

COMMONWEALTH OF PENNSYLVANIA



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September 19, 2019

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

Re: Implementation of Chapter 32 of the Public
Utility Code Regarding Pittsburgh Water and
Sewer Authority – Stage 1
Docket Nos. M-2018-2640802
M-2018-2640803

Petition of The Pittsburgh Water and Sewer
Authority for Approval of Its Long-Term
Infrastructure Improvement Plan
Docket Nos. P-2018-3005037
P-2018-3005039

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

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cc: Honorable Mark A. Hoyer
Honorable Conrad A. Johnson
Certificate of Service
*278760

CERTIFICATE OF SERVICE

Re: Implementation of Chapter 32 of the Public	:	Docket Nos.	M-2018-2640802
Utility Code Regarding Pittsburgh Water and	:		M-2018-2640803
Sewer Authority – Stage 1	:		
	:		
Petition of The Pittsburgh Water and Sewer	:		
Authority for Approval of Its Long-Term	:	Docket Nos.	P-2018-3005037
Infrastructure Improvement Plan	:		P-2018-3005039

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of September 2019.

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Dated: September 19, 2019
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	Docket Nos.	M-2018-2640802
Utility Code Regarding Pittsburgh Water	:		M-2018-2640803
And Sewer Authority – Stage 1	:		
	:		
Petition of The Pittsburgh Water and Sewer	:	Docket Nos.	P-2018-3005037
Authority for Approval of Its Long-Term	:		P-2018-3005039
Infrastructure Improvement Plan	:		

**MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE**

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Dated: September 19, 2019

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I. INTRODUCTION AND STATEMENT OF THE CASE

The Office of Consumer Advocate (OCA) hereby submits this Main Brief regarding Stage 1 of the Pittsburgh Water and Sewer Authority's (PWSA or the Authority) Compliance Plan proceeding. The parties have reached agreement on many issues in this proceeding, as reflected in the Joint Petition for Partial Settlement submitted on September 13, 2019. The remaining issues reserved for litigation that are addressed by the OCA in this Main Brief relate to the relationship between PWSA and the City of Pittsburgh, including the 1995 Cooperation Agreement between PWSA and City of Pittsburgh and how PWSA charges for service to municipal properties and public fire hydrants within the City of Pittsburgh, as well as certain aspects of PWSA's plan to replace lead service lines within its service territory. The OCA submits that its recommendations below will help ensure that PWSA's operations, policies and procedures come into full compliance with the Public Utility Code, Commission regulations, and other applicable laws, and respectfully requests that the Commission adopt the recommendations below.

II. PROCEDURAL HISTORY

A. Background of PWSA Transition to Commission Jurisdiction

PWSA is a municipal water and wastewater authority serving customers in the City of Pittsburgh and surrounding communities. PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in portions of the City of Pittsburgh; the Borough of Millvale; and portions of Reserve, O'Hara, and Blawnox Townships, Allegheny County. PWSA also provides wastewater conveyance service to customers located in the City of Pittsburgh, Allegheny County, and conveys sewage for portions of 24 neighboring communities.

PWSA's water and wastewater operations became subject to regulation by the Pennsylvania Public Utility Commission (Commission) on April 1, 2018, pursuant to Act 65 of

2017, 66 Pa. C.S. § 3201 *et seq.* Act 65 amended the Public Utility Code by adding new language to 66 Pa. C.S. § 1301 and creating a new Chapter 32, which had the effect of bringing the Authority under the Commission's jurisdiction. On March 15, 2018, the Commission issued a Final Implementation Order (FIO) laying out a process for implementing Chapter 32, including tariff approval, ratemaking, compliance plan, and assessment provisions. The instant proceeding addresses PWSA's Compliance Plan and Long-Term Infrastructure Improvement Plan as required by Chapter 32 and the FIO.

B. Record Of This Proceeding

On September 26, 2018, the Commission issued a Secretarial Letter regarding the Procedure for Commission Review of the September 28, 2018 Compliance Plan and Long Term Infrastructure Improvement Plan (LTIIIP) Filings of the Pittsburgh Water and Sewer Authority (September Secretarial Letter).

On September 28, 2018, PWSA filed its Compliance Plan and LTIIIP in accordance with Act 65 and the FIO.¹ Pursuant to the September Secretarial Letter, the Compliance Plan was noticed in the *Pennsylvania Bulletin* on October 13, 2018. 48 Pa.B. 6635. On October 18, 2018, the OCA submitted a Notice of Intervention, Public Statement and Answer to PWSA's Compliance Plan. The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance on October 22, 2018. Petitions to Intervene were filed by Pennsylvania-American Water Company (PAWC) and Pittsburgh UNITED on October 30, 2018 and November 1, 2018, respectively. The Office of Small Business Advocate (OSBA) submitted a Notice of Appearance on November 14, 2018.

¹ The Compliance Plan and LTIIIP proceedings were subsequently consolidated in the First Interim Order Granting Motion for Consolidation of Proceedings (dated February 21, 2019).

On November 2, 2018, the OCA submitted Comments identifying preliminary issues in PWSA's Compliance Plan. Pittsburgh UNITED also submitted comments.

On November 28, 2018, the Commission issued a Corrected Secretarial Letter (November Secretarial Letter) and the accompanying Technical Staff Initial Report and Directed Questions – Stage 1. The November Secretarial Letter assigned PWSA's Compliance Plan to the Office of Administrative Law Judge (OALJ) for hearings as contemplated in the September Secretarial Letter, and also established a new two-stage review process for PWSA's Compliance Plan. The November Secretarial Letter directs PWSA and the parties to address “urgent infrastructure remediation and improvement, and the revenue and financing requirements of maintaining service that supports public health and safety” as part of Stage 1, while Stage 2 will focus on “important PWSA billing issues and the development of a proposed PWSA stormwater tariff.” November Secretarial Letter at 3. Litigation in Stage 2 will begin after a final Commission Order is issued in Stage 1 in late 2019.² *Id.* at 3-4. Further, the Technical Staff Initial Report and Directed Questions listed a variety of specific questions that PWSA and the parties are directed to address as part of the Stage 1 litigation.

This proceeding was assigned to Administrative Law Judges Mark A. Hoyer and Conrad A. Johnson. A prehearing conference was held on December 20, 2019 and a litigation schedule was set. On February 1, 2019, PWSA filed a Compliance Plan Supplement to reflect applicable terms included in the Settlement of PWSA's 2018 base rate case.³ On February 14, 2019, PWSA filed Direct Testimony in support of its Compliance Plan and LTIP.

² OCA and Pittsburgh UNITED each submitted Petitions for Clarification and/or Reconsideration of the November Secretarial Letter, which were subsequently denied.

³ Docket Nos. R-2018-2640802 (water) and R-2018-2640803 (wastewater).

On April 5, 2019, the OCA submitted the Direct Testimonies of: Ashley E. Everette,⁴ OCA Statement 1; Scott J. Rubin,⁵ OCA Statement 2; Barbara R. Alexander,⁶ OCA Statement 3; Roger D. Colton,⁷ OCA Statement 4; and Terry L. Fought,⁸ OCA Statement 5. On May 6, 2019, the OCA submitted the Rebuttal Testimony of Ashley E. Everette, OCA Statement 1R. On May 17, 2019, the OCA submitted the Surrebuttal Testimonies of: Ashley E. Everette, OCA Statement 1S; Barbara R. Alexander, OCA Statement 3S; Roger D. Colton, OCA Statement 4S; and Terry L. Fought, OCA Statement 5S.

On May 13, 2019, the parties submitted an Expedited Motion for Extension of Commission-Created Deadlines (Expedited Motion) which requested a three month extension of Commission-created deadlines to allow the parties additional time to engage in settlement discussions, and to move consumer-related issues from Stage 1 to Stage 2 of this proceeding to enable the parties to discuss these issues in workshops with the Commission's Bureau of Consumer

⁴ Ms. Everette is a Regulatory Analyst employed by the OCA since 2012. She received a Master's degree in Business Administration and a Bachelor's degree in Economics both from the University of Illinois. She has testified in numerous proceedings before the Commission with a primary specialty in accounting and finance issues. Ms. Everette's qualifications are attached to OCA Statement 1 as Appendix A.

