



November 18, 2019

VIA EFILE

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 Nos. M-2018-2640802, -2640803

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

Dear Secretary Chiavetta,

Please find the **Exceptions of Pittsburgh UNITED**, which are being submitted for filing consistent with the Commission's October 29, 2019 Secretarial Letter in the above noted consolidated proceedings. Copies have been served on all parties of record consistent with the attached Certificate of Service.

Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

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Enc.

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	Docket No.	M-2018-2640802
Public Utility Code Re Pittsburgh	:		M-2018-2640803
Water and Sewer Authority	:		

Petition of the Pittsburgh Water and Sewer	:	Docket No.	P-2018-3005037
Authority for Approval of Its Long-Term	:		P-2018-3005039
Infrastructure Improvement Plan	:		

**Certificate of Service**

I hereby certify that I have this day served copies of the **Exceptions of Pittsburgh UNITED** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

**VIA FIRST CLASS MAIL AND EMAIL**

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**EXCEPTIONS OF PITTSBURGH UNITED**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION .....	1
II. BACKGROUND .....	3
A. Lead Contamination in Drinking Water Distributed by PWSA .....	3
B. Act 65.....	7
C. PWSA’s Compliance Plan and LTIP.....	8
D. The Litigation.....	12
E. The Recommended Decision .....	13
III. EXCEPTIONS .....	14
A. Pittsburgh UNITED Exception 1: The Recommended Decision erred as a matter of law in concluding that the Commission lacks jurisdiction to review PWSA’s income-based reimbursement program.....	14
1. The Recommended Decision mischaracterizes the relief sought by Pittsburgh UNITED, I&E, and OCA .....	14
2. The Recommended Decision ignores the Public Utility Code provisions that grant the Commission jurisdiction over PWSA’s service delivery and programming.....	16
a. Act 65 gives the Commission jurisdiction to determine whether PWSA’s plans for replacing private-side lead service lines will ensure safe service .....	16
b. Act 120 gives the Commission jurisdiction to review PWSA’s plans to use ratepayer funds for replacing customer-owned lead service lines.....	20
3. The Recommended Decision misconstrues the Lead and Copper Rule’s relationship to the Commission’s jurisdiction .....	22
B. Pittsburgh UNITED Exception 2: The Recommended Decision erred by approving PWSA’s 2019 Lead Service Line Replacement Policy without considering any record evidence.....	24

C.	Pittsburgh UNITED Exception 3: The Recommended Decision erred in making several findings of fact that are inaccurate or incomplete .....	31
IV.	CONCLUSION.....	36

## TABLE OF AUTHORITIES

### Cases

#### *Pennsylvania Supreme Court*

<u>Civil Serv. Comm’n, City of Philadelphia v. Eckles,</u> 103 A.2d 761 (Pa. 1954) .....	19
<u>Elkin v. Bell Tel. Co. of Pa.,</u> 420 A.2d 371 (Pa. 1980) .....	16
<u>Overlook Dev. Co. v. Pub. Serv. Comm’n,</u> 158 A. 869 (Pa. 1932) .....	18

#### *Pennsylvania Commonwealth Court*

<u>Krichmar v. State Bd. of Vehicle Mfgs., Dealers &amp; Sales Persons,</u> 850 A.2d 861 (Pa. Commw. Ct. 2004) .....	19
<u>Petition of Borough of Boyertown,</u> 466 A.2d 239 (Pa. Commw. Ct. 1983) .....	18
<u>Pickford v. PUC,</u> 4 A.3d 707 (Pa. Commw. Ct. 2010) .....	23

#### *Pennsylvania Superior Court*

<u>Flynn v. Casa Di Bertacchi Corp.,</u> 674 A.2d 1099 (Pa. Super. Ct. 1996) .....	24
---	----

#### *Pennsylvania Public Utility Commission*

<u>Farnsworth v. Verizon Penn. Inc.,</u> Docket No. C-20016223 (Op. and Order entered Apr. 12, 2002) .....	24
<u>In re Application of PPL Elec. Utils. Corp. for Approval of the Siting &amp; Reconstruction of the Proposed Coopersburg #1 and #2 138/69 kV Tap,</u> Docket Nos. A-2008-2022941 et al. (Op. and Order entered July 24, 2009) .....	25
<u>Petition of PGW for Approval of Demand-Side Management Plan for FY 2016-2020,</u> Docket No. P-2014-2459362 (Order entered Aug. 4, 2016) .....	20
<u>Petition of Pennsylvania-American Water Co., Order,</u> Docket No. P-2017-2606100 (Order entered Oct. 3, 2019) .....	19

<u>Petition of Pennsylvania-American Water Co., Recommended Decision</u>	
Docket No. P-2017-2606100 (Order entered Aug. 7, 2019).....	19
<u>Petition of York Water Co., Order,</u>	
Docket No. P-2016-2577404 (Order entered Mar. 8, 2017).....	19, 27
<u>Petition of York Water Co., Recommended Decision,</u>	
Docket No. P-2016-2577404 (Order entered Feb. 2, 2017) .....	19
<u>Pickford v. Pa. Am. Water Co.,</u>	
Docket Nos. C-20078029 et al. (Op. and Order entered Mar. 20, 2008).....	22, 23
<u>PUC v. Mercer Gas,</u>	
Docket No. R-80091297 (Op. and Order entered Aug. 21, 1981).....	18
<u>PUC v. Pa. Gas &amp; Water Co.,</u>	
Docket Nos. R-850178 et al., (Op. and Order entered Apr. 24, 1986) .....	17
<u>PUC v. PWSA, Order,</u>	
Docket Nos. R-2018-3002645, -3002647 (Order entered Feb. 27, 2019) .....	19
<u>PUC v. PWSA, Recommended Decision,</u>	
Docket Nos. R-2018-3002645, -3002647 (Order entered Jan. 17, 2019).....	8
<u>PUC v. Clean Treatment Sewage Co.,</u>	
Docket Nos. C-2009-2125411 et al. (Op. and Order entered Apr. 22, 2010).....	22, 23
<u>PUC v. UGI Utils., Inc. – Gas Division,</u>	
Docket No. R-2018-3006814 (Order entered Sept. 19, 2019) .....	20
<u>Young &amp; Haros, LLC v. Metro. Edison Co.,</u>	
Docket No. C-2013-2355974 (Op. and Order entered May 22, 2014) .....	25

## State Statutes

52 Pa. Code § 121.4(d)-(e).....	25
66 Pa. C.S. § 102.....	18
66 Pa C.S. §§ 332(a) .....	25
66 Pa. C.S. § 1301.....	20
66 Pa. C.S. § 1311(b).....	20, 21



66 Pa. C.S. § 1352(a) .....	17
66 Pa. C.S. § 1501.....	16
66 Pa. C.S. § 3202(a)(1).....	7
66 Pa. C.S. § 3204.....	7, 8, 17
66 Pa. C.S. § 3205.....	18

### **Federal Regulations**

40 C.F.R. § 141.84(d) .....	22
-----------------------------	----

### **Pennsylvania Public Utility Commission Orders**

Implementation of Ch. 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, <u>Final Implementation Order</u> , Docket Nos. M-2018-2640802, -2640803 (order entered Mar. 15, 2018) .....	7, 8
Implementation of Act 120 of 2018, <u>Joint Motion of Chairman Gladys Brown Dutrieuille and Commissioner John F Coleman, Jr.</u> , Docket No. M-2019-3013286 (Oct. 3, 2019) .....	21
PUC, <u>Secretarial Letter – Implementation of Act 120 of 2018</u> , Docket No. M-2019-3013286 (Oct. 24, 2019) .....	21
PUC, <u>Secretarial Letter – Assignment of the Pittsburgh Water and Sewer Authority Compliance Plan to the Office of Administrative Law Judge (Corrected)</u> , Docket Nos. M-2018-2640802, -2640803 (Nov. 28, 2018) .....	22

### **Other Authorities**

House Co-Sponsorship Memoranda for HB 1490, PA House of Representatives Session 2017- 18, Regular Session, May 24, 2017 .....	7
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## **I. INTRODUCTION**

The Pittsburgh Water and Sewer Authority (PWSA) is delivering drinking water to thousands of customers through corroding lead service lines, placing those customers at risk of drinking and cooking with contaminated water. PWSA failed to prevent a spike in lead levels that first gained widespread attention in 2016. Three years later, it has yet to control lead release from its facilities and reliably deliver safe water to all its customers.

The Public Utility Commission's expertise and intervention are needed to resolve a dispute in this case regarding PWSA's lead service line replacement programming, a critical aspect of its efforts to restore safe service. Ensuring the safety of utility service is a core statutory function of the Commission. The state legislature recently brought PWSA under the Commission's jurisdiction in part so that the Commission could fulfill that function and help address the lead crisis that continues to deprive PWSA customers of safe service.

PWSA's plans for lead service line replacement will not address serious health risks from private-side lead service lines. This is because PWSA wants to implement an income-based reimbursement program that will require customers to pay thousands of dollars up front for lead service line replacements. Unlike programs from other utilities, PWSA will not conduct or coordinate the replacements. Individual customers must contract for the replacements themselves and then attempt to obtain reimbursement from PWSA. The program will disadvantage low income customers and people of color, who are among the most at risk from PWSA's lead-contaminated drinking water, and are least likely to be able to afford the substantial up-front costs of pipe replacement. The Bureau of Investigation and Enforcement (I&E), Office of Consumer Advocate (OCA), and Pittsburgh UNITED all submitted extensive expert testimony opposing PWSA's income-based reimbursement program. Nevertheless, PWSA seeks the Commission's approval to push ahead with this ineffective and inefficient program.

The Recommended Decision by the ALJs endorsed many of PWSA's arguments and wrongly concluded that the Commission lacks jurisdiction to review and reject PWSA's income-based reimbursement program. In doing so, the Recommended Decision ignored the provisions of the Public Utility Code that vest the Commission with authority to ensure that PWSA provides safe service and that its ratepayer-funded programming is just, reasonable, and non-discriminatory.

The Recommended Decision also erred in calling for the Commission to approve PWSA's flawed lead service line replacement policy. The ALJs did not consider any of the substantial evidence submitted by Pittsburgh UNITED, I&E, and OCA demonstrating that PWSA's proposed income-based reimbursement program will not ensure safe service and is not a reasonable use of ratepayer funds. The Recommended Decision also made several findings of fact that are not supported by the record.

