

COMMONWEALTH OF PENNSYLVANIA




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November 18, 2019

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions
in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Very truly yours,

A handwritten signature in blue ink that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
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Enclosures:

cc: Honorable Mark A. Hoyer, ALJ
Honorable Conrad A. Johnson, ALJ
Office of Special Assistants (email only: ra-OSA@pa.gov)
Certificate of Service

*280777

CERTIFICATE OF SERVICE

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

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

Dated this 18th day of November 2019.

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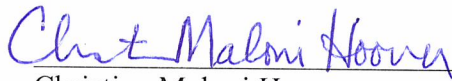
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Dated: November 18, 2019
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS
OF THE OFFICE OF CONSUMER ADVOCATE**

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Dated: November 18, 2019

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	EXCEPTIONS.....	2
	OCA Exception 1: The Billing Plan for Unmetered and/or Unbilled Municipal Properties Within the City of Pittsburgh Should Ramp Up In The Same Manner As Proposed For Metered Rates	2
	OCA Exception 2: The ALJs Erred In Adopting PWSA’s Plan For Lead Service Line Replacements	4
III.	CONCLUSION	20

TABLE OF AUTHORITIES

	Page(s)
 Administrative Decisions	
<u>Ashbaugh v. Fitz Henry Water Co.</u> , 51 Pa. PUC 287 (1977)	15
<u>Kessler v. Shickshinny Water Co.</u> , 64 Pa. PUC 290 (1987)	15
<u>Pa. P.U.C. v. Lake Latonka Water Co.</u> , 71 Pa. PUC 507 (1989)	15
<u>Pa. P.U.C. v. National Utilities, Inc.</u> , 87 Pa. PUC 1 (1997)	14
<u>Pa. P.U.C. v. Pennsylvania-American Water Co.</u> , 71 Pa. PUC 210 (1989)	14
<u>Pa. P.U.C. v. Pennsylvania Gas and Water Co.</u> , 1 Pa. PUC 409, 74 PUR4th 238 (1986)	14
<u>Petition of York Water Co.</u> , Docket No. P-2016-2577404, Order (March 2, 2017)	17
 Statutes	
72 P.S. § 1719-E(c)(1)	16, 18
66 Pa. C.S. § 501	13, 16
66 Pa. C.S. § 1303	2
66 Pa. C.S. § 1304	6, 12, 19
66 Pa. C.S. § 1311(b)	17
66 Pa. C.S. § 1501	<i>passim</i>
66 Pa. C.S. § 1505	5, 16, 18
66 Pa. C.S. § 3205	5, 16
66 Pa. C.S. § 3205(a)	16
 Regulations	
52 Pa. Code § 5.533	1

I. INTRODUCTION

On October 29, 2019, the Office of Administrative Law Judge issued the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson (ALJs) addressing the Stage 1 Compliance filing made by Pittsburgh Water and Sewer Authority (PWSA or the Authority) regarding its water and wastewater services. The ALJs recommended approval of the Joint Petition for Partial Settlement that the parties filed related to many issues in this proceeding. The remaining issues reserved for litigation that are addressed by the OCA in these Exceptions relate to how PWSA charges for service to municipal properties and public fire hydrants within the City of Pittsburgh, as well as certain aspects of PWSA's plan to replace lead service lines within its service territory.

The ALJs did not adopt OCA's position that the Commission should: (1) require PWSA to begin charging a flat rate to unmetered and/or unbilled municipal properties and non-profits which "ramps up" during a five-year transition period; and (2) require PWSA to replace customer-owned lead service lines and reject PWSA's income-based reimbursement policy and direct PWSA to develop a comprehensive plan to replace all lead service lines, both public and private, in the system at no direct cost to customers. The OCA submits that its recommendations below will help ensure that PWSA's operations, policies and procedures come into full compliance with the Public Utility Code, Commission regulations, and other applicable laws, and respectfully requests that the Commission adopt the recommendations below. Therefore, pursuant to 52 Pa. Code § 5.533, the OCA files the following exceptions for the Commission's consideration.

II. EXCEPTIONS

OCA Exception 1: The Billing Plan for Unmetered and/or Unbilled Municipal Properties Within the City of Pittsburgh Should Ramp Up In The Same Manner As Proposed For Metered Rates.

R.D. at 115-28; OCA M.B. at 11-14; OCA R.B. at 2-4.

