



COMMONWEALTH OF PENNSYLVANIA

November 18, 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 Re Pittsburgh Water And  
Sewer Authority / Docket Nos. M-2018-2640802, M-2018-2640803**

Dear Secretary Chiavetta:

Enclosed please find the Exceptions to the Recommended Decision, 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, reading "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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**EXCEPTIONS TO THE RECOMMENDED DECISION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: November 18, 2019**

## **I. Introduction**

On September 28, 2018, 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”).

On October 18, 2018, Answers to PWSA’s Petition for Approval of its Compliance Plan were filed by the Office of Small Business Advocate (“OSBA”) and the Office of Consumer Advocate (“OCA”). 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 Pennsylvania Public Utility Commission (“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 (“Directed Questions”) was issued. Corrected versions of the November 27, 2018 Secretarial Letter and Directed Questions 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 the December 27, 2018 Order.

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 LTIP 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. PWSA's uncontested 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. The June 14, 2019 Status Report represented that the parties had, at that point, participated in three full-day settlement workshops, and had four additional full-day settlement workshops scheduled. 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, a Joint Petition for Partial Settlement (“Partial Settlement”) was filed. The OSBA was a signatory to the Partial Settlement.

On September 19, 2019, the OSBA, OCA, I&E, UNITED, and PWSA submitted Main Briefs (respectively, “OSBA MB,” “OCA MB,” “I&E MB,” “UNITED MB,” and “PWSA MB”).

On September 30, 2019, the OSBA submitted its Reply Brief (“OSBA RB”). OCA, I&E, UNITED, and PWSA filed their Reply Briefs on September 30, 2019 as well (respectively, “OCA RB,” “I&E RB,” “UNITED RB,” and “PWSA RB”).

On October 29, 2019, ALJ Hoyer and ALJ Johnson issued their Recommended Decision (“RD”).

The OSBA submits the following Exceptions in response to the RD.

## II. Exceptions

### **Exception No. 1: The ALJs erred by finding that the Commission lacks jurisdiction to order PWSA to replace customer-owned lead service lines (“LSLs”). (RD, at 208)**

The ALJs determined that the Commission lacked jurisdiction to order PWSA to replace customer-owned LSLs. (RD, at 208). In support of this determination, the ALJs noted that no parties offer any specific statutory language or regulation giving the Commission the power to order PWSA to enter upon an owner’s property and replace LSLs without the owner’s consent. (RD, at 208). However, the OSBA, I&E, UNITED, and OCA argued that Sections 1501 and 3205(a) of the Pennsylvania Public Utility Code (the “Code”) provide express authorization for the Commission to address PWSA’s service lines and do not limit that authority to public service lines. (OSBA RB, at 6; I&E RB, at 36-37; UNITED RB, at 13; OCA RB, at 4-5). Section 3205(a) provides that “the [C]ommission may require an authority to maintain, repair and replace facilities and equipment used to provide services under this chapter to ensure that the equipment and facilities comply with section 1501.” (66 Pa. C.S. § 3205). Section 1501 of the Code states 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. (66 Pa.C.S. § 1501).

The ALJs committed an error by interpreting Sections 1501 and 3205(a) to restrict the Commission’s jurisdiction only to PWSA-owned LSLs. According to the rules of statutory construction, “General words shall be construed to take their meanings and be restricted by preceding particular words.” (1 Pa. C.S. § 1903(b)). Neither Section 1501 nor Section 3205(a)

restricts “facilities” or “equipment” to publicly-owned facilities or equipment. The absence of limiting, particular wording preceding “facilities” or “equipment” demonstrates that it was contemplated and intended for the Commission to have general authority over all facilities or equipment used to furnish water service, whether publicly or privately owned. The ALJs erroneously read restricting language into these sections when such language is not, in fact, present.

Additionally, the ALJs’ interpretation that the Code grants the Commission authority to address water service but does not allow the Commission to direct the removal of all lead service lines seems to frustrate the purposes of these sections. No party disputes that lead in drinking water poses health risks to the public. (OSBA RB, at 6). The Commission must be able to require PWSA to repair and replace all LSLs to ensure that PWSA is furnishing and maintaining safe service under Section 1501. Accepting the ALJs’ interpretation of Sections 1501 and 3205(a) would claw back the authority of the Commission and would render the Commission incapable of executing its charge of ensuring utilities are providing safe services.