The Commission has jurisdiction to review PWSA's plans for replacing private-side lead service lines. It should find that substantial evidence demonstrates that PWSA's plans for private-side lead service line replacement—particularly its income-based reimbursement program—will not ensure safe service. Pittsburgh UNITED respectfully requests that the Commission reject PWSA's income-based reimbursement program and order PWSA to develop a different plan for replacing private-side lead service lines that will ensure safe service for all customers. As discussed below and in Pittsburgh UNITED's Main Brief, that plan should offer free, utility-initiated lead service line replacements.

## **II. BACKGROUND**

### **A. Lead Contamination in Drinking Water Distributed by PWSA**

Lead is a dangerous neurotoxin.<sup>1</sup> It can harm nearly all of the body's functions and organs and is particularly damaging to the neurological and cardiovascular system.<sup>2</sup> Pittsburgh UNITED's expert witness Dr. Bruce Lanphear, a medical doctor, clinician scientist, and university professor with over 20 years of research on lead exposure, testified that "fetuses, infants, and children are uniquely vulnerable to lead toxicity."<sup>3</sup> "[T]here is no safe level of exposure to lead."<sup>4</sup>

Residential tap water monitoring has revealed consistently elevated lead levels in PWSA's drinking water since at least June 2016.<sup>5</sup> Lead enters PWSA's drinking water primarily through thousands of corroding lead service lines.<sup>6</sup> Lead release can occur from either the "public side" of a lead service line (the portion of the service line between the water main and the curb box) or the "private side" (the portion between the curb box and the residence).<sup>7</sup> Thus, public- and private-side lead service lines both present a risk to the health of PWSA's customers.<sup>8</sup>

The health risks from lead-contaminated drinking water are not evenly distributed amongst PWSA's customers. Poor, Black, and Latinx Pittsburghers face a disproportionate risk of lead exposure. This is in part because they are more likely to live in older housing and rental

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<sup>1</sup> Pittsburgh UNITED St. C-3, at 6.

<sup>2</sup> Id. at 8.

<sup>3</sup> Id. at 6-7.

<sup>4</sup> Id. at 11.

<sup>5</sup> See Pittsburgh UNITED St. C-2, at 8; Pittsburgh UNITED St. C-2SUPP-R, at 8.

<sup>6</sup> Pittsburgh UNITED St. C-2, at 6. Galvanized service lines and interior plumbing, lead solder, and lead-bearing internal fixtures are other potential sources of drinking water lead contamination, though they are generally a less significant source than lead service lines. Id. at 6 n.7.

<sup>7</sup> Id. at 9, 18.

<sup>8</sup> Pittsburgh UNITED St. C-3, at 21.

housing, and that housing is more likely to have lead pipes, lead-bearing interior plumbing, and lead paint.<sup>9</sup>

PWSA adds chemicals to its water to reduce the corrosion of lead pipes. In 2014, PWSA unlawfully changed its corrosion control treatment system without obtaining approval from the Pennsylvania Department of Environmental Protection (DEP) or following the multi-step process required by the federal Lead and Copper Rule.<sup>10</sup> In June 2016, PWSA reported that its tap water samples exceeded the federal “lead action level” when 10 percent of those samples contained lead concentrations above 15 parts per billion.<sup>11</sup> PWSA’s lead levels have remained alarmingly high, including in the most recent monitoring period during which PWSA reported its fifth exceedance of the lead action level in three years.<sup>12</sup>

PWSA’s initial response to elevated lead levels violated state and federal law. PWSA failed to compile a comprehensive inventory of its lead service lines, failed to complete the minimum number of lead service line replacements, and failed to follow proper notice or post-replacement sampling procedures at numerous homes where it performed partial lead service line replacements.<sup>13</sup> Partial lead service line replacements occur when PWSA removes the public side but not the private side of a lead service line. Partial replacements can cause dangerous spikes in tap water lead levels by disturbing the protective internal pipe coating (called “scale”) that can otherwise help to reduce lead exposure at the tap.<sup>14</sup> Tap water sampling confirms that

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<sup>9</sup> *Id.* at 7-8, 13; Pittsburgh UNITED St. C-3SUPP-R, at 4-5.

<sup>10</sup> Pittsburgh UNITED St. C-2, Appendix C, 3, DEP Consent Order ¶¶ G.

<sup>11</sup> Pittsburgh UNITED St. C-2, at 8. For an explanation of the lead action level and monitoring requirements under the Lead and Copper Rule, see Pittsburgh UNITED Main Br. at 4-5.

<sup>12</sup> Pittsburgh UNITED St. C-2, at 8; Pittsburgh UNITED St. C-2SUPP-R, at 8.

<sup>13</sup> Pittsburgh UNITED St. C-2, Appendix C, 5-7, DEP Consent Order ¶¶ P-W; see also Pittsburgh UNITED Main Br. at 6-7.

<sup>14</sup> Pittsburgh UNITED St. C-2 at 9-10, 22-24; Pittsburgh UNITED C-3, at 19-21.

these post-replacement spikes have occurred at the homes of PWSA customers.<sup>15</sup>

In November 2017, PWSA and DEP entered into a Consent Order and Agreement (Consent Order). The Consent Order contained three main provisions. First, it set out a process for optimizing PWSA’s corrosion control treatment.<sup>16</sup> Second, the Consent Order obligated PWSA to create an inventory of residential lead service lines by December 31, 2020.<sup>17</sup> Third, it established a minimum number of lead service lines PWSA must replace each year.<sup>18</sup> That lead service line replacement requirement will end when PWSA’s tap water monitoring results fall below the lead action level in two consecutive six-month monitoring periods.<sup>19</sup>

After entering into the Consent Order with DEP, PWSA reformed its approach to lead service line replacement. PWSA began conducting most lead service line replacements through a neighborhood-based program.<sup>20</sup> Using historical records and inspection results, PWSA identifies homes in contiguous multi-block areas likely to have public-side lead service lines.<sup>21</sup> For homes with “full lead service lines”—where both the public- and private-side service lines are made of lead—PWSA seeks authorization from the property owner to replace the private-side lead service line at the same time it replaces the public-side line, at no direct cost to the customer.<sup>22</sup>

By offering free private-side replacements, PWSA has increased the number of full lead service lines replaced—removing more lead from its system—while also avoiding dangerous

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<sup>15</sup> Pittsburgh UNITED St. C-3, at 19-21.

<sup>16</sup> Pittsburgh UNITED St. C-2, Appendix C, 11-13, DEP Consent Order ¶ 3.b.

<sup>17</sup> Pittsburgh UNITED St. C-2, Appendix C, 13-14, DEP Consent Order ¶ 3.c.ii, c.iii; see also Pittsburgh UNITED Main Br. at 7.

<sup>18</sup> Pittsburgh UNITED St. C-2, Appendix C, 14, DEP Consent Order ¶ 3.d, 3.e.i, e.ii; see also Pittsburgh UNITED Main Br. at 7-8.

<sup>19</sup> Pittsburgh UNITED St. C-2, Appendix C, 14-15, DEP Consent Order ¶ 3.e.ii.

<sup>20</sup> See LTIIP, at 28 (“LSLR Program” in Table 2-7 refers to the neighborhood-based program); PWSA St. C-1, at 51. PWSA also replaces lead service lines in response to water main and service line leaks and through its Community Environmental Project. Pittsburgh UNITED St. C-2, at 11.

<sup>21</sup> Pittsburgh UNITED St. C-2, at 10.

<sup>22</sup> Id. at 10, 35.

partial replacements. The neighborhood-based approach also takes advantage of economies of scale and avoids repeatedly digging up streets and sidewalks because contractors deploy to each work order area only once, replacing all public-side-only and full lead service lines at the same time.<sup>23</sup> Though an effective approach on the whole, the neighborhood-based based program does have two significant gaps. It removes lead service lines only in work order areas, which cover a limited portion of PWSA's service area. In addition, it does not replace private-side-only lead service lines (where the private side is lead and the public side is non-lead). By 2020, the program will leave about 2,000 such lines in the ground in work order areas.<sup>24</sup>

Under the terms of the Consent Order, PWSA also changed its corrosion control treatment. With DEP's approval, PWSA began adding orthophosphate, a corrosion-inhibiting chemical, to its water in April 2019.<sup>25</sup> Over time, orthophosphate should help form a stable protective scale on the inside of lead pipes that will reduce corrosion. But it may be up to a year before orthophosphate brings lead levels consistently below the action level and several years before it takes full effect.<sup>26</sup> Even then, the protective scale can be disrupted at any time by changes in water treatment or the chemistry of source water, or by surface or underground vibrations from construction in streets or customers' yards.<sup>27</sup>

The persistent, elevated lead levels in PWSA's drinking water indicate that PWSA has yet to control the corrosion of its lead service lines, and PWSA customers remain at risk of exposure to lead-contaminated drinking water.<sup>28</sup>

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<sup>23</sup> Id. at 27.

<sup>24</sup> Pittsburgh UNITED Main Br. at 23-25.

<sup>25</sup> PWSA St. C-1SD, at 23.

<sup>26</sup> Pittsburgh UNITED St. C-2, at 16-17.

<sup>27</sup> Id.

<sup>28</sup> Pittsburgh UNITED St. C-3SUPP-R, at 6; Pittsburgh UNITED St. C-2SUPP-R, at 8-9; supra, at 3-4.

