



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

September 19, 2019

**Via Electronic Filing**

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

Re: Implementation of Chapter 32 of the Public Utility  
Code Re Pittsburgh Water and Sewer Authority  
Docket No. M-2018-2640802 (Water)  
Docket No. M-2018-2640803 (Wastewater)  
**I&E Main Brief**

Dear Secretary Chiavetta:

Enclosed for filing, please find the Bureau of Investigation and Enforcement's (I&E) **Main Brief** for the above captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

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GLM/ac

cc: Honorable Mark A. Hoyer (*ALJ Pittsburgh*)  
Honorable Conrad A. Johnson (*ALJ Pittsburgh*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: September 19, 2019

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## I. INTRODUCTION AND STATEMENT OF THE CASE

The Bureau of Investigation and Enforcement's ("I&E") role in this case was to investigate and develop a record of Pittsburgh Water and Sewer Authority's ("PWSA") Compliance Plan in order to enable the Commission to determine whether it will adequately ensure and maintain PWSA's provision of adequate, efficient, safe, reliable and reasonable service. I&E is uniquely positioned to assist the Commission in its evaluation of PWSA's Compliance Plan, because I&E's role in this case is directly aligned with its charge to represent the public interest in ratemaking and service matters, and to enforce compliance with the Pennsylvania Public Utility Code ("Code").<sup>1</sup>

By way of further explanation, the "public interest" that I&E represents includes balancing the needs of ratepayers, utilities, and the regulated community as a whole.<sup>2</sup> This case exemplifies the need to protect the public interest, as PWSA's ability to ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service directly impacts each element of the public interest equation. Specifically, (1) PWSA and its employees are both impacted by the challenges of PWSA's existing operations and the work necessary to transition its operations to compliance; (2) captive ratepayers are impacted because they receive and pay for PWSA's service; and (3) the regulated community is impacted because it has an interest in ensuring that the Commission evenly

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<sup>1</sup> 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011)

<sup>2</sup> *Pa. P.U.C. v. Bell Atlantic-Pennsylvania, Inc.*, Docket Nos. R-00953409, *et al.*, 1995 Pa. PUC LEXIS 193 (Order entered September 29, 1995); I&E St. No. 1, p. 5.

and uniformly applies the Code, Commission regulations, orders, and rules to all jurisdictional Pennsylvania utilities, including PWSA.

In order to develop a complete and comprehensive record in this vast and novel case, I&E spent hundreds of hours investigating PWSA's Compliance Plan, along with its supporting documents and testimony, undertaking the discovery process, and submitting three rounds of its own testimony from four I&E expert witnesses. Additionally, after securing PWSA's commitment to highly prioritize the repair and replacement of its Aspinwall Clearwell, which is critical infrastructure, I&E agreed to join PWSA's request to extend the Commission-created deadlines in this case by three months to allow for continued settlement discussions.<sup>3</sup> After the Commission granted PWSA's request,<sup>4</sup> I&E attended and substantially participated in each of the multiple settlement conferences held by PWSA, virtually on a weekly basis, during the months of May through August of 2019.<sup>5</sup> During those conferences, participating parties made significant progress in resolving many of the issues identified in I&E's testimony. Accordingly, I&E submits that the record, and the Joint Petition for Partial Settlement filed in this case on September 13, 2019, support the conclusion that PWSA has made significant efforts and meaningful progress in transitioning its operations into compliance.

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<sup>3</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority Stage I*, M-2018-2640802 et al *Expedited Motion for Extension of Commission-Created Deadlines* (May 13, 2019).

<sup>4</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al *Grant of Expedited Motion for Extension of Deadlines*. Secretarial Letter dated May 15, 2019.

<sup>5</sup> PWSA St. No. C-1SD, p. 3.

Nonetheless, despite the substantial progress that has been made, key issues that detrimentally impact PWSA's operations and thwart compliance could not be resolved. I&E notes that a common thread of the remaining issues is that most of them involve elevating the interests of the City of Pittsburgh ("City"), an unregulated entity that is not a party to this proceeding, but whose interests PWSA has inexplicably elevated above its own, its ratepayers, and the regulated community. As I&E will explain in this Main Brief, City influence, and PWSA's apparent unwillingness or inability to repudiate it, have resulted in portions of its Compliance Plan failing to adequately ensure and maintain its provision of adequate, efficient, safe, reliable and reasonable service in several critical respects.

I&E avers that such influence is exemplified in PWSA's proposal to convey preferential rate treatment to the City at the expense of ratepayers and in a way that compromises PWSA's ability to address key infrastructure improvements necessary to facilitate safe service. Additional evidence that the City's influence is hindering PWSA's operations includes that PWSA continues to fail to operate on a business-like basis with the City and that PWSA has adopted the City's residency requirement for its own employees. Undisputed evidence in this case demonstrates that PWSA's adoption of the City's residency requirement has detrimentally impacted its operations by limiting its access to skilled employees necessary to facilitate day-to-day operations and by resulting in an increased need to hire contractors at a premium price, driving up the costs for ratepayers.

I&E notes that while the need to disentangle PWSA from continued City influence is evident in the record and relevant to this proceeding, the key question in this case is whether PWSA's Compliance Plan will adequately ensure and maintain its provision of adequate, efficient, safe, reliable and reasonable service. I&E's investigation and the resulting record of this case prove that the answer is no, and that PWSA must revise its Compliance Plan in multiple respects. More specifically, and for the reasons explained below, PWSA should be required to revise its Compliance Plan to set forth a plan to:

1. transition from its 1995 Cooperation Agreement with the City to begin operating on a business-like, arm's-length basis with the City;
2. become responsible for the cost of all meter installation, including the installation of City properties, in accordance with 52 Pa. Code § 65.7;
3. introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage;
4. revise its proposed step-billing approach for City public fire hydrant charges and instead set forth a plan to charge the full amount of whatever percent allocation is determined in PWSA's next rate proceeding;
5. consistent with the recognition that where conflicts exist, the Code and Commission regulations and order supersede the Municipality Authorities Act ("MAA"), comply with 52 Pa. Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, and revise its tariff and operations accordingly;
6. immediately eliminate its residency requirement; and
7. strike the income-based reimbursement provision of its lead service line replacement policy in favor of a plan to replace all public and private residential lead lines in its distribution system.

## **II. PROCEDURAL HISTORY**

### **A. Background of PWSA Transition to Commission Jurisdiction**

Understanding the basis for PWSA's transition to the Commission's jurisdiction is central to understanding the challenges that PWSA has faced in the past and that, in some respects, the challenges that continue to impact its operations today. The determination that PWSA needed to become a regulated public utility was officially made by the Pennsylvania General Assembly in 2017, and the concerns that led to that determination are best summarized by the sponsors of the legislation that culminated in PWSA's transition to the Commission's jurisdiction. Specifically, in a Pennsylvania House of Representatives Co-Sponsorship Memoranda dated May 24, 2017, the sponsors of House Bill 1490, Representatives Mike Turzai and Harry Readshaw addressed the rationale of their legislation to place PWSA under the regulatory oversight of the Commission. In their Memoranda, Representatives Turzai and Readshaw explained the basis for the legislation as follows:

Over the last year, local and national newspapers have recounted the many service issues facing PWSA from multi-million dollar debt and uncollectibles, unmetered accounts, incorrect billing, system leaks and non-compliance with federal water quality mandates. These issues call into serious question the sustainability of PWSA and the health and safety of those served by the system.

The customers of PWSA need to know that their water is safe and that they are properly billed for their usage.

While the PUC does not currently have jurisdiction over the operations of municipal authorities, in the case of PWSA, regulatory oversight is needed to fix this deteriorating system and restore the confidence of PWSA's customers. Placing

PWSA under the regulatory authority of the PUC will require its board of directors to bring the system into compliance with the requirements of Title 66 of the PA Statutes and PUC regulations applicable to investor-owned water and wastewater utilities.

Under our bill, PWSA will be obligated to provide safe, reliable service to its customers and be subject to monetary penalties if it fails to do so. Additionally, PWSA's customers will be assured the facilities used to deliver their service meet state and federal requirements, that their water is safe and that they are being accurately billed for their usage.

It is important to note that there is precedent for this legislation. In 1999, the legislature passed similar legislation which placed Philadelphia Gas Works under the oversight of the PUC. The City of Pittsburgh and PWSA clearly need guidance and direction which could be provided by the PUC. This is a positive approach to get at a needed solution to address both an acute and long-term systemic problem with PWSA. In the end, this is about providing necessary help to protect the health and safety of those citizens relying on PWSA for provision of clean water.<sup>6</sup>

As indicated above, citing systemic problems ranging from water safety to unmetered accounts, both of which are at issue in this case, the sponsors of House Bill 1490 took the position that the Commission's jurisdiction over PWSA would be necessary to ensure that PWSA's customers are provided with safe service and that they are charged fairly for that service.

I&E notes that the concerns regarding PWSA's operations described above in the Co-Sponsorship Memoranda were also borne out of two independent analyses of PWSA's operations, which were both admitted into evidence in this case. First, in

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<sup>6</sup> House Co-Sponsorship Memoranda for HB 1490, PA House of Representatives, Session of 2017-2018 Regular Session, May 24, 2017.

November of 2017, the Pennsylvania Department of the Auditor General produced a report summarizing the results of its performance audit of PWSA covering the period of January 1, 2014 through June 30, 2017.<sup>7</sup> The Auditor General's Report concluded that PWSA's "aging and deteriorating infrastructure issues and financial and operations long-term viability issues result from years of mismanagement and conflicted leadership causing a crisis in [PWSA's] governance."<sup>8</sup> Additionally, in March of 2017, the Mayor of the City of Pittsburgh appointed a Blue Ribbon Panel to evaluate PWSA's operations and to make recommendations regarding its future, culminating in the Mayor's Blue Ribbon Report of December 28, 2017.<sup>9</sup> The Mayor's Blue Ribbon Report recognized that "the infrastructure we use to make our plentiful water drinkable and to deliver it to those who need it is badly dilapidated." The Mayor's Blue Ribbon Report also acknowledged that PWSA "is struggling to overcome the burden of its poor management of the past. It has lost the trust of the public that it serves, and it has become a leading risk factor for the future of Pittsburgh's economic development."<sup>10</sup>

While both the Auditor General's Report and the Mayor's Blue Ribbon Report were being developed, House Bill 1490 traversed the legislative process and culminated in Act 65, which was signed into law by Governor Tom Wolf on December 21, 2017. In accordance with Act 65, the Code was amended to grant the Commission jurisdiction

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<sup>7</sup> Performance Audit Report of November 2017 issued by the Pennsylvania Department of the Auditor General ("Auditor General's Report"), p. 3 (I&E Exhibit No. 2, Schedule 4); PWSA Ex. Stip Doc-3.

<sup>8</sup> I&E Ex. No. 2, Sch. 4, p. 2 of Letter dated October 30, 2017.

<sup>9</sup> Report of the Mayor's Blue Ribbon Panel, December 28, 2017 ("Mayor's Blue Ribbon Report") (PWSA Ex. RAW-C-4).

<sup>10</sup> PWSA Ex. RAW-c-4, p. 3.

over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipal Authorities Act.<sup>11</sup> These amendments established regulatory deadlines, requirements, and obligations for subject entities, including PWSA, and those amendments are now codified in Chapter 32 of the Code. Consistent with Chapter 32, the Commission’s jurisdiction over PWSA became effective on April 1, 2018.<sup>12</sup> Thereafter, PWSA was statutorily required to make a tariff filing to trigger a rate proceeding within 90 days.<sup>13</sup> I&E notes that PWSA made a timely tariff filing on July 2, 2018, and that I&E and other parties participated in the resulting rate proceeding culminating in a Commission-approved settlement.<sup>14</sup>

Aside from its tariff filing, PWSA was also required to make compliance filing within 180 days of April 1, 2018, or by September 28, 2018.<sup>15</sup> Specifically, PWSA was required to file a Compliance Plan with the Commission that includes provisions designed to bring the following areas into compliance with the Code, the Commission’s regulations and orders, and other applicable rules: “existing information technology, accounting, billing, collection and other operating systems and procedures.”<sup>16</sup> PWSA’s Compliance Plan must also include a long-term infrastructure improvement plan.<sup>17</sup> In its

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<sup>11</sup> At present, Pittsburgh is Pennsylvania’s sole city of the second class.

<sup>12</sup> 66 Pa. C.S. § 3202(a)(1).

<sup>13</sup> 66 Pa. C.S. § 3204(a).

<sup>14</sup> *Pa. P.U.C. v. PWSA*, Docket No. R-2018-3002645 et al., Order and Opinion, p. 12. (Feb. 27, 2019).

<sup>15</sup> 66 Pa. C.S. § 3204(b).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*



Final Implementation Order for Chapter 32 of the Code regarding PWSA,<sup>18</sup> the Commission established affirmative expectations and instructions for PWSA's compliance with the Code and Commission regulations. Specifically, the Commission indicated that PWSA's compliance plans should address certain topics including the following areas: (1) the future implementation of a stormwater tariff; (2) a plan to address lead levels in the water supply and the replacement of lead service lines; (3) a metering plan identifying unmetered accounts and plans to meter all customers; (4) plans to convert to the Uniform Standards of Accounts; (5) a Self-Certification Form for Security Planning and Readiness; (6) plans to fully comply with the billing, collection, complaint, and termination rules of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations; and (7) Bureau of Consumer Services access to PWSA customer service management information system.<sup>19</sup>

In addition to identifying certain topics to be addressed in PWSA's Compliance Plan, the Commission's Final Implementation Order also provided important guidance about its expectation for PWSA's full compliance. Significantly, the Commission expressed an expectation that PWSA's compliance plans would detail how PWSA will reach "ultimate end-state compliance" with the Code and Commission regulations.<sup>20</sup> Additionally, the Commission noted that while "voluntary compliance is the preferred

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<sup>18</sup> *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order (entered on March 15, 2018) (hereinafter, "*Final Implementation Order*.")

<sup>19</sup> *Id.* at. p. 45. I&E notes that this list was not exhaustive, and, as explained further below, item 6 was deferred to a later proceeding, and the Commission substantially supplemented its areas of inquiry through the issuance of a final list of questions contain the Pennsylvania Public Utility Commission Technical Staff Initial Report and Directed Questions-Stage 1 (November 28, 2018-Corrected).

<sup>20</sup> *Id.* at 33.

regulatory mode” and that it appeared that PWSA understood and acknowledged its regulation by the Commission, the Commission would act to achieve compulsory compliance if circumstances were to necessitate that approach.<sup>21</sup> Finally, the Commission’s Final Implementation Order noted that “the Commission will not defer to PWSA Board decisions as to compliance with the Public Utility Code (including Chapter 32) or Commission regulations.”<sup>22</sup> I&E notes that neither Chapter 32 of the Code, nor the Commission’s expectation for PWSA’s ultimate end state compliance, contemplate or permit PWSA’s sole determination that certain provisions of the Code and Commission regulations were preempted, too onerous, or too politically inconvenient to warrant compliance.

#### **B. Record of this Proceeding**

1. As discussed above, on December 17, 2017, the Code was amended to provide for the Commission’s jurisdiction over PWSA effective on April 1, 2018. As part of its obligations under Chapter 32 of Code, PWSA was required to file its Compliance Plan on or by September 28, 2018.

2. In order to facilitate PWSA’s transition to its jurisdiction and to establish procedures for PWSA’s compliance with Chapter 32, the Commission issued a Tentative Implementation Order at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) on January 18, 2018 requesting comment on proposals to implement

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<sup>21</sup> Id. at 18.

<sup>22</sup> Id. at 17-18.

Chapter 32. After considering comments from interested parties, including I&E, the Commission issued its Final Implementation Order on March 15, 2018.

3. In conjunction with the timeline set by the Commission, PWSA filed its Compliance Plan, as well as its LTIIP, on September 28, 2018. The Commission thereafter published notice of the filing in the Pennsylvania Bulletin.<sup>23</sup>

4. On October 22, 2018, I&E entered its appearance in this case,<sup>24</sup> and it filed comments regarding PWSA's LTIIP on October 25, 2018. By way of further information, other parties entered their appearance, and in some cases, filed comments as follows: on October 18, 2018, the OCA filed an Answer, Notice of Intervention, and Public Statement in this case, as well as its comments regarding PWSA's Compliance Plan and LTIIP on November 2, 2018 and October 29, 2018, respectively. On November 14, 2018, the Office of the Small Business Advocate entered its appearance. Petitions to Intervene were filed by Pennsylvania American Water Company and Pittsburgh UNITED ("UNITED") on October 30, 2018 and November 1, 2018, respectively. Additionally, UNITED filed comments to PWSA's Compliance Plan and LTIIP on November 1, 2018 and October 29, 2018, respectively.

5. On November 28, 2018, the Commission issued a Secretarial Letter ("Staff Directive") which referred PWSA's Compliance Plan to the OALJ for a two-stage evidentiary proceeding. The Staff Directive was accompanied by a document titled "Technical Staff Initial Report and Directed Questions Stage 1" ("Directed Questions")

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<sup>23</sup> 48 Pa.B. 6635.

<sup>24</sup> I&E notes that it also filed a corrected Notice of Appearance on November 28, 2018.

which set forth directed questions to be addressed by parties to Stage 1 of PWSA's Compliance Plan.

6. Subsequent to the Commission's issuance of the Directed Questions, the Office of Administrative Law Judge assigned Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson ("ALJ Hoyer" and "ALJ Johnson," or collectively, "the ALJs") to preside over this matter.

7. On December 7, 2018, the ALJs issued a Prehearing Conference Order scheduling a telephonic Prehearing Conference in this case for December 20, 2018 at 10:00 a.m.

8. During the Prehearing Conference, the ALJs established procedures and a litigation schedule for the parties. The procedures and litigation schedule were memorialized in the Prehearing Order issued by the ALJs on December 27, 2018.<sup>25</sup>

9. On February 1, 2019, in accordance with its commitment to revise its Compliance Plan and LTIP as a condition of the settlement of its first rate case, PWSA filed a supplement to its Compliance Plan ("Compliance Plan Supplement").<sup>26</sup>

10. During the pendency of this case, I&E, along with other parties, engaged in substantial written and informal discovery to investigate PWSA's Compliance Plan and to facilitate development of a record that, to the extent possible, answered the inquiries raised in the Commission's Directed Questions.

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<sup>25</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al., Prehearing Order, p. 7 (entered December 27, 2018).

<sup>26</sup> *Pa. P.U.C. v. PWSA*, R-2018-3002645 et al., *Joint Petition for Settlement*, pp. 24-25, ¶H(4).

11. Pursuant to the litigation schedule, PWSA served direct testimony on February 14, 2019. Thereafter, interested parties served direct testimony on April 5, 2019, rebuttal testimony on May 6, 2019, and surrebuttal testimony on May 17, 2019.

I&E timely served the following testimonies and exhibits in accordance with the applicable deadlines:

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

12. On May 13, 2019, after securing PWSA's commitment to highly prioritize the repair and replacement of its Aspinwall Clearwell, which is critical infrastructure, I&E

agreed to join PWSA's Expedited Motion for Extension of Commission-Created Deadlines. The Expedited Motion requested an extension of the Commission-created deadlines in this case by three months to allow for continued settlement discussions.<sup>27</sup> The Expedited Motion also requested that certain consumer-related issues be moved from Stage 1 to Stage 2 of PWSA's compliance plan proceeding.

13. The Commission granted the Expedited Motion for on May 15, 2019.<sup>28</sup> As a result of the Commission-granted extension, the ALJs cancelled the evidentiary hearings scheduled for May 22-24, 2019 in favor of holding an additional Prehearing Conference on June 7, 2019.

14. During the Prehearing Conference on June 7, 2019, the parties agreed upon an amended litigation schedule that provided for PWSA to serve supplemental direct testimony, limited to new developments that could not have been captured in earlier rounds of testimony, on August 2, 2019. Additionally, parties were permitted to file supplemental rebuttal testimony, limited to testimony responsive to PWSA's supplemental direct testimony, by August 14, 2019. The ALJs memorialized this amended litigation schedule and process in their Fourth Interim Order Amending the Litigation Schedule dated June 18, 2019.

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<sup>27</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al *Expedited Motion for Extension of Commission-Created Deadlines* (May 13, 2013).

<sup>28</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al *Grant of Expedited Motion for Extension of Deadlines*. Secretarial Letter dated May 15, 2019.

15. I&E attended and substantially participated in each of the multiple settlement conferences held by PWSA, virtually on a weekly basis, during the months of May through August of 2019.<sup>29</sup> During those conferences, participating parties made significant progress in resolving many of the issues identified in I&E's testimony, but not all issues could be resolved.

16. On May 14, 2019, I&E served the following supplemental rebuttal testimony and exhibit:

- I&E Statement No. 1-RS: the Supplemental Rebuttal Testimony of Anthony Spadaccio
- I&E Statement No. 2-RS: the Supplemental Rebuttal Testimony of D.C. Patel
- I&E Statement No. 3-RS: the Supplemental Rebuttal Testimony of Ethan H. Cline
- I&E Statement No. 4-RS: the Supplemental Rebuttal Testimony of Israel E. Gray
- I&E Exhibit No. 4-RS: the Exhibit to Accompany the Supplemental Rebuttal Testimony of Israel E. Gray

17. On May 19, 2019, in lieu of presenting oral rejoinder testimony at the evidentiary hearing, PWSA served written rejoinder testimony.

18. On August 21, 2019, an evidentiary hearing was held. During the hearing, parties moved for the admission of their evidence into the record. I&E successfully

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<sup>29</sup> PWSA St. No. C-1SD, p. 3.

moved all of its aforementioned testimony into the record.<sup>30</sup> Additionally, procedural matters and briefing requirements<sup>31</sup> were discussed and memorialized.

### **III. LEGAL STANDARDS AND BURDEN OF PROOF**

#### **A. Legislative Guidance**

In assessing the legal standards and burden of proof in this case, I&E notes that this proceeding represents the first legislatively-required compliance plan under the Code. To that end, the Pennsylvania General Assembly provided clear guidance through Chapter 32, which expressly requires PWSA to file a compliance plan.<sup>32</sup> Specifically, as an impacted authority, PWSA is required to file a compliance plan with the Commission that includes provisions to its “existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission.”<sup>33</sup> Additionally, PWSA’s compliance plan must also include a long-term infrastructure improvement plan (“LTIIP”) related to its distribution system.<sup>34</sup>

Aside from identifying the subject matter to be addressed, the Pennsylvania General Assembly explicitly requires that PWSA’s Compliance Plan’s set forth a plan to comply with the Code, as well as the Commission’s regulations and orders. In the event

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<sup>30</sup> *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Tr. at. 62-65.

<sup>31</sup> *Id.* at 74-75. I&E’s counsel requested, and the ALJs granted, an extension of the regulatory-prescribed page limit to 100 pages due to the complexity of the issues involved in this novel proceeding.

<sup>32</sup> 66 Pa. C.S. § 3204(b).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



that the Commission reviews PWSA's Compliance Plan and determines that it fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service, it may order PWSA to file a new or revised compliance plan.<sup>35</sup> I&E notes that the plain language of Chapter 32 does not require that PWSA come into immediate compliance with the Code, Commission regulations, and orders, but only that it present a plan for compliance that will adequately ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service. This distinction is important because I&E submits that PWSA's transition to Commission jurisdiction is a vast and complex undertaking that undoubtedly requires prioritization and devotion of resources and redevelopment of operations. Nevertheless, the General Assembly makes it clear that PWSA's plan for compliance must meet the floor-level standard of adequately ensuring and maintaining adequate, efficient, safe, reliable and reasonable service for its ratepayers. For the reasons outlined in this Main Brief, I&E submits that PWSA's Compliance Plan has failed to meet this standard.

## **B. PWSA's Burden of Proof**

PWSA, as the proponent of its Compliance Plan, bears the burden of proof to establish that its plan to come into compliance with the Code, Commission regulations, and orders will adequately ensure and maintain its provision of adequate, efficient, safe, reliable and reasonable service.<sup>36</sup> In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by

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<sup>35</sup> 66 Pa. C.S. § 3204(c).