⁵ Mr. Rubin is an independent attorney and public utility industry consultant under contract with the OCA who has testified as an expert witness before utility commissions and courts in twenty states and the District of Columbia and province of Nova Scotia. OCA St. 2 at 1-2. Since 1994, Mr. Rubin has provided legal and consulting services to a variety of parties interested in public utility regulatory proceedings. A complete description of Mr. Rubin's qualifications is provided in OCA Statement 2, Appendix A.

⁶ Ms. Alexander is a Consumer Affairs Consultant who runs her own consulting practice, Barbara Alexander Consulting LLC. She received her Bachelor of Arts degree from the University of Michigan and her J.D. from the University of Maine School of Law. Ms. Alexander's professional experiences and qualifications are provided in OCA Statement 3, Exhibit BA-1.

⁷ Mr. Colton is a Principal of Fisher Sheehan & Colton, Public Finance and General Economics in Belmont, Massachusetts. He provides technical assistance to public utilities and primarily works on low income utility issues. Mr. Colton has devoted his professional career to helping public utilities, community-based organizations, consumer advocates, and state and local governments design, implement and evaluate energy assistance programs to help low income households better afford their home energy bills. He has been involved with the development of the vast majority of ratepayer-funded affordability programs in the nation. A more complete description of Mr. Colton's education and experience is provided in OCA Statement 4, Appendix A.

⁸ Mr. Fought is a consulting engineer with more than forty years' experience as a civil engineer. Mr. Fought is a registered Professional Engineer in Pennsylvania, New Jersey and Virginia and is a Professional Land Surveyor in Pennsylvania. Mr. Fought has prepared studies related to and designed water supply, treatment, transmission, distribution and storage for private and municipal wastewater agencies. He has also served as a consultant to the OCA for numerous water and sewer matters since 1984. Mr. Fought's background and qualifications are attached to OCA Statement 5 as Appendix A.

Services. The requests in the Expedited Motion were granted via a May 15, 2019 Secretarial Letter and a subsequent Order issued on June 18, 2019 amending the litigation schedule.

During May, June and July 2019, the parties engaged in extensive settlement conferences and reached agreement on many issues in this proceeding. On August 2, 2019, PWSA submitted Supplemental Direct Testimony providing updates on issues that had evolved since earlier testimony was submitted, in particular on PWSA's lead service line replacement policy and the Cooperation Agreement with the City of Pittsburgh. On August 14, 2019, the OCA submitted the Supplemental Rebuttal Testimonies of: Ashley E. Everette, OCA Statement 1R-Supp; Scott J. Rubin, OCA Statement 2R-Supp; and Barbara R. Alexander, OCA Statement 3R-Supp.

The testimonies and accompanying exhibits of OCA witnesses Everette, Rubin, Alexander, Colton and Fought, as identified above, were submitted into the record by stipulation of the parties at the hearing on August 21, 2019. Cross examination of all witnesses was waived by all Parties.

Prior to the hearing, the Parties entered into a partial settlement in principle in this proceeding. The parties submitted the Joint Petition for Partial Settlement to the ALJs on September 13, 2019. The parties are briefing the remaining unresolved issues.

III. LEGAL STANDARDS AND BURDEN OF PROOF

Section 332 of the Public Utility Code states:

(a) Burden of proof. — Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

66 Pa. C.S. § 332(a). As the proponent of its Compliance Plan and LTIIP, PWSA has the burden of proof in this proceeding.⁹

⁹ See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Docket No. P-00062227, Order (May 17, 2007). In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term "burden of proof" means a duty to establish a fact by a preponderance

In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission.¹⁰ The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983). Furthermore, it is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” Lansberry v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990). In other words, PWSA’s evidence must be more convincing than the evidence presented by the other parties.¹¹ Additionally, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. Lansberry, 578 A.2d at 602. The utility’s burden of proof to establish the justness and reasonableness of every component of its petition is an affirmative one and remains with PWSA throughout the course of the proceeding.¹² Thus, PWSA has the burden of proof to show that its Compliance Plan and LTIIP are just and reasonable.

of the evidence. The Pennsylvania Supreme Court further held that the term “preponderance of the evidence” means that one party has presented evidence which is more convincing, even by the smallest degree, than the evidence presented by the other party.

¹⁰ 2 Pa. C.S. § 704. The term “substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

¹¹ Se-Ling Hosiery, 70 A.2d 854.

¹² See, Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc. 2014 Pa. PUC LEXIS 691, *11 (Oct. 23, 2014) (“The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested Rider. Instead, the utility’s burden, to establish the justness and reasonableness of every component of its request, is an affirmative one and remains with the public utility throughout the course of the proceeding.”).

IV. SUMMARY OF THE ARGUMENT

This Main Brief presents the OCA's arguments on items reserved for litigation in Stage 1 of this proceeding, which are intended to ensure that various aspects of PWSA's operations, policies and procedures are in compliance with the Public Utility Code, Commission regulations, and other applicable Pennsylvania law.

First, regarding the Cooperation Agreement outlining the relationship between PWSA and the City of Pittsburgh, the OCA submits that the 1995 Cooperation Agreement must be updated to comply with the Public Utility Code and Commission regulations. Given that PWSA is currently renegotiating this agreement, the OCA will participate in the review of the new Cooperation Agreement in the appropriate proceeding. The OCA does not oppose PWSA's proposal to allow the new 2019 Cooperation Agreement to become effective prior to Commission approval, provided that PWSA obtains necessary waivers and that the agreement is subject to any retroactive revisions directed by the Commission.

Second, the OCA addresses PWSA's plan for billing currently unmetered and/or unbilled municipal properties within the City of Pittsburgh. PWSA has proposed to "ramp-up" charges for these municipal properties over a five-year period. The OCA does not oppose PWSA's transition plan provided that it is tied to a flat-rate charge that also would ramp up during the five-year transition period. The OCA's flat rate proposal is consistent with PWSA's proposal for the ramp up of the metered rate, and would allow unmetered customers a gradual transition to metered service while also collecting revenues from the unmetered customers during the transition period. The OCA submits that its flat rate proposal should be adopted.

Finally, the OCA submits that PWSA's income-based reimbursement policy for private-side only lead service lines should be rejected. As discussed in detail below, the OCA submits

that: (1) PWSA's income-based reimbursement policy will likely result in fewer lead service lines being replaced with little to no meaningful savings to the Authority; (2) that PWSA should prioritize removing all lead service lines given the significant public health concerns these lines create; and (3) that PWSA's income-based reimbursement policy may not be in compliance with the Public Utility Code. The OCA also encourages PWSA to replace all lead service lines in the most efficient manner possible. As such, the OCA respectfully submits that the Commission should reject PWSA's income-based reimbursement policy and direct PWSA to develop a comprehensive plan to replace all lead service lines serving residential customers at no direct cost to residential customers.

V. ARGUMENT

A. The Cooperation Agreement Between PWSA and City of Pittsburgh Effective January 1, 1995

The 1995 Cooperation Agreement (1995 Agreement) sets forth the terms of the working relationship between PWSA and the City of Pittsburgh regarding the services provided to and by the City. See Compliance Plan, Appendix B. Pursuant to the 1995 Agreement, PWSA pays an annual \$7.15 million fee designated to compensate the City for a variety of services and costs, including vehicle leasing and fleet maintenance, provided by the City to PWSA. Compliance Plan at 15. This arrangement is not currently accompanied by detailed invoices of the costs and services provided. OCA St. 1 at 9.