## **B. Act 65**

It was against the backdrop of high lead levels in 2016 and 2017 and PWSA's initial, deficient response that the Pennsylvania state legislature brought PWSA under the Commission's jurisdiction. In November 2017, the Auditor General identified "an urgent need to move swiftly to stabilize [PWSA's] deteriorating infrastructure in order to eliminate current health hazards, such as lead-tainted water."<sup>29</sup> Similarly, the Mayor's Blue Ribbon Panel observed in December 2017 that PWSA's "system failures and deficiencies" including "non-compliance with limits on lead in drinking water" had resulted in a loss of public trust and "a sense of crisis."<sup>30</sup> The Pennsylvania House of Representatives Co-Sponsorship Memorandum for the bill that would become Act 65 explained that moving PWSA under the Commission's jurisdiction was "about providing necessary help to protect the health and safety of those citizens relying on PWSA for provision of clean water."<sup>31</sup>

On December 21, 2017, Governor Wolf signed Act 65, adding Chapter 32 to the Public Utility Code and establishing the process by which the Commission would assume jurisdiction over PWSA.<sup>32</sup> Commission jurisdiction took effect on April 1, 2018.<sup>33</sup> Act 65 directed PWSA to file a tariff within 90 days, and a Compliance Plan and Long-Term Infrastructure Improvement Plan (LTIIP) within 180 days.<sup>34</sup>

PWSA filed a petition for approval of its tariff later that year in July. Pittsburgh UNITED

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<sup>29</sup> PWSA St. C-1SD, Stip Doc-3, at 18.

<sup>30</sup> PWSA St. C-4, Ex. RAW-C-4, at 3.

<sup>31</sup> House Co-Sponsorship Memoranda for HB 1490, PA House of Representatives Session 2017-18, Regular Session, May 24, 2017, available at <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20170&cosponId=23989>.

<sup>32</sup> Act of Dec. 21, 2017, Pub. L. No. 1208, No. 65; Implementation of Ch. 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order, Docket Nos. M-2018-2640802, -2640803, at 1 (order entered Mar. 15, 2018).

<sup>33</sup> 66 Pa. C.S. § 3202(a)(1).

<sup>34</sup> Id. § 3204(a)-(b).



intervened in the rate case proceeding and presented testimony regarding affordability, customer service, and lead remediation. The parties reached a settlement, which the Commission approved in February 2019. Among other provisions, the settlement established requirements for PWSA's lead remediation efforts in 2019, including terms covering public- and private-side lead service line removal.<sup>35</sup>

PWSA's lead remediation plans for 2020 and beyond were reserved for the Compliance Plan and LTIP proceeding. These plans must "adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service" to PWSA customers.<sup>36</sup> The Commission also explicitly directed "PWSA to develop and propose a *comprehensive plan* to address lead levels in its water supply *and the replacement of lead service lines*" as part of its Compliance Plan and LTIP.<sup>37</sup>

### **C. PWSA's Compliance Plan and LTIP**

The dispute over PWSA's Compliance Plan and LTIP revolves around three of PWSA's lead service line replacement programs: the neighborhood-based program, the small-diameter water main replacement program, and the income-based reimbursement program. The neighborhood-based program, described above, is effective, but PWSA intends to terminate it in 2020. The small-diameter water main program, which PWSA is ramping up in 2020, is only a partial substitute for the neighborhood-based program; standing alone, it will not remove lead service lines from PWSA's system for another three decades. And PWSA's third program, the income-based reimbursement program, will not meaningfully accelerate lead service line

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<sup>35</sup> PUC v. PWSA, Recommended Decision, Docket Nos. R-2018-3002645, -3002647, at 11-17, § III.C.1 (order entered Jan. 17, 2019).

<sup>36</sup> 66 Pa. C.S. § 3204(a)-(b).

<sup>37</sup> Implementation of Ch. 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order, Docket Nos. M-2018-2640802, -2640803, at 32 (order entered Mar. 15, 2018) (emphasis added).

replacements because of its severe design flaws, including its disproportionate exclusion of low income customers and people of color.

PWSA filed its proposed Compliance Plan and LTIP on September 28, 2018. The plans include a description of how the utility intends to address lead contamination between 2020 and 2026. PWSA says it wants to eliminate its neighborhood-based lead service line replacement program in 2020.<sup>38</sup> This is despite the neighborhood-based program's success in removing several thousand public- and private-side lead service lines and in lowering program costs.<sup>39</sup> PWSA instead plans to conduct most lead service line replacements through a small-diameter water main replacement program.<sup>40</sup> When PWSA replaces a small-diameter water main running down a street, it will replace at the same time all public-side service lines attached to the main and any private-side lead service lines attached to those public-side lines.<sup>41</sup>

But the scope of the small-diameter water main replacement program is limited. By 2026, PWSA will have replaced only 138 of the approximately 720 miles of small-diameter water main in PWSA's system.<sup>42</sup> About 580 miles of mains, or approximately 80 percent of PWSA's total small-diameter water mains, will not be removed. PWSA estimates that each mile of water main has about 41 lead service lines connected to it.<sup>43</sup> Thus, unless PWSA expands its lead service line replacement efforts, come 2026, thousands of customers will still have lead service lines.<sup>44</sup> Even if PWSA continues to replace small-diameter water mains at the same rate after 2026—which it has not committed to do—it will still take about 30 years replace the rest of PWSA's

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<sup>38</sup> Pittsburgh UNITED St. C-2, at 12.

<sup>39</sup> Pittsburgh UNITED Main Br. at 36-39.

<sup>40</sup> Pittsburgh UNITED St. C-2, at 12.

<sup>41</sup> Pittsburgh UNITED St. C-2SUPP-R, at 2-3.

<sup>42</sup> Id. at 4.

<sup>43</sup> Id.

<sup>44</sup> See id.; Pittsburgh UNITED Main Br. at 23-25; Pittsburgh UNITED Reply Br. at 8-9.

small-diameter mains and the lead service lines attached to them.<sup>45</sup>

Pittsburgh UNITED submitted comments on the Compliance Plan and the LTIIP, highlighting deficiencies in PWSA's plans and recommending improvements. Pittsburgh UNITED then intervened in this proceeding to protect its members' interest in safe and affordable drinking water. The parties filed extensive testimony and engaged in settlement negotiations.

In July 2019, PWSA's Board of Directors adopted a new Lead Service Line Replacement Policy.<sup>46</sup> That policy introduced an additional lead service line replacement program, purportedly to supplement the small-diameter water main replacement program described in the Compliance Plan and LTIIP.<sup>47</sup> Under this new income-based reimbursement program, PWSA will not initiate or conduct lead service line replacements. Instead, customers are expected to identify a contractor themselves and pay for the private-side service line replacement up front.<sup>48</sup> PWSA estimates that the average cost to a customer replacing a private-side lead service line is \$5,500.<sup>49</sup>

After coordinating and paying for the replacement, the customer can then apply to PWSA for a reimbursement. The amount of the reimbursement depends on the customer's income.<sup>50</sup> The chart below summarizes PWSA's proposed reimbursements:<sup>51</sup>

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<sup>45</sup> Pittsburgh UNITED St. C-2, at 26 & n.110.

<sup>46</sup> PWSA St. C-1SD, Ex. RAW-C-46.

<sup>47</sup> Id. ¶ 4.10.

<sup>48</sup> PWSA St. C-1RJ, at 9.

<sup>49</sup> Id. at 6

<sup>50</sup> PWSA St. C-1SD, at 30-31.

<sup>51</sup> Pittsburgh UNITED St. C-1SUPP-R, at 4.

**Table 1: Proposed Reimbursement Amounts**

<b>Income Level</b>	<b>Reimbursement Amount</b>	<b>Average Expected Customer Contribution, after Reimbursement</b>
< 300% of the Federal Poverty Level (FPL)	100% of the cost of the replacement	\$0
301-400% of the FPL	75% of the cost of the replacement	\$1,375
401-500% of the FPL	50% of the cost of the replacement	\$2,750
> 500% of the FPL	\$1,000 stipend	\$4,500

After PWSA submitted additional testimony describing this income-based reimbursement program, expert witnesses for Pittsburgh UNITED, I&E, and OCA all voiced opposition to PWSA’s proposal.<sup>52</sup> They explained that PWSA’s proposal will harm low and moderate income residents because those customers cannot afford to pay thousands of dollars up front to replace their lead service lines.

After extensive negotiations, the parties reached a proposed partial settlement that rectifies some of the shortcomings of the Compliance Plan and LTIIP. Most importantly, PWSA must develop a plan to replace all public- and private-side lead service lines in its system by 2026.<sup>53</sup> The parties proceeded to litigation regarding PWSA’s income-based reimbursement program and its decision to terminate the neighborhood-based program.

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<sup>52</sup> I&E St. 4-RS, at 2-8; OCA St. 2R-Supp, at 1-7; Pittsburgh UNITED St. C-1SUPP-R, at 2-17; Pittsburgh UNITED St. C-2SUPP-R, at 1-9; Pittsburgh UNITED St. C-3SUPP-R, at 1-7.

<sup>53</sup> Recommended Decision at 51-52 (Partial Settlement ¶ III.QQ.2).

#### **D. The Litigation**

Pittsburgh UNITED, I&E, and OCA opposed PWSA's proposed income-based reimbursement program because substantial evidence shows that it will not ensure safe service. Severe flaws in program structure render it an unjust, unreasonable, and discriminatory approach, as described in more detail below.<sup>54</sup> Pittsburgh UNITED, I&E, and OCA all argued that the Commission should reject the income-based reimbursement program and direct PWSA to develop a different plan for replacing lead service lines at no direct cost to individual customers.<sup>55</sup> Pittsburgh UNITED contended that, until PWSA offers up a plan (1) that does not utilize reimbursements, (2) that offers free lead service line replacements, and (3) that relies on PWSA to schedule and coordinate replacements, the Commission should direct it to continue its effective neighborhood-based lead service line replacement program.<sup>56</sup>

PWSA acknowledged that its income-based reimbursement program would deter some customers from seeking lead service line replacements, but defended the program on the grounds that it would be less expensive than offering free private-side lead service line replacements.<sup>57</sup> PWSA also maintained that the Commission lacked jurisdiction to even review the program for two reasons. First, it contended that DEP has exclusive jurisdiction over PWSA's lead remediation plans because lead contamination is a matter of "water quality" not "water service."<sup>58</sup> Second, PWSA argued that the Commission cannot order PWSA to replace private-side lead service lines because they are owned by customers.<sup>59</sup> PWSA asked the Commission to

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<sup>54</sup> *Infra*, at § III.B.

<sup>55</sup> Pittsburgh UNITED Main Br. at 28-40; I&E Main Br. at 74-95; OCA Main Br. at 15-28.

<sup>56</sup> Pittsburgh UNITED Main Br. at 36-39; Pittsburgh UNITED Reply Br. at 8-10.

<sup>57</sup> PWSA St. C-1RJ, at 15; PWSA St. C-1SD, at 32; PWSA Main Br. at 74-75.