<sup>36</sup> 66 Pa. C.S. § 332(a); 66 Pa. C.S. § 3204.

establishing a preponderance of evidence which is substantial and legally credible.”<sup>37</sup> In order to meet its burden of proof, PWSA must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”<sup>38</sup> To satisfy its burden, PWSA must demonstrate, by a preponderance of the evidence, that its Compliance Plan complies with Pennsylvania law and should be approved.<sup>39</sup> Specific to this case, PWSA has the burden of proving that its plan to comply with the Code, Commission regulations and orders will adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.<sup>40</sup>

Importantly, although I&E submits that applicable law clearly assigns the burden of proof to PWSA, even assuming, arguendo, that the burden of proof for this novel proceeding was at all unclear, PWSA expressly acknowledged that it bears the burden in this case. More specifically, PWSA’s recent rate case settlement provides as follows:

PWSA agrees that it has the burden of proof in the Compliance Plan proceeding to show that every element of its Compliance Plan, and the policies and procedures described, referenced, or referred to therein, is just and reasonable, is consistent with all applicable law, regulations, and policies, and is in the public interest.<sup>41</sup>

Therefore, it is undisputed that each element of PWSA’s Compliance Plan must not only comply with the Code, Commission regulations and orders, but each element must be just, reasonable, and in the public interest. As evident in the record of this case, and as

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<sup>37</sup> *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Commw. 1990).

<sup>38</sup> *Se-Ling Hosier v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>39</sup> *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Commw. 1990).

<sup>40</sup> 66 Pa. C.S. § 3204(c).

<sup>41</sup> *Pa. P.U.C. v. PWSA, R-2018-3002645 et al., Joint Petition for Settlement*, p. 24, ¶H(2).

supported in this Main Brief, I&E submits that PWSA has failed to meet its burden with respect to each of the issues addressed herein.

#### **IV. SUMMARY OF THE ARGUMENT**

Despite commendable compliance efforts made by PWSA, as evidenced by the resolution of most of the issues raised in this complex and novel case,<sup>42</sup> in several critical respects, PWSA's Compliance Plan fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service to its ratepayers. First, PWSA's continued failure to transition from its 1995 Cooperation Agreement with the City to conducting business with the City on an arm's-length, transactional basis produces a result that unfairly advantages the City at the expense of PWSA and its ratepayers, a result that is inconsistent with the provision of reasonable service. Additionally, PWSA's elevation of City interests above its own and its ratepayers' interests is further evident in its proposals to treat municipal properties differently than other properties for purposes of incurring the costs of meter installation and paying for unmetered service, including public fire hydrant costs. I&E submits that the proposals violate a key Commission regulation regarding metered service, 52 Pa. Code §65.7, as well Sections 1303 and 1304 of the Code regarding adherence to tariffed rates and discrimination in rates, respectively.

PWSA's elevation of municipal interests is not just limited to the 1995 Cooperation Agreement and proposals for metering and billing for unmetered service, but

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<sup>42</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al, *Joint Petition for Partial Settlement* (September 13, 2019).

it extends to an alleged conflict of law that favors municipal jurisdiction over the Commission's jurisdiction. Specifically, PWSA refuses to develop a plan to transition its existing line extension tariff provisions, which arise under the Municipality Authorities Act ("MAA"), to comply with the Commission's line extension regulations at 52 Pa. Code § 65.21-52 Pa. Code § 65.23. As I&E explains below, PWSA's argument that the MAA preempts the Commission's regulations is without merit because, among other things, it is contradicted by the express language of Chapter 32, incompatible with the rules of statutory construction, inconsistent with recent and prior case law, and it would produce an unmanageable and absurd result.

In an additional, and operationally harmful act of deference to the City, PWSA's Board determined to adopt the City's residency requirement for its own employees. The uncontroverted result of PWSA's residency requirement is that it frustrates its ability to hire skilled employees water treatment operators, plumbers, laboratory staff, project managers, welders, electricians, and mechanics who are necessary to address its everyday maintenance and operational needs. I&E submits that this result violates PWSA's obligation to furnish and maintain adequate, efficient, safe, and reasonable service as required by Section 1501 of the Code. Additionally, PWSA's residency requirement produces an estimated \$2 million annually in increased costs because of the resulting need to hire contractors to perform daily tasks and tend to operations, violating Section 1301 of the Code which requires PWSA to charge only just and reasonable rates. Lastly, I&E notes that PWSA's residency requirement also frustrates its ability to achieve the

diversity goals articulated in the Commission's Policy Statement at 52 Pa. Code §§ 69.801-69.809, because its candidate pool is artificially limited.

Finally, while PWSA substantially complied with the Commission's mandate that it propose a plan to address lead levels in the water supply and the replacement of lead service lines, I&E submits that PWSA's proposal for income-based reimbursement of certain private side lead lines fails to ensure PWSA's obligation to provide safe water service under Section 1501 of the Code. The evidence in this case demonstrates that lead service line replacement is the most effective way to address actionable lead levels in PWSA's water. Additionally, the evidence also proves that the income-based reimbursement component of PWSA's policy will be cost-prohibitive, hinder certain residential customers' ability to replace their lead lines, and compromise lead line replacement goals at a time when the lead levels in PWSA's water remain actionable. Despite PWSA's determination that the Commission does not have jurisdiction over this alleged "water quality" issue, the issue is one deriving solely from lead infrastructure; therefore, it is a water service issue squarely within the Commission's jurisdiction. I&E submits, and ensuring safe water service requires, that PWSA be required to strike the income-based reimbursement provision of its lead service line replacement policy in favor of a plan to replace all public and private residential lead lines in its distribution system.

## **V. ARGUMENT**

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

#### **i) Background**

PWSA was established as a municipal authority by the City of Pittsburgh in 1984.<sup>43</sup> PWSA originally served as a financing authority, however, pursuant to the Cooperation Agreement between PWSA and the City, effective January 1, 1995 (“1995 Cooperation Agreement”), PWSA assumed responsibility from the City for day-to-day operations of Pittsburgh’s water and wastewater systems.<sup>44</sup> Pursuant to the 1995 Cooperation Agreement, PWSA and the City are to provide various services to each other. Among other things, PWSA is to pay for City services provided under the 1995 agreement and PWSA is to provide the City 600 million gallons of water each year at no cost.<sup>45</sup>

In its Compliance Plan filing, regarding services provided by the City under the 1995 Cooperation Agreement, PWSA stated it pays the City an annual fee of \$7.15 million for a variety of services and costs, but there is no detailed invoice for the fee.<sup>46</sup> Regarding this fee, PWSA acknowledged that expenses charged to ratepayers must be just, reasonable and reasonably known and definite.<sup>47</sup> Accordingly, PWSA stated it was

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<sup>43</sup> PWSA Compliance Plan, p. 14.

<sup>44</sup> PWSA Compliance Plan, p. 14. Pittsburgh retains ownership of the system’s assets subject to the 1995 Capital Lease Agreement. *See* PWSA Compliance Plan, pp. 107-108. As discussed in the Joint Petition for Settlement in this proceeding and associated Statement in Support, I&E supports PWSA’s intention to purchase the system assets for \$1 in 2025.

<sup>45</sup> PWSA Compliance Plan, Appendix B, 1995 Cooperation Agreement, Sections VII.C. & VII.D.

<sup>46</sup> PWSA Compliance Plan, p. 105.

<sup>47</sup> PWSA Compliance Plan, p. 106.

negotiating a new Cooperation Agreement to revise the payment to only reflect actual services provided.<sup>48</sup>

Regarding PWSA's 1995 Cooperation Agreement, the Commission directed parties to discuss the following:

- Those services and related costs that PWSA can identify and quantify and the basis for those costs, e.g., market, cost plus, or other method.
- Whether PWSA can identify all categories of costs associated with the Cooperation Agreement.
- Whether PWSA receives any services from the City of Pittsburgh at no cost.
- The potential for PWSA to terminate the Cooperation Agreement with the City, or otherwise allow the agreement to lapse, in favor of market-based procurement practices.
- Whether the Cooperation Agreement, or any other agreement, provides the City with free or discounted wastewater service, stormwater service, or otherwise restricts the application of non-consumption fixed charges (i.e., customer charges) for water service.
- The extent to which the Public Utility Code overrides the binding arbitration provisions of the Cooperation Agreement.
- As recommended at Compliance Plan page 107, whether the Commission may exercise jurisdiction under 66 Pa. C.S. § 508 to revise the Cooperation Agreement and the most appropriate procedural vehicle for any such revision.<sup>49</sup>

## **ii) Positions of the Parties**

PWSA acknowledges the terms of 1995 Cooperation Agreement need to be updated with a new Cooperation Agreement. PWSA originally projected a new Cooperation Agreement would be executed during this proceeding. However, during the

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<sup>48</sup> PWSA Compliance Plan, p. 106.

<sup>49</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), p. 6.

proceeding, PWSA extended the target date for terminating the 1995 Cooperation Agreement several times. PWSA cited continuing negotiations for a new Cooperation Agreement as the basis for constant change.<sup>50</sup> As of the hearing date, the 1995 Cooperation Agreement had still not been terminated.

Among other things, the revised agreement would require the City to provide invoices detailing services provided to PWSA and associated fees.<sup>51</sup> PWSA witness Debbie Lestitian originally stated if PWSA is not successful in negotiating a new agreement, negotiations will continue and PWSA will interact with the City at arm's-length on a transactional basis.<sup>52</sup> Once an agreement was reached, PWSA would file the agreement with the Commission pursuant to 66 Pa. C.S. § 507, at which point the Commission should consider using its powers under 66 Pa. C.S. § 508 to reform the Cooperation Agreement to reflect just and reasonable payments.<sup>53</sup> PWSA witness

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<sup>50</sup> In Direct Testimony, PWSA witness Lestitian stated the PWSA Board gave notice to the City that as of February 4, 2019, it was terminating the 1995 Cooperation Agreement in 90 days, or effective May 5, 2019, and that it hoped to have a new agreement in place by then. PWSA St. No. C-2, p. 8. In Rebuttal Testimony, filed May 6, 2019, PWSA witness Lestitian stated negotiations for a new Cooperation Agreement were continuing and, because the May 5, 2019 termination date had passed, PWSA's Board extended the termination date by 60 days to July 5, 2019. PWSA witness Lestitian again expected a final Cooperation Agreement would be finalized by this date, but claimed, despite the extension of the termination date, if no new agreement is reached by July 5, 2019, PWSA will interact with the City at arm's-length on a transactional basis. PWSA St. No. C-2R, p. 9, 11. Pursuant to a Commission Secretarial Letter issued May 15, 2019, the Commission provided parties to this proceeding a three-month extension to provide additional time to engage in settlement discussions. Hearings were thereafter scheduled for August 21 through 24, 2019, and parties were provided the opportunity to supplement testimony as the result of any new developments occurring during the three-month extension period. Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Fourth Interim Order Amending the Litigation Schedule (June 18, 2018), p. 4. In Supplemental Direct Testimony, PWSA witness Lestitian provided an update that the new Cooperation Agreement had not yet received all necessary approvals, and that PWSA's Board again extended the date of termination of the 1995 Cooperation Agreement until October 3, 2019. PWSA St. No. 2-CSD, p. 3. The new Cooperation Agreement had been approved by City Council on July 24, 2019, but had not yet been finalized by the Mayor. PWSA St. No. 2-CSD, pp. 3-4.

<sup>51</sup> PWSA St. No. C-2, pp. 8-9.

<sup>52</sup> PWSA St. No. C-2, p. 9.

<sup>53</sup> PWSA St. No. C-2, pp. 9-10.



Lestitian identified approximately \$20 million in services that it provides to the City, and \$13 million in services that the City provides to PWSA.<sup>54</sup>

I&E witness D.C. Patel noted he still had similar concerns with the 1995 Cooperation Agreement as he did in the 2018 base rate proceeding, including that PWSA did not provide a detailed breakdown of the \$7.15 million annual payment it makes to the City.<sup>55</sup> He acknowledged PWSA witness Lestitian provided new estimates for costs of services, some of which appeared plausible, but PWSA did not provide detailed, itemized explanation and substantiation. Certain costs assigned to PWSA by the City appeared completely unrelated to utility service, such as \$4,722,317 for street sweeping, litter can cleaning, litter cans costs, “yard debris,” and “landslides.” Additionally, PWSA witness Lestitian’s testimony reveals the value of services provided by PWSA are much greater than those provided by the City, clearly demonstrating the \$7.15 million invoiced from the City to PWSA is unreasonable.<sup>56</sup>

I&E witness Patel went on to express concern that PWSA’s governance structure makes it difficult, if not impossible, for PWSA to renegotiate a Cooperation Agreement at arm’s length.<sup>57</sup> Specifically, the City’s home rule charter states PWSA’s Board members are appointed by the Mayor and confirmed by City Council, and that four of the

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<sup>54</sup> PWSA St. No. C-2, p. 10 and Exhibits DML/C-1 and DML/C-2. Although this information was originally marked confidential, at the hearing on August 21, 2019, PWSA reported that the basis for its assertion of confidentiality (i.e., active negotiations for a new Cooperation Agreement) no longer existed. This proprietary information was thereafter moved and accepted into the record on a non-confidential basis.

<sup>55</sup> I&E St. No. 2, p. 16.

<sup>56</sup> I&E St. No. 2, pp. 19-21. I&E witness Patel marked certain sections of his testimony as confidential when it revealed PWSA testimony marked confidential. However, because PWSA St. No. C-2 and Exhibits DML/C-1 and DML/C-2 were entered into the record on a non-confidential basis, I&E witness Patel’s direct testimony was also moved and accepted into the record on a non-confidential basis.

<sup>57</sup> I&E St. No. 2, p. 23.

five Board members were currently or formerly employed by the City or elected representatives of the City. I&E witness Patel expressed particular concern with the two Board members who were current representatives of the City, who, if active in new Cooperation Agreement negotiations, would have responsibility for both entities' budgets simultaneously.<sup>58</sup>

I&E witness Patel ultimately made the following recommendations:

- Define the City's and PWSA's relationship on a "business-like" basis and negotiate all terms and conditions of the agreement at arm's length to ensure fair, equitable, and reasonable terms for both the parties.
- Identify and list all services by the City to PWSA and vice versa with a detailed breakdown and related cost of service based on current market conditions.
- Eliminate the subsidy payment to Pennsylvania-American Water Company ("PAWC") and other municipal authorities by PWSA.<sup>59</sup>
- Eliminate the free water services to the City and its instrumentalities, agencies, and other bodies.<sup>60</sup>
- The City should be charged for wastewater and stormwater services at tariff rates and for the ALCOSAN wastewater treatment charges.<sup>61</sup>
- Implement the governance reforms identified by the Auditor General.<sup>62</sup>

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<sup>58</sup> I&E St. No. 2, pp. 23-24. Margaret Lanier as City Finance Director and Treasurer and Deborah Gross as current City Council member.

<sup>59</sup> The issue regarding the subsidy payment to PAWC was settled pursuant to Section III.T. of the Joint Petition for Partial Settlement, p. 32.

<sup>60</sup> See I&E statement No. 3, pp. 54-63 (Direct Testimony of I&E witness Cline). See also discussion below regarding PWSA's plan for eliminating free water services to the City by means of a step-billing plan.

<sup>61</sup> The issue regarding ALCOSAN was settled pursuant to Section III.U. of the Joint Petition for Partial Settlement, p. 32.

<sup>62</sup> I&E St. No. 2, pp. 26-27. The Auditor General recommended the following reforms: (1) making Board, management, and operational decisions, including domiciliary, salaries, etc., independent from City influence; (2) work with the City to amend PWSA's Article of Incorporation to require PWSA Board seats to be filled by individuals not compensated by the City; (3) amend PWSA's bylaws to include the necessary fiduciary responsibility of the Board as a whole, and the individual members; (4) require Board members to sign an acknowledgement that they understand and accept their fiduciary responsibility when serving on the Board. Performance Audit Report of November 2017 issued by the Pennsylvania Department of the Auditor General, pp. 31-34 (I&E Exhibit No. 2, Schedule 3, pp. 36-39).

I&E witness Patel stated PWSA should strive to include these terms in its pending renegotiated Cooperation Agreement, or, to the extent a new Cooperation Agreement does not address these concerns, it should be reformed under 66 Pa. C.S. § 508 prior to filing of PWSA's next base rate case to ensure ratepayers are not charged unjust and unreasonable costs.<sup>63</sup>

PWSA witness Lestitian claimed supporting details for costs were not provided because estimates were draft working documents.<sup>64</sup> However, PWSA witness Lestitian acknowledged PWSA will need to provide details moving forward to justify payments made to the City.<sup>65</sup> Regarding I&E witness Patel's governance recommendations, PWSA witness Lestitian stated Mr. Patel had a "fundamental misunderstanding" of PWSA and its inability to implement his recommendations beyond discussing recommendations with the City.<sup>66</sup>

In Surrebuttal Testimony I&E witness Patel stated PWSA clearly understands that a new Cooperation Agreement must comply with the Code and therefore, PWSA should only enter into a new Cooperation Agreement if it believes it is lawful.<sup>67</sup> I&E witness Patel also agreed with PWSA's intention to interact with the City of a transactional basis if no new agreement is negotiated and executed by July 5, 2019.<sup>68</sup> Regarding his

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<sup>63</sup> I&E St. No. 2, p. 27.

<sup>64</sup> PWSA St. No. C-2R, p. 10. PWSA witness Lestitian provided Exhibit DML/C-4, the City's 2018 invoice to PWSA, as an example of cost detail.

<sup>65</sup> PWSA St. No. C-2R, p. 10. PWSA witness Lestitian's testimony appears to inadvertently state PWSA will need to provide details to justify payments made "by", not "to" the City. However, read in context, this appears to be a typo.

<sup>66</sup> PWSA St. No. C-2R, p. 12.

<sup>67</sup> I&E St. No. 2-SR, pp. 6-7.

<sup>68</sup> When witness Patel made his recommendation, PWSA's Board had not yet, but subsequently did, further extend the 1995 Cooperation Agreement until October 3, 2019.

governance recommendations, I&E witness Patel agreed PWSA cannot “unilaterally” alter its relationship with the City, however, certain of his recommendations, i.e., amendment of bylaws, and Board members acknowledging fiduciary responsibility, appear to be matters of purely internal PWSA governance.<sup>69</sup>

In Supplemental Direct Testimony, PWSA witness Lestitian stated, when the new Cooperation Agreement is filed pursuant to 66 Pa. C.S. § 507,<sup>70</sup> PWSA will request the Commission allow PWSA to begin operating under the new Cooperation Agreement effective October 4, 2019, subject to retroactive revisions under 66 Pa. C.S. § 508 and impact on rates in future rate proceedings.<sup>71</sup> Although PWSA witness Lestitian previously stated PWSA would operate on a transactional basis if a new Cooperation Agreement were not effective on the termination date of the 1995 Cooperation Agreement, she now stated such approach would not be transparent and less structured than operating on a temporary basis under the new Cooperation Agreement.<sup>72</sup>

In Supplemental Rebuttal Testimony, I&E witness Patel noted, since PWSA witness Lestitian is explaining PWSA’s future intentions, and not actually making a request in this case, he would defer to I&E counsel to address a request to temporarily approve the 2019 Cooperation Agreement when it is presented to the Commission.<sup>73</sup> However, I&E witness Patel did note his support for PWSA’s original proposal to

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<sup>69</sup> I&E St. No. 2-SR, pp. 7-8.

<sup>70</sup> PWSA St. No. 2-CSD, pp. 4-5.

<sup>71</sup> PWSA St. No. 2-CSD, p. 5.

<sup>72</sup> PWSA St. No. 2-CSD, pp. 5-6.

<sup>73</sup> I&E St. No. 2-RS, p. 5.

interact with the City on an arm's-length transactional basis should the 1995 Cooperation Agreement terminate without a new Cooperation Agreement in-effect (i.e., approved by the Commission under 66 Pa. C.S. § 507).<sup>74</sup>

### **iii) Discussion**

The 1995 Cooperation Agreement undisputedly has provisions non-compliant with the Code, but its status and the status of the new Cooperation Agreement have been in constant flux during this proceeding. PWSA either hoped or expected a new Cooperation Agreement would be effective at some point during this proceeding. Accordingly, until the evidentiary hearing commenced, parties were unclear whether the 1995 Cooperation Agreement would be terminated during this proceeding, and to what extent a new Cooperation Agreement would or should be addressed. Because the new Cooperation Agreement was not finalized before hearings, parties agree that once a new Cooperation Agreement is finalized, it will be filed with the Commission for its review under 66 Pa. C.S. § 507, and PWSA will make a request for a formal on-the-record proceeding.<sup>75</sup> However, until the new Cooperation Agreement is acted upon by the Commission, the 1995 Cooperation Agreement remains in effect, at least until October 3, 2019.

I&E asserts PWSA remains non-compliant with Chapter 32 until the 1995 Cooperation Agreement is terminated and the Commission has either approved a new Cooperation Agreement, or PWSA is transacting with the City on an arm's-length, as-needed basis. Although parties agree a new Cooperation Agreement will be subject to a

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<sup>74</sup> I&E St. No. 2-RS, p. 6.

<sup>75</sup> Section III.P. of the Joint Petition for Partial Settlement, p. 30.

future proceeding, the Commission should not allow the 1995 Cooperation Agreement to be extended by PWSA's Board again, this time beyond October 3, 2019. Although PWSA has stated its intentions multiple times to terminate the 1995 Cooperation Agreement, it has not yet done so, and has provided no guarantees it will not attempt to do so again. If PWSA attempts to extend the lifespan of the 1995 Cooperation Agreement beyond October 3, 2019, Commission action will be necessary.<sup>76</sup>

PWSA has had substantial time to revise the 1995 Cooperation Agreement or submit a new Cooperation Agreement for Commission review. It has been a constant source of contention since PWSA came under the Commission's jurisdiction.<sup>77</sup> PWSA at least implicitly acknowledges many provisions of the 1995 Cooperation Agreement violate the Code, i.e., a new agreement must reflect just and reasonable costs.<sup>78</sup> If PWSA's estimates are correct and reflect prudent costs, which is not certain, PWSA should be *receiving* approximately \$7 million from the City, rather than being invoiced \$7 million. This \$7 million could be used to offset future rate increases, or be placed towards critical infrastructure repairs, such as the replacement of lead service lines.

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<sup>76</sup> I&E still hopes PWSA will terminate the 1995 Cooperation Agreement on its own, but if it does not, the Commission may need to exercise its powers under 66 Pa. C.S. § 508 to reform the 1995 Cooperation Agreement.

<sup>77</sup> There have been multiple rounds of testimony regarding concerns of unsubstantiated and unjustified costs in the 1995 Cooperation Agreement, both in this proceeding and the 2018 rate case. Additionally, as memorialized in the 2018 rate case settlement, PWSA understands I&E may recommend disallowance of unsubstantiated costs paid to the City and impute revenue to PWSA for the provision of any free services. *See* Pa. P.U.C. Docket Nos. R-2018-3002645 & R-2018-3002647, Joint Petition for Settlement (November 29, 2018), Section G.1.a.i.(e).

<sup>78</sup> The \$7,150,000 paid by PWSA to the City is not based on any specific costs, and if costs were based on the actual exchange of services, PWSA should be receiving payments. The City receives up to 600 million gallons of water per year at no cost. Additionally, because many City properties are unmetered and unbilled, there is no certainty how much free water the City receives and is not charged for. PWSA Compliance Plan, p. 108. *See* discussion below regarding I&E's position on PWSA's step-billing proposal for metering and billing City properties.

PWSA's ratepayers are burdened with this inequitable relationship as long as this imbalance continues. Additionally, because PWSA is a cash-flow company, there are no investors from which to recover costs. Accordingly, the 1995 Cooperation Agreement should be terminated as soon as possible, if not by PWSA, then by direction of the Commission.

