



COMMONWEALTH OF PENNSYLVANIA

September 30, 2019

**E-FILED**

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

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

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "EK Fure".

Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID No. 312245

*Enclosures*

cc: Brian Kalcic  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Implementation of Chapter 32 of the</b>	<b>:</b>	<b>Docket No. M-2018-2640802</b>
<b>Public Utility Code Regarding Pittsburgh</b>	<b>:</b>	<b>Docket No. M-2018-2640803</b>
<b>Water and Sewer Authority – Stage 1</b>	<b>:</b>	
	<b>:</b>	
<b>Petition of The Pittsburgh Water and</b>	<b>:</b>	<b>Docket No. P-2018-3005037</b>
<b>Sewer Authority for Approval of Its Long-</b>	<b>:</b>	<b>Docket No. P-2018-3005039</b>
<b>Term Infrastructure Improvement Plan</b>	<b>:</b>	

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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Attorney ID No. 312245**

**For: John R. Evans  
Small Business Advocate**

**Office of Small Business Advocate  
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**Date: September 30, 2019**

## I. INTRODUCTION

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”).

On September 28, 2018, the Pittsburgh Water and Sewer Authority (“PWSA” or the “Authority”) filed its Petition for Approval of its Compliance Plan at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater) (collectively, “Compliance Plan dockets”). Also on September 28, 2018, PWSA filed its LTIP at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater).

On October 18, 2018, the OSBA and the Office of Consumer Advocate (“OCA”) each filed Answers to PWSA’s Petition for Approval of its Compliance Plan. The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed Notices of Appearance on October 22, 2018. Pennsylvania-American Water Company (“PAWC”) filed a Petition to Intervene on October 30, 2018. On November 1, 2018, Pittsburgh UNITED (“UNITED”) filed a Petition to Intervene.

On November 27, 2018, the Commission issued a Secretarial Letter assigning the Compliance Plan dockets to the Office of Administrative Law Judge (“OALJ”) and establishing two stages of review for PWSA’s Compliance Plan. The November 27, 2018 Secretarial Letter designated Stage 1 to focus on health and safety issues and Stage 2 to focus on Chapter 56 billing and collection issues and the development of a stormwater tariff. Also, on November 27, 2018, the Commission’s Technical Staff Initial Report and Directed Questions for Stage 1 (“Stage 1

Initial Report”) was issued. Corrected versions of the November 27, 2018 Secretarial Letter and Stage 1 Initial Report were issued on November 28, 2018.

A telephonic Pre-Hearing Conference was held on December 20, 2018, at which time a litigation schedule was determined. The litigation schedule was memorialized in an Order issued on December 27, 2018.

On February 1, 2019, PWSA filed its Compliance Plan Supplement. On February 21, 2019, an Order was issued consolidating the Implementation of Chapter 32 of the Public Utility Code Regarding PWSA-Stage 1 proceeding and the Petition of PWSA for Approval of its LTIIP at Docket Nos. P-2018-3005037 and P-2018-3005039.

On April 5, 2019, the OSBA submitted the direct testimony of Brian Kalcic. PWSA filed a Status Report on April 30, 2019 addressing the anticipated completion date for negotiations between the City of Pittsburgh and PWSA.

On May 6, 2019, the OSBA submitted the rebuttal testimony of Brian Kalcic. PWSA filed an Expedited Motion for Extension of Commission-Created Deadlines on May 13, 2019; the Motion was granted by Secretarial Letter dated May 15, 2019. On May 17, 2019, the OSBA submitted the surrebuttal testimony of Brian Kalcic.

A second telephonic Pre-Hearing Conference was held on June 7, 2019. PWSA filed a Status Report on June 14, 2019 updating the Commission on the status of settlement discussions. On June 18, 2019, an Order was issued setting forth an amended litigation schedule.

The OSBA submitted the supplemental direct testimony of Brian Kalcic on August 2, 2019. On August 14, 2019, the OSBA submitted the supplemental rebuttal testimony of Brian Kalcic.

An evidentiary hearing was held before Deputy Chief Administrative Law Judge (“ALJ”) Mark A. Hoyer and ALJ Conrad A. Johnson on August 21, 2019, at which time the parties represented that they had reached a partial settlement of the Stage 1 issues. At the August 21, 2019 hearing, the OSBA moved the testimony of its witness, Brian Kalcic, into the record.