PWSA does not currently charge water and wastewater rates to the municipal properties that it serves, even though some of those properties already have meters. OCA M.B. at 10-14. PWSA proposes to continue to not charge these properties. Id. PWSA argues that moving to recovering costs from the City related to City meter installations, usage, and public fire hydrants presents a unique challenge. PWSA M.B. at 21-29. PWSA acknowledges that this historical situation of not charging the City needs to change. PWSA M.B. at 22. PWSA's proposal, however, to bill nothing until a meter is installed during a five-year metering project, is not reasonable or consistent with the requirements of the Public Utility Code and basic ratemaking principles.¹ The ALJs recommended that the Commission adopt I&E's proposal to have the City properties begin to pay a customer charge immediately and continue to pay that charge until a meter is installed, at which time the property would pay a metered rate. R.D. at 128. The OCA agrees with the ALJs' rejection of PWSA's position that it is appropriate to continue to charge nothing. As described below, the OCA submits that its proposal, to have a flat rate ramp up until a meter is installed for each property mirrors PWSA's proposed metered rate ramp up, and is a reasonable way to address the "unique challenge." See OCA M.B. at 10-14; OCA R.B. at 2-4.

The ALJs rejected the OCA's position because they accepted PWSA's concern that PWSA would not be able to figure out how to estimate usage at unmetered properties. R.D. at 128. The

¹ The Public Utility Code obligates PWSA to charge rates based on its Commission-approved tariff (66 Pa. C.S. § 1303), and PWSA's current tariff already includes a flat rate. OCA M.B. at 14; Tariff Water Pa. P.U.C. No. 1, Original page 9 (effective March 1, 2019).

OCA submits that the ALJs erred because PWSA has mischaracterized the OCA's position. As Mr. Rubin explained in OCA Statement 2, the rate that would be charged and ramped up over five years, or until a meter is installed, would be based on the size of the service line that is serving the property, not an estimate of the individual property's usage. OCA St. 2 at 7-8. PWSA would use the average bill for metered customers with similarly sized service lines² and charge 20% of that average bill in year 1, then 40% of that average bill in year 2, and so on until a meter is installed. Id. The necessary information for this calculation is already available in PWSA's billing records. Moreover, under the ALJs' recommendation, PWSA would still have to determine the size of each of the service lines serving each City property in order to bill the appropriate customer charge to the unmetered properties. Finally, the ALJs' recommended billing process does not require the unmetered properties to provide additional revenues towards the cost of service until the meter is installed, while OCA's recommendation provides additional revenues gradually, each year, until a meter is installed at each property.

The OCA's position is that PWSA's five-year ramp up of metered rates to be implemented as meters are installed at each City and non-profit property is acceptable **if** it is tied to a flat rate charge that also would ramp up during the five-year transition period for properties that remain unmetered. OCA R.B. at 2; OCA M.B. at 13-14; OCA St. 2 at 7-8. The OCA's proposed flat rate charge ramp up has the same benefits as PWSA's metered rate ramp up because it allows the City and non-profits to plan for the rates and incorporate the known annual changes in flat rates in the budgets. The OCA's proposal, compared to the ALJs' recommendation, has the advantage of requiring each City property to contribute additional amounts each year until it is metered rather

² The minimum charge in PWSA's tariff is based on meter size. PWSA Tariff Water - Pa. P.U.C. No. 1, Original page 8 (effective March 1, 2019). The size of the meter is based on the size of the service line serving each property.

than keeping the same relatively low minimum charge rate for up to five years and then be switched immediately to a metered rate reflecting all usage.

The OCA submits that a five-year ramp up plan for a flat rate charge, along with PWSA's proposed five-year ramp up plan for metered rates is a reasonable plan towards compliance and does not require immediate billing for municipal and non-profit entities, as recommended by the ALJs. The OCA's proposed flat rate ramp up does not speed up the time frame proposed by PWSA for the metered rate ramp up. The OCA's proposal recognizes that a flat rate exists in PWSA's tariff and it can be used to gradually bridge the gap between no charges and metered charges.

The OCA's proposed ramp-up of flat rate charges for City-owned and non-profit accounts is reasonable, consistent with the requirements of the Public Utility Code and should be adopted.

OCA Exception 2: The ALJs Erred In Adopting PWSA's Plan For Lead Service Line Replacements.

R.D. at 164-209; OCA M.B. at 15-28; OCA R.B. at 11-15.