The General Assembly placed PWSA under Commission oversight to correct its course and prevent such lopsided, disadvantageous relationships from continuing.<sup>79</sup> PWSA is no longer the City's water department. When the City created PWSA as a municipal authority, it created an agency of the Commonwealth independent from the City.<sup>80</sup> Although PWSA and the City recognize the need to implement governance reforms, efforts have stalled.<sup>81</sup> I&E asserts reforms are essential as PWSA still provides unfair advantages to the City that no other truly independent public utility would allow. To become compliant with the Code, PWSA needs to start operating on a business-like

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<sup>79</sup> See, e.g., Reps. Turzai and Readhsaw, *Legislation to place the Pittsburgh Water and Sewer Authority under the oversight of the Public Utility Commission*, House Co-Sponsorship Memoranda (May 24, 2017 ("Over the last year, local and national newspapers have recounted the many service issues facing PWSA from multi-million dollar debt and uncollectibles, unmetered accounts, incorrect billing, system leaks and non-compliance with federal water quality mandates.... Placing PWSA under the regulatory authority of the PUC will require its board of directors to bring the system into compliance with the requirements of Title 66 of the PA Statutes and PUC regulations applicable to investor-owned water and wastewater utilities....The City of Pittsburgh and PWSA clearly need guidance and direction which could be provided by the PUC."))

<sup>80</sup> See, e.g., "[The Pennsylvania Supreme Court] has held that municipal authorities are not the creatures, agents or representatives of the municipalities which organize them; rather, they are independent agencies of the Commonwealth." *Com. v. Lucas*, 534 Pa. 293, 295 (Pa. 1993); "[The Pennsylvania Supreme Court] has consistently held that municipal authorities are not the creatures, agents or representatives of the municipalities which organize them, but rather are 'independent agencies of the Commonwealth, and part of its sovereignty.'" *Com. v. Erie Metro. Transit Auth.*, 444 Pa. 345, 348 (Pa. 1971) (quoting *Whitemarsh Township Authority v. Elwert*, 413 Pa. 329, 332 (Pa. 1964));

<sup>81</sup> See, e.g., I&E Ex. No. 2, Sch. 6. Legislation to implement the Mayor's Blue Ribbon Panel's governance reform recommendations "to make [PWSA] accountable to and trusted by the public" and implement changes recommended by the Auditor General, among others, was introduced in Pittsburgh City Council on March 30, 2018, and was last subject of public hearing on July 18, 2018, with no action thereafter.

basis with the City as soon as possible. Although parties agree the terms of a new Cooperation Agreement will be the subject of a future proceeding, in no event should the Commission allow the 1995 Cooperation Agreement to operate beyond October 3, 2019.

## **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**

#### **i) Background**

Section 65.7 of the Commission’s regulations provide, *inter alia*, that a public utility shall, “unless otherwise authorized by the Commission...provide; install at its own expense; and continue to own, maintain and operate all meters” and “provide a meter to each of its water customers....and shall furnish water service...exclusively on a metered basis.” PWSA’s Compliance Plan states it is generally in compliance with Section 65.7, except 200-400 municipal buildings and 500 flat rate customers are not metered.<sup>82</sup>

PWSA’s Compliance Plan says PWSA “hopes to recover some of the associated costs (e.g. additional plumbing, meter pits, backflow prevention devices, etc.) from the City.”

In its Directed Questions, the Commission asked parties to address:

Whether the Public Utility Code provides for any proposed charge for meter installation and other related appurtenances (i.e., additional plumbing, meter pits, backflow prevention devices, etc.) and if PWSA’s proposed tariff adequately addresses requirements for meter installation and other related appurtenances.<sup>83</sup>

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<sup>82</sup> PWSA Compliance Plan, pp. 67-69.

<sup>83</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), p. 6.



In Direct Testimony, PWSA witness Robert Weimar states, on advice of counsel, that the Code does not expressly prohibit a charge for meter installation, meters or meter pits provided by a public utility.<sup>84</sup> The rebuttal testimony of PWSA witness Weimar first introduced the assertion that PWSA has an agreement with the City to split the costs of meter installations 50/50.<sup>85</sup> PWSA witness Weimar also asserted an additional 300-400 “municipally-owned fountains, pools, etc.” are also unmetered.<sup>86</sup>

In Direct Testimony, I&E witness Ethan Cline stated, on advice of counsel, PWSA should be responsible for costs related to meter installation, but the issue would be discussed further in brief.<sup>87</sup> In Surrebuttal Testimony, I&E witness Cline stated, on advice of counsel, the newly expressed arrangement to split costs of meter installation with the City 50/50 would violate 66 Pa. C.S. § 1304, i.e. the prohibition against unreasonable rate discrimination, when the proposal to charge non-municipal customers the full cost of meter installation remained.<sup>88</sup>

## **ii) PWSA is Not Authorized to Depart from Commission Regulations**

On advice of counsel, PWSA witness Weimar cites Section 65.7(b) to support the proposition that an owner might be responsible for meter installation, meters or meter pits. Specifically, PWSA witness Weimar states the general rule is that a utility should provide the meter at the utility’s expense, but expressly provides that the Commission can

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<sup>84</sup> PWSA St. No. C-1, p. 23.

<sup>85</sup> PWSA St. No. C-1R, p. 18.

<sup>86</sup> PWSA St. No. C-1R, p. 16.

<sup>87</sup> I&E St. No. 3, pp. 22-23.

<sup>88</sup> I&E St. No. 3-SR, p. 11.

authorize a departure from that general rule.<sup>89</sup> I&E agrees that Section 65.7(b) includes the provision that a Commission may authorize a departure from the rules under subsection (b). As a general matter, the Commission may authorize a departure from any of its regulations, not just Section 65.7(b).<sup>90</sup> However, the Commission has not authorized any such departure. Nor has PWSA formally petitioned for waiver of Commission regulations. PWSA has not even explained on what basis it would be appropriate to authorize a departure.

Instead, PWSA cites to limited examples of possibly recoverable costs related to backflow prevention<sup>91</sup> for the general proposition that a customer should be responsible for costs under the much broader categories of meter installation, meters or meter pits. Even under the limited circumstance of backflow prevention devices, I&E asserts PWSA overstates the circumstances for which costs may be charged in three ways. First, 52 Pa. Code § 69.169 is a policy statement, and relates only to what is or isn't considered a standby charge assessed against the owner of a residential structure equipped with an automatic fire protection system (i.e., a backflow prevention device is not a prohibited standby charge). Second, PWSA overlooks that Rule 11.6 of York Water's Water Tariff requires York Water to install a backflow preventor at its cost for residential customers with low potential for back flow. Lastly, there is no basis to claim citation to Pennsylvania Department of Environmental Protection ("PA DEP") regulations

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<sup>89</sup> PWSA St. No. C-1, p. 23.

<sup>90</sup> 52 Pa. Code §§ 1.91, 5.43.

<sup>91</sup> PWSA St. No. C-1, p. 24.

regarding customer responsibility to provide backflow devices precludes a public utility from providing a backflow preventor at its cost.

To further support its claim, PWSA states that a property owner is responsible for “internal piping.”<sup>92</sup> I&E agrees that generally a water utility is not responsible for plumbing beyond its meter, but PWSA has not explained how this principle is related to costs under the much broader categories of meter installation, meters or meter pits. Limited examples related to backflow prevention devices and “internal piping” do not justify shifting the entirety of metering costs to the customer. However, that is what PWSA proposes to do.

The limited issue for briefing is whether PWSA’s proposal to split the costs of metering at municipal properties 50/50 is appropriate.<sup>93</sup> I&E avers the answer is no. As explained above, Section 65.7(b) requires PWSA to be responsible for the expense. PWSA has received no authorization to charge otherwise. PWSA also fails to provide adequate basis why the City should be charged for costs related to metering generally. Instead, PWSA only provides a legal opinion regarding Section 65.7 and cites to a few, discrete costs (i.e., backflow prevention devices, internal piping).

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<sup>92</sup> PWSA St. No. C-1.

<sup>93</sup> In settlement, PWSA agreed, for non-municipal properties, PWSA will pay for the meter and the meter installation, but Applicants will be required to pay for plumbing changes, including service lines in accordance with Part III, Section B.13 of PWSA’s approved Tariff, and other related appurtenances required to make the installation comply with applicable PWSA requirements and county and local plumbing codes. See *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al, *Joint Petition for Partial Settlement*, p. 22, ¶¶ III(G)(3) (September 13, 2019).

Further, the Code prohibits unreasonable discrimination in rate making.<sup>94</sup> PWSA has not provided a basis why it is reasonable to charge only municipal properties 50% of meter installation costs. PWSA states if it must pay for meter installation within a short time frame, PWSA will have to reduce its investments in other critical projects and high-risk priorities.<sup>95</sup> I&E asserts this is not an adequate rationale for deviation from Commission regulations for two reasons. First, PWSA has not explained why this rationale would not apply to all unmetered properties, not just municipal properties. Second, many other utilities could similarly cite this rationale. However, the appropriate recourse is to pursue a rate increase, not to save costs by disregarding Commission regulations. For the reasons above, the Commission should deny PWSA's request to split the costs of meter installation with the City, and instead require PWSA to be responsible for the cost in accordance with 52 Pa. Code § 65.7.

## **2. Billing Plan For Unmetered and/or Unbilled Municipal Properties Within The City Of Pittsburgh**

### **i) Background**

As explained above, pursuant to the 1995 Cooperation Agreement, the City is entitled to receive up to 600 million gallons per year from PWSA for free. In reality, the majority of City properties are unmetered and actual use is unknown, and estimated to be higher.<sup>96</sup> PWSA recognizes provision of unmetered, unbilled service violates numerous provisions of the Code and Commission regulations.<sup>97</sup> To come into compliance, PWSA

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<sup>94</sup> 66 Pa. C.S. § 1304.

<sup>95</sup> PWSA St. No. C-1R, p. 19.

<sup>96</sup> PWSA Compliance Plan, p. 108.

<sup>97</sup> PWSA Compliance Plan, p. 109.

proposes, once municipal properties are metered, to charge 20% of the total bill in the first year, and for each successive year to charge an additional 20% of the total bill, until 100% of the total bill is charged.<sup>98</sup> PWSA states this is appropriate because the City has never been billed for water at unmetered locations and unaware of the amount of water or cost it will be responsible for once billing begins. Accordingly, PWSA claims the City needs lead time to understand its obligations, take steps to mitigate its current water use, and incorporate payment obligations into future budgets.<sup>99</sup>

Regarding PWSA's step-billing proposal for the City, the Commission directed parties to address:

- Estimated revenue loss associated with unmetered and unbilled usage.
- The legality of the proposed PWSA step billing approach.
- The feasibility of estimating usage based on engineering estimates on all currently unmetered customers and billing immediately based on those estimates.
- Whether initiating the 20/40/60/80/100 percent step billing proposal immediately based on those engineering estimates would be feasible and legal.
- Whether any 20/40/60/80/100 percent billing program should be phased as opposed to stepped.
- The feasibility of immediately implementing a metering and billing triage plan with the following hierarchy:
  - Metering/estimating and billing high volume customers.
  - Metering/estimating and billing mid-volume customers.
  - Metering/estimating and billing residential and other low-volume customers.

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<sup>98</sup> PWSA Compliance Plan, p. 110.

<sup>99</sup> PWSA Compliance Plan, p. 110-111.

- If any of the 200-400 City-owned and/or operated locations that are unbilled for water service are billed for wastewater service.<sup>100</sup>

## **ii) Positions of the Parties**

In Direct Testimony, PWSA witness Weimar reiterates PWSA’s position that the City needs time until it receives full bills.<sup>101</sup> Regarding estimated revenue loss, PWSA witness Weimar states half of the City’s major facilities are metered, and measurements for those facilities equate to about \$3.6 million in billed usage.<sup>102</sup> However, PWSA witness Weimar notes the “key” City and City-affiliated facilities that do not have meters are the Zoo and swimming pools and spray parks.<sup>103</sup> On advice of counsel, PWSA witness Weimar admits that failing to meter or charge some locations is inconsistent with the Code, as well as Commission regulations, but PWSA’s step-billing proposal is consistent with creating a plan for coming into compliance and additionally, the Commission can waive the applicability of any provision of the Code, except 66 Pa. C.S. § 3202.<sup>104</sup>

PWSA witness Weimar goes on to explain that it is difficult to make estimates of usage for the City, and implementing a step-billing approach based on estimates is not feasible because, if PWSA begins to immediately bill 100% of City locations with meters, the City will face significant new charges it likely would not be able to pay.<sup>105</sup>

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<sup>100</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), pp. 15-16.

<sup>101</sup> PWSA St. No. C-1, p. 27.

<sup>102</sup> PWSA St. No. C-1, p. 28.

<sup>103</sup> PWSA St. No. C-1, p. 28.

<sup>104</sup> PWSA St. No. C-1, p. 28 (citing 66 Pa. C.S. § 3202(b)).

<sup>105</sup> PWSA St. No. C-1, p. 29.

Similarly, implementing a customer charge prior to installation of a meter would not be feasible because, again, “[t]he City needs lead time.”<sup>106</sup>

In response, I&E witness Cline stated unbilled usage represents upwards of \$11.4 million in foregone revenue.<sup>107</sup> Accordingly, I&E witness Cline expressed concern about PWSA witness Weimar’s step-billing proposal because it appeared to elevate the City’s interest above those of PWSA and its customers.<sup>108</sup> Responding to PWSA witness Weimar’s assertion the City needs time to understand its obligations, I&E witness Cline provided numerous reasons why this basis was invalid:

- The City had knowledge that the need to meter and bill for water usage was an issue of public concern at least since the Auditor General’s Report was issue on October 30, 2017.<sup>109</sup>
- The City had notice that its unbilled usage and other City interests would be investigated in this proceeding and, despite such notice, it elected not to participate.<sup>110</sup>
- PWSA provided no factual basis that the City would be unable to pay water bills if it was billed immediately.<sup>111</sup>
- PWSA’s desire to provide “lead time” to the City is an unreasonable preference not offered to other customers.<sup>112</sup>
- On advice of counsel, it is inappropriate for PWSA to raise a claim on behalf of the City, which did not participate in this proceeding.<sup>113</sup>
- PWSA’s concern for the City’s budget is unfounded because the City will have “lead time” to fully absorb costs if the City is not billed until after the next base rate case and PWSA does not finish metering for five years.<sup>114</sup>

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<sup>106</sup> PWSA St. No. C-1, p. 30. PWSA also confirms that customers who are not billed for water are not billed for wastewater. PWSA. St. No. C-1, p. 31.

<sup>107</sup> I&E St. No. 3, p. 55.

<sup>108</sup> I&E St. No. 3, pp. 54-55.

<sup>109</sup> I&E St. No. 3, p. 55.

<sup>110</sup> I&E St. No. 3, pp. 55-56.

<sup>111</sup> I&E St. No. 3, p. 56.

<sup>112</sup> I&E St. No. 3, p. 56.

<sup>113</sup> I&E St. No. 3, p. 56-57.

<sup>114</sup> I&E St. No. 3, p. 57.

Accordingly, I&E witness Cline recommended that PWSA introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, their usage should be billed immediately.<sup>115</sup>

In Rebuttal Testimony, PWSA witness Weimar states the goal of the Compliance Plan proceeding is to arrive at an acceptable plan for compliance, not simply identify where PWSA is not in compliance.<sup>116</sup> PWSA witness Weimar then again reiterates the step-billing approach is appropriate because the City has never been billed and needs time to manage these new costs.<sup>117</sup> PWSA witness Weimar then claims I&E's proposed flat-rate approach would be "rate shock" to the City.<sup>118</sup>

In Surrebuttal Testimony, I&E witness Cline stated PWSA had not provided an adequate reason why, at minimum, the City could not be responsible for the customer charge, which would provide needed revenue for PWSA's operations, including but not limited to infrastructure repair, lead remediation, and meter installation.<sup>119</sup> Regarding "rate shock," I&E witness Cline stated PWSA witness Weimar's position elevates the City's position above PWSA and other ratepayers, and PWSA has not argued "rate shock" from the perspective of non-City customers, who in-part face rate increases due to PWSA foregoing revenue such as this.<sup>120</sup>

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<sup>115</sup> I&E St. No. 3, p. 56.

<sup>116</sup> PWSA St. No. C-1R, p. 20.

<sup>117</sup> PWSA St. No. C-1R, p. 21.

<sup>118</sup> PWSA St. No. C-1R, p. 21.

<sup>119</sup> I&E St. No. 3-SR, p. 27.

<sup>120</sup> PWSA St. No. 3-SR, pp. 27-28.



### **iii) PWSA Has Not Justified its Step-Billing Proposal for Municipal Properties**

There is no dispute among parties that failing to meter or charge the City for its water use violates the Code and Commission regulations. The issue is whether PWSA's step-billing proposal is a reasonable plan. I&E asserts it is not and should be rejected for the following reasons.<sup>121</sup>

First, PWSA's concern for the City's finances is troubling and misplaced. PWSA's concern should be focused upon ensuring the integrity of its operations, and upon providing adequate, efficient, safe, reliable, and reasonable service, not upon the City's finances. Furthermore, despite receiving notice of this proceeding and a copy of PWSA's Compliance Plan, which implicated issues of City interest, and despite being advised of the opportunity to participate, the City elected not to participate.<sup>122</sup> PWSA witness Weimar repeatedly states the City needs lead time (i.e., five years) until it is fully responsible for the costs of its bills. However, the City had notice of this proceeding, and the ability to participate and raise concerns of affordability. The City is a sophisticated entity with its own solicitor and law department, which was fully capable of making the arguments PWSA made on its behalf. The City recently demonstrated this capability by participating in negotiations with PWSA regarding a new Cooperation Agreement.

Second, although not relevant to PWSA's compliance obligations, other than bare assertions, PWSA provided no evidence that the City would be unable to pay bills at

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<sup>121</sup> PWSA witness Weimar confirmed PWSA's proposed step-billing proposal is limited to metered municipal authorities. PWSA St. No. C-1R, p. 21.

<sup>122</sup> *Pa. .P.U.C. v. PWSA*, R-2018-3002645 et al., Letter to Solicitor for the City of Pittsburgh (December 13, 2018)

quicker pace than contemplated by its step-billing approach. As the party with the burden of proof, PWSA must support its proposal with evidence. It has not done so.

Third, if the Commission accepted I&E's approach, the City would still receive up to five years of "lead time" to incorporate the costs of billing into its budgets. Unmetered city facilities would be responsible for a customer charge, but not be responsible for its full meter costs until metering is complete. As reflected in the partial settlement, the parties accepted PWSA's plan that it intends to complete metering of all unmetered municipal and flat rate properties within five years or by December 31, 2024.<sup>123</sup> Therefore, PWSA's claim that I&E's recommendation would create "rate shock" is inaccurate and unsupported.

Fourth, I&E agrees this proceeding is not simply to identify violations with the Code, but to develop a reasonable plan for PWSA's compliance with the Code. However, PWSA should strive to bring itself into compliance as quickly as possible. Every day the City is unbilled for its water usage is a day PWSA is not collecting tariffed revenue and charging discriminatory rates, violating 66 Pa. C.S. §§ 1303 and 1304. I&E witness Cline offered a reasonable plan for PWSA to charge at least the customer charge, while the City would still not be fully billed until its metering is complete. In the alternative, PWSA's proposal would still allow free water service for unmetered properties. As a matter of equity, the Commission should not allow free water service,

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<sup>123</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al, *Joint Petition for Partial Settlement*, p. 22, ¶¶ III(G)(2)(b)(iii) (September 13, 2019). As advocated by I&E, PWSA also intends to accelerate this timeframe, if possible.

which, under PWSA's step-billing proposal, would potentially continue for up to five years. PWSA projects a vast expansion in spending over the next five years,<sup>124</sup> which, as a cash-flow company, is only recoverable from ratepayers. It would be unacceptable to ask non-City ratepayers to foot their full bill for future rate increases while the City is still receiving free water service.

Lastly, implementation of the step-billing proposal would condone and perpetuate the imbalanced, discriminatory relationship the City has with PWSA. As discussed in the section above regarding the 1995 Cooperation Agreement, PWSA should operate on a business-like basis with the City as soon as possible. I&E recognizes PWSA's step-billing proposal is an attempt to correct the legacy of free water provided to the City under the 1995 Cooperation Agreement. However, PWSA's proposal for the City to continue receiving free water, albeit in gradually reduced form, is unacceptable. I&E's proposal is a reasonable alternative that accepts the City may not receive full bills until metering is complete, which could be as late as 2024. However, the City would be charged its full rate once metered, like any other customer. I&E therefore recommends the Commission order PWSA to introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, their usage should be billed immediately.

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<sup>124</sup> See, e.g., PWSA Compliance Plan, Appendix C, PWSA's LTIP, p. 42 (PWSA projects approximately a ten-fold increase in capital spending, from about \$30 million in 2017, to a high of \$330 million in 2021).

### 3. Billing Plan For Public Fire Hydrants Within The City Of Pittsburgh

The Commission directed parties to address how PWSA plans to address and implement charges for public fire hydrants.<sup>125</sup> Parties agree that PWSA will provide a class cost of service study reflecting all public fire hydrant costs and will present a rate design reflecting allocation of 25% of all public fire hydrant costs to the City with its next rate case proposal. Additionally, PWSA reserves the right to propose a phase-in period at that time.<sup>126</sup>

Although parties agreed on terms related to allocation of public fire hydrant costs, parties reserved their right to address their positions regarding PWSA's billing plan for public fire hydrants.<sup>127</sup> Because PWSA does not charge the City for any of its water use, the step-billing proposal for City water use generally includes billing for public fire hydrants. Pursuant to the Partial Settlement, PWSA may propose a phase-in period of percent allocation when its next rate case is filed.<sup>128</sup> However, for the same reasons stated above, PWSA should not be allowed to implement a step-billing approach for City public fire hydrant charges. PWSA has provided no basis distinguishing why charges related to public fire hydrants should be treated differently than any other water usage by the City. Accordingly, the City should be charged the full amount of whatever percent allocation is determined in PWSA's next rate proceeding.

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<sup>125</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), p. 16.

<sup>126</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al, *Joint Petition for Partial Settlement*, p. 23, ¶¶ III(I) (September 13, 2019).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* Section 1328 of the Public Utility Code only allows allocation of 25% of the cost of service for public fire hydrants to the City.

**C. Applicability Of The Municipal Authorities Act, 53 Pa. C.S. §5601, Et. Seq.,  
And The Commission’s Line Extension Regulations At 52 Pa Code §§65.1,  
65.21-65.23**

**i) Background**

Commission regulations require water utilities to include as part of their tariff conditions under which service will be extended to applicants.<sup>129</sup> Further, Commission regulations detail under what circumstances a water utility shall construct line extensions,<sup>130</sup> and rules regarding associated customer advance financing and payments.<sup>131</sup> These regulations do not apply to special utility service.<sup>132</sup>

The Municipality Authorities Act (“MAA”)<sup>133</sup> provides for certain powers that an authority may exercise, including those related to line extensions.<sup>134</sup> Included is the power to charge the cost of construction of sewer and water mains against properties served via the “benefits method” or “foot front rule,”<sup>135</sup> require posting of financial security,<sup>136</sup> and charge various fees to connect a property to an authority’s sewer or water system.<sup>137</sup> Additionally, the MAA permits a property owner to construct extensions him

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<sup>129</sup> 52 Pa. Code § 65.21.

<sup>130</sup> *Id.*

<sup>131</sup> 52 Pa. Code § 65.22.

<sup>132</sup> 52 Pa. Code § 65.23. Special utility service is defined as “[r]esidential or business service which exceeds that required for ordinary residential purposes. The term may include installation of facilities such as oversized mains, booster pumps and storage tanks as necessary to provide adequate flows or to meet required pressure criteria and service to large water consuming commercial and industrial facilities.” 52 Pa. Code § 65.1.

<sup>133</sup> 53 Pa. C.S. §§ 5601-5623.

<sup>134</sup> 53 Pa. C.S. § 5607(d).

<sup>135</sup> 53 Pa. C.S. § 5607(d)(21)-(22). As explained in *Whitemarsh Twp. Auth. v. Elwert*, costs of construction may be either by the “benefits method” (under § 5607(d)(21) or the “foot front method”. 413 Pa. 329, 334 (Pa. 1964).

<sup>136</sup> 53 Pa. C.S. § 5607(d)(23).