<sup>58</sup> PWSA Main Br. at 65-69.

<sup>59</sup> *Id.* at 69-72.

approve its proposed Compliance Plan and LTIPP, including the 2019 July Lead Service Line Replacement Policy, without ordering changes to its income-based reimbursement program.<sup>60</sup>

#### **E. The Recommended Decision**

The Recommended Decision by the ALJs concluded that the terms of the proposed partial settlement, including those regarding lead, are in the public interest. It recommended approving the settlement without modification.<sup>61</sup>

Turning to the parties' dispute regarding PWSA's income-based reimbursement program, the Recommended Decision rejected PWSA's first jurisdictional challenge. It observed that "water quality and water service are inseparable in this proceeding" and concluded that § 1501 and § 3205 of the Public Utility Code granted the Commission "jurisdiction over PWSA's water service."<sup>62</sup> The Recommended Decision, however, found that the "Commission lacks jurisdiction to order PWSA to replace customer-owned lead lines."<sup>63</sup> It said that Pittsburgh UNITED, I&E, and OCA did not offer "any specific statutory language or regulation which give[s] the Commission the power to order PWSA to enter upon an owner's property and replace lead service lines without the owner's consent."<sup>64</sup> It also noted that the Lead and Copper Rule does not require PWSA to replace private-side lead service lines.<sup>65</sup>

The precise scope of the Recommended Decision's jurisdictional findings is unclear. It is likely that the ALJs held that they lacked jurisdiction to review PWSA's July 2019 Lead Service Line Replacement Policy altogether. However, given the ALJs' ultimate recommendation that

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<sup>60</sup> Id. at 85-86.

<sup>61</sup> Recommended Decision at 79-86.

<sup>62</sup> Id. at 207-08.

<sup>63</sup> Id. at 208.

<sup>64</sup> Id.

<sup>65</sup> Id. at 208-09.

the Commission approve the policy—a finding that could only be made with jurisdiction to review the program—it is possible that the ALJs intended to hold only that the Commission cannot order PWSA to enter the homes of non-consenting customers to replace their lead lines.<sup>66</sup> But even if the ALJs intended to make this narrower finding, they still recommended that the Commission approve PWSA’s program without discussing any of the parties’ extensive testimony or arguments showing that the program will not ensure safe service, will not be a just or reasonable use of ratepayer funds, and will have a discriminatory result by disproportionately excluding low income customers and people of color.

Either jurisdictional finding is wrong, as is the ALJs’ ultimate recommendation to approve PWSA’s program, as Pittsburgh UNITED explains below.

### **III. EXCEPTIONS**

#### **A. Pittsburgh UNITED Exception 1: The Recommended Decision erred as a matter of law in concluding that the Commission lacks jurisdiction to review PWSA’s income-based reimbursement program**

The Public Utility Code vests the Commission with jurisdiction over PWSA’s plans for replacing lead service lines, including its income-based reimbursement program. Pittsburgh UNITED, I&E, and OCA explained that statutory authority in their briefs to the ALJs.<sup>67</sup> The Recommended Decision, however, mischaracterizes the relief sought by those parties, ignores relevant provisions of the Public Utility Code giving this Commission authority to review PWSA’s program, and misconstrues the federal Lead and Copper Rule’s relationship to the Commission’s jurisdiction.

##### *1. The Recommended Decision mischaracterizes the relief sought by Pittsburgh UNITED, I&E, and OCA*

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<sup>66</sup> *Id.* at 209.

<sup>67</sup> I&E Reply Br. at 36-39; OCA Reply Br. at 9-11; Pittsburgh UNITED Reply Br. at 13-15.

The Recommended Decision states that Pittsburgh UNITED, I&E, and OCA did “not offer any specific statutory language or regulation which give[s] the Commission the power to order PWSA to enter upon an owner’s property and replace lead service lines without the owner’s consent.”<sup>68</sup> But no party is asking the Commission to direct PWSA to replace lead service lines without customer consent. Pittsburgh UNITED seeks a Commission order rejecting PWSA’s income-based reimbursement program and directing PWSA to develop a program for replacing private-side lead service lines that is just, reasonable, and nondiscriminatory.<sup>69</sup> None of the improvements advocated by Pittsburgh UNITED, I&E, or OCA involve PWSA forcing its way into customers’ homes and removing lead service lines against their will. In fact, in the proposed partial settlement, the parties acknowledge that PWSA may not be able to replace all lead lines in its system because some customers may refuse a private-side replacement.<sup>70</sup>

The Recommended Decision also mistakenly describes the legal question at issue in this proceeding as whether the Commission has “jurisdiction to order PWSA to replace customer-owned lead lines.”<sup>71</sup> The Commission does have that authority under § 1501 and § 3205, as described below. The Commission, however, need not exercise that authority in this proceeding because PWSA has already agreed to replace all private-side lead service lines in its system.<sup>72</sup> The parties’ disagreement concerns one of the ways PWSA proposes to conduct those replacements: namely, its income-based reimbursement program. Thus, the jurisdictional question at issue is whether the Commission has authority to review PWSA’s income-based reimbursement program, determine whether it will ensure safe service for all customers and is a

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<sup>68</sup> Recommended Decision at 208.

<sup>69</sup> See Pittsburgh UNITED Main Br. at 39-40; Pittsburgh UNITED Reply Br. at 6-10.

<sup>70</sup> Recommended Decision at 51 (Partial Settlement ¶ III.QQ.2).

<sup>71</sup> Recommended Decision at 208.

<sup>72</sup> Id. at 51-52 (Partial Settlement ¶ III.QQ.2); id. at 17 (Finding of Fact No. 55); PWSA St. C-1RJ at 9-10.



reasonable use of ratepayer funds, and order modifications to that program if necessary. As explained below, the Public Utility Code provides that authority.

2. *The Recommended Decision ignores the Public Utility Code provisions that grant the Commission jurisdiction over PWSA's service delivery and programming*

The Recommended Decision overlooks the “specific statutory language” conferring jurisdiction on the Commission to review PWSA’s plans for private-side lead service line replacement.<sup>73</sup> In addition to the Commission’s general authority to oversee all aspects of service delivery by public utilities (including PWSA) conferred by 66 Pa. C.S. § 1501,<sup>74</sup> the Commission also derives a more explicit jurisdiction over PWSA from Act 65, which authorizes the Commission to ensure that PWSA provides safe service, and from Act 120, which requires the Commission to review and approve utilities’ proposals for replacing private-side lead service lines with ratepayer dollars.

- a. Act 65 gives the Commission jurisdiction to determine whether PWSA’s plans for replacing private-side lead service lines will ensure safe service

The Commission has the authority to review and order changes to PWSA’s private-side lead service line replacement plans, and it can also order PWSA to replace private-side lead service lines when necessary to ensure safe service. Under § 1501 of the Public Utility Code, all utilities must provide their customers with safe and reasonable service.<sup>75</sup> Act 65, which enacted Chapter 32 of the Public Utility Code, gives the Commission tools to specifically hold PWSA

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<sup>73</sup> See Recommended Decision at 208.

<sup>74</sup> See also Elkin v. Bell Tel. Co. of Pa., 420 A.2d 371, 375 (Pa. 1980) (noting that the Commission has “rather extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services”).

<sup>75</sup> 66 Pa. C.S. § 1501. Section 1501 states, “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.”

accountable to that safe service standard. Section 3204, for instance, requires PWSA to submit to the Commission for review a Compliance Plan and LTIP that “adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service.”<sup>76</sup> The LTIP must also include measures “to ensure that the plan is cost effective.”<sup>77</sup>

In this proceeding, the Commission must decide whether PWSA’s Compliance Plan and LTIP satisfy those standards and whether to order revisions if they fall short.<sup>78</sup> The Commission “can specifically direct” PWSA “to incorporate a particular infrastructure improvement project in the new or revised” LTIP if the Commission deems the project “necessary and in the public interest.”<sup>79</sup>

In assessing whether a utility provides adequate and safe service to its customers, the Commission has observed that “*every* customer is entitled to water that is fit for basic domestic purposes; e.g., cooking, drinking, washing, and bathing.”<sup>80</sup> Here, it is undisputed that private-side lead service lines are releasing lead into the water received by a significant number of PWSA customers.<sup>81</sup> This renders PWSA’s drinking water unfit for drinking and cooking.<sup>82</sup> Because the Commission has jurisdiction to ensure that PWSA is providing customers with safe service, and private-side lead lines impair safe service, the Commission has the authority—

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<sup>76</sup> Id. § 3204(b)-(c).

<sup>77</sup> Id. § 1352(a)(5).

<sup>78</sup> Id. § 3204(c); see also id. § 1352(a)(7).

<sup>79</sup> PUC, Review of Long-Term Infrastructure Improvement Plan, Docket No. L-2012-2317274, at 23 (Final Rulemaking Order entered May 22, 2014); see also id. at 23 (“[B]oth preexisting Section 1501 and the recently added Section 1352(a)(7) of the Code authorize the Commission to direct, after notice and opportunity to be heard and with an appropriate mechanism for cost recovery, the implementation of infrastructure maintenance and improvement projects deemed necessary to ensure safe and reliable service.”).

<sup>80</sup> PUC v. Pa. Gas & Water Co., Docket Nos. R-850178 et al., (Opinion and Order entered Apr. 24, 1986) (emphasis in original).

<sup>81</sup> See Recommended Decision at 13 (Finding of Fact No. 33); Pittsburgh UNITED St. C-2, at 18; I&E Reply Br. at 38-39.

<sup>82</sup> See Pittsburgh UNITED St. C-3, at 21, 25.

pursuant to § 1501 and § 3204—to assess whether PWSA’s plans for addressing private-side lead service lines in fact ensure safe service to PWSA customers.