The parties understand the need for an updated Agreement which more specifically defines the cost of services provided between PWSA and the City. OCA St. 1 at 9. As such, PWSA has given notice to the City of termination of the 1995 Agreement and is working to renegotiate its terms under an updated Agreement (2019 Agreement). PWSA St. No. C-2 at 8. The 2019 Agreement is expected to require the City to give periodic invoices detailing the services provided to PWSA and the fees for each service. Compliance Plan at 106; PWSA St. No. C-2 at 8-9. As provided in the Direct Testimony of Ashley Everette (OCA St. 1 at 9), the OCA agrees with PWSA that the 1995 Agreement should be updated to accurately reflect the costs of services provided to and by the City and be accompanied by supporting documentation to be reviewed in each rate case. Id. Further, where a service may be obtained by PWSA at a lesser cost from another provider, PWSA should evaluate and consider obtaining the service from a non-City vendor or negotiating a lower cost with the City. Id.

PWSA initially provided notice to the City that the 1995 Agreement would be terminated effective May 5, 2019. PWSA St. No. C-2 at 8. PWSA subsequently extended the termination

date to October 3, 2019 to allow additional time for negotiations, with an effective date for the 2019 Agreement set for the following day, October 4, 2019. PWSA St. No. C-2SD at 4. If a gap in time occurs between termination of the 1995 Agreement and implementation of the 2019 Agreement, the parties agree that PWSA and the City will interact on a transactional basis reflecting actual costs, including overhead. OCA St. 1 at 9; PWSA St. No. 2-C at 8.

Generally, Section 507 of the Public Utility Code requires Commission approval prior to implementation of contracts between public utilities and municipalities. 66 Pa. C.S. § 507. PWSA may seek a waiver of this provision pursuant to Section 3202(b). 66 Pa. C.S. § 3202(b). PWSA plans to propose immediate implementation of the new 2019 Agreement on October 4, 2019, subject to any retroactive revisions directed by the Commission. PWSA St. No. C-2SD at 5. The OCA understands PWSA's concerns with regard to delayed implementation of the 2019 Agreement and does not oppose its immediate implementation following PWSA's request and the Commission's approval of the necessary waiver. OCA St. 1R-Supp. at 2.

After the negotiated terms are approved by PWSA and the City, the 2019 Agreement will be reviewed in the appropriate proceeding as outlined in the Joint Petition for Partial Settlement to determine whether it complies with the Code and the Commission's regulations. Settlement ¶¶ III.P.1 and 5.

B. Municipal Properties and Public Fire Hydrants within the City of Pittsburgh

1. Responsibility for Payment of Costs Related to Metering Municipal Properties within the City of Pittsburgh

The OCA did not address this issue in this proceeding and therefore will not address it in this Main Brief. However, the OCA reserves the right to respond to other parties in its Reply Brief.

2. Billing Plan for Unmetered and/or Unbilled Municipal Properties within the City of Pittsburgh

The Authority does not bill the City of Pittsburgh or certain non-profit entities for water service. OCA St. 2 at 4. Some of these properties have meters installed, but many of them are not metered at the present time. Id. The properties that are not metered are not receiving bills under PWSA's tariff for unmetered service. Id. The Authority recognizes that it is out of compliance with the Public Utility Code and the Municipality Authorities Act regarding its failure to bill municipal properties (some are unmetered and some properties are metered) within the City. OCA St. 2 at 5. In its Compliance Plan, PWSA proposed to come into compliance over a five year period, as explained by Mr. Rubin:

The Authority states that it will take approximately five years to install meters on all unmetered properties owned by the City or one of the favored non-profit entities. PWSA proposes that it will begin billing accounts as they become metered based on a phase-in schedule. PWSA has not made a commitment to begin billing unmetered City/non-profit accounts prior to the installation of meters, but it states that it is "considering ... for inclusion in its next base rate case" a proposal to bill City/non-profit accounts under a flat rate until meters are installed.

OCA St. 2 at 5; OCA Sch. SJR-1. Mr. Rubin explained that PWSA's proposal should not be adopted. Importantly, PWSA's current practice is not compliant with the Public Utility Code and contravenes the requirements of the Municipality Authorities Act. He explained, as follows:

First, I must point out that this problem has been ongoing for many years and has nothing to do with the Authority coming under the Commission's jurisdiction. The Municipality Authorities Act ("MAA") requires every municipal authority to charge non-discriminatory rates and it prohibits the provision of free service to customers, except for a very limited exclusion for a limited amount of free service to a non-profit entity.

Specifically, for decades the MAA has required that rates for service be "reasonable and uniform." 53 Pa. C.S. § 5607(d)(9). Further, in 2012 the MAA was amended to add a new section that specifically prohibits a water or sewer authority from providing free or reduced-price service to municipalities or non-profit

organizations, except in limited circumstances. Act 73 of 2012 added 53 Pa. C.S. § 5612(a.1) which reads as follows:

(a.1) Prohibition.

(1) Money of the authority may not be used for any grant, loan or other expenditure for any purpose other than a service or project directly related to the mission or purpose of the authority as set forth in the articles of incorporation or in the resolution or ordinance establishing the authority under section 5603 (relating to method of incorporation).

(2) A ratepayer to an authority shall have a cause of action in the court of common pleas where the authority is located to seek the return of money expended in violation of paragraph (1) from the recipient.

(3) Paragraph (1) shall not apply to the following:

(i) A monetary contribution to a nonprofit community organization or activity that does not exceed \$1,000.

(ii) An in-kind service, including the provision of water or other resources to a nonprofit community organization or activity, the value of which does not exceed \$1,000.

(iii) An agreement for the joint purchase and use of equipment.

(iv) An agreement for the sharing of equipment during emergency situations.

Thus, at least since 2012, and likely for much longer, the Authority has been out of compliance with laws that prohibit the provision of free service to a municipality or non-profit organization.

OCA St. 2 at 5-6. Mr. Rubin also highlighted another issue with PWSA's proposal:

Second, I am troubled by the Authority's apparent lack of urgency in addressing this long-standing compliance problem. I recognize that metering unmetered properties can be a challenge, but that is why flat-rate tariffs exist. I do not take issue with the Authority's plan to take five years to meter all City/non-profit properties, but I am deeply concerned by the Authority's failure to commit to a plan

to stop the practice of providing free service while the metering program progresses. That is, the Authority should be required to implement flat-rate billing for each property that is receiving service but is awaiting the installation of a meter.

OCA St. 2 at 6-7. The implementation of flat rate billing would recognize that the municipal/non-profit accounts should be paying a rate for the service being provided. 66 Pa. C.S. § 1303. The flat rate in PWSA's tariff exists and should be used to ensure that accounts are paying for the service being provided by PWSA.

The Authority's plan is to "ramp up" the charges to the currently unmetered/unbilled City/non-profit customers over a five-year period. PWSA proposes to charge 20% of its typical tariffed rate in 2020, 40% in 2021, 60% in 2022, 80% in 2023, and then full metered rates in 2024 for the currently unmetered/unbilled City/non-profit customers. OCA St. 2 at 7. Mr. Rubin noted that the proposed rates do not depend on when a meter is installed. For example, if a meter is installed in 2021, the rate that would be charged to that account is 40% of the typical tariffed rate, and if the meter is installed in 2024, the account would be charged the full tariffed rate. Id.

The OCA does not oppose PWSA's transition plan **if** it is tied to a flat-rate charge that also would ramp up during the five-year transition period. Mr. Rubin explained how that would work:

[I]n 2020 there should be a flat-rate charge based on the size of the service line serving the property that would approximate 20% of the average bill of metered customers with similar-sized service lines. In 2021 the flat rate would increase to 40% of the average bill for similar-sized service lines, and so on. In that way, the transition from unmetered to metered service would be gradual for all properties. It also would provide a path forward that can be built into the budgets of the City and the unmetered non-profit organizations. This approach also means that delays in the physical metering of properties would not seriously impact PWSA's collection of revenues from unmetered customers.

OCA St. 2 at 7-8. The OCA's proposal to ramp up the flat rate charge is consistent with PWSA's proposal for the ramp up of the metered rate. In addition, under the OCA's proposed ramp up of the flat rate, the unmetered customers would have a gradual transition to metered service, the costs

can be included in future budgets for the City and the non-profits, and revenues would be collected from the unmetered customers during the transition period.