<sup>137</sup> 53 Pa. C.S. § 5607(d)(24).

or herself,<sup>138</sup> and requires certain reimbursements of a property owner if another property owner later connects to the extension.<sup>139</sup>

PWSA's Compliance Plan states the following regarding its compliance with 52 Pa. Code § 65.21, 52 Pa. Code § 65.22, and 52 Pa. Code § 65.23:<sup>140</sup>

PWSA does not plan to comply with Section 65.21, and will instead, subject to PUC approval, follow the PWSA Policies and Procedures related to line extensions, as provided in its 2018 Tariff Filing Rules and Regulations and required by the Municipality Authorities Act.

[Regarding Sections 65.22 and 65.23] PWSA's policy on line extensions is detailed in the Rules and Regulations section of its Tariff filing and is consistent with the requirements of the Pennsylvania Municipality Authorities Act.

The Commission directed parties to address the appropriateness of PWSA following the MAA instead of the Code, including whether PWSA's tariff rules and regulations comply with the Code.<sup>141</sup>

## **ii) Positions of the Parties**

In Direct Testimony, PWSA witness Julie Quigley reasserted PWSA's intention to follow the MAA regarding line extensions.<sup>142</sup> PWSA witness Quigley stated PWSA's operations and processes are consistent with the MAA and, on advice of counsel, the MAA contains a provision that obligates PWSA's compliance with MAA line extension

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<sup>138</sup> 53 Pa. C.S. § 5607(d)(30)

<sup>139</sup> 53 Pa. C.S. § 5607(d)(31).

<sup>140</sup> PWSA Compliance Plan, pp. 67-69.

<sup>141</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Technical Staff Directed Questions (November 28, 2018), pp. 9-10.

<sup>142</sup> PWSA St. No. C-4, p. 30. Ms. Quigley also stated the relevant sections are found in Sections G of PWSA's water and wastewater tariffs.

requirements and nothing in the Code mandates otherwise.<sup>143</sup> Additionally, on advice of counsel, PWSA witness Quigley stated there are no “line extension” provisions of the Code, but instead Commission’s regulations address line extensions at 52 Pa. Code §§ 65.21, 65.22.<sup>144</sup>

PWSA witness Quigley also discussed generally the applicable provisions of the MAA and Commission regulations, and PWSA’s line extension fee structure.<sup>145</sup> In conclusion, PWSA witness Quigley opined that PWSA cannot be in compliance with the requirements of Commission’s regulations because they would make PWSA’s practices inconsistent with the MAA.<sup>146</sup>

I&E witness Cline responded to PWSA witness Quigley, recommending that PWSA be required to comply with 52 Pa. Code §§ 65.21-65.23 because, on advice of counsel, the Code now supersedes the MAA regarding line extensions.<sup>147</sup> I&E was the only party to respond to PWSA on this issue. In Rebuttal Testimony, PWSA witness Quigley maintained her position, but added that compliance with Commission regulations would negatively impact PWSA’s operations. Specifically, PWSA witness Quigley stated changing existing processes would be a substantial undertaking, and PWSA would have to carefully review all of its policies and procedures to identify needed changes.<sup>148</sup> Accordingly, PWSA witness Quigley stated that, given all the other matters identified by

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<sup>143</sup> PWSA St. No. C-4, pp. 30-31.

<sup>144</sup> PWSA St. No. C-4, p. 31.

<sup>145</sup> PWSA St. No. C-4, pp. 31-33.

<sup>146</sup> PWSA St. No. C-4, pp. 33-34.

<sup>147</sup> I&E St. No. 3, pp. 42-45.

<sup>148</sup> PWSA St. No. C-4R, pp. 36-37.

PWSA witnesses, she did not support adhering PWSA's practices regarding line extensions to Commission regulations, even if the Commission did conclude that it could legally direct PWSA to do something different from the MAA with regard to its line extension process.<sup>149</sup>

In his Surrebuttal Testimony, I&E witness Cline recognized PWSA witness Quigley's concern that compliance with Commission regulations would require PWSA to readjust its practices, but stated this should not be a reason to determine PWSA should not comply with Commission regulations.<sup>150</sup>

**iii) Rules of Statutory Construction Require that the Public Utility Code and Commission Regulations Supersede Provisions of the Municipality Authorities Act Regarding the Duty of PWSA to Make Line Extensions and Customer Advance Financing, Refunds and Facilities on Private Property**

As PWSA witness Quigley recognized in testimony, PWSA cannot be in compliance with the MAA and Commission regulations regarding line extensions at the same time. Therefore, it is necessary to look to rules of statutory construction to determine whether the MAA or Commission regulations control.<sup>151</sup> At the outset, if the conflict was viewed simply as a regulation versus statute, the MAA would prevail.<sup>152</sup> However, this is not the correct analysis. The correct analysis is whether a newly enacted statute, i.e., Chapter 32 of the Public Utility Code, requires PWSA to follow Commission regulations regarding line extensions, instead of the MAA. I&E asserts the answer is yes.

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<sup>149</sup> PWSA St. No. C-4R, p. 37-38.

<sup>150</sup> I&E St. No. 3-SR, pp. 20-21.

<sup>151</sup> 1 Pa. C.S. §§ 1501-1991.

<sup>152</sup> See, e.g., *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa. Super. 2002).



The conflict is as follows. The MAA, a statute, provides specific rules regarding line extensions. Chapter 32, also a statute, mandates PWSA comply with the Code generally. Compliance with the Code generally includes compliance with Commission regulations,<sup>153</sup> and Commission regulations include specific rules regarding line extensions.

Rules of statutory construction require that, whenever a general provision in a statute is in conflict with a special provision in the same or another statute, both provisions should be construed to be operable, if possible.<sup>154</sup> Here, it is not possible for the MAA, which includes special provisions regarding line extensions, to coexist with Chapter 32, a general provision, which requires PWSA follow Commission regulations related to line extensions. Rules of statutory construction further provide that if the two provisions are irreconcilable, as they are here, the special provision shall prevail to the exclusion of the general provision, unless the general provision was (1) enacted later and (2) it is the manifest intention of the General Assembly that such general provision shall prevail. Here, both elements necessary for an exception to the rule are satisfied. Chapter 32 was enacted later than the applicable provisions of the MAA, and the legislature expressly prescribed that the Code, including associated Commission regulations, apply to PWSA.

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<sup>153</sup> See, e.g., 66 Pa. C.S. § 501(c) (“Every public utility...subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof”); 66 Pa. C.S. § 1501 (“[A public utility’s] service and facilities shall be in conformity with the regulations and orders of the commission”).

<sup>154</sup> 1 Pa. C.S. § 1933.

The first element is clearly satisfied. The MAA was enacted in 1945 and first amended to allow municipal authorities to recoup costs of sewer line extensions and associated fees in 1947.<sup>155</sup> MAA rules regarding line extensions were amended multiple times thereafter, but Sections (d)(21) through (24), and (d)(30) through (31) of the MAA have been identical to the current version of the MAA, with one exception, inapplicable to PWSA, since 2013.<sup>156</sup> The current version of the MAA regarding line extensions was enacted on July 7, 2017, when Governor Wolf signed Act 19 of 2017 into law. Chapter 32 of the Code was enacted later than any of the above dates, on December 21, 2017, when Governor Wolf signed Act 65 of 2017 into law.

Regarding the second element, although Chapter 32 does not specifically reference line extensions, the General Assembly clearly intended for the Code and Commission's rules, regulations and orders to apply to PWSA the same as any other Commission-regulated utility, barring a few, limited exceptions. Section 3202 of the Code states:

Beginning on April 1, 2018, unless otherwise provided in this chapter, *the provisions of this title, except Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations with affiliated interests), shall apply to an authority in the same manner as a public utility* (emphasis added).

Chapters 11 and 21 of the Code are not relevant to the line extensions rules under 52 Pa. Code §§ 65.21-65.23. Additionally, the Code requires compliance with

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<sup>155</sup> Act of June 12, 1947 (P.L. 571, No. 249).

<sup>156</sup> The current statute provides certain refunds of tapping fees if facilities have not been placed into service within 20 years, compared to 15 years under the prior version of the statute. 53 Pa. C.S. § 5607(d)(24)(i)(C)(VI)(b). This provision only applies to an authority which provides service to five or more municipalities.

Commission regulations.<sup>157</sup> Section 3204 of Chapter 32 also demonstrate the General Assembly’s intention to place PWSA under full Commission jurisdiction, e.g., subject not only to the Code, but also the rules, regulation and orders of the Commission. Specifically, Section 3204 mandates this Compliance Plan proceeding’s entire purpose is to bring PWSA’s operations into compliance with the same requirements applicable to jurisdictional water and wastewater utilities under the Code and applicable rules, *regulations* and orders of the commission.<sup>158</sup> Additionally, the General Assembly could have expressly limited the Code’s applicability regarding line extensions, but did not do so. To the contrary, in addition to Chapters 11 and 21, Chapter 32 limits only the Code’s applicability to establishment of authorities, audits, and compliance with certain financial obligations.<sup>159</sup> Considering all the above, the General Assembly clearly and expressly intended to require PWSA to comply with the Code and associated Commission rules, regulations, and orders, barring a few, limited exceptions.

**iv) There is No Mandate that PWSA Exclusively Comply with the  
MAA Regarding Line Extensions**

PWSA witness Quigley states, on advice of counsel, that PWSA only has powers conferred upon it by the MAA. Additionally, the MAA contains a provision that obligates PWSA’s compliance with MAA line extension requirements and nothing in the

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<sup>157</sup> See, e.g., 66 Pa. C.S. § 501(c) (“Every public utility...subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof”); 66 Pa. C.S. § 1501 (“[A public utility’s] service and facilities shall be in conformity with the regulations and orders of the commission”)

<sup>158</sup> 66 Pa. C.S. § 3204(b)(emphasis added).

<sup>159</sup> 66 Pa. C.S. § 3208.

Code mandates otherwise.<sup>160</sup> I&E disagrees with PWSA’s position for four reasons.

First, PWSA only has powers conferred upon it by the legislature.<sup>161</sup> PWSA is not bound to only exercise powers granted under the MAA. Second, as discussed above, consistent with rules of statutory construction, Chapter 32 does mandate PWSA comply with the Commission’s regulations rather than the MAA regarding line extensions. Third, the Commission’s regulations regarding line extensions are mandatory. Sections 65.21 and 65.22 both state a utility “shall” take certain actions related to line extensions.<sup>162</sup> Fourth, the only apparent express “mandate” regarding line extensions in the MAA is Section 5607(d)(24)(iii), which states:

No authority shall have the power to impose a connection fee, customer facilities fee, tapping fee or similar fee except as provided specifically under this section.

This only applies to a *portion* of the MAA regarding line extensions, i.e., Section 5607(d)(24) regarding connection, customer facilities, tapping, and similar fees.<sup>163</sup>

Nonetheless, as explained above, Chapter 32 and 52 Pa. Code §§ 65.21-65.23 supersedes 53 Pa. C.S. § 5607(d)(24)(iii) and the MAA generally regarding line extensions.

Additionally, I&E asserts Section 5607(d)(24)(iii) is meant to limit what fees a municipal authority can charge under the MAA, not to preempt implementation of Chapter 32.

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<sup>160</sup> PWSA St. No. C-4, p. 30.

<sup>161</sup> See, e.g., *Naylor v. Township of Hellam*, 773 A.2d 770, 773-774 (Pa. 2001) (“Municipal corporations have no inherent powers and may do only those things that the Legislature has expressly or by necessary implication placed within their power to do.”)

<sup>162</sup> Section 65.23 simply states that Sections 65.21 and 65.22(a) and (c) do not apply to special utility service.

<sup>163</sup> Section 5607(d)(24) states “[Section 5607(d)(24)] fees shall be *in addition* to any charges assessed against the property in the construction of a sewer or water main by the authority under [Sections 5607(d)(21) and (22)] (emphasis added).”

Municipal authorities are allowed to “*exercise all powers necessary or convenient*” to effectuate its purposes, “including, *but without limiting the generality of the foregoing*, [34 enumerated] rights and powers.”<sup>164</sup> If Section 5607(d)(24)(iii) did not exist, a municipal authority may attempt to charge fees beyond what is provided for in Section 5607(d)(24) pursuant to its powers under the MAA.<sup>165</sup> I&E asserts this section’s purposes is to tightly control what can be charged for certain fees under MAA, rather than to bind the General Assembly from adopting contrary legislation in perpetuity. Other supposed “mandates” of Section 5607(d) are equally inapplicable, such as “[t]he court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service.”<sup>166</sup> The Code and the Commission’s rules, regulations and orders now control.

#### **v) The Public Utility Code’s Regulation of Public Utilities is Supreme**

Pennsylvania Courts have long held that the General Assembly’s intention is that the Code should exclusively control regulation of public utilities.<sup>167</sup> There is no reason to think the legislature’s intention was different here. To the contrary, as discussed above, Chapter 32 explicitly states the Code is to apply to PWSA the same as any other

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<sup>164</sup> 53 Pa. C.S. § 5607(d) (emphasis added).

<sup>165</sup> See, e.g., *Naylor v. Township of Hellam*, 773 A.2d 770, 774, fn. 2 (Pa. 2001) (“A municipal corporation *can* function through powers incidental to those expressly granted (emphasis in original).”)

<sup>166</sup> 53 Pa. C.S. § 5607(d)(9).

<sup>167</sup> *PPL Electric Utilities Corp. v. City of Lancaster*, 2019 WL 3926456 (Pa. 2019) (“[T]he General Assembly long has intended, and continues to intend, that its comprehensive statutory framework for utility regulation, as complemented by the PUC’s voluminous complementary regulations, reflect its general intention wholly to occupy the field of utility regulation at the state level”); *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996 (Pa. Commw. 2007) (“[T]he Public Utility Code is intended to be the supreme law of the Commonwealth in the regulation and supervision of public utilities”); *Newtown Twp. v. Philadelphia Elec. Co.*, 140 Pa. Cmwlth 635 (Pa. Commw. 1991) (“[A]ll laws inconsistent with the powers thus conferred [by the Public Utility Code] must be held to be repealed” (quoting *York Water Co. v. York*, 250 Pa. 115 (Pa. 1915))).

regulated public utility.<sup>168</sup> The Commission has recognized the goal of transitioning PWSA from oversight under the MAA to the Code. Specifically, the purpose of this proceeding is to:

[P]rovide for the orderly transition of regulation of the Pittsburgh Water and Sewer Authority from the Municipal Authorities Act to the Public Utility Code. In addition to outlining how PWSA may comply with the Public Utility Code, Commission Regulations, and applicable precedent, [the Final Implementation Order] provides direction to affected stakeholders and members of the public on how PWSA may achieve the regulatory transition mandated by Act 65 of 2017.<sup>169</sup>

I&E does not dispute the MAA still applies to PWSA when not in conflict with Chapter 32. Chapter 32 did not change PWSA's status as a municipal authority. Chapter 32 only states that PWSA is to be regulated under the Code, and the Commission's rules, regulations and orders as though it were public utility. Additionally, the above analysis is isolated to the conflict between line extension rules of the MAA and Commission regulations. However, the MAA contains numerous other provisions that, as PWSA continues under Commission jurisdiction, may create apparent conflict with Chapter 32. While each potential conflict should be evaluated on its own particular merits, if the Commission determines that the MAA prevails here, it may increase the likelihood future similar challenges will occur.

Allowing PWSA to follow the MAA when unmerited will also create an administrative hardship for the Commission where PWSA is subject to different

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<sup>168</sup> 66 Pa. C.S. § 3202(a)(1).

<sup>169</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Final Implementation Order (March 15, 2018), p. 43.

standards than other regulated water utilities. As an example, assume, *arguendo*, that the MAA line extension policy prevailed over the Commission's regulations, and a PWSA customer contacts the Commission's Bureau of Consumer Services ("BCS") to complain about PWSA's line extension policies. Under that scenario, it is unclear what assistance the BCS representative would be able to provide, since providing any assistance would likely require the representative to refer to, interpret, and potentially seek enforcement of the MAA provision, assuming jurisdiction for such enforcement would even be within the Commission's jurisdiction. This example illustrates the potential consequence of permitting PWSA to follow the MAA line extension provisions, noting its inconsistency with a key presumption of legislative intent that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.<sup>170</sup> Conversely, recognition that the Commission's regulatory provisions for line extension prevail honors the legislature's intention for PWSA to be treated like any other jurisdictional water and wastewater utility, promotes regulatory certainty, and supports the Commission's goal to strive for uniformity among utilities that it regulates.

**vi) Although PWSA May Seek Waiver of 52 Pa. Code §§ 65.21, 65.22, 65.23, it Has Neither Sought Waiver Nor Provided Adequate Basis to Allow Such Waiver**

The foregoing discussion clearly demonstrates PWSA must follow the Commission's regulations regarding line extensions, not the MAA. However, PWSA may seek Commission permission to waive its regulations.<sup>171</sup> PWSA predicts various

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<sup>170</sup> 1 Pa. C.S. §1922.

<sup>171</sup> 52 Pa. Code §§ 1.91, 5.43.

hardships if it were required to comply with Commission regulations regarding line extensions. PWSA claimed hardships include: developers, entities, and others are familiar with the MAA processes; conforming to Commission regulations would require PWSA to “carefully review all its policies and procedures to identify those that would need to be changed;” PWSA would need to evaluate all existing contracts, RFP documents, and projects, as well as design new systems, to implement changes.<sup>172</sup> Accordingly, PWSA does not support implementation of Commission regulations, even if it were required to do so.<sup>173</sup>

I&E asserts PWSA has neither provided an adequate basis for the Commission to waive its regulations, nor has it even made such a request. I&E does not deny PWSA changing its line extension policies will require planning, coordination, and effort. But this is true of all other operations that must change to come into compliance with Chapter 32. The same hardships cited by PWSA could be extended to other areas of compliance. For example, Stage 2 of this Compliance Plan proceeding will focus, among other things, on how PWSA’s billing practices will come into compliance with Chapter 56 of the Commission’s regulations.<sup>174</sup> If it has not already, PWSA will likely need to review all of its billing policies and procedures carefully, and implement changes that likely will be unfamiliar to existing customers. To accept PWSA’s reasoning regarding hardship for line extensions would create a dangerous precedent that could be extended to other areas.

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<sup>172</sup> PWSA St. No. C-4R, p. 37.

<sup>173</sup> PWSA St. No. C-4R, pp. 37-38.

<sup>174</sup> Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803, Corrected Secretarial Letter (November 28, 2018), p. 4.



Finally, PWSA states the MAA has been PWSA's "governing statute" since inception.<sup>175</sup> However, PWSA's predecessor was the City's Water Department. Just as PWSA had to change its practices to comply with the MAA once the City's Water Department became PWSA, it is reasonable to expect PWSA to comply with Commission regulations now that it is regulated as though it were a public utility. For these reasons, the Commission should find that PWSA is required to comply with 52 Pa. Code §§ 65.21-65.23, and should revise its tariff and operations accordingly.

#### **D. PWSA's Residency Requirement**

##### **i) Background**

The clear, uncontroverted evidence in this case indicates that PWSA's Board has adopted a residency requirement for its employees that simultaneously hinders its operations and escalates its costs. As explained more thoroughly below, the record in this proceeding reveals that PWSA's residency requirement offends multiple provisions of the Code and the Commission's regulations, resulting in non-compliance that must be remediated in order to protect PWSA and its ratepayers. Accordingly, I&E submits that the Commission must determine that PWSA's residency requirement produces a result that frustrates PWSA's ability to adequately ensure and maintain the provision of adequate, safe, reliable, and reasonable service.

Significantly, PWSA's Compliance Plan failed to address its residency requirement. Instead, as part of the Directed Questions issued in this case, the

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<sup>175</sup> PWSA St. No. C-4, p. 30.

Commission’s technical staff noted that PWSA’s Compliance Plan failed to discuss whether any residency requirement applies to employment with PWSA or to PWSA employees. Noting this deficiency, parties were directed to discuss whether a residency requirement is imposed and, if so, how it operates. Finally, if applicable, parties were directed to discuss how PWSA’s residency requirement for employment is consistent with its safety and reliability obligations under the Code and with the Commission’s regulations at 52 Pa. Code §§ 69.801 – 69.809.<sup>176</sup> As further explained below, the evidence in this case establishes that PWSA has imposed its own residency requirement under the influence of the City, despite the fact that the requirement is hindering its operations, driving up costs, and frustrating its ability to comply with the Code and the Commission’s regulations and orders.

During the course of this proceeding, I&E conducted an investigation into PWSA’s residency requirement.<sup>177</sup> As a result, I&E learned that PWSA adopted a residency requirement that requires all employees, except those specifically exempted by its Board’s Executive Committee, to be domiciled in the City on their first day of employment with PWSA and to remain domiciled in the City throughout their employment with PWSA.<sup>178</sup> PWSA explains that its Board adopted the policy “[f]ollowing the City of Pittsburgh’s home rule Charter, which contains a requirement for

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<sup>176</sup> These regulations encompass guidelines, objectives and strategies to facilitate the Commission’s Statement of Policy on Diversity at Major Jurisdictional Utility Companies.

<sup>177</sup> I&E notes that various PWSA documents and witnesses interchangeably refer to the policy as both the “residency requirement” and the “Domicile policy.” For purposes of consistency, I&E will refer to the policy only as the “residency requirement.”

<sup>178</sup> I&E Ex. No. 2, Sch. 7, pp.1-3.

persons employed by the City to live in the City. . . .”<sup>179</sup> The policy, as adopted by PWSA, defines “domicile” as the place where an employee has his or her true, fixed, and permanent home and principal establishment, coupled with an intention of returning to that location whenever they are absent.<sup>180</sup>

Although PWSA’s Board retains discretion to grant an exemption to the policy, such exemptions are not codified in the policy, as they are left solely to the Board’s determination.<sup>181</sup> Additionally, while some positions may be declared “Exempt Positions” candidates for those positions still must be domiciled in one of 10 designated counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Lawrence, Indiana, Washington or Westmoreland county. Moreover, PWSA’s policy indicates that, for undefined “Key Positions,” candidates or employees who are domiciled in the City will be given preference during the interview process over other candidates.<sup>182</sup> Finally, employees who are not exempted but who are believed to be in violation of the residency requirement are investigated by the City’s Office of Municipal Investigation and subject to a 5 day suspension pending termination unless a City domicile address is provided.<sup>183</sup> The undisputed practical reality of PWSA’s residency requirement is that it produces at least an estimated \$2 million in additional annual costs,<sup>184</sup> and significantly limits the

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<sup>179</sup> PWSA St. No. C-2, p. 14.

<sup>180</sup> I&E Ex. No. 2, Sch. 7, p. 3.

<sup>181</sup> I&E Ex. No. 2, Sch. 7, p.1.

<sup>182</sup> I&E Ex. No. 2, Sch. 7, pp. 4-5.

<sup>183</sup> Id.

<sup>184</sup> I&E Ex. No. 2, Sch. 7, p. 2. PWSA estimated the cost premium to use specialty contractors adds \$2 million annually to non-unionized workforce costs alone.

parameters of qualified applicants from the 2.36 million people estimated to live in the Pittsburgh metropolitan area, to the 300,000 people estimated to live in the City.<sup>185</sup>

PWSA has not offered any rationale for adopting its residency requirement, but instead simply indicates that PWSA's Board chose to adopt "the City's residency requirement."<sup>186</sup> Although PWSA's apparent resignation to the will of the City, vis a vis, its Board's action is, on its own, telling, additional evidence in this case indicates that political interests are the reason that PWSA adopted the requirement. Specifically, the Auditor General's Report makes it clear that City influence has impacted decisions and policies approved by PWSA's Board, including adoption of the Domicile policy.<sup>187</sup> Specifically, the Auditor General's report indicated that PWSA officials and Board members who were interviewed in conjunction with the report, "indicated that the domiciliary requirement was influenced by the Mayor's Office because this policy is in place at all City government offices."<sup>188</sup> Furthermore, as evidence indicates that the City's Office of Municipal Investigation is charged with investigated suspected policy violators, it appears that the City exerts enforcement influence over PWSA's employees, which is troubling.

I&E submits that PWSA's residency requirement improperly elevates the City's interests above its ratepayers interests and hinders PWSA ability to comply with its obligations under the Code, Commission regulations and orders. PWSA needs to stop

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<sup>185</sup> PWSA St. No. C-2, p. 15

<sup>186</sup> PWSA St. No. C-2R, p. 18.

<sup>187</sup> I&E Ex. No. 2, Sch. 4, p. 8.