The Commission not only has authority to *review* PWSA’s private-side lead service line replacement plans, it also has the power to *order* PWSA to perform private-side lead service replacements when necessary for safe service. Act 65 empowers the Commission to require PWSA to “replace facilities and equipment used to provide services under this chapter to ensure that the equipment and facilities comply with section 1501.”<sup>83</sup> The Recommended Decision correctly concluded that “[u]nder Sections 3205 and 1501 of the Code the Commission has authority over PWSA’s service lines, as a service issue if the water quality is not safe.”<sup>84</sup> The Recommended Decision erred, however, in failing to recognize that § 3205 and § 1501 extend the Commission’s jurisdiction to private-side lead service lines when they render service unsafe. Section 102 of the Public Utility Code defines “facilities” as “any and all means and instrumentalities . . . used” by a utility, even if not “owned” by the utility.<sup>85</sup> Private-side service lines are “instrumentalities . . . used” by PWSA to provide water service.<sup>86</sup> Consequently, when necessary to ensure safe service, the Commission can order PWSA to replace private-side service lines.

This conclusion is bolstered by the Commission’s decision in Public Utility Commission v. Mercer Gas. That case approved a tariff supplement assigning customers responsibility for service lines they own, but it also held that the Commission “is not prohibited under existing law and regulation from requiring Mercer Gas Company to assume ownership, installation,

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<sup>83</sup> 66 Pa. C.S. § 3205.

<sup>84</sup> Recommended Decision at 208.

<sup>85</sup> 66 Pa. C.S. § 102.

<sup>86</sup> See Overlook Dev. Co. v. Pub. Serv. Comm’n, 158 A. 869, 871-72 (Pa. 1932) (holding that privately owned water mains are “facilities” of the utility); Petition of Borough of Boyertown, 466 A.2d 239, 247-48 (Pa. Commw. Ct. 1983) (same, applying 66 Pa. C.S. § 102).

maintenance, and replacement of customer service lines, should [the Commission] hereafter determine that it would be in the interest of the public to do so.”<sup>87</sup> Mercer Gas demonstrates that the Commission may direct PWSA to replace customer-owned service lines.

As noted above, the Commission does not need to exercise its authority to compel PWSA to replace private-side lead service lines. PWSA has already agreed to replace all private-side lead service lines in its system. However, the Commission’s greater authority to mandate the replacement of lead service lines includes the lesser authority to regulate *how* PWSA conducts such replacements.<sup>88</sup>

Finally, the Recommended Decision failed to acknowledge that the Commission has already exercised its Act 65 jurisdiction in this proceeding. The Commission approved the settlement in PWSA’s rate case, which created a legally enforceable obligation for PWSA to replace certain private-side lead service lines.<sup>89</sup> And the Recommended Decision itself calls for approval of the partial settlement in this proceeding, including the terms that require PWSA to replace private-side lead service lines.<sup>90</sup> Additionally, in other proceedings, the Commission approved a tariff supplement and settlement committing York Water Company and Pennsylvania-American Water Company, respectively, to replace private-side lead service lines in their systems.<sup>91</sup> Through these approvals, the Commission is exercising its jurisdiction to ensure safe service.

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<sup>87</sup> Docket No. R-80091297, at \*34 (Opinion and Order entered Aug. 21, 1981).

<sup>88</sup> See Civil Serv. Comm’n, City of Philadelphia v. Eckles, 103 A.2d 761, 764 (Pa. 1954) (power to dismiss includes power to demote); Krichmar v. State Bd. of Vehicle Mfgs., Dealers & Sales Persons, 850 A.2d 861, 864 (Pa. Commw. Ct. 2004) (power to suspend a professional license includes power to condition its reinstatement).

<sup>89</sup> PUC v. PWSA, Order, Docket Nos. R-2018-3002645, -3002647 (Order entered Feb. 27, 2019).

<sup>90</sup> Recommended Decision at 51-52 (Partial Settlement ¶ III.QQ.2).

<sup>91</sup> Petition of York Water Co., Order, Docket No. P-2016-2577404 (Order entered March 8, 2017); Petition of York Water Co., Recommended Decision, Docket No. P-2016-2577404 (Order entered Feb. 2, 2017); Petition of Pennsylvania-American Water Co., Order, Docket No. P-2017-2606100 (Order entered Oct. 3, 2019); Petition of Pennsylvania-American Water Co., Recommended Decision, Docket No. P-2017-2606100 (Order entered Aug. 7, 2019).

- b. Act 120 gives the Commission jurisdiction to review PWSA's plans to use ratepayer funds for replacing customer-owned lead service lines

Act 120 offers an additional, independent source of Commission authority to review and modify PWSA's income-based reimbursement program. Section 1311 of the Public Utility Code, which was recently amended by Act 120, requires the Commission to review and approve programs that will replace customer-owned lead service lines *before* a regulated utility may implement the program and recover costs through rates.<sup>92</sup> Like all ratepayer-funded programs, programs for replacing customer-owned lead service lines must be just, reasonable, and nondiscriminatory.<sup>93</sup>

So, even if the Commission concludes that it does not have jurisdiction under Act 65 to direct PWSA to replace private-side lead lines or to review PWSA's program (which it does, as explained above), the Commission nevertheless has jurisdiction under Act 120 to review and modify PWSA's proposal to commit millions in ratepayer funds to replacing customer-owned lead service lines.<sup>94</sup> The Commission routinely exercises similar authority to review the design and implementation of all ratepayer-funded utility programming—including voluntary programs that the Commission otherwise cannot compel a public utility to offer.<sup>95</sup> Indeed, PWSA in this

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<sup>92</sup> 66 Pa. C.S. § 1311(b)(2)(v) (“Notwithstanding any other provision of law to the contrary, a public utility providing water or wastewater service must obtain *prior approval* from the commission for the replacement of a customer-owned lead water service line or customer-owned damaged wastewater lateral by filing a new tariff or supplement to existing tariffs under section 1308 (relating to voluntary changes in rates.)” (emphasis added)).

<sup>93</sup> See *id.* §§ 1301 (rates must be just and reasonable), 1304 (rates must be nondiscriminatory); 1311(b)(3) (“Nothing in this section shall be construed to limit the existing ratemaking authority of the commission . . .”).

<sup>94</sup> 66 Pa. C.S. § 1311(b)(2)(vii), (b)(3).

<sup>95</sup> See, e.g., PUC v. UGI Utilities, Inc. – Gas Division, Order and Opinion, Docket No. R-2018-3006814, at 31-33, ¶¶ 18, 23-27 (Order entered Oct. 4, 2019) (reviewing and approving the terms of a voluntary, ratepayer-funded energy efficiency and conservation program and a voluntary, ratepayer-funded gas line expansion program, as amended by a proposed settlement); see also Petition of PGW for Approval of Demand-Side Management Plan for FY 2016-2020, Tentative Opinion and Order, Docket No. P-2014-2459362, at 1145-46 (order entered Aug. 4, 2016) (reviewing, modifying, rejecting or approving various aspects of PGW's voluntary Demand Side Management programming).

proceeding seeks the Commission's approval of its 2019 Lead Service Line Replacement Policy under Act 120.<sup>96</sup> It is nonsensical for PWSA to argue that the Commission has jurisdiction to approve its policy but not to review the terms of that policy for compliance with the Public Utility Code.

The Commission also recently started the process of developing uniform procedures to address customer-owned lead service lines under Act 120.<sup>97</sup> Following the Joint Motion of Chairman Gladys Brown Dutrieuille and Commissioner John F. Coleman, Jr., the Commission issued an Order on October 3, 2019, directing Commission staff to request stakeholder comments on, *inter alia*, how utilities can best prioritize replacement of customer-owned lead service lines outside of a water main replacement program.<sup>98</sup> If the Commission has jurisdiction to address this issue with respect to all water utilities, it must have jurisdiction to address it with respect to PWSA in this proceeding.<sup>99</sup>

Importantly, the Commission should not wait to review PWSA's lead service line replacement programming until statewide standards or regulations are adopted. It is unclear when that Act 120 process will conclude; there is no deadline for adopting final standards. Meanwhile, PWSA customers are receiving unsafe water now. PWSA must take decisive action to remove all lead service lines by 2026. Instead, PWSA plans to terminate its effective neighborhood-based program in 2020 and implement its inequitable and inefficient income-based reimbursement program. The record in this proceeding is complete, and a decision on the

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<sup>96</sup> PWSA Main Br. at 71 & n.297.

<sup>97</sup> Implementation of Act 120 of 2018, Joint Motion of Chairman Gladys Brown Dutrieuille and Commissioner John F. Coleman, Jr., Docket No. M-2019-3013286 (Oct. 3, 2019).

<sup>98</sup> PUC, Secretarial Letter – Implementation of Act 120 of 2018, Docket No. M-2019-3013286 (Oct. 24, 2019)

<sup>99</sup> Act 120 permits the Commission to develop standards for reimbursing customers who replaced their own private-side lead service lines within a year prior to the commencement of a full-cost, utility-operated service line replacement program. 66 Pa. C.S. § 1311(b)(2)(vii)(B). This provision for retroactive reimbursements does not apply to PWSA's proposal to create a new program that will reimburse customers on a going-forward basis.

merits is critical at this juncture to protect customers from both financial and physical harm.

3. *The Recommended Decision misconstrues the Lead and Copper Rule's relationship to the Commission's jurisdiction*

Although the Recommended Decision did not discuss the Public Utility Code's application to private-side lead service line replacements, it did observe that such replacements are not required by the federal Lead and Copper Rule.<sup>100</sup> But the fact that DEP's jurisdiction under the Lead and Copper Rule does not extend to private-side lead service lines has no bearing on the Commission's jurisdiction over those facilities under the Public Utility Code.

Neither the Safe Drinking Water Act, the Lead and Copper Rule, nor the DEP Consent Order displaces the Commission's authority to ensure safe service under the Public Utility Code or to determine that PWSA's proposed program is a reasonable use of ratepayer funds. A "utility's compliance with the [Safe Drinking Water Act] is a portion, albeit critical, of all of the broad categories of service over which the Commission has jurisdiction."<sup>101</sup> The Commission wields "joint jurisdiction" with DEP over matters affecting the safety of drinking water.<sup>102</sup> The Commission recognized its shared and complementary jurisdiction when it assigned Stage 1 of the Compliance Plan to the Office of Administrative Law Judge:

As to regulated public water and wastewater service, the Commission and DEP are State agencies jointly charged with the protection of fundamental aspects of public health and safety. The procedure established here reflects the challenges of the PWSA transition and a harmonization of the joint regulatory roles of DEP and the Commission.<sup>103</sup>

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<sup>100</sup> Recommended Decision at 208-09 (citing 40 C.F.R. § 141.84(d)).