On September 13, 2019, the parties filed a Joint Petition for Partial Settlement (“Partial Settlement”), which resolves approximately 75% of the identified issues that arose in this matter.

The OSBA submitted its Main Brief on September 19, 2019. PWSA, I&E, OCA and UNITED also filed main briefs on September 19, 2019.

The OSBA submits this reply brief pursuant to the procedural schedule as set forth in the June 18, 2019 Order. As noted in the OSBA’s Main Brief, the OSBA is primarily concerned with the issue of replacement of non-residential lead service lines (“LSLs”) and the application of PWSA’s Lead Service Line Replacement Program (“LSLRP”) to non-residential customers. The OSBA’s position is that non-residential LSLs should be replaced as part of PWSA’s LSLRP, that non-residential customers should be included in PWSA’s LSLRP, and that, where applicable, non-residential customers should be afforded a stipend of \$1,000 to offset the costs of replacing the customer-owned side of their lines.

## II. SUMMARY OF THE REPLY ARGUMENT

The OSBA will only address the issue of Replacement of Non-Residential Lead Service Lines in this brief.

The Commission has jurisdiction to evaluate and order modifications to PWSA's LSLRP. PWSA's arguments that the Pennsylvania Department of Environmental Protection ("PA DEP") has exclusive jurisdiction over PWSA's plan to address LSLs fail in light of Section 1501 of the Pennsylvania Public Utility Code (the "Code"). Section 1501 grants the Commission the authority to ensure that utilities provide their customers with safe service. When lead enters the water in PWSA's system a public safety concern is created due to the health hazards posed by lead. The authority conferred on the Commission by Section 1501 allows the Commission to order changes to PWSA's LSLRP.

Given the public health concern caused by LSLs, all lead service lines in PWSA's system should be replaced. PWSA attempts to justify its exclusion of non-residential customers from its LSLRP by arguing that residential LSLs are different insofar as failing to replace residential customer-owned LSLs could result in partial line replacements. While the concern of having partial replacements may not be present for non-residential customer-owned LSLs, the public health risk posed by lead nevertheless remains even when a LSL is owned by a non-residential customer. PWSA additionally argues that non-residential customers should not be included in its LSLRP because non-residential customers can afford to replace LSLs by passing the cost of replacement on as an overhead expense in prices. This argument fails to appreciate the time cost, as well as actual cost, non-residential customers would have to incur to replace their LSLs, and overestimates the incentive non-residential customers have for ensuring the safety of PWSA's drinking water, which is the duty of PWSA, not the customer. Such a stance will likely result in

more non-residential private-side LSLs remaining within PWSA's system than being removed, which will do nothing to eliminate the safety risk to the public.

There is no valid reason to distinguish between residential customer-owned LSLs and non-residential customer-owned LSLs, therefore non-residential customers should be able to avail themselves of benefits comparable to those available to residential customers under PWSA's LSLRP. If PWSA's income-based reimbursement program is ultimately included in its LSLRP, non-residential customers should be permitted to participate in a similar program whereby a stipend of \$1,000 be provided to eligible non-residential customers to offset the costs of private-side LSL replacement.

### III. REPLY ARGUMENT

#### A. The Commission has Jurisdiction Over PWSA's LSLRP

The Authority argued that the Commission does not have jurisdiction to order PWSA to include non-residential customers in PWSA's LSLRP because (1) lead remediation is a water quality issue and the PA DEP, not the PUC, has jurisdiction over water quality issues, and (2) the Public Utility Code makes it clear that a utility's decision to repair or replace a customer's private service line is at the discretion of the utility.<sup>1</sup>

The Commission does have jurisdiction to order changes to PWSA's LSLRP because the Commission has jurisdiction under Section 1501 of the Code to ensure that the Authority provides safe water and wastewater service to its customers.<sup>2</sup> Section 1501 requires that every public utility shall furnish safe service and shall make such repairs as are necessary and proper for the safety of the public and that such service shall be in conformity with orders by the Commission.<sup>3</sup> No party disputes that lead in drinking water poses health risks to the public. The provisions included in PWSA's LSLRP are subject to Commission review, approval, and modification because the Commission is empowered to ensure that those provisions will result in public safety and PWSA's customers receipt of safe water service.