<sup>188</sup> I&E Ex. No. 2, Sch. 4, pp. 8-9.

providing unfair advantages to the City and conduct its business on an arm's-length basis. This same principle applies to the residency requirement, as it does above regarding the Cooperation Agreement and "step-billing" proposal. Additionally, as demonstrated below, PWSA's residency requirement compromises its ability to ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service. For these reasons, and as further explained below, PWSA's residency requirement should be terminated.

## **ii) Violation of Section 1301 of the Code**

PWSA's residency requirement violates Section 1301 of the Code because it is a politically-driven policy that results in increased rates, without adding any value or benefit for ratepayers. By way of additional context, Section 1301 requires that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.<sup>189</sup> It is well-settled that the Commission has broad discretion in determining whether rates are reasonable.<sup>190</sup> Pertinent to the instant case, a determination that a utility's rates are unjust or unreasonable usually rests on a factual finding that the imposition of those rates unreasonably benefits the utility's investors at the expense of the utility's ratepayers, that is; that the rates constitute a species of "unlawful taxation of consumers."<sup>191</sup> Although PWSA is not an investor-owned utility and therefore does not answer to investors, as explained above, the only evidence of PWSA's motive in establishing its residency requirement is that it did so to appease the City. In this way,

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<sup>189</sup> 66 Pa. C.S. § 1301.

<sup>190</sup> *Popowsky v. Pa. P.U.C.*, 683 A.2d 958 (Pa. Commw. 1996).

<sup>191</sup> *Nat'l Fuel Gas Distribution Corp. v. Pa. P.U.C.*, 76 Pa. Commw. 102, 139 (Pa. Commw. 1983).

PWSA's residency requirement unreasonably benefits the City and its political interests at the expense of ratepayers.

PWSA's ratepayers are harmed by the residency requirement, as the evidence in this case reveals that the residency requirement has thwarted PWSA's ability to hire qualified staff. Specifically, PWSA has had difficulty in hiring water treatment operators, plumbers, laboratory staff, project managers, welders, electricians, and mechanics who are necessary to address its everyday maintenance and operational needs.<sup>192</sup> As a result of its inability to fill such positions, PWSA has needed to engage specialty contractors to address daily operational needs, which comes at a premium cost to ratepayers. Notably, PWSA indicates that as a result of its residency requirement, more than 10% of its workforce is comprised of contractors who are needed to address operational needs. The cost premium for these contractors is estimated to be 150% to 200%, which equates to an addition of more than \$2 million in annual costs to PWSA's non-unionized workforce.<sup>193</sup> As I&E witness Patel explained, the escalated costs resulting from PWSA's residency requirement drives up costs for ratepayers while simultaneously compromising PWSA's ability to make timely repairs and improvements that are necessary to provide and maintain safe and effective service.<sup>194</sup> Notably, no party has disputed I&E's position that the increased costs, estimated to be \$2 million annually, that PWSA's ratepayers are shouldering to fund its residency requirement are imprudent, unreasonable costs that result in the type of "unlawful taxation of consumers"

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<sup>192</sup> I&E St. No. 2, p. 38; I&E Ex. No. 2, Sch. 7, p. 2.

<sup>193</sup> I&E Ex. No. 2, Sch. 7, p. 2.

<sup>194</sup> I&E St. No. 2, p. 39.

that the Commission must prohibit. Accordingly, the costs that PWSA is imposing upon ratepayers to facilitate its residency requirement, which is not alleged to and does not provide any benefits to those ratepayers, are inconsistent with just and reasonable rates; therefore, PWSA's residency requirement violates Section 1301 of the Code.

### **iii) Violation of Section 1501 of the Code**

In addressing the realities of how PWSA's residency requirement impacts its operations, witness Lestitian, PWSA's Chief Corporate Counsel and Chief of Administration, testified that the requirement detrimentally impacts PWSA's ability to comply with Section 1501 of the Code. Specifically, in pertinent part, Section 1501 of the Code requires as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.<sup>195</sup>

Despite acknowledging the authority of Section 1501, witness Lestitian indicates that PWSA's residency requirement has thwarted its ability to hire qualified water treatment operators, plumbers, laboratory staff, project manager, welders, electrician, and mechanics who are necessary to address its everyday maintenance and operational needs.<sup>196</sup> PWSA witness Weimar agreed with Ms. Lestitian, as he opined that PWSA's

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<sup>195</sup> 66 Pa. C.S. § 1501.

<sup>196</sup> I&E St. No. 2, p. 38; I&E Ex. No. 2, Sch. 7, p. 2.

residency requirement hindered its ability to hire trade staff, including qualified and licensed plumbers who are necessary to, among other things, test and, if appropriate, replace customers' meter for compliance.<sup>197</sup> Additionally, witness Lestitian noted that the restrictions imposed by the residency requirement make it difficult for PWSA to have redundancy among its staff.<sup>198</sup>

I&E submits, that, as proffered by PWSA's own witnesses, the outcomes and practical realities of PWSA's requirement are inconsistent with its obligations under Section 1501. It is evident that by artificially restricting its qualified applicant pool by an estimated 84% of the otherwise available population,<sup>199</sup> PWSA has imposed unwarranted and imprudent obstacles upon its operations. Specifically, both witnesses Lestitian and Weimar testified that PWSA's residency requirement negatively impacts PWSA's ability to hire qualified trade staff, including plumbers, welders, electricians, and mechanics who are necessary to address daily operational needs. I&E submits PWSA's adoption and enforcement of a policy that compromises its ability to address operational needs is directly at odds with its obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. Similarly, PWSA's residency requirement is impeding its ability to have redundancy among staff, which is not a result that is consistent with its obligation to provide service that is reasonably continuous and without unreasonable interruptions or delay. Accordingly, the undisputed evidence in this case proves that

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<sup>197</sup> PWSA St. No. C-1, 23.

<sup>198</sup> PWSA St. No. C-2, p. 16, 32.

<sup>199</sup> PWSA St. No. C-2, p. 15



PWSA's residency requirement produces a result that is inconsistent with its obligations under Section 1501 of the Code; therefore, it should be eliminated.

**iv) Frustration of the Commission's Policy Goals at 52 Pa. Code §§ 69.801-69.809**

Additionally, the Commission has established a policy and guidelines for major jurisdictional utility companies to incorporate diversity into their business strategy in connection with the procurement of goods and services.<sup>200</sup> More specifically, in furtherance of its policy goal for major jurisdictional utility companies to implement diversity programs, the Commission issued guidance on the following topics: (1) guidelines for diversity development;<sup>201</sup> (2) contracting recommendations;<sup>202</sup> (3) program development;<sup>203</sup> (4) minimum improvement levels;<sup>204</sup> (5) subcontracting program;<sup>205</sup> (6) external outreach;<sup>206</sup> and (7) filing.<sup>207</sup> As PWSA witness Lestitian explains, the Commission encourages major public utilities to incorporate diversity in their business strategy in ways that include the following efforts:

- (i) the articulation of a corporate policy by the senior executives committing the utility to improving its level of diversity in the workplace and within its procurement processes;
- (ii) the development and implementation of a

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<sup>200</sup> 52 Pa. Code § 69.801. By way of further information, the definition of "major jurisdictional utility" includes water utilities whose plant in service is valued at \$10 million or more. While PWSA, a cash flow utility does not presently have any valued plant-in-service, I&E notes that p. 7 of PWSA's Compliance Plan indicates its intent to make \$155 in capital investments in 2019, \$256 million in 2020, and \$327 million in 2021. Considering this level of investment, the policy goals of 52 Pa. Code §§ 69.801-69.809 would be thwarted by narrowly construing PWSA's ratemaking methodology to exclude it from application of the policy. Additionally, PWSA has invited application of the policy by virtue of its position on this issue.

<sup>201</sup> 52 Pa. Code § 69.803.

<sup>202</sup> 52 Pa. Code § 69.804.

<sup>203</sup> 52 Pa. Code § 69.805.

<sup>204</sup> 52 Pa. Code § 69.806.

<sup>205</sup> 52 Pa. Code § 69.807.

<sup>206</sup> 52 Pa. Code § 69.808.

<sup>207</sup> 52 Pa. Code § 69.809.

corporate-wide diversity program with specified goals and objectives for each year; (iii) the appointment of utility managers to be responsible for the success of the program; (iv) the training of managers regarding implementing diversity initiatives in the areas of employment and contracting for goods and services; and (v) the location of qualified minority/women/persons with disabilities-owned business contractors and mentoring, partnering and training qualified women/minority/persons with disabilities-owned businesses' contractors to serve the utility's needs; and (vi) filing an annual report with the Commission on March 1 in order to summarize diversity program activity for the previous year.<sup>208</sup>

Yet, despite PWSA's awareness of the Commission's diversity development policy, PWSA's residency requirement is thwarting its ability to meet the policy goals, because the residency requirement substantially limits its applicant pool. As witness Lestitian explains, while 2.36 million people live in the Pittsburgh metropolitan area, only an estimated 300,000 people live in the City; thus, PWSA's residency requirement eliminates its access to an estimated 84% of that population.<sup>209</sup> Importantly, witness Lestitian herself concludes that PWSA's residency requirement hinders its ability to achieve the policy goals of 52 Pa. Code §§ 69.801-69.809.<sup>210</sup> Notably, witness Lestitian indicated that relocating into the City to comply with the residency requirement is especially challenging for families with school-age children,<sup>211</sup> and I&E notes that this reality may particularly impact PWSA's ability to fulfill policy goals associated with extending opportunities to women-owned businesses.<sup>212</sup> Accordingly, as supported in the

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<sup>208</sup> PWSA St. No. C-2, p. 15, summarizing 52 Pa. Code §§ 69.803-69.809.

<sup>209</sup> PWSA St. No. C-2, p. 15

<sup>210</sup> Id.

<sup>211</sup> Id. at p. 16.

<sup>212</sup> 52 Pa. Code § 69.804.

record of this case, PWSA's residency requirement frustrates its ability to comply with the Commission's diversity policy goals as set forth in 52 Pa. Code §§ 69.801-69.809. Therefore, and consistent with the need to remedy the Code violations explained above, the Commission should require PWSA to revise its Compliance Plan to provide for the elimination of its residency requirement.

#### **E. Lead Remediation Issues**

1. Replacement of Private-Side Lead Service Lines Not Scheduled For Replacement Through PWSA's Current Lead Service Line Replacement Program
  - a) Income-Based Reimbursement for Private-Side Lead Service Line Replacements Initiated By Property Owner

##### **i) Introduction**

PWSA's ability to provide safe and effective service to its ratepayers and to make repairs and improvements necessary for the safety of its customers, as required by Section 1501 of the Code is, in part, contingent upon its ability to effectively address actionable lead levels in its system. By way of further context, PA DEP regulations establish an action level for lead at 0.015 mg/L, and provide that the action level is exceeded when the concentration on more than 10% of tap water samples collected during the monitoring period (known as the 90<sup>th</sup> percentile amount) is greater than the action level.<sup>213</sup> Lead is toxic to the central nervous system and to the cardiovascular system, and it damages numerous organ systems and causes permanent, irreversible injuries to children's developing brains. Lead exposure has also been associated with

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<sup>213</sup> 25 Pa. Code § 109.1102(a).

increased incidence of miscarriage, delays in time to achieve pregnancy, and irreversible neuropsychological and developmental effects in children.<sup>214</sup> Unfortunately, to date, lead testing in PWSA's service territory reveals that the lead levels in PWSA's water remain actionable.

In recognition of the lead levels, PWSA ongoing efforts to address those levels, and the need to develop a more comprehensive action plan to provide additional protections and resources to PWSA's customers, parties in this case spent hundreds of hours working towards refining PWSA's lead remediation plan. To that end, I&E submits that the comprehensive lead settlement included in the Joint Petition for Partial Settlement that parties filed in this case on September 13, 2019<sup>215</sup> represents a resolution that will promote safe and effective service in PWSA's service territory. However, PWSA's Board recently adopted an updated policy regarding its Lead Service Line Replacement ("LSLR") program that provides for, in pertinent part, income-based reimbursement for replacement of private side lead service lines after January 1, 2019.<sup>216</sup> As explained in more detail below, PWSA's income-based replacement policy must be rejected because it will impede its ability to comply with several Code provisions, result in high and inefficient administrative costs, and unnecessarily compromise some ratepayers' access to lead line replacements. Any type of income-based replacement of lead lines in PWSA's services territory must be rejected, as the manner in which PWSA's

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<sup>214</sup> UNITED St. No. C-3, pp. 8-9.

<sup>215</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al, *Joint Petition for Partial Settlement*, pp. 43-53 (September 13, 2019).

<sup>216</sup> PWSA Ex. RAW-C-46.

actionable lead levels developed exemplifies the need to promote, and not disincentive, replacement of all lead lines in the PWSA system.

## **ii) How Actionable Lead Levels Developed in the PWSA System**

In its Compliance Plan, PWSA explains that while there is no detectable lead in its water when the water leaves the treatment plant and travels through PWSA's water mains, lead can enter through drinking water through lead service lines and household plumbing.<sup>217</sup> Notably, before 1950, service lines installed in Pittsburgh were often made of lead, and when lead pipes corrode, lead is released into drinking water.<sup>218</sup> As part of corrosion control measures, in July of 1995, PA DEP approved PWSA's treatment plant corrosion control plan and issued PWSA a permit requiring the use of soda ash for corrosion control.<sup>219</sup> PWSA's use of corrosion control treatment was required for compliance with PA DEP regulations related to lead and copper.<sup>220</sup>

Despite the mandated use of soda ash, in April of 2014, PWSA switched from soda ash to caustic soda in its water treatment process because of the higher cost of soda ash and an obsolete ash feeder.<sup>221</sup> Evidence suggests that PWSA's switch was made in response to a cost-saving recommendation made by Veolia Management services, a company that PWSA contracted with for interim management services.<sup>222</sup> At Veolia's apparent direction, PWSA made the switch without PA DEP's approval, even though

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<sup>217</sup> PWSA Compliance Plan, p. 119.

<sup>218</sup> UNITED St. No. C-2, p. 6.

<sup>219</sup> PWSA Ex. Stip Doc. 1, p. 61.

<sup>220</sup> UNITED St. No. C-2, Appendix C, p. 3.

<sup>221</sup> PWSA Ex. Stip Doc. 1, p. 61.

<sup>222</sup> PWSA Ex. Stip Doc. 1, pp. 10, 62.

doing so constituted a violation of the Safe Drinking Water Act and despite the fact that caustic soda was less effective than soda ash at preventing lead and copper from leaching into the water.<sup>223</sup> A performance audit report issued by the County of Allegheny Office of the Controller, issued on July 25, 2017, concluded that “PWSA’s unauthorized change in corrosion control chemicals appears to have increased water lead levels that were already somewhat elevated before the change.”<sup>224</sup> As a result of PWSA’s unauthorized change in corrosion control, PA DEP opened an investigation.<sup>225</sup>

### **iii) The Terms of the PWSA/PA DEP Consent Order**

Both the recent lead issues that have plagued PWSA’s system and the prescribed path toward remediation are best summarized in the 2017 Consent Order and Agreement that PWSA entered with the PA DEP (“PWSA/PA DEP Consent Order”) following PA DEP’s investigation.<sup>226</sup> The PWSA/PA DEP Consent Order indicates that in April of 2014, PWSA violated several PA DEP regulations when it substantially modified its corrosion control treatment facilities and its public water system by substituting caustic soda for soda ash as the primary chemical for corrosion control without first obtaining a required PA DEP permit. On April 25, 2016, once PA DEP learned about PWSA’s unauthorized modification, it ordered PWSA to take certain actions, including the following: (1) investigating lead levels within its system; (2) evaluating impacts from PWSA’s change in corrosion control chemicals; (3) providing certain notification to the

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<sup>223</sup> PWSA Ex. Stip Doc. 1, p. 61.

<sup>224</sup> PWSA Ex. Stip Doc. 4, p. 5.

<sup>225</sup> Id.

<sup>226</sup> UNITED St. No. C-2, Appendix C.

public, and (4) conducting a feasibility study to be submitted to the PA DEP that developed recommendations for optimization of corrosion control treatment.<sup>227</sup>

Although PA DEP required PWSA to complete its corrosion control treatment feasibility study by the end of June 2017, and to submit its final report and recommendations to PA DEP by no later than July 30, 2017, PWSA failed to adhere to that deadline. Specifically, PA DEP noted that as of the date of the PWSA/PA DEP Consent Order, November 17, 2017, PWSA had not conducted the corrosion control treatment feasibility study, nor evaluated system impact from its unauthorized modification of corrosion control chemicals as required, constituting violations of a PA DEP Order, the Safe Drinking Water Act, and PA DEP regulations.<sup>228</sup> PA DEP also noted that that PWSA's lead and copper monitoring between January 1, 2016 and June 30, 2016, as well as between July 1, 2016 and December 31, 2016, showed lead levels of 0.022 mg/L and 0.018 mg/L, respectively, which demonstrably exceeded lead action levels.<sup>229</sup> Noting the exceedance, PA DEP indicated that its regulations required PWSA to initiate lead service line replacement.<sup>230</sup> Additionally, as a result of the lead action level, PA DEP required PWSA to complete a materials evaluation to determine the initial number of lead service lines in its system; however, PWSA indicated that it did not have an accurate material inventory of the approximately 80,000 active service lines in its system. Because of the lack of inventory, PWSA requested that it be permitted to rely

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<sup>227</sup> UNITED, St. No. C-2, Appendix C, pp. 3-4.

<sup>228</sup> UNITED, St. No. C-2, Appendix C, p. 4.

<sup>229</sup> UNITED, St. No. C-2, Appendix C, p. 5.

<sup>230</sup> Id.

upon a lead service line inventory estimate, but PA DEP determined that the estimate would be insufficient as a complete materials evaluation. Therefore, as of the issuance of the PWSA/PA DEP Consent Order, PWSA had not provided a materials evaluation of its system as necessary to comply with applicable PA DEP regulations.<sup>231</sup>

In recognition of PWSA's failure to comply with applicable regulations and its violations of prior PA DEP Orders, the PWSA/PA DEP Consent Order set forth a path for PWSA to come into compliance by PWSA's agreement to undertake an enumerated list of corrective actions. Such corrective actions include PWSA's agreement (1) to provide, on or before December 31, 2020, a supplemental materials evaluation, or an inventory, to PA DEP for all residential structures for which PWSA has not been able to confirm the absence of lead lines; (2) to provide, on or before December 31, 2022, a supplemental materials evaluation, or inventory, to PA DEP for all structures connected to the system; (3) unless PWSA has met the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring by June 30, 2018, PWSA shall, on or before December 31, 2018, replace at least an additional 7% of the lead service lines within its system and thereafter continue to replace 7% of lead service lines by June 30 of the following calendar year unless it has met the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring by June 30; and (4) upon issuance of an amended construction permit from PA DEP permitting PWSA to modify its corrosion control facilities for the system, PWSA must complete constructions in accordance with

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<sup>231</sup> UNITED, St. No. C-2, Appendix C, p. 14.



the amended construction permit, submit certification, and begin operating the modified corrosion control treatment facilities immediately upon issuance of an amended operation permit by PA DEP, and thereafter comply with monitoring and reporting requirements.<sup>232</sup>

#### **iv) PWSA's Lead Remediation Efforts**

Over the course of this proceeding, PWSA has made important strides in addressing the mandates of the PWSA/PA DEP Consent Order. Significantly, in April of 2019, PWSA began adding orthophosphate into its system to reduce lead levels in its drinking water.<sup>233</sup> Although PWSA's June 2019 compliance test results exceeded lead actions levels, PWSA witness Weimar indicated that orthophosphate can take up to six months from its introduction to take effect; therefore, he anticipates that lead levels will be reduced as the effectiveness of orthophosphate continues to increase.<sup>234</sup> Additionally, in July of 2019, after discussions with PA DEP, PWSA presented PA DEP with its revised comprehensive plan to inventory service line materials in its distribution system.<sup>235</sup> Aside from taking steps to address its PA DEP-related obligations, PWSA has worked extensively with the parties in this case to develop a partial settlement that addresses many of the lead-related safety concerns and issues identified in this proceeding.

Unfortunately, despite the substantial progress that has been made, PWSA's Board determined to revise PWSA's LSLR program to provide for an income-based

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<sup>232</sup> UNITED, St. No. C-2, Appendix C, pp. 9-15.

<sup>233</sup> PWSA St. No. C-1SD, p. 23.

<sup>234</sup> PWSA St. No. C-1SD, p. 23.

<sup>235</sup> PWSA St. No. C-1SD, p. 24; PWSA Ex. RAW-C-44.

reimbursement structure to be implemented when homeowners “elect” to replace their private-side lead service line after January 1, 2019.<sup>236</sup> I&E submits that PWSA’s newly-adopted policy for its LSLR program will compromise the goal of lead line replacement by implementing an income-based reimbursement program for certain ratepayers. Importantly, as recognized in the Office of the City of Pittsburgh Controller’s Performance Audit of PWSA issued in February of 2017, “[t]he best way to prevent lead from leaching from water lines and home plumbing systems is to remove lead lines completely and replace them. . . .”<sup>237</sup> As explained below, PWSA’s income-based reimbursement policy will impede its ability to comply with several Code provisions, result in high and inefficient administrative costs, and unnecessarily compromise some ratepayers’ access to lead line replacements.

**v) The Income-Based Reimbursement Provision of PWSA’s Current LSLR Program Will Unnecessarily Compromise Lead Remediation**

On July 26, 2019, PWSA’s Board adopted a revised LSLR Policy, which provides, in pertinent part, that if homeowners elect to replace their private side lead service line after January 1, 2019, PWSA will offer an income-based reimbursement for private-side costs as follows:

1. PWSA will reimburse the entire cost of the private side lead service line replacement for households with income levels below 300 percent of the federal poverty level, as adjusted annually;

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<sup>236</sup> PWSA St. No. C-1SD, p. 30.

<sup>237</sup> PWSA Ex. Stip Doc. 1, p. 58.

2. PWSA will reimburse 75 percent of the cost of the private side lead service line replacement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually;
3. PWSA will reimburse 50 percent of the cost of the private side lead service line replacement for households with income levels between 401 and 500 percent of the federal poverty level, as adjusted annually;
4. All other households will be offered a \$1,000 stipend towards the replacement cost of a private side lead service line replacement.<sup>238</sup>

PWSA stresses that its income-based reimbursement policy will only apply to customer-initiated replacements that are not scheduled to be replaced through PWSA's other programs.<sup>239</sup> Although PWSA estimates a wide swath of eligible replacements, between 8,000 to 20,000, because PWSA does not yet know how many customers have private-sized lead service lines, it is uncertain how many customers would be eligible for the income-based reimbursement.<sup>240</sup>

In defense of PWSA's new LSLR policy, witness Weimar opines that the policy goes "above and beyond" what is required by environmental regulations, taking into account that the orthophosphate program is expected to reduce lead levels in PWSA's service territory to below action levels.<sup>241</sup> Therefore, in witness Weimar's opinion, the policy is voluntary and not required by PA DEP, which holds primacy over the

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<sup>238</sup> PWSA Ex. RAW C-46 p. 4, paragraph 10(d)).

<sup>239</sup> PWSA St. No. C-1SD, p. 26.

<sup>240</sup> UNITED St. C-2, pp. 29-32; UNITED St. C-2SUPP-R, p. 4.

<sup>241</sup> PWSA St. No. C-1SD, p. 25.

Commission on water quality issues.<sup>242</sup> Additionally, PWSA claims it adopted its income-based reimbursement policy because it “fairly balance[es] the needs and concerns of the community with PWSA’s other substantial construction and operational obligations.”<sup>243</sup>

I&E fundamentally rejects PWSA’s claims. First, the evidence in this case dispels any notion that PWSA’s reliance upon a corrosion control plan is a panacea for addressing actionable lead levels in its water. Additionally, PWSA’s claim that PWSA’s private-side lead replacement policy represents a water quality issue that is outside of the Commission’s purview, is fundamentally flawed in that it ignores the Commission’s clear authority, and PWSA’s clear obligations, under Section 1501 of the Code. Furthermore, removing questions of necessity and appropriateness of the Commission’s review, the income-based reimbursement provision of PWSA’s LSLR program is inconsistent with the public interest in several ways. As I&E witness Israel Gray explained, the income-based reimbursement provision of PWSA’s LSLR program should be rejected because: (1) it relies upon arbitrary income parameters that are not tied to any affordability analysis; (2) it will make customer replacement cost-prohibitive; (3) it will divert PWSA resources that could be used towards replacement to cover excessive administrative costs; (4) it unfairly and unnecessarily ties safe drinking water to income by ignoring PWSA’s ability to replace customer-owned lead water service lines and to thereafter recover its

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<sup>242</sup> PWSA St. No. C-1SD, p. 26.