<sup>101</sup> Pickford v. Pa. Am. Water Co., Docket Nos. C-20078029 et al., at 13 (Opinion and Order entered Mar. 20, 2008); see also PUC v. Clean Treatment Sewage Co., Docket Nos. C-2009-2125411 et al., at 16 (Opinion and Order entered Apr. 22, 2010) (similar).

<sup>102</sup> Pickford v. Pa. Am. Water Co., Docket Nos. C-20078029 et al., at 16 (Opinion and Order entered Mar. 20, 2008).

<sup>103</sup> PUC, Secretarial Letter - Assignment of the Pittsburgh Water and Sewer Authority Compliance Plan to the Office of Administrative Law Judge (Corrected), Docket Nos. M-2018-2640802, -2640803, at 3 (Nov. 28, 2018).

Although the Commission cannot contradict orders duly issued by DEP regarding water quality,<sup>104</sup> the Commission retains authority to order PWSA to take other steps to protect customers from lead-contaminated drinking water and ensure the utility is providing safe service.<sup>105</sup>

None of the relief sought by Pittsburgh UNITED in this proceeding would conflict with the Lead and Copper Rule or DEP's directives to PWSA. DEP has not assessed whether PWSA's lead service line replacement efforts are adequate to protect public health or will result in safe service to customers.<sup>106</sup> DEP has not evaluated, let alone approved, PWSA's proposals to create an income-based reimbursement program or to end its neighborhood-based program—the aspects of PWSA's lead service line replacement plans being litigated in this proceeding.<sup>107</sup> Neither policy is designed to fulfill a requirement of the DEP Consent Order.<sup>108</sup> In sum, the Lead and Copper Rule and DEP Consent Order are not dispositive as to whether PWSA's lead remediation plan meets the Commission's safe service standard. The Commission can find that different or additional action—separate from what DEP has ordered—is required by PWSA to fulfill its obligation to provide safe and reasonable service to its customers. The Public Utility Code thus gives the Commission jurisdiction to review and order changes to PWSA's plans for private-side lead service line replacement.

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<sup>104</sup> See Pickford v. PUC, 4 A.3d 707, 714 (Pa. Commw. Ct. 2010) (holding that Commission lacked jurisdiction over a collateral attack on a DEP permit authorizing a utility to use a certain water treatment chemical).

<sup>105</sup> Pickford v. Pa. Am. Water Co., Docket Nos. C-20078029 et al., at 13-14 (Opinion and Order entered Mar. 20, 2008); PUC v. Clean Treatment Sewage Co., Docket Nos. C-2009-2125411 et al., at 16 (Opinion and Order entered Apr. 22, 2010).

<sup>106</sup> See Pittsburgh UNITED St. C-2, Appendix C, 1-26, DEP Consent Order (setting out PWSA's violations of the Lead and Copper Rule and specifying corrective actions but making no finding as to whether those actions will ensure safe service).

<sup>107</sup> PWSA Reply Br. at 24 (conceding the "fact that PADEP has not evaluated or specifically approved PWSA's income-based reimbursement program").

<sup>108</sup> See Pittsburgh UNITED St. C-2, Appendix C, 9-20, DEP Consent Order ¶¶ 3-7.



**B. Pittsburgh UNITED Exception 2: The Recommended Decision erred by approving PWSA’s 2019 Lead Service Line Replacement Policy without considering any record evidence**

Despite concluding that the Commission lacks jurisdiction to review PWSA’s proposed income-based reimbursement program, the ALJs recommended that the Commission *approve* the program—and did so without referencing, let alone discussing, any of the substantial evidence in the record detailing the program’s flaws. That is clear error.<sup>109</sup>

Upon finding that the Commission lacked jurisdiction to review the income-based reimbursement program, the ALJs should have refrained from making any recommendation about it.<sup>110</sup> It appears, however, that jurisdictional holding led the ALJs to recommend that the Commission approve the program without first evaluating the substantial evidence presented and arguments made against the program by Pittsburgh UNITED, I&E, and OCA. Both the stakes of this case and Pennsylvania law demand otherwise.

PWSA’s customers remain at serious risk of lead exposure. Thousands of customers still have lead service lines, and PWSA’s tap water monitoring continues to show high concentrations of lead.<sup>111</sup> PWSA has proposed an income-based reimbursement program as part of its response to this lead crisis. But PWSA has the burden of proving that this multi-million-dollar program will ensure safe service and be a reasonable use of ratepayer funds, and the Commission has a

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<sup>109</sup> As explained above, supra p. 13-14, it is possible that the ALJs intended to hold only that the Commission cannot order PWSA to enter the homes of non-consenting customers to replace their lead lines. But even if the ALJs intended to make that narrower finding—which misconstrues Pittsburgh UNITED’s requested relief, as described at p. 14—they erred in failing to consider any of the parties’ arguments or testimony before recommending that the Commission approve PWSA’s proposed income-based reimbursement program.

<sup>110</sup> See Farnsworth v. Verizon Penn. Inc., Docket No. C-20016223 (Opinion and Order entered Apr. 12, 2002) (“In order to decide a controversy, the Commission must have subject matter jurisdiction to decide the matter at issue.”); Flynn v. Casa Di Bertacchi Corp., 674 A.2d 1099, 1105 (Pa. Super. Ct. 1996) (holding that, absent “subject matter jurisdiction,” a judgment “is void on its face”).

<sup>111</sup> Pittsburgh UNITED St. C-3SUPP-R at 3.

duty to determine whether PWSA has carried its burden.<sup>112</sup> The ALJs violated that duty when they approved the program without discussion or analysis. Had they agreed with Pittsburgh UNITED on the jurisdictional question and properly proceeded to the merits, they would have been forced to grapple with the parties' arguments and develop a more reasoned and robust recommendation reflective of the underlying record. Because the ALJs failed to do so, the Commission should decline to adopt their recommendation.<sup>113</sup>

Pittsburgh UNITED submitted over 150 pages of written expert testimony from three subject matter experts, along with exhibits and supportive data and documentation, evaluating PWSA's lead programming.<sup>114</sup> Pittsburgh UNITED's Main and Reply Briefs, along with I&E's and OCA's briefs, summarize this evidence and explain why PWSA's income-based reimbursement program will not ensure safe service. Rather than duplicate those lengthy arguments here, Pittsburgh UNITED provides a brief summary below and incorporates its briefs by reference.<sup>115</sup>

For PWSA to provide safe service consistent with the Public Utility Code, Pittsburgh UNITED's testimony shows that PWSA must adopt an effective strategy for replacing private-side lead service lines.<sup>116</sup> These lines pose the same health risk to customers as public-side lead service lines.<sup>117</sup> And, while PWSA's new corrosion control treatment should help reduce tap

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<sup>112</sup> 66 Pa C.S. §§ 332(a), 3204(c); 52 Pa. Code § 121.4(d)-(e); see also Recommended Decision at 66.

<sup>113</sup> Cf. In re Application of PPL Elec. Utils. Corp. for Approval of the Siting & Reconstruction of the Proposed Coopersburg #1 and #2 138/69 kV Tap, Docket No. A-2008-2022941 et al., at 15 (Opinion and Order entered July 24, 2009) (adopting Recommended Decision and Findings of Fact where they were "amply supported by the evidence of record" and contained a "detailed discussion of the issues"); Young & Haros, LLC v. Metro. Edison Co., Docket No. C-2013-2355974, at 21 (Opinion and Order entered May 22, 2014) (denying exception where ALJ had "thoroughly addressed the issues raised").

<sup>114</sup> See generally Pittsburgh UNITED Sts. C1 to C3; Sts. C-1SR to C-3SR; and Sts. C-1SUPP-R to C-3SUPP-R.

<sup>115</sup> See Pittsburgh UNITED Main Br. at 16-40; Pittsburgh UNITED Reply Br. at 1-16.

<sup>116</sup> Pittsburgh UNITED St. C-2, at 17; see also Pittsburgh UNITED St. C-3, at 21-22.

<sup>117</sup> Pittsburgh UNITED St. C-2, at 18.

water lead levels, this treatment “is neither an immediate nor permanent fix.”<sup>118</sup> Because PWSA’s existing lead replacement programs—namely, the small-diameter water main replacement program—will not reach all of the lead service lines in its system, PWSA proposed the income-based reimbursement program in an attempt to fill the gap and address those remaining lines.<sup>119</sup> The program is deeply flawed, however, for three main reasons.

First, to participate in the program, customers must pay the full cost of lead service line replacement—\$5,500 on average—up front.<sup>120</sup> Many low and moderate income families simply cannot afford this expense.<sup>121</sup> Pittsburgh UNITED expert Mitchell Miller, former Director of the Bureau of Consumer Services—with decades of experience in designing and implementing low income programming—concluded that, as a result, the program will “effectively and disproportionately exclude[] low income customers from participating.”<sup>122</sup> Yet low income customers are among the most at risk of lead exposure, and are less likely than wealthier customers to have the savings or access to capital necessary to pay for a lead service line replacement.<sup>123</sup> The perverse outcome of PWSA’s proposal, then, is that the customers most in need of assistance are the least likely to get it.<sup>124</sup>

Second, the income-based reimbursement program does not offer full reimbursements to all customers.<sup>125</sup> Instead, it requires customers making more than 300 percent of the federal poverty line to pay a portion of the cost.<sup>126</sup> Customers earning between 301 and 400 percent of

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<sup>118</sup> Id. at 16.

<sup>119</sup> Pittsburgh UNITED Main Br. at 23-27.

<sup>120</sup> Id. at 26.

<sup>121</sup> Pittsburgh UNITED St. C-1SUPP-R, at 5-7.

<sup>122</sup> Id. at 6.

<sup>123</sup> Pittsburgh UNITED St. C-3, at 7-8, 13; Pittsburgh UNITED St. C-1SUPP-R, at 5-6.

<sup>124</sup> Pittsburgh UNITED Main Br. at 28-30.

<sup>125</sup> Id. at 30.

