility Code and Commission regulations and orders to the same extent as they are for PWSA’s other areas of operation.³² Accordingly, PWSA’s prior Stage 1 Compliance Plan, as previously approved by the Commission for the Authority’s water and wastewater operations, as well as the Stage 2 Compliance Plan related to customer service and collections issues, which was approved by the Commission,³³ are also applicable to PWSA’s stormwater operations. The

²⁹ OCA St. in Supp. at 4.

³⁰ City St. in Supp. at 3.

³¹ Joint Petition at ¶¶ 16, 31-33.

³² PWSA’s January 20, 2022 Stage 2 Compliance Plan: Stormwater (Revised), at 5. Note that the PUC has no specific regulations dealing with stormwater *per se*.

³³ *See*, Order entered by the Commission on July 14, 2022.

Stormwater Compliance Plan addresses any instance in which PWSA’s plan for compliance with a particular regulation needs to be modified because of the nature of stormwater service, as well as areas that are unique to stormwater operations.³⁴

Additionally, this Settlement reflects the detailed investigation into stormwater service and PWSA’s stormwater tariff that was undertaken in PWSA’s 2021 combined water, wastewater and stormwater rate case in the 2021 Rate Case.³⁵ Through the 2021 Rate Case, the parties (which are the same parties as those in this Stage 2 Compliance Plan proceeding) engaged in extensive informal and formal discovery, detailed settlement negotiations, and submitted direct, supplemental direct, rebuttal, surrebuttal, and rejoinder testimony on stormwater issues. The parties reached a full settlement of the *2021 Rate Case* – including all stormwater issues raised in that proceeding – and the settlement was subsequently approved by the Commission without modification. PWSA’s January 20, 2022, Stage 2 Compliance Plan: Stormwater (Revised) incorporates and reflects the rate case settlement terms related to stormwater service.³⁶

In turn, the terms and conditions of the Settlement in this proceeding address the few remaining stormwater issues that were not resolved in the *2021 Rate Case*.³⁷ They provide for the filing of an updated and complete Stage 2 Compliance Plan for stormwater within sixty days of the final order in this proceeding; short-term and long-term public engagement related to PWSA’s stormwater public; as well as the filing of a Compliance Tariff incorporating any necessary changes from the Compliance Plan into the stormwater tariff within sixty days after entry of the final order in this proceeding. We find that these provisions comply with the relevant statutory and regulatory provisions of the Commission and strike an appropriate balance of the many and varied interests of the parties to the Settlement. In addition, the Settlement is consistent with the Commission’s rules and practices encouraging settlements, 52 Pa. Code

³⁴ PWSA’s January 20, 2022 Stage 2 Compliance Plan: Stormwater (Revised), at 5-6.

³⁵ Docket Nos. R-2021-3024773 (water), R-2021-3024774 (wastewater), and R-2021-3024779 (stormwater).

³⁶ Joint Petition at ¶ 32.

³⁷ As explained in the Joint Petition, the litigation of the Stage 2 stormwater issues proceeded on a separate track from the litigation of the customer service and collections issues. *See* Joint Petition at ¶ 17.

§§ 5.231, 69.391, 69.401-69.406, and is supported by a substantial record. Accordingly, we find that approval of the Settlement is in the public interest and recommend that the Commission adopt it without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 501, 1308(d), 3202(a)(1).

2. The provisions in the Public Utility Code apply to PWSA in the “same manner as a public utility.” 66 Pa.C.S. § 3202(a)(1).

3. The Commission encourages parties in contested on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231.

4. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm’n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

5. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

6. The Joint Petition for Settlement is in the public interest.