<sup>243</sup> PWSA St. No. C-1SD, p. 26.

costs.<sup>244</sup> For these reasons, and as further explained below, the income-based reimbursement provision in PWSA's LSLR policy must be rejected.

**(a) Commission Review of PWSA's LSLR Replacement Policy is Necessary and Appropriate**

**(1) Corrosion Control Alone Has Not Proven To Be An Effective Solution In Addressing Lead Levels In PWSA's Water**

Although PWSA anticipates that lead levels will be reduced as the effectiveness of orthophosphate continues to increase,<sup>245</sup> I&E submits that any reliance upon PWSA's corrosion control plan as a substitute for lead line replacement should be rejected. Recognizing that corrosion control is not the panacea of actionable lead levels in PWSA's water is important because PWSA suggests opposition against its private side lead service line reimbursement policy is unwarranted, in part, because its corrosion prevention program will materially reduce, if not eliminate, health concerns posed by lead levels.<sup>246</sup> First, I&E submits that PWSA's claim regarding the anticipated impact of its corrosion control plan, orthophosphate treatment, is speculative, as it could take more than a year from PWSA's April 2019 implementation of treatment to be fully effective.<sup>247</sup> Therefore, it is not yet possible to determine whether and when orthophosphate alone will reduce PWSA's water lead levels that significantly reduces or alleviates health concerns.

Additionally, PWSA has not refuted the testimony offered by UNITED witness Gregory Welter, who opined that "orthophosphate is not a silver bullet for the problem of

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<sup>244</sup> I&E St. No. 4-RS.

<sup>245</sup> PWSA St. No. C-1SD, p. 23.

<sup>246</sup> PWSA St. No. C-1RJ, p. 3.

<sup>247</sup> UNITED St. No. C-2, at 16-17.

lead corrosion.”<sup>248</sup> Instead, witness Welter explained that as long as there are lead service lines, there is “the distinct potential that a future unintended change in water quality could result in serious episodes of lead release.” Witness Welter also recognized the possibility that the protective scale on the interior of lead service lines could be disrupted by physical disturbance or through changes in water chemistry. Taking into account these possibilities, witness Welter concluded that removal of lead service lines is the only way to eliminate risk to PWSA’s customers,<sup>249</sup> and while PWSA has not successfully refuted this conclusion, I&E submits that PWSA’s own past operational failures actually support witness Welter’s conclusion.

More specifically, the circumstances surrounding the PA DEP’s investigation of PWSA and the actionable lead levels in PWSA’s water serve as a cautionary tale of relying solely upon a corrosion control plan to address lead levels. As explained above, PWSA was operating under a PA DEP-approved corrosion control plan since July of 1995, which required PWSA to use soda ash for corrosion control.<sup>250</sup> PWSA’s use of soda ash as a corrosion control treatment was required for compliance with PA DEP regulations related to lead and copper.<sup>251</sup> Nonetheless, PWSA departed from its required use of soda ash in April of 2014, and instead determined to change to use of caustic soda in its water treatment process because of the higher cost of soda ash and an obsolete ash

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<sup>248</sup> UNITED St. No. C-2 SUPP-R, p. 9.

<sup>249</sup> Id.

<sup>250</sup> PWSA Ex. Stip Doc. 1, p. 61.

<sup>251</sup> UNITED St. No. C-2, Appendix C, p. 3.

feeder.<sup>252</sup> As previously explained, PWSA's switch was made in response to a cost-saving recommendation made by Veolia Management Services, a company that PWSA contracted with for interim management services.<sup>253</sup> At Veolia's apparent direction, PWSA made the switch without PA DEP's approval, even though doing so constituted a violation of the Safe Drinking Water Act and despite the fact that caustic soda was less effective than soda ash at preventing lead and copper from leaching into the water.<sup>254</sup> A performance audit report issued by the County of Allegheny Office of the Controller, issued on July 25, 2017, concluded that "PWSA's unauthorized change in corrosion control chemicals appears to have increased water lead levels that were already somewhat elevated before the change."<sup>255</sup>

While I&E recognizes that PWSA is no longer diverting its managerial decision making to Veolia Management Services, evidence demonstrates that just recently PWSA's delayed a critical corrosion control project because of outside influences. Specifically, the City's influence has recently and negatively impacted PWSA's ability to timely implement corrosion control measures. As I&E witness Gray summarized after investigating the DEP timeline approving orthophosphate as a corrosion control measure for PWSA, City permitting issues delayed PWSA's construction of facilities necessary to facilitate orthophosphate treatment:

PA DEP approved PWSA's plan to utilize orthophosphate as corrosion control treatment on April, 27, 2018. On May 10, 2018, PWSA submitted an application to PA DEP for approval

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<sup>252</sup> PWSA Ex. Stip Doc. 1, p. 61.

<sup>253</sup> PWSA Ex. Stip Doc. 1, pp. 10, 62.

<sup>254</sup> PWSA Ex. Stip Doc. 1, p. 61.

<sup>255</sup> PWSA Ex. Stip Doc. 4, p. 5.

to proceed with the construction of the additional equipment required to implement the orthophosphate. DEP approved the application for construction on September 24, 2018; unfortunately, the construction was delayed due to issues in obtaining municipal permits.<sup>256</sup>

I&E notes that that construction of the new orthophosphate addition facilities was not completed until April 2019<sup>257</sup> and that PWSA did not begin actual introduction of orthophosphate treatment into its system until “different points in March and April 2019,”<sup>258</sup> reflecting a six month period between approval of construction and completion of construction and treatment implementation.

I&E submits that any delay in orthophosphate treatment caused by the inability to obtain City permits significantly compromised PWSA’s ability to provide safe and effective service to ratepayers. The serious safety issue implicated by any treatment delay is exemplified in the fact that lead test results issued in December 2018 reflected lead levels of 20 ppb,<sup>259</sup> which is 5 ppb over the action level. It is concerning that both prior mismanagement and City influence has previously led PWSA to depart from effectively and timely controlling corrosion within its system. Therefore, PWSA current reliance upon corrosion control as an effective alternative to the full replacement of residential lead service lines or as a basis to implement any income-based lead service line replacement is contrary to record evidence and it must be rejected.

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<sup>256</sup> I&E St. No. 4, p. 5 (referencing PWSA St. No. C-1, p. 49); I&E Ex. No. 4, Sch. 2.

<sup>257</sup> PWSA St. No. C-1RJ, p. 17.

<sup>258</sup> PWSA St. No. C-1R, p. 37.

<sup>259</sup> PWSA St. No. C-1SD, p. 23.



(2) Section 1501 of the Code Gives the Commission Authority to  
Regulate Lead Line Replacement

In response to criticism from I&E and other parties regarding PWSA's income-based lead service line replacement policy, PWSA attempts to circumvent the Commission's regulatory role in addressing PWSA's lead infrastructure by couching the actionable lead levels in its system as "water quality" issue.<sup>260</sup> Specifically, by characterizing lead drinking water as a water quality issue, PWSA concludes that "the PUC does not have jurisdiction to direct PWSA to take action greater or different than that required by EPA/DEP."<sup>261</sup> To be sure, I&E acknowledges precedent that provides for a distinction between **water service**, which the Commission may regulate, and **water quality**, which may only be regulated by the DEP.<sup>262</sup> Additionally, I&E recognizes that "as a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Code."<sup>263</sup>

The fatal flaw in PWSA's argument is that its "water quality" issues directly result from lead infrastructure, through lead service lines and plumbing, which PWSA readily admits in its Compliance Plan.<sup>264</sup> The fact that the origin of actionable lead levels in PWSA's water is lead infrastructure, utility facilities, is determinative here, because the Code has specifically granted the Commission authority to require that PWSA's facilities are safe. Specifically, Section 1501 of the Code requires PWSA to make repairs,

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<sup>260</sup> PWSA St. No. C-1RJ, p. 3.

<sup>261</sup> PWSA St. No. C-1RJ, p. 3.

<sup>262</sup> *Pickford v. Pa. P.U.C.*, 4 A.3d 707, 713 (Pa. Commw. 2010) (emphasis added).

<sup>263</sup> *Id.*, citing *City of Pittsburgh v. Pa. PUC*, 157 Pa. Super. 595, 43 A.2d 348 (Pa. Super. 1945).

<sup>264</sup> PWSA Compliance Plan, p. 119.

changes, alterations, substitutions, extensions, and improvements to facilities as necessary for the safety of its patrons, employees, and the public. Precedent establishes that the Commission’s jurisdiction covers matters including “hazards to public safety due to the use of utility facilities. . . .”<sup>265</sup>

The importance of the Commission’s authority to address public safety hazards resulting from utility facilities is underscored in the record of this case. UNITED witness Dr. Bruce Lanphear, a medical doctor and a Professor on the Faculty of Health Sciences at Simon Fraser University, testified that Pittsburgh residents are at risk of lead exposure from drinking water.<sup>266</sup> Dr. Lanphear explained that over the past three years, PWSA’s tap water showed consistently high levels of lead, and he indicated that the risk of lead exposure to Pittsburgh residents, especially children and other vulnerable populations, is unacceptably high.<sup>267</sup> In explaining the risks of lead exposure, Dr. Lanphear indicated that lead is toxic to the central nervous system and to the cardiovascular system, and it damages numerous organ systems and causes permanent, irreversible injuries to children’s developing brains. Dr. Lanphear also indicated that lead exposure has also been associated with increased incidence of miscarriage, delays in time to achieve pregnancy, and irreversible neuropsychological and developmental effects in children.<sup>268</sup>

Significantly, no party presented any evidence to refute Dr. Lanphear’s testimony about the detrimental effects of lead exposure. Nor has any party disputed that the

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<sup>265</sup> *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1001 (Pa. Commw. 2007).

<sup>266</sup> UNITED St. No. C-3, p. 10.

<sup>267</sup> UNITED St. No. C-3, pp. 11, 14.

<sup>268</sup> UNITED St. No. C-3, pp. 8-9.

existence of lead service lines in PWSA's distribution system have resulted in actionable lead levels in its water. Accordingly, the undisputed record in this case indicates that the lead service lines in PWSA's service territory are not providing safe service to PWSA's ratepayers, and the Commission has clear authority under Section 1501 to compel PWSA to remedy the safety issue through replacement of lead service lines. Therefore, PWSA's argument that the Commission is without authority to compel it address water lead levels through replacement of lead service lines is without merit and it is not a viable basis to prevent the Commission from reviewing PWSA's income-based lead service line replacement policy for compliance and consistency with the public interest.

**vi) The Income-Based Provision In PWSA's LSLR Policy is Arbitrary, Cost-Prohibitive, and Unnecessary**

**(a) The Income-Based Provision in PWSA's LSLR Policy Relies Upon Arbitrary Income Parameters**

The income-based provision of PWSA's LSLR policy provides for levels of reimbursement of private side lead service line replacements for residential households based upon arbitrarily determined income parameters.<sup>269</sup> Specifically, the policy will reimburse (1) the entire cost of the private side lead service line replacement for households with income levels below 300 percent of the federal poverty level, as adjusted annually; (2) 75 percent of the cost of the private side lead service line replacement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually; (3) 50 percent of the cost of the private side lead service line replacement for households with income levels between 401 and 500 percent of the

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<sup>269</sup> I&E will hereinafter refer to this policy collectively as "the income-based provision" of PWSA's LSLR policy.

federal poverty level, as adjusted annually; and (4) all other households will be offered a \$1,000 stipend towards the replacement cost of a private side lead service line replacement.<sup>270</sup> As I&E witness Gray points out, PWSA has not explained how the sliding scale for the reimbursement policy was developed.<sup>271</sup>

Instead of explaining the basis for the income parameters, PWSA simply indicates that it developed the policy after considering the “availability of public funds, equipment, personnel and facilities and the competing demands of the authority for public funds, equipment, personnel and facilities.”<sup>272</sup> However, PWSA’s general claim regarding the resources it considered offers no explanation of how the determined parameters are tied to ratepayer affordability or the likelihood of those parameters facilitating private side lead line replacement. On the contrary, the record is completely void of any affordability analysis and any statistics to support PWSA’s self-determined conclusion that the reimbursement policy fairly balances the needs and concerns of the community with its other construction and operational obligations.<sup>273</sup> Furthermore, I&E rejects PWSA’s suggestion that its ability to replace private side lead lines and to meet its operational obligations are mutually exclusive when safe water service is at issue,<sup>274</sup> as PWSA has offered no evidence to support such a position. Therefore, I&E also submits that PWSA fails to provide any facts or analysis to support its conclusion that adoption of the income-based policy is necessary to ensure the integrity of its operations. Accordingly,

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<sup>270</sup> PWSA Ex. RAW C-46 p. 4, paragraph 10(d)).

<sup>271</sup> I&E St. No. 4-RS, p. 4.

<sup>272</sup> PWSA St. No. C-1RJ.

<sup>273</sup> PWSA St. No. C-1SD.

<sup>274</sup> I&E St. No. 4-RS, p. 4.

the income-based parameters of PWSA's LSLR program are unsupported and arbitrary; therefore, the policy should be rejected.

(b) The Income-Based Provision In PWSA's LSLR Policy Will Divert  
PWSA's Resources To Excessive Administrative Costs

The concerning lack of support for the basis of the income parameters in the income-based provision of PWSA's LSLR reimbursement program is only further compounded by the excessive administrative costs that PWSA estimates incurring to facilitate the policy. As I&E witness Gray explains, PWSA's high estimated cost for administering the policy is the same amount that some customers will be reimbursed for their private side lead line replacement-\$1,000.<sup>275</sup> PWSA stresses that while the \$1,000 figure represents an estimate, it intends to do everything reasonable to keep costs low.<sup>276</sup> Nonetheless, I&E witness Gray also noted PWSA did not prepare a detailed cost estimate to establish its administrative budget; therefore, a breakdown of the type of costs and anticipated costs were not available.<sup>277</sup> Alongside the lack of any support for the excessive estimated cost, I&E witness Gray noted that the high cost of administering the policy would be better spent as construction dollars towards the replacement of private side lead lines.<sup>278</sup> Accordingly, while minimal information is available to support PWSA's estimated administrative cost of \$1,000 per applicant, I&E submits that the estimate, which is the only information available, is excessive and unsupported,

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<sup>275</sup> I&E St. No. 4-RS, p. 6; I&E Ex. No. 4-RS, Sch. 1.

<sup>276</sup> PWSA St. No. C-1RJ, p. 13.

<sup>277</sup> I&E St. No. 4-RS, p. 5.

<sup>278</sup> I&E St. No. 4-RS, p. 6.

representing an additional basis for rejecting PWSA's income-based reimbursement provision of its LSLR program.

(c) The Income-Based Reimbursement Provision in PWSA's LSLR Policy Will Make Customer Replacement of Lead Lines Cost-Prohibitive

PWSA indicates that the average cost to replace private side lead lines is \$5,500,<sup>279</sup> and the evidence in this case reveals that requiring customers to pay this cost up front and await reimbursement will reduce private side replacements. As explained by UNITED witness Miller, most of the affected households cannot afford the upfront cost, particularly Pittsburgh's low and moderate income customers.<sup>280</sup> UNITED witness Mitchell Miller testified that aside from just the high cost of replacement, the need to wait for reimbursement would impose an insurmountable obstacle for customers who cannot afford to front the cost of replacement and then wait to be reimbursed.<sup>281</sup> In support of UNITED witness Miller's testimony, he cites to a 2018 Federal Reserve report that indicates that 40% of the adults in the United States cannot afford an unexpected \$400 expense, and 22% of adults cannot cover their monthly bills.<sup>282</sup> No party has refuted Mr. Miller's testimony.

Additionally, as OCA witness Rubin explains, PWSA's income-based reimbursement policy's adoption of federal poverty level guidelines as guidelines for reimbursement levels may be insufficient to enable replacement. OCA witness Scott

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<sup>279</sup> PWSA Ex. RAW C-46, p. 2.

<sup>280</sup> UNITED St. C-1-Supp-R, p. 5.

<sup>281</sup> UNITED St. C-1-Supp-R, p. 6.

<sup>282</sup> UNITED St. C-1-Supp-R, p. 5, footnote 10.

Rubin indicates that federal poverty level calculation may not adequately represent the cost of living for people who live on their own, and elderly people in particular. To explain that point, OCA witness Rubin provides an example of a single elderly person with social security and retirement income of \$37,500 per year, which exceeds 300% of the federal poverty level. However, in his example, OCA witness Rubin indicates that the elderly customer's costs for necessities including food, housing, medical care, insurance, taxes, and transportation, could conceivably consume all of that income.<sup>283</sup> In witness Rubin example, the elderly customer may have no funds available to pay any of \$5,500 up front for a private side lead line replacement while waiting an indeterminate amount of time to be reimbursed for a fraction of that expense.

Importantly, witness Rubin indicates that his example does not merely represent a hypothetical example, as U.S. Census data indicates that there are more than 18,000 housing units in Pittsburgh that are headed by a person age 65 or older, and that as many as 8,000 of those households may be a single, elderly person living alone.<sup>284</sup> Finally, witness Rubin notes that the affordability concerns he identified are not just limited to elderly customers, as one or two-person households headed by younger people may also not have an extra money available to replace a lead service line, even though their income might exceed 300% of the federal poverty level.<sup>285</sup>

In summary, several witnesses in this proceeding have testified that the income-based reimbursement provision of PWSA's LSLR policy would be cost-prohibitive to

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<sup>283</sup> OCA St. No. 2R-Supp, pp. 5-6.

<sup>284</sup> OCA St. No. 2R-Supp, p. 6.

<sup>285</sup> OCA St. No. 2R-Supp, p. 6.

PWSA ratepayers, and PWSA has not refuted those claims. Instead, the evidence serves to support I&E witness Gray's concern that ratepayers who cannot afford to pay up front will be unable to replace their private-side lead service lines, compromising the goal of removing lead service lines from PWSA's water distribution system.<sup>286</sup> Accordingly, the Commission should reject the income-based reimbursement provision of PWSA's LSLR policy.

(d) The Income-Based Provision In PWSA's LSLR Policy Is  
Unnecessary In Light Of The Recovery Available Under 66 Pa. C.S.  
§ 1311(b)

Compromising the goal of removing lead service lines within the PWSA distribution system and risking ratepayers' inability to replace their private-side lead service lines is unnecessary and unwarranted because PWSA has a mechanism available to enable it to replace these customer-owned lines and to recover the cost of such replacement. Specifically, by way of 66 Pa. C.S. § 1311(b)<sup>287</sup> the Pennsylvania General Assembly permitted regulated utilities to seek Commission approval to replace customer-owned lead water service lines.<sup>288</sup> If the public utility receives such permission, the Commission may permit the utility to allocate the cost associated with the replacement of a customer-owned lead water service line or customer-owned damaged wastewater lateral among each customer, classes of customers and types of service.<sup>289</sup> Unfortunately, PWSA is not availing itself of the opportunity to seek authorization to replace all private

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<sup>286</sup> I&E St. No. 4-RS, p. 6.

<sup>287</sup> "Section 1311(b)."

<sup>288</sup> 66 Pa. C.S. § 1311(b)(2)(v).

<sup>289</sup> 66 Pa. C.S. § 1311(b)(2)(iv).



side lead lines and to recover the cost of such replacement, despite the fact that the opportunity is available to all regulated water and wastewater utilities.

I&E acknowledges that some portions of Section 1311 reference a utility's option to seek recovery of lead line replacements in a context that is consistent with the rate base/rate of return methodology that applies to investor-owned public utilities, such references.

However, such references are not present in each subpart of Section 1311(b). For instance, Section 1311(b)(2)(iv) states:

The Commission may allocate the cost associated with the replacement of a customer-owned lead water service line or customer-owned damaged wastewater lateral among each customer, classes of customers and types of service.

Such provision allows PWSA to allocate costs of all private lead line replacement as a cash-flow company. However, even where reference to investor-owned ratemaking methodology is present, such reference is not determinative of a limitation of application to PWSA for several reasons. First, the plain language of the statute indicates that “a public utility providing water or wastewater service” is eligible to seek commission approval to pursue the replacement of customer-owned lead water service lines.<sup>290</sup> Notably, nothing in Section 1311(b) limits the option to seek private side lead line replacement authority to “an investor-owned public utility” providing water or wastewater service. The absence of such limitation is clear and unambiguous, and under such circumstances, an attempt to impose any implied limitation is inconsistent with tenets of statutory construction.<sup>291</sup> Additionally, limiting application of Section 1311(b)

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<sup>290</sup> 66 Pa. C.S. § 1311(b)(2)(v).

<sup>291</sup> 1 Pa. C.S. § 1921.

to investor-owned utilities is inconsistent with the legislative intent behind its recent amendment. Significantly, the Pennsylvania General Assembly's intent in amending Section 1311(b) was, in part, to facilitate the goal of furthering lead line replacement for all regulated public utilities. Specifically, in a Pennsylvania House of Representatives Sponsorship Memoranda, the sponsor of House Bill 2075, which culminated in the amendment of 1311(b) to its operative form, Representative Alexander T. Charlton addressed the purpose of such legislation as follows:

As you know, our nation's infrastructure is crumbling. We cannot travel to our districts without observing roads and bridges that are in desperate need of repair. What's often overlooked is our critical water and wastewater infrastructure. The American Society for Civil Engineers recently gave a grade of D and D- for Pennsylvania's water and wastewater systems. That is simply unacceptable.

**In an effort to curb this problem, a bi-partisan group of legislators wrote language into this year's Fiscal Code allowing municipal authorities and municipal governments to replace homeowner's water and sewer laterals when there is a public health concern such as lead. Unfortunately, left out of that was Pennsylvania's regulated water and wastewater utilities who serve much of my district.**

To that end, I intend to introduce legislation allowing regulated water and wastewater utilities to replace water laterals in communities that still have lead distribution pipe coming into their homes and sewer laterals that pose environmental hazards. This will allow these utilities to proactively be part of the solution to a growing public health issue.<sup>292</sup>

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<sup>292</sup> House Co-Sponsorship Memoranda for HB 2075, PA House of Representatives, Session of 2017-2018 Regular Session, February 1, 2018 (emphasis added).

Notably, although Representative Charlton identified lead as a public health concern, he did not opine that the public health concern only existed for investor-owned regulated utilities. Instead, Representative Charlton indicated that the intent of the legislation was, in part, to give regulated water and wastewater utilities the ability to address the public health concern of lead by permitting them to replace homeowners' lead water and sewer lines. Significantly, Representative Charlton referenced all regulated utilities, without limitation. Finally, Representative Charlton also indicated that empowering regulated utilities to replace homeowner's lead water and sewer lines was consistent with powers already available to municipal authorities; accordingly, his intent in introducing the legislation was to enable all regulated utilities to replace customer-owned lead service lines. As PWSA is a regulated public utility, its former status as an unregulated municipal authority was not intended to and does not limit its access to the lead line replacement authority outlined of Section 1311(b).

It is important to recognize that PWSA has not contested that it has an opportunity to request Section 1311(b) cost recovery for private side lead service lines, but it argues that such recovery is not appropriate. First, it argues that Section 1311(b) recovery presents a very real concern about PWSA's ability to finance the cost of that replacement alongside its other "urgent" infrastructure improvement, which would impose additional rate burdens upon customers.<sup>293</sup> Additionally, PWSA argues that it is under another directive, 72 P.S. §§ 1719-E(c), (d), as related to municipal authorities, when it comes to

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<sup>293</sup> PWSA St. No. C-1RJ, p. 5.

replacing private-side lead lines. PWSA claims that the directive requires it to consider the availability of public funds, equipment, personnel, facilities and the competing demands of the authority for public funds equipment, personnel, and facilities. For these two reasons, PWSA claims that its plan for reimbursement of customer-initiated private side lead line replacements is a more appropriate option than recovery options available through Section 1311(b).<sup>294</sup> However, PWSA's position is without merit because its claims are contradicted by the record and by applicable law.