In the Recommended Decision, the ALJs correctly found that the Commission has jurisdiction over the quality of service provided by PWSA. R.D. at 207-08. The ALJs found, however, that the Commission did not have authority to direct PWSA to replace customer-owned lead service lines and recommended adoption of PWSA's plan. Id. As explained in the OCA's Main and Reply Briefs, PWSA's plan is not reasonable and should not be adopted without changes. The ALJs agreed that the Commission has jurisdiction to determine whether PWSA is providing adequate, safe, and reasonable service as required by Sections 1501 and 3205 of the Public Utility Code, 66 Pa. C.S. §§ 1501 and 3205. R.D. at 207-08; OCA M.B. at 15-28; OCA R.B. at 8. The applicable standard is that water must be suitable for "household purposes"; including drinking, cooking, bathing, and laundry. This standard is measured at the taps in the home. A necessary corollary to Section 1501 is the Commission's authority to require PWSA to take necessary steps,

including making capital and operational improvements, to address service that is not suitable for household purposes. See 66 Pa. C.S. §§ 1505, 3205.

If the OCA's Exception 2 is granted, then the Commission will need to address the implementation issues presented in this proceeding. As discussed in the OCA's Main and Reply Briefs, at times, PWSA's goals and policies regarding lead service line replacements seem to be inconsistent or unsupported by the record in this proceeding, particularly related to how the proposed income-based reimbursement policy fits within the context of PWSA's broader lead service line replacement program. See OCA M.B. at 16-17; OCA R.B. at 11. The OCA's position is that the Commission should reject PWSA's proposed income-based reimbursement policy and direct PWSA to submit a single, comprehensive plan for replacing all public and private-side lead services lines in its system at no direct cost to customers.

PWSA's Board adopted a new Lead Service Line Replacement Program Policy on July 26, 2019. As part of this policy, when PWSA is not replacing the Authority's portion of the service line, customers with private-side only lead service lines can elect to replace the private side on their own and apply for reimbursement of some or all of the expense based on the customer's income. For customers choosing to replace their own private side lead service line, PWSA will reimburse customers based on the customer's income. The OCA submits that PWSA has not presented adequate justification for this income-based reimbursement policy. This approach is not based on any substantiated data; rather, the policy is arbitrary and is inconsistent with PWSA's stated goal of removing all lead service lines from its system. As discussed in greater detail below, the OCA submits that: (1) this policy will result in fewer lead service lines being replaced with little to no meaningful savings to the Authority; (2) lead service lines represent a significant public health and safety risk and should be removed from PWSA's system in their entirety; and (3) this

policy may not be consistent with the Public Utility Code. For these reasons, the OCA requests that the Commission reject the income-based reimbursement policy and direct PWSA to submit a single, comprehensive plan for replacing all public and private-side lead services lines in its system.

PWSA states that it has “voluntarily committed to formulating a plan that will, over time, completely eliminate lead in its water system,” but argues that “PWSA has no legal or regulatory obligation to repair or replace a customer’s private service line.” PWSA M.B. at 56. PWSA seems to suggest that because of its jurisdictional argument, it has no obligation to ensure that customers are treated in a fair and consistent manner, both to achieve PWSA’s stated goal of eliminating lead in an efficient manner and to ensure that customers are treated fairly and equitably as required by Section 1304 of the Public Utility Code. 66 Pa. C.S. § 1304.

PWSA repeatedly makes promises to replace all lead in its system, but does not have a comprehensive plan to do so and does not explain how the reimbursement policy, which will likely result in many private-side lead service lines remaining in the ground (see OCA M.B. at 20-23), fits within this stated goal. For example, PWSA states that “[t]he July 2019 Policy will eventually address all known residential lead service lines in PWSA’s system.” PWSA M.B. at 61. The record in this proceeding, however, does not include a plan or other information supporting this statement. PWSA does not currently have complete information on how many lead service lines are in the system and where the lead service lines are located. See PWSA M.B. at 52 (explaining PWSA’s timeline for completing an inventory of residential lead service lines by December 31, 2020). PWSA also has not presented a comprehensive plan for replacing all lead service lines, beyond generic statements that it intends to do so. Further, it is unclear how the July 2019 policy would ensure that all lines are replaced, particularly given that the income-based reimbursement

policy requires customers with private-side only lead service lines to replace their lead line on their own initiative at some level of personal expense. See OCA M.B. at 20-23.

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

PWSA has stated that the average cost of replacement is approximately \$5,500.³ Given that \$5,500 is an average, the actual cost to an individual customer could potentially be a much higher amount. As OCA witness Rubin discussed:

³ PWSA maintained during most of this proceeding and in official policy documents that \$5,500 is the average cost of replacements. See PWSA Exh. RAW/C-46 ¶ 3.2; Pittsburgh UNITED St. C-1-Supp-R, Appendix A, 2. In Rejoinder, PWSA modified its position and stated that if administrative costs are included, the actual average cost for

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

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

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

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

PWSA estimates that 53.3% of households in its service territory will qualify for full reimbursement of costs of the private-side lead service line replacement, 12.1% will qualify for 75% reimbursement for the private-side lead service line replacement and 9.0% will qualify for a 50% reimbursement of the private-side lead service line replacement. Approximately 75% of households will qualify to receive a reimbursement for at least 50% of those costs.