The record in this proceeding supports the conclusion that removal of lead service lines is the only way to eliminate health risks from lead exposure to PWSA's customers.<sup>4</sup> PWSA has already made the decision to replace residential public-side service lines, and has determined that replacing private-side LSLs is worth pursuing. As the Authority has extended its LSLRP to

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<sup>1</sup> See Main Brief of the Pittsburgh Water and Sewer Authority ("PWSA M.B."), at 78.

<sup>2</sup> 66 Pa. C.S. § 1501.

<sup>3</sup> 66 Pa. C. S. §1501.

<sup>4</sup> See UNITED St. No. C-2 SUPP-R, at 9; PWSA Ex. Stip Doc. 1, at 58.



include residential private-side LSLs, the Commission, under Section 1501, has the authority to order that all private-side LSLs be replaced if it concludes that doing so is necessary for public safety.

B. PWSA's Arguments for Excluding Non-Residential Customers from its LSLRP Should Be Rejected

In justification of excluding non-residential customers from its LSLRP, the Authority asserted that residential customers are different from non-residential customers in that PWSA does not have any concern regarding partial LSL replacements for non-residential customers.<sup>5</sup> The OSBA understands PWSA's argument that it is concerned that partial replacements can increase lead levels, but the OSBA believes that PWSA should be concerned about all lead service lines in its system and eliminate all LSLs. Again, the record in this matter supports the conclusion that removal of all lead service lines is the only way to eliminate the health risks posed by LSLs in PWSA's water system.

Additionally, PWSA argued that its decision to replace residential private-side LSLs was partially influenced by the concern that without PWSA support, an unacceptable percentage of private-side LSLs would not be replaced due to customer inability to fund replacement.<sup>6</sup> PWSA contended that for non-residential customers, the cost the customer must incur to replace a private-side LSL should be viewed as a cost of doing business, which can be passed on "as a nominal overhead expense in its prices."<sup>7</sup> Of course, PWSA has provided absolutely no evidence that business customers view their cost of replacing a LSL as a "nominal" expense, or that such replacement would occur absent the expansion of PWSA's LSLRP to business customers. Moreover, PWSA's argument assumes that non-residential customers are as

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<sup>5</sup> PWSA M.B., at 79.

<sup>6</sup> PWSA M.B., at 80.

<sup>7</sup> PWSA M.B., at 80.

motivated as PWSA should be to eliminate LSLs from PWSA's system. As appropriately pointed out in the OCA's main brief, requiring a PWSA customer to replace a private-side LSL "may require a significant time commitment of finding, hiring, and overseeing a qualified contractor."<sup>8</sup> These challenges can be just as daunting for non-residential customers as for residential customers, with the potential added aggravations for non-residential customers of perhaps closing down their business while LSLs are being replaced, or attempting to conduct their business while overseeing the LSL replacement. It is PWSA who not only has the incentive, but also the responsibility, for maintaining safe and reasonable water and wastewater service.<sup>9</sup>

If PWSA replaces residential customer-owned LSLs at no direct cost to the customer, non-residential customers should be afforded the same treatment and benefits afforded under the LSLRP. Further, if PWSA offers other residential customers an income-based reimbursement of their LSL replacement costs under specific circumstances, with a minimum guarantee of a \$1,000 stipend, then non-residential customers facing similar circumstances should be eligible to receive a \$1,000 stipend under PWSA's LSLRP. Therefore, the OSBA respectfully requests the ALJs and Commission direct PWSA to extend its LSLRP to all non-residential customers and replace the customer-owned side of LSLs at no direct cost to the customer. The OSBA further respectfully requests that if PWSA's LSLRP is extended to non-residential customers, and if PWSA's reimbursement proposal is approved, the ALJs and Commission direct that eligible non-residential customers be afforded a \$1,000 stipend to offset the cost of private-side LSL replacements.

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<sup>8</sup> Main Brief of the Office of Consumer Advocate ("OCA M.B."), at 20.

<sup>9</sup> 66 Pa. C.S. §1501.

#### IV. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the ALJs and Commission expand the Authority's LSLRP to include non-residential customers, so that non-residential customers are able to avail themselves of the same benefits available to residential customers under PWSA's LSLRP, and to direct PWSA to provide stipends of \$1,000 to non-residential customers, if and where applicable, through its LSLRP to offset the cost of replacing the private side of their lines.

Respectfully submitted,



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Dated: September 30, 2019

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<b>Term Infrastructure Improvement Plan</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Michelle Naccarati-Chapkis  
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c/o Women for a Healthy Environment  
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DATE: September 30, 2019



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