<sup>126</sup> Id.

the poverty line would be expected to pay more than \$1,000 out of pocket.<sup>127</sup> Evidence shows that some of these customers would be unable to afford this expense, and would be disincentivized from participating in the program as a result.<sup>128</sup> Lead service line replacement programs in Washington, D.C. and Providence, Rhode Island confirm that requiring customers to contribute to the costs of replacement decreases customer participation, and that low income customers are disproportionately likely to opt out.<sup>129</sup>

Third, the income-based reimbursement program relies on customers to initiate the replacements themselves.<sup>130</sup> That means that customers, not PWSA, must determine whether they have a private-side lead service line, understand the risk presented by the line, know that PWSA will reimburse them for the replacement, complete PWSA's yet-to-be-defined income verification process, find a contractor who will replace the line, pay for the replacement, and then apply for and wait to receive reimbursement. This complex and lengthy process will further decrease customer participation, particularly among low income customers who may lack the time and resources necessary to complete it.<sup>131</sup> Relying on customers to initiate replacements is also inefficient. As Pittsburgh UNITED's engineering expert, Gregory Welter, described, "haphazard, one-off replacements lose out on the economies of scale that would be generated by a more systematic approach," such as PWSA's neighborhood-based program, which coordinates large numbers of replacements in the same area.<sup>132</sup>

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<sup>127</sup> Id.; Pittsburgh UNITED Reply Br. at 4.

<sup>128</sup> OCA St. 2R-Supp at 5-6; Pittsburgh UNITED Main Br. at 30.

<sup>129</sup> Pittsburgh UNITED Main Br. at 30 (citing Pittsburgh UNITED St. C-2SUPP-R, at 6-7).

<sup>130</sup> Id. at 32.

<sup>131</sup> Id. at 32-33 (citing Pittsburgh UNITED St. C-1SUPP-R, at 7-8).

<sup>132</sup> Id. at 35 (quoting Pittsburgh UNITED St. C-2SUPP-R, at 7). Notably, in approving the York Water Company Settlement, the Commission recognized the importance of utility-initiated service line replacement programming, wherein the customer is not required to enter a private contract or pay upfront for the replacement cost: "Rather than rely upon customers to replace their lead service lines, *which would result in a haphazard approach*, York Water proposes to assume responsibility at its initial expense." Petition of York Water Company, Docket No. P-2016-2577404, at 4 (Order entered Mar. 8, 2017) (emphasis added).

Collectively, these deficiencies will exclude a disproportionate number of low income, Black, and Latinx customers from the income-based reimbursement program.<sup>133</sup> As Dr. Lanphear explained, these customers are among the most vulnerable to lead exposure because they are exposed to multiple sources of lead, and the effects of lead exposure are cumulative.<sup>134</sup> He further explained that “[l]iving in a home that has a lead service line is an independent risk factor for elevated blood lead levels ( $\geq 5$   $\mu\text{g/dL}$ ), even when the lead level for the broader water system is below EPA’s lead action level.”<sup>135</sup> Dr. Lanphear concluded that, by discouraging low-income, Black, and Latinx participation, PWSA’s income-based reimbursement program will heighten these customers’ risk of suffering the harmful health effects of lead contaminated water.<sup>136</sup> Such a program is unjust, unreasonable, and discriminatory, and cannot meet the Commission’s standards for safe service.

PWSA nonetheless defended the program on the grounds that it would save ratepayers money and that the health risks to customers will become less urgent once orthophosphate, the new corrosion control treatment, becomes effective.<sup>137</sup> But the weight of the evidence shows otherwise. While PWSA claimed that the program would save millions of dollars less compared to a program that offered free, utility-arranged replacements, PWSA failed to back that claim with any reliable analysis—particularly in view of the income-based reimbursement program’s high administrative costs and the social costs that increased lead exposure will impose on the community.<sup>138</sup> And although PWSA relies heavily on the switch to orthophosphate to claim that

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<sup>133</sup> Pittsburgh UNITED St. C-3SUPP-R, at 4-5; Pittsburgh UNITED Main Br. at 36.

<sup>134</sup> Pittsburgh UNITED St. C-3SUPP-R, at 5.

<sup>135</sup> *Id.* at 4-5 (citing PWSA St. C-1SD, Stip Doc – 4 at 15).

<sup>136</sup> *Id.* at 4-5.

<sup>137</sup> PWSA Reply Br. at 28.

<sup>138</sup> Pittsburgh UNITED Main Br. at 30-32; Pittsburgh UNITED Reply Br. at 4-5.

risks to its customers have been reduced, that treatment is not the “silver bullet” PWSA wants it to be, as discussed above.<sup>139</sup>

Meanwhile, PWSA failed to offer any compelling responses to the three deficiencies identified by Pittsburgh UNITED. As to the first deficiency—utilizing a reimbursement structure—PWSA conceded that the structure is problematic and vaguely asserted that it is “willing to modify its program to address this concern.”<sup>140</sup> But PWSA has yet to commit to this modification or explain how it will work. As to the second—not providing full reimbursements to all customers—PWSA simply remarked that the program requires contributions from “customers who have the wherewithal” to make them.<sup>141</sup> It provided no affordability analysis or other evidence to support its assertion that customers at or above 301% of the federal poverty level can afford such a significant up-front cost.<sup>142</sup> As to the third—requiring customers to initiate replacements—PWSA suggested that working with the Community Lead Responsive Advisory Committee on outreach would address Pittsburgh UNITED’s concerns about low customer participation.<sup>143</sup> But PWSA’s Community Environmental Project disproves this notion. The program, which relies on customers to initiate the replacement process, is severely undersubscribed, despite the fact that it provides free replacements to eligible customers—with no requirement that the customer make an up-front payment or hire a private contractor—and despite PWSA’s and the Advisory Committee’s efforts to improve outreach.<sup>144</sup> Finally, in response to Pittsburgh UNITED’s argument that the income-based reimbursement program will

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<sup>139</sup> Pittsburgh UNITED St. C-2SUPP-R, at 9; supra, at 6. See also Pittsburgh UNITED Main Br. at 22; Pittsburgh UNITED Reply Br. at 7-8.

<sup>140</sup> PWSA Reply Br. at 29.

<sup>141</sup> PWSA Main Br. at 73.

<sup>142</sup> Pittsburgh UNITED Reply Br. at 3-4; OCA Main Br. at 19-21.

<sup>143</sup> PWSA Reply Br. at 29.

<sup>144</sup> Pittsburgh UNITED Main Br. at 34-35 (citing Pittsburgh UNITED St. C-1SUPP-R, at 8-9).

leave countless lead service lines in the ground, PWSA maintained that all of these lines will *eventually* be replaced through the small-diameter water main replacement program, so long as the customer is “willing to wait.”<sup>145</sup> Yet PWSA failed to mention that, for some, this “wait” could stretch almost *thirty years*—meaning that children born more than five years from now will have otherwise graduated from college by the time their home’s lead service line gets replaced.<sup>146</sup>

Given the income-based reimbursement program’s pervasive flaws, the Commission should reject it. PWSA has failed to demonstrate that the program will ensure safe service or be a just, reasonable, and non-discriminatory use of ratepayer funds. To the contrary, ample evidence shows that the program is inefficient and will disproportionately exclude low income households and people of color.<sup>147</sup> Safe service requires that PWSA instead offer free, utility-initiated private-side lead service line replacements to all customers.<sup>148</sup>

Accordingly, Pittsburgh UNITED respectfully requests that the Commission direct PWSA to develop a fairer, more effective plan for replacing private-side lead service lines, such as by continuing the neighborhood-based program, which has proven to be a more efficient and equitable replacement model that prioritizes—rather than excludes—those customers at the highest risk of lead exposure.<sup>149</sup> Alternatively, the Commission could leave PWSA with the discretion to propose a substitute for the neighborhood-based program, so long as the substitute program (1) does not utilize a reimbursement structure, (2) offers free replacements to all customers, and (3) relies on PWSA to schedule and coordinate the replacements.<sup>150</sup>

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<sup>145</sup> See PWSA Reply Br. at 31.

<sup>146</sup> Pittsburgh UNITED Reply Br. at 9.

<sup>147</sup> Pittsburgh UNITED Main Br. at 28-36.

<sup>148</sup> Pittsburgh UNITED Main Br. at 21-23; Pittsburgh UNITED Reply Br. 6-10; Pittsburgh UNITED C-2SUPP-R, at 6-8; Pittsburgh UNITED C-3SUPP-R, at 3-6.

<sup>149</sup> Pittsburgh UNITED Main Br. at 36-39; Pittsburgh UNITED Reply Br. at 8-10.

<sup>150</sup> Pittsburgh UNITED Main Br. at 36-40; see also Pittsburgh UNITED Reply Br. at 8-10.

Additionally, Pittsburgh UNITED requests that the Commission order PWSA to revise its Compliance Plan and LTIIP to include much-needed details about the lead remediation program—including details about the program’s design and implementation, customer eligibility and enrollment criteria, and budget. This revised plan should be available for public comment and be subject to Commission review and approval in an on-the-record proceeding.<sup>151</sup>

**C. Pittsburgh UNITED Exception 3: The Recommended Decision erred in making several findings of fact that are inaccurate or incomplete**

Finding of Fact Numbers 38, 50, 51, 56, 57, and 58—all related to PWSA’s lead remediation programming—are incomplete or inaccurate.<sup>152</sup> The Commission should revise or vacate these findings of fact, as they are unsupported by substantial evidence, and should instead include additional or revised findings of fact consistent with the evidence on the record in this proceeding.

Finding of Fact Number 38 states that “PWSA anticipates that orthophosphate will very shortly reduce lead levels in residential tap water to well below PADEP actions levels.”<sup>153</sup> This finding reflects PWSA’s expectation, but it is incomplete because it ignores important evidence about the current and future risk of lead exposure to PWSA’s customers. While PWSA began adding orthophosphate to its water in April 2019, lead levels in PWSA water remain dangerously high.<sup>154</sup> As discussed above, it may be several years before orthophosphate takes full effect, and, even then, orthophosphate is not a permanent solution to lead release.<sup>155</sup>

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<sup>151</sup> Pittsburgh UNITED Main Br. at 40; Pittsburgh UNITED Reply Br. at 16.

<sup>152</sup> Recommended Decision at 12-19.

<sup>153</sup> *Id.* at 14.

<sup>154</sup> PWSA St. C-1SD, at 23; Pittsburgh UNITED St. C-2SUPP-R, at 8.