In rebuttal, PWSA witness Weimar opposed the OCA's recommendation, stating:

PWSA has begun its consideration of the proposal for a flat rate for both water and wastewater for all unmetered and unbilled municipal and government properties/buildings served by PWSA but wants to be sure that any methodology applied is defensible and equitable. The Authority plans to conduct its analysis before the next rate case.

PWSA St. C-1R at 22, 23. The OCA submits that there is no justification for PWSA to delay the implementation of a flat rate until the end of its next case. First, it should be noted that PWSA's current tariff already includes a flat rate. Tariff Water Pa. P.U.C. No. 1, Original page 9 (effective March 1, 2019). The OCA's proposal for unmetered customers to be charged a flat rate until a meter is installed is consistent with the requirements under the Public Utility Code and the MAA. The concept proposed by OCA, to ramp up a flat rate over the five-year transition period, is consistent with PWSA's proposed ramp up of an estimated metered rate. PWSA's approach to analyze the issue before its next case (but not necessarily to implement any flat rate billing) is not defensible nor equitable. The OCA's proposal should be adopted.

3. Billing Plan for Public Fire Hydrants within the City of Pittsburgh

The OCA did not address this issue in this proceeding and therefore will not address it in this Main Brief. However, the OCA reserves the right to respond to other parties in its Reply Brief.

C. Applicability of the Municipality Authorities Act, 53 Pa. C.S. § 5601, *et seq.*, and the Commission's Line Extension Regulations at 52 Pa. Code §§ 65.1, 65.21-23

The OCA did not address this issue in this proceeding and therefore will not address it in this Main Brief. However, the OCA reserves the right to respond to other parties in its Reply Brief.

D. PWSA's Residency Requirement

The OCA did not address this issue in this proceeding and therefore will not address it in this Main Brief. However, the OCA reserves the right to respond to other parties in its Reply Brief.

E. Lead Remediation Issues

The Commission's Final Implementation Order directed PWSA to "develop and propose a comprehensive plan to address lead levels in its water supply and the replacement of lead service lines as a part of its water operations and infrastructure comprehensive plan." FIO at 32. Further, the Commission's November 28, 2018 Technical Staff Initial Report and Directed Questions included a number of questions addressing the reasonableness of PWSA's plans for lead service line replacements. See, e.g., Directed Questions at 17.

Under its 2017 Consent Order and Agreement (COA) with the Pennsylvania Department of Environmental Protection (PADEP) and PWSA's 2018 Lead Service Line Replacement Policy, PWSA has begun replacing both the public and privately owned portions of lead service lines in its service territory at no direct cost to customers. See Compliance Plan at 119-121; PWSA St. No. C-1 at 51. PWSA received a grant and low-interest loan from PENNVEST to fund this work through mid-2020. PWSA St. No. C-1 at 51. PWSA continues working to inventory the service line materials in its distribution system, with plans to complete this inventory in 2020. See PWSA St. No. C-1RJ at 4. As such, PWSA does not currently have a complete picture of where the public and private-side lead service lines exist or how many lead lines are in its system.

On July 26, 2019, PWSA's Board adopted a new Lead Service Line Replacement Program Policy (July 2019 Policy). See PWSA Exh. RAW/C-46. Going forward, PWSA will replace public lead service lines through its Small Diameter Water Main Replacement (SDWMR) program, and will replace private-side lead service lines at no direct cost to customers when

replacing the public side. See PWSA St. No. C-1SD at 26-29; Exh. RAW/C-46. If a customer's private-side lead service line is not slated to be replaced as part of the SDWMR program or as part of an emergency or other repair, the customer can elect to replace the private lead service line at their own expense and apply for reimbursement from PWSA based on the homeowner's income level. PWSA Exh. RAW/C-46 at 4. This income-based reimbursement policy will be discussed in greater detail below.

In this proceeding, the parties have settled many issues related to lead service line replacements. Those settlement terms were submitted as part of the September 13, 2019 Joint Petition for Partial Settlement. See Settlement ¶¶ III.OO through YY. However, the remaining issues are significant and relate to the overall scope of PWSA's lead service line replacement program. The OCA's primary concern, as discussed below, relates to if and how PWSA will replace lead service lines where the customer's private service line is lead but the public side is non-lead, and thus is not currently slated for replacement through PWSA's LSLR or SDWMR program.

As a general matter, the OCA notes that PWSA's approach regarding lead service lines has shifted throughout the course of this proceeding. While some amount of evolution is to be expected under the circumstances, at times PWSA's goals and policies regarding lead service line replacements seem to be inconsistent. For example, PWSA's Petition of Pittsburgh Water and Sewer Authority for Approval of its Compliance Plan (Sept. 28, 2018) states that:

Recognizing that ridding the system water supply of harmful lead levels is a top priority for City and State government, as well as all Pittsburgh residents, PWSA is proposing to implement an expedited lead service line replacement ("LSLR") program and small diameter water main replacement ("SDWMR") program with the goal of effectively eliminating all lead service lines from the system by 2026, assuming current funding availability and continued DEP programmatic support. This ambitious schedule is designed to effectively eliminate lead service lines from

PWSA's system scores of years sooner than if these special efforts were not ordered.

Petition of Pittsburgh Water and Sewer Authority for Approval of its Compliance Plan, at 5 (emphasis in original). PWSA reiterated this goal in Rejoinder Testimony, but then said that it plans to develop a comprehensive plan in 2021 to “replace all lead service lines in its system and will establish a revised replacement timeline (its current goal is 2026) once it has completed its inventory of lead service lines in 2020.” PWSA St. No. C-1RJ at 4. The OCA notes that the Final Implementation Order directed PWSA to provide a “comprehensive plan to address lead levels in its water supply and the replacement of lead service lines” as part of the current proceeding, not two years from now. FIO at 32. Further, during the course of this proceeding, PWSA adopted a lead service line replacement policy in which private-side only lead service lines will be the customer's responsibility to replace, subject to an income-based sliding scale for reimbursement. This policy will likely result in much more lead remaining in the system, as discussed in greater detail below. This is inconsistent with PWSA's stated goals in this proceeding to replace all lead in the water system, as well as the message it has consistently provided to the public that functionally all lead service lines will be replaced by 2026. See Pittsburgh UNITED St. C-2 at 15-16, citing Exh. RAW/C-6 at 3 (In “Pittsburgh's Water Future: 2030 and Beyond,” PWSA states that “[b]y 2030, we will have removed all lead service lines, ensuring a safe, healthy future for Pittsburgh children and families.”).¹³

¹³ For other examples cited by UNITED witness Welter, see also PWSA Currents Newsletter (Feb. 2019) at 2, available at <http://pgh2o.com/newsletters> (“The additional resources will be used to make sure we maintain our infrastructure and get ahead of the curve on important repairs – including replacing all of our lead service lines.”); Bob Bauder, PWSA customers in Pittsburgh may experience discolored water, Pittsburgh Tribune-Review (Mar. 18, 2019), <https://triblive.com/local/pittsburgh-alleggheny/pwsa-to-begin-flushing-water-hydrants-in-preparation-for-the-addition-of-lead-inhibitor/> (quoting PWSA witness Weimar as stating, “Our long-term goal is to remove all lead service lines from the system.”).