**Exception No. 2: The ALJs erred by finding that the Commission lacks jurisdiction to order PWSA to include non-residential lead service lines in its Lead Service Line Replacement Program (“LSLR Program”). (RD, at 213)**

As discussed *supra* the Commission has jurisdiction under Sections 1501 and 3205(a) of the Code to order PWSA to replace customer-owned LSLs. The ALJs recommended that the Commission approve PWSA’s LSLR Program, as revised by its Board of Directors on July 26, 2019. (RD, at 209). However, if the Commission adopts the ALJs’ recommendation, it would result in the exclusion of non-residential customers from PWSA’s LSLR Program. The Commission should not exclude non-residential customers from PWSA’s LSLR Program.

Instead, the Commission should direct to Authority (i) to make all service lines eligible for its LSL replacement program, and (ii) to replace what would normally be classified as the “public-side” of such service lines (i.e., the portion of the service line that runs from the water main to the customer’s curb stop) at no charge to the customer. (OSBA MB, at 11, 13; OSBA RB, at 7,8).

As noted in the OSBA’s Main Brief, the safety concern posed by LSLs does not dissipate simply because a customer is classified as non-residential. (OSBA MB, at 10). Section 1501 requires that PWSA maintain safe service and make all repairs as shall be necessary for the safety of its patrons and the public. (66 Pa. C. S. § 1501). PWSA acknowledges that LSLs pose a safety issue but excludes non-residential customers from its LSLR Program. (OSBA MB, at 10). “If LSLs are a public health concern which necessitates their replacement to reduce lead in PWSA’s distribution system, then all LSLs should be eligible for the [LSLR Program].” (OSBA MB, at 11). Non-residential customers should be afforded the same treatment and benefits afforded to residential customers under PWSA’s LSLR Program because the record supports the conclusion that removal of all LSLs is the only way to eliminate the safety risks posed by lead in PWSA’s water system. (OSBA MB, at 11; OSBA RB, at 7).

**Exception No. 3: The ALJs erred in recommending that the Commission approve PWSA’s LSLR Program, as revised by its Board of Directors on July 26, 2019. (RD, at 209)**

The ALJs’ recommendation to approve PWSA’s July 26, 2019 Board-approved LSLR Program should be rejected because the program excludes non-residential customers, which in turn results in a failure to mitigate the safety concerns posed by LSLs, as explained in the previous section.



However, a further implication of the ALJs' recommendation to approve PWSA's LSLR Program is that residential customers will be eligible for income-based reimbursement for private-side LSL replacements initiated by the property owner. (See PWSA Supplemental St. No. C-1SD, at 30-31). If the Commission determines that PWSA's LSLR Program should extend to non-residential customers, and that PWSA's income-based reimbursement program for residential customers should be approved, then non-residential customers should be eligible for reimbursement for traditional private-side replacements under the LSLR Program as well. (OSBA MB, at 11). It is inherently unfair to disqualify non-residential customers from any form of private-side reimbursement, while simultaneously providing reimbursement to residential customers which, under the terms of PWSA's July 26, 2019 Board-approved LSLR Program, would provide over \$1,000 to nearly 75% of all eligible residential customers and stipends of \$1,000 to the remaining 25%. (OSBA MB, at 12).

As noted in the OSBA's Reply Brief, PWSA's contention that non-residential customers should view the cost of replacing private-side LSLs as a "cost of doing business" that can be passed on as an overhead expense in its prices is unsupported by the evidence in the record and ignores the burdens such a position places on small commercial and industrial customers. (OSBA RB, at 6-7). If PWSA offers residential customers an income-based reimbursement of their private-side LSL replacement costs under specific circumstances, then non-residential customers facing similar circumstances should be afforded the same treatment and benefits, and should receive at least a \$1,000 stipend, as that is the minimum amount residential customers are guaranteed under PWSA's LSLR Program. (OSBA RB, at 8).

### **III. Conclusion**

Wherefore, the OSBA respectfully requests that the Commission adopt OSBA  
Exceptions No. 1-3, as set forth above, and revise the Recommended Decision accordingly.

Respectfully submitted,



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Dated: November 18, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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