<sup>155</sup> Pittsburgh UNITED St. C-2, at 16-17; Pittsburgh UNITED St. C-2SUPP-R, at 9; *supra*, at 6.



Finding of Fact Number 50 states that “PWSA has committed to voluntary efforts to fully remediate lead at residential properties on its system in PWSA’s 2019 Lead Service Line Replacement Policy.”<sup>156</sup> This statement is misleading. While PWSA’s 2019 Policy includes lead service lines (the most important source of lead to drinking water), it will not address galvanized interior plumbing, lead solder, or lead-bearing internal plumbing fixtures, which are also potential sources of drinking water contamination.<sup>157</sup> Lead dust, paint, and soil are additional sources of residential lead exposure.<sup>158</sup> The proposed Partial Settlement contains terms that require PWSA to help some customers determine whether visible interior plumbing may be a source of lead.<sup>159</sup> Pittsburgh UNITED is not asking PWSA to address any other sources of lead exposure beyond those covered by the proposed settlement and this litigation, but it is not accurate to state that PWSA’s 2019 Policy will “fully” remediate lead at residential properties when sources of lead exposure other than lead service lines will remain.

Finding of Fact Number 51 wrongly concludes that “PWSA’s July 2019 Policy was formulated to address all known residential lead service lines in PWSA’s system.”<sup>160</sup> The evidence shows that PWSA’s July 2019 Policy will not result in the replacement of all known residential lead service lines, and certainly not by the 2026 deadline that PWSA committed to in the parties’ proposed Partial Settlement.<sup>161</sup> As discussed extensively in Pittsburgh UNITED’s Main Brief, PWSA’s small-diameter water main replacement program, together with its plan to terminate the neighborhood-based program, will leave large numbers of PWSA customers at risk

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<sup>156</sup> Recommended Decision at 16.

<sup>157</sup> See PWSA St. C-1SD, Ex. RAW-C-46; Pittsburgh UNITED St. C-2, at 6 n.7.

<sup>158</sup> Pittsburgh UNITED St. C-3, at 6-7.

<sup>159</sup> Recommended Decision at 53 (Partial Settlement ¶ III.RR).

<sup>160</sup> *Id.* at 17.

<sup>161</sup> PWSA St. C-1SD, Ex. RAW-C-46; Pittsburgh UNITED St. C-2, at 14, 26-27; Pittsburgh UNITED C-2SUPP-R, at 4-5; Recommended Decision at 51-52 (Partial Settlement ¶ III.QQ.2).

from lead-contaminated water.<sup>162</sup> PWSA's proposed income-based reimbursement program, intended to fill that gap, will disproportionately exclude low income, Black, and Latinx customers who are especially vulnerable to lead exposure.<sup>163</sup> PWSA must revise and expand its lead service line replacement efforts to meet its goal of removing all lead service lines by 2026.

Finding of Fact Number 52 claims that "PWSA has committed to formulating a plan that will, over time, completely eliminate lead in its water system (not including private customers who simply refuse to have their private lines replaced – whether free of charge or with a stipend or non-residential customers who may replace their galvanized iron lines at their expense)."<sup>164</sup> This statement is not accurate. As discussed above, galvanized interior plumbing, lead solder, and lead-bearing internal plumbing fixtures are other potential sources of drinking water contamination that likely will not be covered by PWSA's plans.<sup>165</sup> PWSA's lead remediation plans will not "completely eliminate" lead from its system.

Finding of Fact Number 56 states that "[o]ver 50% (53%) of households in its service territory would be fully reimbursed for a private-side lead line replacement requested by a customer *who does not wish to wait for PWSA to replace his/her private lead service line as part of its SDWMR program*, and 75% would qualify to receive a reimbursement of 50% or greater."<sup>166</sup> This finding accepts PWSA's misleading contention that customers who cannot participate in the income-based reimbursement program will eventually receive a private-side lead service line replacement through the small-diameter water main replacement program.<sup>167</sup> As

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<sup>162</sup> Pittsburgh UNITED Main Br. at 23-25; Pittsburgh UNITED Reply Br. at 8-9; Pittsburgh UNITED C-2SUPP-R, at 4-5.

<sup>163</sup> Pittsburgh UNITED St. C-3, at 7-8, 13; Pittsburgh UNITED St. C-3SUPP-R, at 4-5; Pittsburgh UNITED Main Br. at 29.

<sup>164</sup> Recommended Decision at 17.

<sup>165</sup> Pittsburgh UNITED St. C-2, at 6 n. 7

<sup>166</sup> Recommended Decision at 17 (emphasis added).

<sup>167</sup> PWSA C-1RJ, at 15.

explained above, in the briefs, and in testimony, the small-diameter water main program that PWSA sets out in its LTIP will replace only about 20 percent of the small-diameter water mains in PWSA's system by 2026.<sup>168</sup> It will leave thousands of lead service lines in the ground.<sup>169</sup> It is not a strategy for removing all lead service lines from PWSA's system. Even if PWSA extends the small-diameter water main program beyond 2026 and continues replacements at its current rate—which it has not committed to do—it would take nearly thirty years to replace all small-diameter water mains and their attached lead service lines.<sup>170</sup>

Finding of Fact Number 57 states, “PWSA’s income-based reimbursement plan is similar to the private service replacement programs implemented by other utilities.”<sup>171</sup> The Recommended Decision provides no record citation for this finding because there is nothing in the record to support it. Testimony and the parties’ briefs discussed the approaches to private-side lead service line replacement taken by Philadelphia Water Department, York Water Company, and Pennsylvania-American Water Company.<sup>172</sup> Unlike PWSA, none of those utilities require customers to pay up front for private-side lead service line replacements.<sup>173</sup> None of those utilities require the customer to arrange for the replacement of lead service lines by private contractors.<sup>174</sup> None of those utilities vary the amount of replacement assistance based on customer income.<sup>175</sup> Finding of Fact Number 57 is wholly unsupported by the record.

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<sup>168</sup> Supra, at 9-10; Pittsburgh UNITED Main Br. at 23-25; Pittsburgh UNITED Reply Br. at 8-9; Pittsburgh UNITED C-2SUPP-R, at 4-5.

<sup>169</sup> Pittsburgh UNITED Main Br. at 23-25.

<sup>170</sup> Pittsburgh UNITED St. C-2, at 26 & n.110.

<sup>171</sup> Recommended Decision at 18.

<sup>172</sup> OCA St. 2R-Supp, at 1-3; PWSA St. C-1RJ, at 6-8; PWSA Main Br. at 72-73; OCA Main Br. at 18-19; Pittsburgh UNITED Reply Br. at 3; OCA Reply Br. at 9-10 n.1.

<sup>173</sup> See PWSA St. C-1RJ, at 7.

<sup>174</sup> See id.

<sup>175</sup> See id.

Finding of Fact Number 58 states, “PWSA is willing to modify the [income-based reimbursement] program so that customers need not come up with the full cost of the replacement and then be reimbursed.”<sup>176</sup> This finding is incomplete. PWSA has yet to make any actual commitment to revising this aspect of its proposal.<sup>177</sup> Providing assistance through reimbursements discriminates against low income customers who, unlike wealthier customers, cannot afford up-front payments of thousands of dollars for private-side lead service line replacements.<sup>178</sup> Eliminating reimbursements, moreover, will not transform PWSA’s program into an effective lead service line replacement strategy. The program’s sliding scale payment structure for customer contributions and its reliance on customers to initiate replacements will still significantly suppress participation, particularly among low income customers.<sup>179</sup>

The Commission should revise each of these findings of fact for consistency with the evidence. Pittsburgh UNITED respectfully requests that the Commission consider the Proposed Findings of Fact Pittsburgh UNITED submitted with its Main Brief to the ALJs, particularly Proposed Findings of Fact Numbers 14-17 and 31:<sup>180</sup>

14. Corrosion control treatment, including orthophosphate, does not eliminate the risk of lead release from lead service lines. Changes to corrosion control treatment, shifts in source water chemistry, and physical disruption of lead service lines (by, for instance, construction in the street or customer’s yard) can disturb the lead-bearing scale inside service lines and release lead into drinking water. Pittsburgh UNITED St. C-2, at 16-17.

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<sup>176</sup> Recommended Decision at 18.

<sup>177</sup> See PWSA Main Br. at 73-74; PWSA Reply Br. at 29.

<sup>178</sup> Pittsburgh UNITED St. C-2SUPP-R, at 5-7; Pittsburgh UNITED Main Br. 28-30.

<sup>179</sup> See Pittsburgh UNITED Main Br. at 30-36.

<sup>180</sup> Pittsburgh UNITED Main Br. Appendix A at 2-3, 5.

15. Removing lead service lines is the only way to permanently protect PWSA customers from the health and safety risks posed by lead service lines. Pittsburgh UNITED St. C-2, at 17; Pittsburgh UNITED St. C-3, at 21-22.
16. PWSA's existing lead service line replacement programs will not result in the removal of all known lead service lines from its system. Pittsburgh UNITED St. C-2, at 14, 26-27; Pittsburgh UNITED St. C-2SUPP-R, at 4-5.
17. PWSA does not yet have a plan for removing all lead service lines from its system. Pittsburgh UNITED St. C-2, at 14, 26-27; Pittsburgh UNITED St. C-2SUPP-R, at 4-7.
31. Many low and moderate income customers will not be able to afford to pay the up-front costs of a lead service line replacement. They will not be able to participate in PWSA's income-based reimbursement program. Pittsburgh UNITED St. C-1SUPP-R, at 5-7.

#### **IV. CONCLUSION**

For the reasons stated above and in its previous briefs, Pittsburgh UNITED requests that the Commission exercise its jurisdiction to review PWSA's plans for replacing private-side lead service lines. Substantial evidence shows that PWSA's income-based reimbursement program will not ensure safe service or make reasonable use of ratepayer funds. The Commission should therefore reject that program and order PWSA to revise its Compliance Plan and LTIP to propose a different strategy for replacing private-side lead service lines replacements—one that offers free, utility-initiated replacements to all customers. Until PWSA proposes such a strategy and the Commission approves it in an on-the-record proceeding, the Commission should order PWSA to continue its neighborhood-based program.

Respectfully Submitted,



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