PWSA has also generally failed to recognize recent changes in Pennsylvania law and actions being taken by other utilities to remove lead service lines from their systems. PWSA witness Weimar states in rejoinder that “as a general rule, neither PWSA, nor any water utility of which I am aware, is responsible for repairing and replacing a water service line not owned by the utility. . . .” PWSA St. No. C-1RJ. While this is generally correct, the Pennsylvania General Assembly has recognized the significant public health issue created by lead service lines and has taken action to encourage water utilities to replace customer-owned lead service lines. In late 2018, Governor Wolf signed Act 120 of 2018 into law, which became effective on December 23, 2018. Act 120 amended Section 1311(b) of the Public Utility Code, 66 Pa. C.S. § 1311(b), to allow, *inter alia*, water utilities to replace the customer-owned portion of lead service lines subject to Commission-approved budget caps, and to include the lead service line replacement costs in the utility’s rate base. While Act 120 was primarily aimed at investor-owned utilities (as a municipal authority, PWSA does not have a rate base on which it can earn a return), this change to the Public Utility Code is indicative of Pennsylvania’s policy goals. Further, Act 44 of 2017 amended the Fiscal Code to clarify that municipal authorities have the ability to replace private water or wastewater laterals in order to benefit public health. 72 P.S. § 1719-E(c)(1). The legislature clearly intended to encourage water utilities and municipal authorities to replace the customer-owned portion of lead service lines, and PWSA is one of a number of water utilities in Pennsylvania that will be replacing these lead service lines. As OCA witness Rubin explained, Pennsylvania-American Water Company (PAWC), York Water Company (York), and Philadelphia Water Department (PWD) all have programs to replace customer-owned lead service lines. OCA St. 2R-Supp at 2-3. Other water utilities will likely follow suit. Thus, PWSA is not

unique in replacing customer-owned lead service lines given the significant public health issues involved, and recent changes to Pennsylvania law encourage water utilities to do so.

1. Replacement of Private-Side Lead Service Lines Not Scheduled for Replacement through PWSA's Current Lead Service Line Replacement Programs
 - a. *Income-Based Reimbursement for Private-Side Lead Service Line Replacements Initiated by Property Owner*

As discussed above, PWSA's Board adopted a new Lead Service Line Replacement Program Policy on July 26, 2019. As part of this policy, when PWSA is not replacing the Authority's portion of the service line, customers with private-side only lead service lines can elect to replace the private side on their own and apply for reimbursement of some or all of the expense based on the customer's income. For customers choosing to replace their own private side lead service line, PWSA will reimburse customers based on the customer's income as follows:

Income Level	Reimbursement Amount
≤ 300% of the Federal Poverty Level (FPL)	100% of the cost of replacement
301-400% of FPL	75% of the cost of replacement
401-500% of FPL	50% of the cost of replacement
> 500% of FPL	\$1,000 stipend

See PWSA Exhibit RAW/C-46 at 4. This policy applies to customers replacing their own private-side lead service line after January 1, 2019. Id.

The OCA submits that PWSA has not presented adequate justification for this income-based reimbursement policy. This approach is not based on any substantiated data; rather, the policy is arbitrary and is inconsistent with PWSA's stated goal of removing all lead service lines from its system. As discussed in greater detail below, the OCA submits that: (1) this policy will

result in fewer lead service lines being replaced with little to no meaningful savings to the Authority; (2) that lead service lines represent a significant public health and safety risk and should be removed the PWSA's system in their entirety; and (3) that this policy may not be consistent with the Public Utility Code. For these reasons, the OCA requests that the Commission reject the income-based reimbursement policy and direct PWSA to submit a single, comprehensive plan for replacing all public and private-side lead services lines in its system.

- i. *PWSA's Income-Based Reimbursement Policy will likely result in fewer lead service lines being replaced with little to no meaningful savings to the Authority.*

The OCA submits that PWSA's income-based reimbursement policy will result in fewer lead service lines being replaced, which is contrary to PWSA's stated goals in this proceeding. This policy presents a major obstacle to customers wishing to have their private-side only lead service line replaced. This policy requires customers to identify and hire a private contractor to perform the replacement, provide payment to the contractor up front, submit all necessary documentation of the work performed to PWSA, provide documentation of the customer's income, and then presumably be reimbursed a percentage of the replacement cost assuming all requirements have been met. To the OCA's knowledge, PWSA has not yet articulated what documentation, such as invoices, inspections, etc. will be required to establish eligibility for reimbursement, or exactly how PWSA will go about verifying customer incomes as part of this process. See OCA St. 2R-Supp at 4-5. Importantly, this policy requires customers to pay upfront and then be reimbursed, and may require a significant time commitment of finding, hiring, and overseeing a qualified contractor. These factors will make it much less likely that customers will replace their private-side only lead service line than if PWSA performed the work. See Pittsburgh UNITED St. C-1-Supp-R at 5-11.

PWSA has stated that the average cost of replacement is approximately \$5,500.¹⁴ Given that \$5,500 is an average, the actual cost to an individual customer could potentially be a much higher amount. As OCA witness Rubin discussed:

...a single elderly person with social security and some retirement income might have an income that exceeds 300% of the FPL (\$37,470 per year). But the person's costs for necessities (food, housing, medical care, insurance, taxes, transportation, and so on) could easily consume most if not all of that income. I question whether such a customer could afford to spend \$1,000 or more to replace a lead service line.

I use a single elderly person as just one example of how PWSA's reimbursement policy might be insufficient to enable customers to pay for the remaining cost of a service line replacement. Young families, single mothers, and other households may have incomes that exceed 300% of the FPL but lack access to \$1,000 or more to fund their portion of a service line replacement.

OCA St. 2R-Supp at 5-6. This significant direct expense will likely deter or entirely prevent many of these customers from replacing their lead service line, resulting in continued potential lead exposure to those customers and their families, and resulting in more lead lines remaining in the water system.

In support of the income-based reimbursement policy, PWSA has stated that the majority of customers would qualify for full reimbursement of the cost to replace their private line given income levels in PWSA's service territory. PWSA St. No. C-1SD at 31. If this is accurate, the OCA questions the need for the additional costs, complications, and potential delays introduced by PWSA's program. As PWSA witness Weimar noted:

PWSA estimates that 53.3% of households in its service territory will qualify for full reimbursement of costs of the private-side lead service line replacement, 12.1% will qualify for 75% reimbursement for the private-side lead service line

¹⁴ PWSA maintained during most of this proceeding and in official policy documents that \$5,500 is the average cost of replacements. See PWSA Exh. RAW/C-46 ¶ 3.2; Pittsburgh UNITED St. C-1-Supp-R, Appendix A, 2. In Rejoinder PWSA modified its position and stated that if administrative costs are included, the actual average cost for PWSA to replace a lead service line is \$7,500. PWSA St. No. C-1RJ at 6. The OCA has not seen PWSA's justification for this, given that this new figure was mentioned for the first time in Rejoinder.

replacement and 9.0% will qualify for a 50% reimbursement of the private-side lead service line replacement. Approximately 75% of households will qualify to receive a reimbursement for at least 50% of those costs.

Id. The OCA submits that this policy appears to be targeted at a very small number of customers while imposing barriers to 75% or more of customers who will require assistance and likely will not have the funds available to replace their own private-side lead service line.

Further, PWSA has estimated high administrative costs to oversee the reimbursement program, including a yet to be determined process for verifying customer incomes. See Pittsburgh UNITED St. C-1SUPP-R, Appendix A, 1 and 2. In establishing this reimbursement program, PWSA estimated administrative costs of \$1,000 per customer to administer the program. Id. OCA witness Rubin noted that the parties “do not have sufficient information to evaluate the reasonableness of this cost, but it appears to be very high.” OCA St. 2R-Supp at 5. PWSA also states that this program will provide an estimated savings of \$12 to \$25 million. PWSA St. No. C-1SD at 31-32. However, these numbers are all speculative given that PWSA does not know how many lead service lines are in its system, where the lead service lines are located, or how it will administer the income-based reimbursement program.

Further, PWSA’s cost estimates have evolved over the course of this proceeding. Most recently, PWSA estimated that its cost to replace all lead service lines (both public and private) at no direct cost to customers would be approximately \$112 to \$185 million, while replacing public lead service lines and the associated private lead lines and implementing the income-based reimbursement policy for private-side only replacements would cost approximately \$104 to \$167 million. See Pittsburgh UNITED St. C-1SUPP-R, Appendix A, 2. These are very wide ranges that overlap significantly, and it is unclear whether PWSA would achieve any actual savings through the income-based reimbursement program. The OCA submits that, rather than spending

\$1,000 per customer in administrative costs and undertaking the significant burden of overseeing the income-based reimbursement policy, PWSA and its customers would be better served to put this funding and operational capacity toward replacing lead service lines at no direct cost to customers, thus ensuring that lead lines are being expeditiously removed from its system.