First, PWSA's claim that it is not seeking Section 1311(b) authority to replace customer initiated private side lead service lines because of rate affordability is not persuasive in light of the preferential rate treatment it proposes to continue to the City. As explained above, PWSA has continually extended its 1995 Cooperation Agreement, which financially benefits the City at PWSA's expense. Additionally, PWSA proposes a step-billing approach for unmetered City properties. Both of these actions continue to deprive PWSA of needed revenue and burden its ratepaying customers, in favor of City interests. The fact that PWSA decries the cost of lead line replacement, legislatively-recognized public health concern, while offering free service to the City exemplifies the adverse political influence that has financially burdened PWSA and financially benefitted the City.<sup>295</sup> Accordingly, I&E submits that PWSA's concerns for rate affordability of replacement of lead service lines, a legislatively-recognized public health concern, are misplaced. To the extent that PWSA's concern is for ratepayer costs, it is

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<sup>294</sup> PWSA St. No. C-1RJ, pp. 5-6.

<sup>295</sup> I&E Ex. No. 2, Sch. 4, p. 9.

well-positioned to either completely alleviate or mitigate those concerns by (1) eliminating free water and wastewater service to the City, charging the City tariffed rates, and otherwise transacting with the City on an arm's-length, business-like basis, and (2) eliminating its residency requirement which is escalating costs without adding any value to ratepayers. After implementing these two measures, PWSA could devote the resulting revenue and cost savings to funding replacement of all lead service lines. Therefore, PWSA's argument that its plan for reimbursement of customer-initiated private side lead line replacements is necessary to protect ratepayers is contrary to record evidence and it must be rejected.

Finally, I&E fundamentally rejects, and the law does not support, PWSA's position that 72 P.S. §§ 1719-E(c), (d) or any other municipally-based statute or authority weighs in favor of the income-based reimbursement provision of PWSA's LSLR program. At the outset, and as explained above, PWSA is now regulated as a public utility, and therefore, with respect to its rates, the Code and Commission regulations now prevail. Although the law is clear that the Code prevails, even assuming, *arguendo*, that 72 P.S. §§ 1719-E(c), (d) would apply, PWSA would fail the test it articulates. Specifically, as PWSA explained, 72 P.S. §§ 1719-E(c) and (d), requires it to consider the availability of public funds, equipment, personnel, facilities and the competing demands of the authority for public funds, equipment, personnel, and facilities. In this case, PWSA has failed to adequately account for publicly available funds, as it is proposing to continue to provide reduced-price or, in some cases, free water and wastewater service to the City instead of charging applicable rates for such service. Because PWSA proposes

to provide reduced-price or free service to many City properties, thereby depriving itself of the revenue it should be recouping to alleviate the burden on ratepaying customers, it has not considered the actual availability of public funds as required in 72 P.S. §§ 1719-E(c) and (d). Accordingly, while I&E avers that the Code supersedes application of 72 P.S. §§ 1719-E(c) and (d), in either case, PWSA's argument fails. Accordingly, the income-based reimbursement provision of PWSA's LSLR program should be rejected.

### **vii) Conclusion**

In conclusion, I&E summarily rejects, and the evidence dispels, PWSA's false-choice representation that the income-based reimbursement provision of its LSLR policy represents a fair balance of community needs and fulfillment of its operational obligations. On the contrary, PWSA's ability to replace private side lead lines and to meet its operational obligations are not mutually exclusive, especially when water safety is at issue<sup>296</sup> and it has an obligation to provide safe service.<sup>297</sup> The evidence in this case reveals that corrosion control measures alone have not been successful in controlling lead levels in PWSA's water, as mismanagement and City influence have impacted the character and timing of corrosion control treatment. Additionally, while the evidence demonstrates that lead line replacement is the most effective way to control the lead levels in PWSA's water, it also illustrates that the income-based reimbursement provision of its LSLR program will act as a barrier to lead line replacement. Finally, PWSA's rationale for rejecting the opportunity to pursue Section 1311(b) recovery of private side

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<sup>296</sup> I&E St. No. 4-RS, p. 4.

<sup>297</sup> 66 Pa. C.S. § 1501.

lead line replacement costs in favor of enacting a reimbursement program that would compromise replacement goals is without merit. The evidence in this case illustrates that PWSA is exactly the kind of regulated utility that the Pennsylvania General Assembly had in mind when it permitted regulated public utilities the opportunity to recover the cost of replacing customer-owned lead lines. To the extent that PWSA is concerned about the rate impact of lead line replacement, it can and should be required to mitigate the rate impact by eliminating the financial burden of undue City influence by charging the City tariffed rates and curtailing unnecessary costs by terminating its residency requirement. Therefore, PWSA should be required to revise its Compliance Plan to strike the income-based reimbursement provision of its LSLR policy and to provide a plan to replace all public and private residential lead lines in its distribution system.

b) Continuation of Neighborhood-Based Replacement Program

At the outset of this proceeding, I&E witness Gray expressed concern regarding PWSA's plan to transition its residential lead service line replacements from the existing neighborhood-based replacement program ("LSLR program") to a Small Diameter Water Main Replacement Program ("SDWMP").<sup>298</sup> Under the SDWMP, PWSA plans to replace each public lead line as each water main is replaced.<sup>299</sup> Given the uncertainty of how long it will take to replace all water mains connected to lead service lines, and in recognition of PWSA's goal of removing all lead lines from its system by 2026, I&E witness Gray expressed concern that transitioning to the SDWMP could jeopardize

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<sup>298</sup> I&E St. No. 4, p. 23.

<sup>299</sup> PWSA St. No. C-1, p. 56.

PWSA's ability to meet its target for lead removal.<sup>300</sup> By way of the Settlement filed in this case on September 13, 2019, I&E's concern regarding PWSA's ability to meet its lead replacement target in 2026 was addressed.<sup>301</sup> However, PWSA may still need to complement its SDWMP with other lead service line efforts to accomplish its 2026 goal. PWSA has not provided any evidence to support that its SDWMP alone will remove all lead-service lines by 2026.

## 2. Replacement of Non-Residential Lead Service Lines

I&E has taken no position on whether and how PWSA should be compelled to replace non-residential lead service lines as part of this Compliance Plan proceeding. The absence of an I&E position should be attributed to the lack of record evidence available on this topic. To a large extent, the lack of record evidence is attributable to the lack of information available from PWSA and to the priority ordering of inventories outlined by the PA DEP, which provides for PWSA to complete its inventory of Commercial and Industrial service lines by the end of 2022, which is two years after the inventory obligations for PWSA's residential service lines.<sup>302</sup> Citing the lack of foreseeable Commercial and Industrial line determinations until the end of 2022, PWSA has proposed to address those lines "[o]nce the extent of the issues are understood."<sup>303</sup> I&E neither challenged nor endorsed this position, which appears to be predicated upon

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<sup>300</sup> I&E St. No. 4, p. 28.

<sup>301</sup> *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage 1*, M-2018-2640802 et al, *Joint Petition for Partial Settlement*, p. 46, ¶¶ III(QQ)(2)(c) (September 13, 2019).

<sup>302</sup> UNITED St. No. C-2, Appendix C, pp. 13-14. See also PWSA St. No. C-1R, pp. 42-43 and PWSA St. No. C-1R-Supp, p. 5 (each referencing the November 17, 2017 Consent Order and Agreement entered into by PWSA and the PA DEP).

<sup>303</sup> PWSA St. No. C-1R, pp. 42-43.



compliance with a timeline set forth in a PA DEP Order. In any event, the absence of an I&E position on this issue should not be construed to either support or oppose any position offered by any party.

## **VI. CONCLUSION**

As explained above, the evidence supports the conclusion that PWSA's Compliance Plan is deficient in several areas that will prevent PWSA from adequately ensuring and maintaining provision of adequate, efficient, safe, reliable and reasonable service to its ratepayers. In order to remedy the deficiencies, and to ensure that PWSA's Compliance Plan is sufficient to ensure and maintain its ability to provide adequate, efficient, safe, reliable and reasonable service to its ratepayers, I&E respectfully requests that the Commission require PWSA to revise its Compliance Plan to set forth a plan to:

1. transition from its 1995 Cooperation Agreement with the City to begin operating on a business-like, arm's-length basis with the City;
2. become responsible for the cost of all meter installation, including the installation at City properties, in accordance with 52 Pa. Code § 65.7;
3. introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage;
4. revise its proposed step-billing approach for City public fire hydrant charges and instead set forth a plan to charge the full amount of whatever percent allocation is determined in PWSA's next rate proceeding;
5. consistent with the recognition that where conflicts exist, the Code and Commission regulations and orders supersede the Municipality Authorities Act ("MAA"), comply with 52 Pa. Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, and revise its tariff and operations accordingly;
6. immediately eliminate its residency requirement; and

7. strike the income-based reimbursement provision of its lead service line replacement policy in favor of a plan to replace all public and private residential lead lines in its distribution system.

Respectfully submitted,

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Dated: September 19, 2019

## PROPOSED FINDINGS OF FACT

### Procedural Facts

1. PWSA was established as a municipal authority by the City of Pittsburgh in 1984.( PWSA Compliance Plan, p. 14).
2. In a Pennsylvania House of Representatives Co-Sponsorship Memoranda dated May 24, 2017, the sponsors of House Bill 1490, Representatives Mike Turzai and Harry Readshaw addressed the rationale of their legislation to place PWSA under the regulatory oversight of the Commission. citing systemic problems ranging from water safety to unmetered accounts, both of which are at issue in this case, the sponsors of House Bill 1490 took the position that the Commission’s jurisdiction over PWSA would be necessary to ensure that PWSA’s customers are provided with safe service and that they are charged fairly for that service. *House Co-Sponsorship Memoranda for HB 1490, PA House of Representatives Session of 2017-2018, Regular Session, May 24, 2017.*
3. In November of 2017, the Pennsylvania Department of the Auditor General produced a report summarizing the results of its performance audit of PWSA covering the period of January 1, 2014 through June 30, 2017. The Auditor General’s Report concluded that PWSA’s “aging and deteriorating infrastructure issues and financial and operations long-term viability issues result from years of mismanagement and conflicted leadership causing a crisis in [PWSA’s] governance.” *Performance Audit Report of November 2017 issued by the Pennsylvania Department of the Auditor General* (I&E Exhibit No. 2, Schedule 4, p. 3); PWSA Ex. Stip Doc-3; I&E; Ex. No. 2, Sch. 4, p. 2 of Letter dated October 30, 2017).
4. In March of 2017, the Mayor of the City of Pittsburgh appointed a Blue Ribbon Panel to evaluate PWSA’s operations and to make recommendations regarding its future, culminating in the Mayor’s Blue Ribbon Report of December 28, 2017. The Mayor’s Blue Ribbon Report recognized that “the infrastructure we use to make our plentiful water drinkable and to deliver it to those who need it is badly dilapidated.” The Mayor’s Blue Ribbon Report also acknowledged that PWSA “is struggling to overcome the burden of its poor management of the past. It has lost the trust of the public that it serves, and it has become a leading risk factor for the future of Pittsburgh’s economic development.” *Report of the Mayor’s Blue Ribbon Panel, December 28, 2017* (PWSA Ex. RAW/C-4, p. 3).
5. House Bill 1490 traversed the legislative process and culminated in Act 65, which was signed into law by Governor Tom Wolf on December 21, 2017. 66 Pa. C.S. § 3201.

6. In accordance with Act 65, the Code was amended to grant the Commission jurisdiction over the provision of utility water, wastewater, and stormwater service by entities created by Pennsylvania cities of the second class under the Municipality Authorities Act. 66 Pa. C.S. § 3201.
7. Consistent with Chapter 32, the Commission’s jurisdiction over PWSA became effective on April 1, 2018. 66 Pa. C.S. § 3202(a)(1).
8. In its Final Implementation Order for Chapter 32 of the Code regarding PWSA, the Commission established affirmative expectations and instructions for PWSA’s compliance with the Code and Commission regulations. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order (entered on March 15, 2018).
9. In addition to identifying certain topics to be addressed in PWSA’s Compliance Plan, the Commission’s Final Implementation Order expressed an expectation that PWSA’s compliance plans would detail how PWSA will reach “ultimate end-state compliance” with the Code and Commission regulations. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order, p. 33 (entered on March 15, 2018).
10. The Commission’s Final Implementation Order noted that “the Commission will not defer to PWSA Board decisions as to compliance with the Public Utility Code (including Chapter 32) or Commission regulations.” *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 et al, Final Implementation Order, pp. 17-18 (entered on March 15, 2018).

### **1995 Cooperation Agreement Facts**

11. PWSA originally served as a financing authority, however, pursuant to the Cooperation Agreement between PWSA and the City, effective January 1, 1995, PWSA assumed responsibility from the City for day-to-day operations of Pittsburgh’s water and wastewater systems. (PWSA Compliance Plan, p. 14).
12. Pursuant to the 1995 Cooperation Agreement, PWSA and the City are to provide various services to each other. Among other things, PWSA is to pay for City services provided under the 1995 agreement and PWSA is to provide the City 600 million gallons of water each year at no cost. (PWSA Compliance Plan, Appendix B, 1995 Cooperation Agreement, Sections VII.C. & VII.D).

13. In its Compliance Plan filing, regarding services provided by the City under the 1995 Cooperation Agreement, PWSA stated it pays the City an annual fee of \$7.15 million for a variety of services and costs, but there is no detailed invoice for the fee. (PWSA Compliance Plan, p. 105; I&E St. No. 2, p. 16.).
14. PWSA acknowledged that expenses charged to ratepayers must be just, reasonable and reasonably known and definite. (PWSA Compliance Plan, p. 106).
15. PWSA originally projected a new Cooperation Agreement would be executed during this proceeding. However, during the proceeding, PWSA extended the target date for terminating the 1995 Cooperation Agreement several times. PWSA cited continuing negotiations for a new Cooperation Agreement as the basis for constant change. As of the hearing date, the 1995 Cooperation Agreement had still not been terminated. (PWSA St. No. C-2, p. 8; PWSA St. No. C-2R, p. 9, 11; PWSA St. No. 2-CSD, pp. 3-4).
16. PWSA witness Lestitian provided new estimates for costs of services, some of which appeared plausible, but PWSA did not provide detailed, itemized explanation and substantiation. PWSA St. No. C-2, p. 10 and Exhibits DML/C-1 and DML/C-2
17. PWSA witness Lestitian identified approximately \$20 million in services that it provides to the City, and \$13 million in services that the City provides to PWSA. PWSA St. No. C-2, p. 10 and Exhibits DML/C-1 and DML/C-2.
18. Certain costs assigned to PWSA by the City appear completely unrelated to utility service, such as \$4,722,317 for street sweeping, litter can cleaning, litter cans costs, “yard debris,” and “landslides.” I&E St. No. 2, pp. 19-21.
19. Additionally, PWSA witness Lestitian’s testimony reveals the value of services provided by PWSA are much greater than those provided by the City, clearly demonstrating the \$7.15 million invoiced from the City to PWSA is unreasonable. I&E St. No. 2, pp. 19-21.
20. PWSA should only enter into a new Cooperation Agreement if it believes it is lawful. I&E St. No. 2-SR, pp. 6-7.
21. PWSA witness Debbie Lestitian originally testified that if PWSA were not successful in negotiating a new Cooperation Agreement with the City, negotiations will continue and PWSA would interact with the City at arm’s-length on a transactional basis. PWSA St. No. C-2, p. 9.

22. Despite witness Lestitian's original testimony on February 14, 2019, regarding reverting to dealing with the City on a transactional basis if a new Cooperation Agreement could not be negotiated, she repudiated that position in her supplemental direct testimony, after PWSA had granted two additional extensions of its existing Cooperation Agreement on May 5, 2019 and on July 5, 2019. PWSA St. No. 2-CSD, pp. 5-6.
23. Any new Cooperation Agreement PWSA enters with the City should define the City's and PWSA's relationship on a "business-like" basis and include only terms and conditions of the agreement negotiated at arm's length to ensure fair, equitable, and reasonable terms for both the parties. I&E St. No. 2, p. 64.
24. Any new Cooperation Agreement PWSA enters with the City should identify and list all services by the City to PWSA and vice versa with a detailed breakdown and related cost of service based on current market conditions. I&E St. No. 2, p. 64.
25. Any new Cooperation Agreement PWSA enters with the City should eliminate the free water services to the City and its instrumentalities, agencies, and other bodies. I&E St. No. 2, p. 65.
26. If PWSA's 1995 Cooperation Agreement terminates without a new Cooperation Agreement in-effect, PWSA should adopt its original proposal to interact with the City on an arm's-length transactional basis. I&E St. No. 2-RS, p. 6.
27. PWSA remains non-compliant with Chapter 32 until the 1995 Cooperation Agreement is terminated and the Commission has either approved a new Cooperation Agreement, or PWSA is transacting with the City on an arm's-length, as-needed basis. I&E St. No. 2-RS, pp. 6-7.
28. To become compliant with the Code, PWSA needs to start operating on a business-like basis with the City as soon as possible. I&E St. No. 2, pp. 32.

### **Metering and Unmetered Service Facts**

29. The rebuttal testimony of PWSA witness Weimar first introduced the assertion that PWSA has an agreement with the City to split the costs of meter installations 50/50. PWSA St. No. C-1R, p. 18.
30. PWSA's proposed arrangement to split costs of meter installation with the City 50/50 would violate 66 Pa. C.S. § 1304, i.e. the, prohibition against unreasonable rate discrimination, when the proposal to charge non-municipal customers the full cost of meter installation remained. I&E St. No. 3-SR, p. 11.

31. Pursuant to the 1995 Cooperation Agreement, the City is entitled to receive up to 600 million gallons per year from PWSA for free. In reality, the majority of City properties are unmetered and actual use is unknown, and estimated to be higher. PWSA Compliance Plan, p. 108.
32. PWSA recognizes provisions of unmetered, unbilled service violate numerous provisions of the Code and Commission regulations. PWSA Compliance Plan, p. 109.
33. In an attempt to come into compliance, PWSA proposes, once municipal properties are metered, to charge 20% of the total bill in the first year, and for each successive year to charge an additional 20% of the total bill, until 100% of the total bill is charged. PWSA Compliance Plan, p. 110.
34. PWSA claims its unmetered municipal billing step-in plan is appropriate because the City has never been billed for water at unmetered locations and unaware of the amount of water or cost it will be responsible for once billing begins. Additionally, PWSA claims the City needs lead time to understand its obligations, take steps to mitigate its current water use, and incorporate payment obligations into future budgets. PWSA Compliance Plan, p. 110-111; PWSA St. No. C-1, p. 27.
35. Half of the City's major facilities are metered, and measurements for those facilities equate to about \$3.6 million in billed usage. PWSA St. No. C-1, p. 28.
36. "Key" City and City-affiliated facilities that do not have meters are the Zoo and swimming pools and spray parks. PWSA St. No. C-1, p. 28.
37. PWSA witness Weimar admits that failing to meter or charge some locations is inconsistent with the Public Utility Code, as well as Commission regulations. PWSA St. No. C-1, p. 28.
38. PWSA witness Weimar opined that it is difficult to make estimates of usage for the City, and implementing a step-billing approach based on estimates is not feasible because, if PWSA begins to immediately bill 100% of City locations with meters, the City will face significant new charges it likely would not be able to pay. PWSA St. No. C-1, p. 29.
39. PWSA's unbilled usage represents upwards of \$11.4 million in foregone revenue. I&E St. No. 3, p. 55.
40. PWSA's step-billing proposal inappropriately elevates the City's interest above those of PWSA and its ratepaying customers. I&E St. No. 3, pp. 54-55.

41. I&E witness Cline recommended that PWSA introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, their usage should be billed immediately. I&E St. No. 3, p. 56.
42. PWSA had not provided an adequate reason why, at minimum, the City could not be responsible for the customer charge, which would provide needed revenue for PWSA's operations, including but not limited to infrastructure repair, lead remediation, and meter installation. I&E St. No. 3-SR, p. 27.
43. Despite receiving notice of this proceeding and a copy of PWSA's Compliance Plan, which implicated issues of City interest, and despite being advised of the opportunity to participate, the City elected not to participate. *Pa. P.U.C. v. PWSA*, R-2018-3002645 et al., Letter to Solicitor for the City of Pittsburgh (December 13, 2018).

**Line Extension: Code v. MAA Facts**

44. PWSA witness Quigley opined that PWSA cannot be in compliance with the line extension requirements of Commission's regulations because they would make PWSA's practices inconsistent with the Municipality Authorities Act. PWSA St. No. C-4, pp. 33-34.
45. PWSA cannot be in compliance with the Municipality Authorities Act and Commission regulations regarding line extensions at the same time. PWSA St. No. C-4, p. 33.
46. PWSA does not support implementation of the Commission's line extension 52 Pa. Code §§ 65.21-65.23 regulations, even if it were required to do so. PWSA St. No. C-4R, pp. 37-38.
47. Requiring PWSA to readjust its practices should not be a reason to determine PWSA should not comply with Commission regulations. I&E St. No. 3-SR, pp. 20-21.
48. The Commission has recognized the goal of transitioning PWSA from oversight under the Municipality Authorities Act to the Code. *Pa. P.U.C. Docket Nos. M-2018-2640802 & M-2018-2640803*, Final Implementation Order (March 15, 2018), p. 43.



## **Residency Requirement Facts**

49. PWSA adopted a residency requirement that requires all employees, except those specifically exempted by its Board's Executive Committee, to be domiciled in the City on their first day of employment with PWSA and to remain domiciled in the City throughout their employment with PWSA. I&E Ex. No. 2, Sch. 7, pp.1-3.
50. PWSA explains that its Board adopted the policy "[f]ollowing the City of Pittsburgh's home rule Charter, which contains a requirement for persons employed by the City to live in the City. PWSA St. No. C-2, p. 14.
51. For the purposes of its residency (or domicile) requirement, PWSA, defines "domicile" as the place where an employee has his or her true, fixed, and permanent home and principal establishment, coupled with an intention of returning to that location whenever they are absent. I&E Ex. No. 2, Sch. 7, p. 3.
52. Although PWSA's Board retains discretion to grant an exemption to its residency policy, such exemptions are not codified in the policy, as they are left solely to the Board's determination. I&E Ex. No. 2, Sch. 7, p.1.
53. While some positions may be declared "Exempt Positions" under PWSA's residency requirement, candidates for those positions still must be domiciled in one of 10 designated counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Lawrence, Indiana, Washington or Westmoreland county. I&E Ex. No. 2, Sch. 7, pp. 4-5.
54. Employees who are not exempted but who are believed to be in violation of the residency requirement are investigated by the City's Office of Municipal Investigation and subject to a 5 day suspension pending termination unless a City domicile address is provided. I&E Ex. No. 2, Sch. 7, pp. 4-5.
55. The undisputed practical reality of PWSA's residency requirement is that it produces at least an estimated \$2 million in additional annual costs. I&E Ex. No. 2, Sch. 7, p. 2.
56. PWSA's residency requirement significantly limits the parameters of qualified applicants from the 2.36 million people estimated to live in the Pittsburgh metropolitan area, to the 300,000 people estimated to live in the City. PWSA St. No. C-2, p. 15.
57. PWSA has not offered any rationale for adopting its residency requirement, but instead simply indicates that PWSA's Board chose to adopt "the City's residency requirement." PWSA St. No. C-2R, p. 18.