In Rejoinder Testimony, Mr. Weimar suggests that it is not appropriate for PWSA to “take on even more financial obligations and to impose additional rate burdens on its lower income customers in order to relieve other customers of a financial contribution to replace their own line even when that customer arguably has the financial wherewithal to make such a contribution.” PWSA St. No. C-1RJ at 5. While the OCA appreciates the significant infrastructure repairs that PWSA must make in the near future and shares PWSA’s concern about keeping rates affordable for customers, the income-based reimbursement process that PWSA has proposed simply will not achieve those goals. The OCA respectfully requests that the Commission reject PWSA’s income-based reimbursement policy for private-side only lead service line replacements, and direct PWSA to develop a comprehensive plan to replace all lead service lines in its system at no direct cost to customers.

- ii. *PWSA should remove all lead service lines given the significant public health concerns these lines create.*

Lead service lines present a significant public health issue. The OCA strongly supports PWSA’s efforts to date to replace lead service lines and its stated goal of removing all lead from its water system. In addition to removing lead lines, PWSA has begun introducing orthophosphate into its system, which over time will create a protective coating inside water lines and help limit potential lead exposure. PWSA St. No. C-1SD at 22-23. While this is an important step, orthophosphate, or any other chemical corrosion control treatment system, does not provide a permanent solution to the health risks associated with lead service lines. See Pittsburgh UNITED

St. C-2 at 16-17; St. C-2SR at 4. The OCA submits that PWSA should continue working to remove all lead lines¹⁵ from its water system, including private-side only lead service lines. As discussed above, the income-based reimbursement policy for private-side only lead service lines will likely result in many more lead service lines remaining in the ground. The OCA submits that this creates a risk to public health and safety and may prevent PWSA from providing adequate, efficient, safe, and reasonable service and facilities to customers as required by Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501.

Pittsburgh UNITED witness Lanphear discussed the public health risks associated with lead exposure in detail. See Pittsburgh UNITED St. C-3. Dr. Lanphear testified that:

Pittsburgh residents remain at serious risk of lead exposure. Thousands of customers still have lead service lines, and PWSA's tap water monitoring continues to show high concentrations of lead. As I've explained in my direct testimony, low-income customers, minorities, and tenants in particular have a higher risk of lead exposure. This is because they are more likely to live in older, poorly maintained housing that contains lead plumbing and paint.

Pittsburgh UNITED St. C-3-Supp-R at 3 (citations omitted). PWSA's income-based reimbursement policy, requiring money to be provided first by customers, will put many customers in a difficult position as they balance their family's health versus if or when they can afford to replace their private-side only lead service line. This is particularly concerning for customers in that PWSA has indicated that it may change course in the future. In Rejoinder Testimony, PWSA witness Weimar states that PWSA is:

...committed to eliminating all lead lines in its system . . . To do this, in 2021 PWSA will establish a plan and timeline to replace all lead service lines in its system and

¹⁵ The OCA understands that it may not be possible to remove 100% of the lead from PWSA's water system by a given date. For example, a homeowner may decline PWSA's offer to replace their lead service line at no direct cost, or PWSA may not be able to identify all lead service lines despite its best efforts. See PWSA St. No. C-1RJ at 4. When the OCA states that PWSA should remove all lead, it means functionally all lead that can be identified, is feasible to remove, and that PWSA receives permission to replace.

will establish a revised replacement timeline (its current goal is 2026) once it has completed its inventory of lead service lines in 2020.

PWSA St. No. C-1RJ at 4. It is unclear to the OCA how customers can adequately evaluate whether to spend their own time and money to replace their lead line now, or wait while their family is potentially being exposed to harmful lead contamination in the hope that PWSA may modify its policy and instead replace their private-side lead service line at no direct cost as part of a future program. While the Commission's FIO required PWSA to propose a comprehensive plan for removing all lead service lines as part of this proceeding, comments such as this indicate that PWSA has not fully developed its plan beyond 2020. This may lead to confusion among customers and may result in an unfair situation where a family may replace their own private-side lead service line at significant expense, only to have PWSA change its policy in the future.

Given the significant and ongoing public health concerns associated with lead service lines, the OCA respectfully submits that the Commission should reject PWSA's income-based reimbursement policy and direct PWSA to develop a comprehensive plan to replace all lead service lines in its system at no direct cost to customers.

- iii. *PWSA's Income-Based Reimbursement Policy may not be in compliance with 66 Pa. C.S. § 1304.*

Commission Staff's Directed Questions specifically asked the parties to discuss "PWSA's criteria or policy for replacing customer owned lead service lines and whether or not this policy complies with 66 Pa. C.S. § 1304." Directed Questions at 17. Section 1304 of the Public Utility Code relates to discrimination in rates and provides, in relevant part:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa. C.S. § 1304. In addition to PWSA's income-based reimbursement policy being arbitrary and unjustified, the OCA submits it may also be discriminatory toward customers with private-side only lead service lines.

To be discriminatory under Section 1304, rates must provide an *unreasonable* preference or advantage. In Philadelphia Electric Co. v. Pa. PUC, 470 A.2d 654 (Pa. Commw. 1984) (hereinafter, PECO), the Commonwealth Court stated as follows:

It must be first noted that not all differences in rates are discriminatory and, therefore, unlawful. Only unreasonable differences are prohibited. More importantly:

Before a rate can be declared unduly preferential and therefore unlawful, it is essential that there be not only an advantage to one, but a resulting injury to another. Such an injury may arise from collecting more than a reasonable rate to him in order to make up for inadequate rates charged to another, or because of a lower rate to one of two patrons who are competitors in business. There must be an advantage to one at the expense of another.

PECO at 657 (citations omitted).

Customers with private-side only lead service lines may have received a partial lead service line replacement in the past (i.e. before 2018) through no fault of their own. For example, before 2018 when the LSLR program began, if there was a water main break, PWSA may have replaced the public line but would have left the associated private-side lead service lines in place. Partial lead service line replacements are not effective in reducing lead exposure. As Pittsburgh UNITED witness Welter explained:

Lead concentrations in drinking water often spike when utilities remove the public-side of a service line and leave the private-side lead service line in place. Replacing the public-side service line physically disturbs the private-side lead service line, shaking loose lead-containing scales from the pipe's interior, which then flow to the household tap. The rise in lead levels caused by partial replacements can be dramatic and last for months.

Pittsburgh UNITED St. C-2 at 22 (citations omitted); see also pages 10, 22-24. Customers in this situation would not be eligible to have their private-side lead service line replaced at no direct cost under PWSA's current program. As discussed above, these customers are also paying for other customers' lead service line replacements through PWSA's base rates, while they would be required to replace their private-side only lead service line independently and seek some amount of reimbursement under PWSA's income-based reimbursement policy. PWSA has provided no reasonable basis for drawing this line and requiring customers with private-side only lead service lines to make a significant out-of-pocket contribution toward replacing their lead service line while other customers receive a lead service line replacement at no direct cost.

As such, the OCA submits that PWSA's current policy provides an unreasonable preference or advantage to customers served by both public and private-side lead service lines and thus is discriminatory in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304.

b. *Continuation of Neighborhood-Based Replacement Program*

The OCA submits that PWSA should replace both public and private lead service lines at no direct cost to customers, and should do so in the most efficient manner possible. PWSA has replaced lead service lines as part of a neighborhood-based program since 2018. See Pittsburgh UNITED St. C-2Supp-R at 2. As part of this program, PWSA targets specific neighborhoods within the City where it replaces the public lead service line as well as any private lead service lines attached to it at no direct cost to customers. Id. PWSA plans to discontinue the neighborhood-based program in 2020 and instead replace lead service lines through its SDWMR program. Id. at 2-3. While the OCA does not necessarily oppose this, the OCA submits that ad hoc or "one-off" private-side only lead service line replacements that would occur under the

income-based reimbursement policy are very inefficient and miss economies that could be gained by a more systematic geographic approach. See OCA St. 2R-Supp at 3-5.

As discussed above, the OCA respectfully submits that the Commission should reject PWSA's income-based reimbursement policy and direct PWSA to develop a comprehensive plan to replace all lead service lines in its system at no direct cost to customers. Through a new comprehensive plan, PWSA could identify a method of grouping private-side only lead service line replacements to enhance efficiency, both for mobilizing crews and equipment and for restoration work such as street and sidewalk repair. See OCA St. 2R-Supp at 5. This may look very much like the current neighborhood-based LSLR program. This will help ensure that all lead service lines, both public and private, are removed from PWSA's water system as soon as possible and at no direct cost to customers.

2. Replacement of Non-Residential Lead Service Lines

The OCA did not take a position on this issue in this proceeding. However, the OCA reserves the right to respond to other parties on this issue in its Reply Brief.

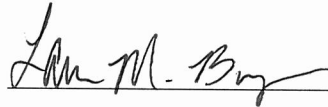
F. Other Issues

The OCA has no further issues to address at this time.

VI. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate respectfully requests that the Commission adopt its recommendations as discussed above in order to ensure that the Pittsburgh Water and Sewer Authorities comes into compliance with the Public Utility Code, Commission regulations, and other applicable Pennsylvania law as relates to the issues reserved for litigation in Stage 1 of this proceeding.

Respectfully Submitted,



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Dated: September 19, 2019
278871

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	Docket Nos.	M-2018-2640802
Utility Code Regarding Pittsburgh Water	:		M-2018-2640803
And Sewer Authority – Stage 1	:		
	:		
Petition of The Pittsburgh Water and Sewer	:	Docket Nos.	P-2018-3005037
Authority for Approval of Its Long-Term	:		P-2018-3005039
Infrastructure Improvement Plan	:		

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDERING PARAGRAPHS
OF THE OFFICE OF CONSUMER ADVOCATE

PROPOSED FINDINGS OF FACT

Background of PWSA Transition to Commission Jurisdiction

1. PWSA is a municipal water and wastewater authority serving customers in the City of Pittsburgh and surrounding communities.
2. PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in portions of the City of Pittsburgh; the Borough of Millvale; and portions of Reserve, O'Hara, and Blawnox Townships, Allegheny County.
3. PWSA also provides wastewater conveyance service to customers located in the City of Pittsburgh, Allegheny County, and conveys sewage for portions of 24 neighboring communities.
4. PWSA's water and wastewater operations became subject to regulation by the Pennsylvania Public Utility Commission (Commission) on April 1, 2018, pursuant to Act 65 of 2017, 66 Pa. C.S. § 3201 *et seq.* (Chapter 32).
5. On March 15, 2018, the Commission issued a Final Implementation Order (FIO) laying out a process for implementing Chapter 32, including tariff approval, ratemaking, compliance plan, and assessment provisions. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water And Sewer Authority*, Docket No. M-2018-2640802 and M-2018-2640803, Final Implementation Order entered March 15, 2018 at 44.
6. The instant proceeding addresses PWSA's Compliance Plan and Long-Term Infrastructure Improvement Plan as required by Chapter 32 and the FIO.

The Cooperation Agreement Between PWSA and City of Pittsburgh Effective January 1, 1995

7. The 1995 Cooperation Agreement (1995 Agreement) sets forth the terms of the working relationship between PWSA and the City of Pittsburgh regarding the services provided to and by the City. See Compliance Plan, Appendix B.
8. Pursuant to the 1995 Agreement, PWSA pays an annual \$7.15 million fee designated to compensate the City for a variety of services and costs, including vehicle leasing and fleet maintenance, provided by the City to PWSA. Compliance Plan at 15.
9. The arrangement under the 1995 Agreement is not currently accompanied by detailed invoices of the costs and services provided. OCA St. 1 at 9.
10. PWSA has given notice to the City of termination of the 1995 Agreement and is working to renegotiate its terms under an updated Agreement (2019 Agreement). PWSA St. No. C-2 at 8.
11. The 2019 Agreement is expected to require the City to give periodic invoices detailing the services provided to PWSA and the fees for each service. Compliance Plan at 106; PWSA St. No. C-2 at 8-9.
12. PWSA initially provided notice to the City that the 1995 Agreement would be terminated effective May 5, 2019. PWSA St. No. C-2 at 8.
13. PWSA subsequently extended the termination date of the 1995 Agreement to October 3, 2019 to allow additional time for negotiations, with an effective date for the 2019 Agreement set for the following day, October 4, 2019. PWSA St. No. C-2SD at 4.
14. If a gap in time occurs between termination of the 1995 Agreement and implementation of the 2019 Agreement, PWSA and the City will interact on a transactional basis reflecting actual costs, including overhead. OCA St. 1 at 9; PWSA St. No. 2-C at 8.
15. After the negotiated terms are approved by PWSA and the City, the 2019 Agreement will be reviewed in the appropriate proceeding as outlined in the Joint Petition for Partial Settlement to determine whether it complies with the Code and the Commission's regulations. Settlement ¶¶ III.P.1 and 5.

Municipal Properties and Public Fire Hydrants within the City of Pittsburgh

16. The Authority does not bill the City of Pittsburgh or certain non-profit entities for water service. OCA St. 2 at 4.
17. Some of these properties have water meters installed, but many are not metered at the present time. OCA St. 2 at 4.

18. The properties that are not metered are not receiving bills under PWSA's tariff for unmetered service. OCA St. 2 at 4.
19. PWSA recognizes that it is out of compliance with the requirements of the Public Utility Code. OCA St. 2 at 5.
20. In its Compliance Plan, PWSA proposed to come into compliance over a five year period by beginning to bill accounts as they become metered based on a phase-in schedule. OCA St. 2 at 5; OCA Sch. SJR-1.
21. The unbilled/unmetered accounts have been present for many years and are not related to PWSA coming under the Commission's jurisdiction. OCA St. 2 at 5.
22. The Municipality Authorities Act (MAA) requires every municipality to charge non-discriminatory rates and prohibits the provision of free service to customers, with very limited exclusions for a limited amount of free service to a non-profit entity. OCA St. 2 at 5.
23. In 2012 the MAA was amended to add a new section that specifically prohibits a water or sewer authority from providing free or reduced-price service to municipalities or non-profit organizations, except in limited circumstances. Act 73 of 2012 added 53 Pa. C.S. § 5612(a.1). OCA St. 2 at 6.
24. PWSA's current tariff includes a flat rate. Tariff Water Pa. P.U.C. No. 1, Original page 9 (effective March 1, 2019).
25. Flat rates can be charged to accounts receiving service until a meter is installed. OCA St. 2 at 7.
26. The Authority's plan is to "ramp up" the charges to the currently unmetered/unbilled City/non-profit customers over a five-year period. PWSA proposes to charge 20% of its typical tariffed rate in 2020, 40% in 2021, 60% in 2022, 80% in 2023, and then full metered rates in 2024 for the currently unmetered/unbilled City/non-profit customers. OCA St. 2 at 7.
27. The Authority's transition plan for metered rates is reasonable only if it is combined with a flat rate charge that would be charged until each account has a meter installed. OCA St. 2 at 7.
28. The flat rate charge should be based on the size of the service line serving the property. OCA St. 2 at 7.
29. The ramp up of the flat rate charge mirrors PWSA's proposed ramp up of metered rates. See OCA St. 2 at 7.

30. A ramp up of the flat rate provides a path forward that can be built into the budgets of the City and the unmetered non-profit organizations. OCA St. 2 at 7-8.
31. A ramp up of the flat rate means that delays in the physical metering of properties would not seriously impact PWSA's collection of revenues from unmetered customers. OCA St. 2 at 8.