58. The Auditor General's Report concludes that City influence has impacted decisions and policies approved by PWSA's Board, including adoption of the Domicile policy. I&E Ex. No. 2, Sch. 4, p. 8.
59. The Auditor General's report indicated that PWSA officials and Board members who were interviewed in conjunction with the report, "indicated that the domiciliary requirement was influenced by the Mayor's Office because this policy is in place at all City government offices." I&E Ex. No. 2, Sch. 4, pp. 8-9.
60. Because of its residency requirement, PWSA has had difficulty in hiring water treatment operators, plumbers, laboratory staff, project managers, welders, electricians, and mechanics who are necessary to address its everyday maintenance and operational needs. I&E St. No. 2, p. 38; I&E Ex. No. 2, Sch. 7, p. 2.
61. PWSA indicates that as a result of its residency requirement, more than 10% of its workforce is comprised of contractors who are needed to address operational needs. The cost premium for these contractors is estimated to be 150% to 200%, which equates to an addition of more than \$2 million in annual costs to PWSA's non-unionized workforce. I&E Ex. No. 2, Sch. 7, p. 2.
62. The escalated costs resulting from PWSA's residency requirement drives up costs for ratepayers while simultaneously compromising PWSA's ability to make timely repairs and improvements that are necessary to provide and maintain safe and effective service. I&E St. No. 2, p. 39.
63. PWSA's residency requirement hindered its ability to hire trade staff, including qualified and licensed plumbers who are necessary to, among other things, test and, if appropriate, replace customers' meter for compliance. PWSA St. No. C-1, 23.
64. The restrictions imposed by the residency requirement make it difficult for PWSA to have redundancy among its staff. PWSA St. No. C-2, p. 16, 32.
65. Because of the limitations it imposes upon the PWSA applicant pool, which particularly impacts families with school-age children, PWSA's residency requirement hinders its ability to achieve the diversity policy goals of 52 Pa. Code §§ 69.801-69.809. PWSA St. No. C-2, pp. 15-16.

## **Lead Service Line Replacement/Income-Based Replacement Facts**

66. PA DEP regulations establish an action level for lead at 0.015 mg/L, and provide that the action level is exceeded when the concentration on more than 10% of tap water samples collected during the monitoring period (known as the 90<sup>th</sup> percentile amount) is greater than the action level. 25 Pa. Code § 109.1102(a).
67. Lead is toxic to the central nervous system and to the cardiovascular system, and it damages numerous organ systems and causes permanent, irreversible injuries to children's developing brains. Lead exposure has also been associated with increased incidence of miscarriage, delays in time to achieve pregnancy, and irreversible neuropsychological and developmental effects in children. UNITED St. No. C-3, pp. 8-9.
68. While there is no detectable lead in PWSA's water when the water leaves the treatment plant and travels through PWSA's water mains, lead can enter through drinking water through lead service lines and household plumbing. PWSA Compliance Plan, p. 119.
69. Before 1950, service lines installed in Pittsburgh were often made of lead, and when lead pipes corrode, lead is released into drinking water. UNITED St. No. C-2, p. 6.
70. As part of corrosion control measures, in July of 1995, PA DEP approved PWSA's treatment plant corrosion control plan and issued PWSA a permit requiring the use of soda ash for corrosion control. PWSA Ex. Stip Doc. 1, p. 61.
71. PWSA's use of corrosion control treatment was required for compliance with PA DEP regulations related to lead and copper. UNITED St. No. C-2, Appendix C, p. 3.
72. Recent lead testing in PWSA's service territory revealed that the lead levels in PWSA's water remain actionable. PWSA St. No. C-1SD, p. 23.
73. Despite the mandated use of soda ash as a corrosion control treatment, in April of 2014, PWSA switched from soda ash to caustic soda in its water treatment process because of the higher cost of soda ash and an obsolete ash feeder. PWSA Ex. Stip Doc. 1, p. 61.
74. PWSA's switch to caustic soda as a corrosion control treatment was made in response to a cost-saving recommendation made by Veolia Management services, a company that PWSA contracted with for interim management services. PWSA Ex. Stip Doc. 1, pp. 10, 62.

75. PWSA made the switch to caustic soda as a corrosion control treatment without PA DEP's approval, even though doing so constituted a violation of the Safe Drinking Water Act and despite the fact that caustic soda was less effective than soda ash at preventing lead and copper from leaching into the water. PWSA Ex. Stip Doc. 1, p. 61.
76. A performance audit report issued by the County of Allegheny Office of the Controller, issued on July 25, 2017, concluded that "PWSA's unauthorized change in corrosion control chemicals appears to have increased water lead levels that were already somewhat elevated before the change. PWSA Ex. Stip Doc. 4, p. 5.
77. As a result of PWSA's unauthorized change in corrosion control, PA DEP opened an investigation. PWSA Ex. Stip Doc. 4, p. 5.
78. On April 25, 2016, once PA DEP learned about PWSA's unauthorized modification, it ordered PWSA to take certain actions, including the following: (1) investigating lead levels within its system; (2) evaluating impacts from PWSA's change in corrosion control chemicals; (3) providing certain notification to the public, and (4) conducting a feasibility study to be submitted to the PA DEP that developed recommendations for optimization of corrosion control treatment. UNITED, St. No. C-2, Appendix C, pp. 3-4.
79. Although PA DEP required PWSA to complete its corrosion control treatment feasibility study by the end of June 2017, and to submit its final report and recommendations to PA DEP by no later than July 30, 2017, PWSA failed to adhere to that deadline. Specifically, PA DEP noted that as of the date of the PWSA/ PA DEP Consent Order, November 17, 2017, PWSA had not conducted the corrosion control treatment feasibility study, nor evaluated system impact from its unauthorized modification of corrosion control chemicals as required, constituting violations of a PA DEP Order, the Safe Drinking Water Act, and PA DEP regulations. UNITED, St. No. C-2, Appendix C, p. 4.
80. PA DEP noted that that PWSA's lead and copper monitoring between January 1, 2016 and June 30, 2016, as well as between July 1, 2016 and December 31, 2016, showed lead levels of 0.022 mg/L and 0.018 mg/L, respectively, which demonstrably exceeded lead action levels. As a result, PA DEP regulations required PWSA to initiate lead service line replacement. UNITED, St. No. C-2, Appendix C, p. 5.

81. As a result of the lead action level, PA DEP required PWSA to complete a materials evaluation to determine the initial number of lead service lines in its system; however, PWSA indicated that it did not have an accurate material inventory of the approximately 80,000 active service lines in its system. UNITED, St. No. C-2, Appendix C, p. 14.
82. A 2017 PWSA/ PA DEP Consent Order set forth a path for PWSA to come into compliance by PWSA's agreement to undertake an enumerated list of corrective actions. The enumerated list required PWSA do the following:
- (1) to provide, on or before December 31, 2020, a supplemental materials evaluation, or an inventory, to PA DEP for all residential structures for which PWSA has not been able to confirm the absence of lead lines;
  - (2) to provide, on or before December 31, 2022, a supplemental materials evaluation, or inventory, to PA DEP for all structures connected to the system;
  - (3) unless PWSA has met the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring by June 30, 2018, PWSA shall, on or before December 31, 2018, replace at least an additional 7% of the lead service lines within its system and thereafter continue to replace 7% of lead service lines by June 30 of the following calendar year unless it has met the 90<sup>th</sup> percentile lead action level during two consecutive rounds of 6-month monitoring by June 30; and
  - (4) upon issuance of an amended construction permit from PA DEP permitting PWSA to modify its corrosion control facilities for the system, PWSA must complete constructions in accordance with the amended construction permit, submit certification, and begin operating the modified corrosion control treatment facilities immediately upon issuance of an amended operation permit by PA DEP, and thereafter comply with monitoring and reporting requirements (UNITED, St. No. C-2, Appendix C, pp. 9-15).
83. In April of 2019, PWSA began adding orthophosphate into its system to reduce lead levels in its drinking water. PWSA St. No. C-1SD, p. 23.
84. City permitting issues delayed PWSA's construction of facilities necessary to facilitate orthophosphate treatment. I&E St. No. 4, p. 5 (referencing PWSA St. No. C-1, p. 49); I&E Ex. No. 4, Sch. 2.

85. Although PA DEP approved PWSA's application to proceed with the construction of the additional equipment required to implement the orthophosphate on September 24, 2018, construction of the new orthophosphate addition facilities was not completed until April 2019. I&E Ex. No. 4, Sch. 2.; PWSA St. No. C-1RJ, p. 17.
86. The serious safety issue implicated by any treatment delay is exemplified in the fact that lead test results issued in December 2018 reflected lead levels of 20 ppb, which is 5 ppb over the action level. PWSA St. No. C-1SD, p. 23.
87. PWSA's claim regarding the anticipated impact of its corrosion control plan, orthophosphate treatment, is speculative, as it could take more than a year from PWSA's April 2019 implementation of treatment to be fully effective. UNITED St. No. C-2, at 16-17.
88. As long as there are lead service lines, there is "the distinct potential that a future unintended change in water quality could result in serious episodes of lead release" because protective scale on the interior of lead service lines could be disrupted by physical disturbance or through changes in water chemistry. UNITED St. No. C-2 SUPP-R, p. 9.
89. Removal of lead service lines is the only way to eliminate risk to PWSA's customers. UNITED St. No. C-2 SUPP-R, p. 9.
90. The Office of the City of Pittsburgh Controller's Performance Audit of PWSA issued in February of 2017, "[t]he best way to prevent lead from leaching from water lines and home plumbing systems is to remove lead lines completely and replace them. . . . PWSA Ex. Stip Doc. 1, p. 58.
91. The lead levels in PWSA's water result from lead infrastructure, through lead service lines and plumbing. PWSA Compliance Plan, p. 119.
92. Over the past three years, PWSA's tap water showed consistently high levels of lead, and he indicated that the risk of lead exposure to Pittsburgh residents, especially children and other vulnerable populations, is unacceptably high. UNITED St. No. C-3, pp. 11, 14.
93. PWSA's Board recently adopted an updated policy regarding its Lead Service Line Replacement ("LSLR") program that provides for, in pertinent part, income-based reimbursement for replacement of private side lead service lines after January 1, 2019. PWSA Ex. RAW-C-46.

94. The income-based reimbursement policy will only apply to customer-initiated replacements that are not scheduled to be replaced through PWSA's other programs. PWSA St. No. C-1SD, p. 26.
95. Although PWSA estimates a wide swath of eligible replacements, between 8,000 to 20,000, because PWSA does not yet know how many customers have private-sized lead service lines, it is uncertain how many customers would be eligible for the income-based reimbursement. UNITED St. C-2, pp. 29-32; UNITED St. C-2SUPP-R, p. 4.
96. Under the income-based reimbursement provision of its lead line replacement policy, PWSA will reimburse (1) the entire cost of the private side lead service line replacement for households with income levels below 300 percent of the federal poverty level, as adjusted annually; (2) 75 percent of the cost of the private side lead service line replacement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually; (3) 50 percent of the cost of the private side lead service line replacement for households with income levels between 401 and 500 percent of the federal poverty level, as adjusted annually; and (4) all other households will be offered a \$1,000 stipend towards the replacement cost of a private side lead service line replacement. PWSA Ex. RAW C-46 p. 4, paragraph 10(d)).
97. PWSA has not explained how the sliding scale for the reimbursement policy was developed. I&E St. No. 4-RS, p. 4.
98. PWSA's high estimated cost for administering the policy is the same amount that some customers will be reimbursed for their private side lead line replacement-\$1,000. I&E St. No. 4-RS, p. 6; I&E Ex. No. 4-RS, Sch. 1.
99. PWSA did not prepare a detailed cost estimate to establish its budget for administering the income-based reimbursement provision of its lead line replacement policy; therefore, a breakdown of the type of costs and anticipated costs were not available as part of this case. I&E St. No. 4-RS, p. 5.
100. The high cost of administering the policy would be better spent as construction dollars towards the replacement of private side lead lines.
101. PWSA indicates that the average cost to replace private side lead lines is \$5,500. PWSA Ex. RAW C-46, p. 2.
102. Most of the affected households cannot afford the upfront cost of replacing their private side lead lines, particularly Pittsburgh's low and moderate income customers. UNITED St. C-1-Supp-R, pp. 5-6.

103. In 2018, the Federal Reserve issued a report that indicates that 40% of the adults in the United States cannot afford an unexpected \$400 expense, and 22% of adults cannot cover their monthly bills. UNITED St. C-1-Supp-R, p. 5, footnote 10.
104. The federal poverty level calculation may not adequately represent the cost of living for people who live on their own, and elderly people in particular. OCA St. No. 2R-Supp, pp. 5-6.
105. Ratepayers who cannot afford to pay up front will be unable to replace their private-side lead service lines, compromising the goal of removing lead service lines from PWSA's water distribution system. I&E St. No. 4-RS, p. 6.
106. By way 66 Pa. C.S. § 1311(b) the Pennsylvania General Assembly permitted regulated utilities to seek Commission approval to replace customer-owned lead water service lines.
107. PWSA's ability to replace private side lead lines and to meet its operational obligations are not mutually exclusive, especially when water safety is at issue and it has an obligation to provide safe service. I&E St. No. 4-RS, p. 4.



**PROPOSED CONCLUSIONS OF LAW**

1. I&E is charged with represent the public interest in ratemaking and service matters, and to enforce compliance with the Pennsylvania Public Utility Code (“Code”). 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).
2. The “public interest” that I&E represents includes balancing the needs of ratepayers, utilities, and the regulated community as a whole. *Pa. P.U.C. v. Bell Atlantic-Pennsylvania, Inc.*, Docket Nos. R-00953409, *et al.*, 1995 Pa. PUC LEXIS 193 (Order entered September 29, 1995).
3. When the City created PWSA as a municipal authority, it created an agency of the Commonwealth independent from the City. *Commonwealth v. Lucas*, 534 Pa. 293, 295 (Pa. 1993).
4. Consistent with Chapter 32, the Commission’s jurisdiction over PWSA became effective on April 1, 2018. 66 Pa. C.S. § 3202(a)(1).
5. PWSA was statutorily required to file a Compliance Plan with the Commission, within 180 days of April 1, 2018, that includes provisions designed to bring the following areas into compliance with the Code, the Commission’s regulations and orders, and other applicable rules: “existing information technology, accounting, billing, collection and other operating systems and procedures.” PWSA’s Compliance Plan was also required to include a long-term infrastructure improvement plan. 66 Pa. C.S. § 3204(b).
6. In its Final Implementation Order entered at this docket, the Commission expressed an expectation that PWSA’s compliance plans would detail how PWSA will reach “ultimate end-state compliance” with the Code and Commission regulations. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 *et al*, Final Implementation Order (entered on March 15, 2018), p. 33.
7. The Commission’s Final Implementation Order established that “the Commission will not defer to PWSA Board decisions as to compliance with the Public Utility Code (including Chapter 32) or Commission regulations. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, M-2018-264802 *et al*, Final Implementation Order (entered on March 15, 2018), pp. 17-18.

8. PWSA's plan for compliance must meet the floor-level standard of adequately ensuring and maintaining adequate, efficient, safe, reliable and reasonable service for its ratepayers. 66 Pa. C.S. § 3204(c).
9. In the event that the Commission reviews PWSA's Compliance Plan and determines that it fails to adequately ensure and maintain the provision of adequate, efficient, safe, reliable, and reasonable service, it may order PWSA to file a new or revised compliance plan. 66 Pa. C.S. § 3204(c).
10. PWSA, as the proponent of its Compliance Plan, bears the burden of proof to establish that its plan to come into compliance with the Code, Commission regulations, and orders adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service. 66 Pa. C.S. § 332(a); 66 Pa. C.S. § 3204; Pa. P.U.C. v. PWSA, R-2018-3002645 et al., *Joint Petition for Settlement*, p. 24, ¶H(2).
11. In cases pending before an administrative tribunal, like this once, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. 1990).
12. PWSA has failed to meet its burden with respect to its failure to set forth a compliance plan that (1) terminates its 1995 Cooperation Agreement in favor of transacting with the City on an arm's length, business-like transaction; (2) become responsible for the cost of all meter installation, including the installation of City properties, in accordance with 52 Pa. Code § 65.7; (3) introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage; (4) revise its proposed step-billing approach for City public fire hydrant charges and instead set forth a plan to charge the full amount of whatever percent allocation is determined in PWSA's next rate proceeding; (5) consistent with the recognition that where conflicts exist, the Code and Commission regulations and orders supersede the Municipality Authorities Act, comply with 52 Pa. Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, and revise its tariff and operations accordingly; (6) immediately eliminate its residency requirement; and (7) strike the income-based reimbursement provision of its lead service line replacement policy in favor of a plan to replace all public and private residential lead lines in its distribution system.
13. PWSA remains non-compliant with Chapter 32 until the 1995 Cooperation Agreement is terminated and the Commission has either approved a new Cooperation Agreement, or PWSA is transacting with the City on an arm's-length, as-needed basis. 66 Pa. C.S. 3204; 66 Pa. C.S. §1301; 66 Pa. C.S. §1501.

14. PWSA's plan to split the costs of meter installations with the City on a 50/50 basis, while it incurs the full cost of installation for all other customers, violates the Commission's regulations for metered service. 52 Pa. Code §65.7.
15. PWSA's plan to split the costs of meter installations with the City on a 50/50 basis, while it incurs the full cost of installation for all other customers, violates the Code's prohibition against unreasonable rate discrimination. 66 Pa. C.S. § 1304.
16. PWSA's step-billing proposals for unmetered and unbilled City properties violates its obligation to charged tariffed rates. 66 Pa. C.S. § 1303
17. PWSA's step-billing proposal for unmetered and unbilled City properties violates the Code's prohibition against unreasonable rate discrimination. 66 Pa. C.S. § 1304.
18. Any PWSA step-billing proposal for public fire hydrant costs would violate the Code's prohibition against unreasonable rate discrimination. 66 Pa. C.S. § 1304.
19. Commission regulations require water utilities to include as part of their tariff conditions under which service will be extended to applicants. 52 Pa. Code § 65.21.
20. Commission regulations detail under what circumstances a water utility shall construct line extensions. 52 Pa. Code § 65.21.
21. Commission regulations outline rules regarding associated customer advance financing and payments. 52 Pa. Code § 65.22.
22. The Municipality Authorities Act ("MAA")<sup>304</sup> provides for certain powers than an authority may exercise, including those related to line extensions. 53 Pa. C.S. §§ 5601-5623; 53 Pa. C.S. § 5607(d).
23. Rules of statutory construction require that, whenever a general provision in a statute is in conflict with a special provision in the same or another statute, both provisions should be construed to be operable, if possible. 1 Pa. C.S. § 1933.
24. Rules of statutory construction also provide that if the two provisions are irreconcilable, as they are here, the special provision shall prevail to the exclusion of the general provision, unless the general provision was (1) enacted later and (2) it is the manifest intention of the General Assembly that such general provision shall prevail. 1 Pa. C.S. § 1933.

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<sup>304</sup> 53 Pa. C.S. §§ 5601-5623.

25. The current version of the MAA regarding line extensions was enacted on July 7, 2017, when Governor Wolf signed Act 19 of 2017 into law. Chapter 32 of the Code was enacted later than any of the above dates, on December 21, 2017, when Governor Wolf signed Act 65 of 2017 into law.
26. The General Assembly clearly intended for the Code and Commission's rules, regulations and orders to apply to PWSA the same as any other Commission-regulated utility, barring a few, limited exceptions. 66 Pa. C.S. § 3202; 66 Pa. C.S. § 3204.
27. The General Assembly could have expressly limited the Code's applicability regarding line extensions, but did not do so. To the contrary, in addition to Chapters 11 and 21, Chapter 32 limits only the Code's applicability to establishment of authorities, audits, and compliance with certain financial obligations. 66 Pa. C.S. § 3208.
28. Chapter 32 of the Public Utility Code requires PWSA to follow Commission regulations regarding line extensions, instead of the MAA.
29. The Commission's regulations regarding line extensions are mandatory. 52 Pa. Code §§ 65.21 and 65.22.
30. Pennsylvania Courts have long held that the General Assembly's intention is that the Code should exclusively control regulation of public utilities. *PPL Electric Utilities Corp. v. City of Lancaster*, 2019 WL 3926456 (Pa. 2019); *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996 (Pa. Commw. 2007); *Newtown Tp. v. Philadelphia Elec. Co.*, 140 Pa. Cmwlth 635 (Pa. Commw. 1991).
31. The Commission has broad discretion in determining whether rates are reasonable. *Popowsky v. Pa. P.U.C.*, 683 A.2d 958 (Pa. Commw. 1996).
32. A determination that a utility's rates are unjust or unreasonable usually rests on a factual finding that the imposition of those rates unreasonably benefits the utility's investors at the expense of the utility's ratepayers, that is; that the rates constitute a species of "unlawful taxation of consumers." *Nat'l Fuel Gas Distribution Corp. v. Pa. P.U.C.*, 76 Pa. Commw. 102, 139 (Pa. Commw. 1983).
33. PWSA's residency requirement violates Section 1301 of the Code because it is a politically-driven policy that results in increased rates, without adding any value or benefit for ratepayers. 66 Pa. C.S. § 1301.

34. The outcomes and practical realities of PWSA’s residency requirement are inconsistent with its obligations under Section 1501 of the Code to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa. C.S. § 1501.
35. The Commission has established a policy and guidelines for major jurisdictional utility companies to incorporate diversity into their business strategy in connection with the procurement of goods and services. 52 Pa. Code §§ 69.801-69.809.
36. PWSA’s residency requirement frustrates its ability to achieve the policy goals of 52 Pa. Code §§ 69.801-69.809
37. PA DEP regulations establish an action level for lead at 0.015 mg/L, and provide that the action level is exceeded when the concentration on more than 10% of tap water samples collected during the monitoring period (known as the 90<sup>th</sup> percentile amount) is greater than the action level. 25 Pa. Code § 109.1102(a).
38. “As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Code.” *City of Pittsburgh v. Pa. PUC*, 157 Pa. Super. 595, 43 A.2d 348 (Pa. Super. 1945).
39. Precedent provides for a distinction between **water service**, which the Commission may regulate, and **water quality**, which may only be regulated by the DEP. *Pickford v. Pa. P.U.C.*, 4 A.3d 707, 713 (Pa. Commw. 2010).
40. Section 1501 of the Code requires PWSA to make repairs, changes, alterations, substitutions, extensions, and improvements to facilities as necessary for the safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501.
41. Precedent establishes that the Commission’s jurisdiction covers matters including “hazards to public safety due to the use of utility facilities. . . .” *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1001 (Pa. Commw. 2007).
42. Homeowners’ water and sewer laterals comprised of lead represent public health concerns. House Co-Sponsorship Memoranda for HB 2075, PA House of Representatives, Session of 2017-2018 Regular Session, February 1, 2018.
43. PWSA has a mechanism available to enable it to replace customer-owned lead lines and to recover the cost of such replacement. 66 Pa. C.S. § 1311(b).

44. If the public utility receives such permission, the Commission may permit the utility to allocate the cost associated with the replacement of a customer-owned lead water service line or customer-owned damaged wastewater lateral among each customer, classes of customers and types of service. 66 Pa. C.S. § 1311(b)(2)(iv).
45. The plain language of the Code indicates that “a public utility providing water or wastewater service” is eligible to seek commission approval to pursue the replacement of customer-owned lead water service lines. 66 Pa. C.S. § 1311(b)(2)(v).
46. Limiting application of Section 1311(b) to investor-owned utilities is inconsistent with the legislative intent behind Pennsylvania General Assembly’s intent in amending Section 1311(b), which was, in part, to facilitate the goal of furthering lead line replacement for all regulated public utilities. House Co-Sponsorship Memoranda for HB 2075, PA House of Representatives, Session of 2017-2018 Regular Session, February 1, 2018.
47. The law does not support PWSA’s position that 72 P.S. §§ 1719-E(c), (d) or any other municipally-based statute or authority weighs in favor of the income-based reimbursement provision of its lead service line replacement program both because this provision is preempted by rate provisions of Code and because PWSA failed to accurately account for publicly available funds as required by 72 P.S. §§ 1719-E(c), (d). *PPL Electric Utilities Corp. v. City of Lancaster*, 2019 WL 3926456 (Pa. 2019); 72 P.S. §§ 1719-E(c).
48. PWSA’s ability to replace private side lead lines and to meet its operational obligations are not mutually exclusive, especially when water safety is at issue and it has an obligation to provide safe service. 66 Pa. C.S. § 1501.
49. The income-based reimbursement provision of PWSA’s lead service line replacement program is inconsistent with its obligation to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service. 66 Pa. C.S. § 1501.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the Public	:	Docket Nos.
Utility Code Re Pittsburgh Water and	:	M-2018-2640802 (Water)
Sewer Authority	:	M-2018-2640803 (Wastewater)

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Main Brief** dated September 19, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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