Lead Remediation Issues

32. The Commission's Final Implementation Order directed PWSA to "develop and propose a comprehensive plan to address lead levels in its water supply and the replacement of lead service lines as a part of its water operations and infrastructure comprehensive plan." FIO at 32.
33. Under its 2017 Consent Order and Agreement (COA) with the Pennsylvania Department of Environmental Protection (PADEP) and PWSA's 2018 Lead Service Line Replacement Policy, PWSA has begun replacing both the public and privately owned portions of lead service lines in its service territory at no direct cost to customers. See Compliance Plan at 119-121; PWSA St. No. C-1 at 51.
34. PWSA received a grant and low-interest loan from PENNVEST to fund this work through mid-2020. PWSA St. No. C-1 at 51.
35. PWSA continues working to inventory the service line materials in its distribution system, with plans to complete this inventory in 2020. See PWSA St. No. C-1RJ at 4.
36. PWSA does not currently have a complete picture of where the public and private-side lead service lines exist or how many lead lines are in its system.
37. On July 26, 2019, PWSA's Board adopted a new Lead Service Line Replacement Program Policy (July 2019 Policy). See PWSA Exh. RAW/C-46.
38. Under the July 2019 Policy, going forward, PWSA will replace public lead service lines through its Small Diameter Water Main Replacement (SDWMR) program, and will replace private-side lead service lines at no direct cost to customers when replacing the public side. See PWSA St. No. C-1SD at 26-29; Exh. RAW/C-46.
39. Under the July 2019 Policy, if a customer's private-side lead service line is not slated to be replaced as part of the SDWMR program or as part of an emergency or other repair, the customer can elect to replace the private lead service line at their own expense and apply for reimbursement from PWSA based on the homeowner's income level. PWSA Exh. RAW/C-46 at 4.
40. Pennsylvania-American Water Company (PAWC), York Water Company (York), and Philadelphia Water Department (PWD) all have programs to replace customer-owned lead service lines. OCA St. 2R-Supp at 2-3.

41. For customers choosing to replace their own private side lead service line, PWSA will reimburse customers based on the customer's income as follows:

Income Level	Reimbursement Amount
300% of the Federal Poverty Level (FPL)	100% of the cost of replacement
301-400% of FPL	75% of the cost of replacement
401-500% of FPL	50% of the cost of replacement
> 500% of FPL	\$1,000 stipend

See PWSA Exhibit RAW/C-46 at 4.

42. The July 2019 Policy applies to customers replacing their own private-side lead service line after January 1, 2019. PWSA Exhibit RAW/C-46 at 4.
43. PWSA has stated that the average cost of replacement of a private lead service line is approximately \$5,500. See PWSA Exh. RAW/C-46 ¶ 3.2.
44. In establishing this reimbursement program, PWSA estimated administrative costs of \$1,000 per customer to administer the program. See Pittsburgh UNITED St. C-1SUPP-R, Appendix A, 1 and 2.
45. PWSA estimated that its cost to replace all lead service lines (both public and private) at no direct cost to customers would be approximately \$112 to \$185 million, while replacing public lead service lines and the associated private lead lines and implementing the income-based reimbursement policy for private-side only replacements would cost approximately \$104 to \$167 million. See Pittsburgh UNITED St. C-1SUPP-R, Appendix A, 2.
46. PWSA has begun introducing orthophosphate into its system, which over time will create a protective coating inside water lines and help limit potential lead exposure. PWSA St. No. C-1SD at 22-23.
47. Lead concentrations in drinking water often spike when utilities remove the public-side of a service line and leave the private-side lead service line in place. Pittsburgh UNITED St. C-2 at 22 (citations omitted); see also pages 10, 22-24.
48. PWSA has replaced lead service lines as part of a neighborhood-based program since 2018. See Pittsburgh UNITED St. C-2Supp-R at 2.
49. As part of the neighborhood-based program, PWSA targets specific neighborhoods within the City where it replaces the public lead service line as well as any private lead service

lines attached to it at no direct cost to customers. See Pittsburgh UNITED St. C-2Supp-R at 2.

50. PWSA plans to discontinue the neighborhood-based program in 2020 and instead replace lead service lines through its SDWMR program. See Pittsburgh UNITED St. C-2Supp-R at 2-3.

PROPOSED CONCLUSIONS OF LAW

1. Section 332 of the Public Utility Code states:

(a) Burden of proof. — Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

66 Pa. C.S. § 332(a).
2. As the proponent of its Compliance Plan and LTIP, PWSA has the burden of proof in this proceeding. See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Docket No. P-00062227, Order (May 17, 2007).
3. In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The Pennsylvania Supreme Court further held that the term “preponderance of the evidence” means that one party has presented evidence which is more convincing, even by the smallest degree, than the evidence presented by the other party.
4. In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission. 2 Pa. C.S. § 704. The term “substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).
5. Even where a party has established a prima facie case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983).
6. It is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” Lansberry v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990).
7. The evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. Lansberry, 578 A.2d at 602.

8. The utility's burden of proof to establish the justness and reasonableness of every component of its petition is an affirmative one and remains with PWSA throughout the course of the proceeding. See, Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc. 2014 Pa. PUC LEXIS 691, *11 (Pa. P.U.C. Oct. 23, 2014) ("The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested Rider. Instead, the utility's burden, to establish the justness and reasonableness of every component of its request, is an affirmative one and remains with the public utility throughout the course of the proceeding.").
9. PWSA has the burden of proof to show that its Compliance Plan and LTIP are just and reasonable.
10. Generally, Section 507 of the Public Utility Code requires Commission approval prior to implementation of contracts between public utilities and municipalities. 66 Pa. C.S. § 507.
11. PWSA may seek a waiver of the Section 507 requirement for Commission approval prior to implementation of contracts between public utilities and municipalities pursuant to Section 3202(b). 66 Pa. C.S. § 3202(b).
12. PWSA is out of compliance with the Public Utility Code and the Municipality Authorities Act regarding its failure to bill municipal properties (some are unmetered and some properties are metered) within the City. 66 Pa. C.S. § 1303.
13. Specifically, PWSA's billing practice for currently unmetered and/or unbilled municipal or non-profit organizations is not in compliance with the MAA requirement that rates for service be "reasonable and uniform." 53 Pa. C.S. § 5607(d)(9).
14. At least since 2012, the Authority has been out of compliance with laws that prohibit the provision of free service to a municipality or non-profit organization. See 53 Pa. C.S. § 5612(a.1).
15. The OCA's proposal for unmetered customers to be charged a flat rate until a meter is installed is consistent with the requirements under the Public Utility Code and the Municipality Authorities Act.
16. Act 120 of 2018, which became effective on December 23, 2018, amended Section 1311(b) of the Public Utility Code, 66 Pa. C.S. § 1311(b), to allow, *inter alia*, water utilities to replace the customer-owned portion of lead service lines subject to Commission-approved budget caps, and to include the lead service line replacement costs in the utility's rate base.
17. Act 44 of 2017 amended the Fiscal Code to clarify that municipal authorities have the ability to replace private water or wastewater laterals in order to benefit public health. 72 P.S. § 1719-E(c)(1).

18. To be discriminatory under Section 1304, rates must provide an *unreasonable* preference or advantage. Philadelphia Electric Co. v. Pa. P.U.C., 470 A.2d 654 (Pa. Commw. 1984).
19. PWSA's current income-based reimbursement policy provides an unreasonable preference or advantage to customers served by both public and private-side lead service lines and thus is discriminatory in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304.

PROPOSED ORDERING PARAGRAPHS

It is hereby ORDERED THAT:

1. PWSA may seek a waiver of 66 Pa. C.S. Section 507 to permit the 2019 Cooperation Agreement to become effective on October 4, 2019, subject to any retroactive revisions directed by the Commission.
2. PWSA is permitted to “ramp-up” charges for currently unmetered and/or unbilled municipal properties; however, PWSA must simultaneously implement a flat-rate charge that would also ramp-up at the same levels during the five-year transition period.
3. PWSA’s proposed income-based reimbursement policy for private-side only lead service line replacements is denied. PWSA is hereby ordered to:
 - a. Develop a comprehensive plan to replace all lead service lines serving residential customers at no direct cost to residential customers; and
 - b. Ensure that this plan replaces all lead service lines in the most efficient manner possible.

DATED: _____

Mark A. Hoyer
Conrad A. Johnson
Administrative Law Judges