PWSA to replace a lead service line is \$7,500. PWSA St. No. C-1RJ at 6. The OCA has not seen PWSA's justification for this, given that this new figure was mentioned for the first time in Rejoinder.

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

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

Further, PWSA’s cost estimates have evolved over the course of this proceeding. Most recently, PWSA estimated that its cost to replace all lead service lines (both public and private) at no direct cost to customers would be approximately \$112 to \$185 million, while replacing public lead service lines and the associated private lead lines and implementing the income-based reimbursement policy for private-side only replacements would cost approximately \$104 to \$167 million. See Pittsburgh UNITED St. C-1SUPP-R, Appendix A, 2. These are very wide ranges that overlap significantly, and it is unclear whether PWSA would achieve any actual savings through the income-based reimbursement program. The OCA submits that, rather than spending \$1,000 per customer in administrative costs and undertaking the significant burden of overseeing the income-based reimbursement policy, PWSA and its customers would be better served to put

this funding and operational capacity toward replacing lead service lines at no direct cost to customers, thus ensuring that lead lines are being expeditiously removed from its system.

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

PWSA misstates the OCA’s position regarding the proposed income-based reimbursement policy. PWSA claims that the OCA and other parties “insist that PWSA must provide ‘free’ private-side line replacement to all residential customers who wish to have their line replaced (and not wait for PWSA to replace the water mains on his/her street – in which case PWSA will replace at no direct cost to the property owner).” PWSA M.B. at 58; see also PWSA M.B. at 73. This statement is inconsistent with the record in this proceeding. This statement indicates that all customers with private-side only lead service lines can simply wait their turn and have their lead service line replaced when PWSA replaces the public main, but that is not the OCA’s understanding of PWSA’s proposal as presented in the record. PWSA has not indicated that all private-side only lead service lines will be replaced. For example, as discussed by Pittsburgh

UNITED, “by 2020, PWSA will have skipped nearly 2,000 private-side-only lead service lines located in areas covered by its neighborhood-based program.” UNITED M.B. at 9. Thus, even in PWSA’s current program, customers with private lead service lines do not receive a replacement unless the public side is also being replaced, resulting in many lead service lines remaining in the system. PWSA does not have a comprehensive plan to remove all lead from its system and, in particular, nothing indicates that all private-side only lines will be removed at no direct cost to customers unless PWSA happens to replace the public side. As discussed in the OCA’s Main Brief, the income-based reimbursement policy is particularly concerning for customers in that PWSA has indicated that it may change course in the future. In Rejoinder Testimony, PWSA witness Weimar states that PWSA is:

...committed to eliminating all lead lines in its system . . . To do this, in 2021 PWSA will establish a plan and timeline to replace all lead service lines in its system and will establish a revised replacement timeline (its current goal is 2026) once it has completed its inventory of lead service lines in 2020.

PWSA St. No. C-1RJ at 4. It is unclear to the OCA how customers can adequately evaluate whether to spend their own time and money to replace their lead line now, or wait while their family is potentially being exposed to harmful lead contamination in the hope that PWSA may modify its policy and instead replace their private-side lead service line at no direct cost as part of a future program. OCA M.B. at 24-25.

To address the parties’ concerns about the proposed income-based reimbursement policy, PWSA stated that it is “willing to work with third parties so PWSA would pay the customer’s contractor (usually a plumber) directly, thereby obviating the need for the customer to initially ‘front’ the entire cost.” PWSA M.B. at 63 (citation omitted); see also PWSA M.B. at 73-74. PWSA first raised this possibility late in the proceeding in its Rejoinder testimony. PWSA St. C-

1RJ at 11. There is nothing in the record to substantiate if or how PWSA would do this, and nothing to this effect is included in the July 2019 Board Policy creating the income-based reimbursement policy. Additionally, while it would be helpful for customers to not be required to pay all costs up front, this change would not fully address the OCA's concerns with the income-based reimbursement policy. As discussed in the OCA's Main Brief, PWSA has not demonstrated that this program would achieve any actual savings to the Authority, and the administrative burden of verifying customers' income and otherwise running this program are unknown but have been estimated at \$1,000 per customer. OCA M.B. at 22-23. The OCA submits that, rather than spending \$1,000 per customer in administrative costs and undertaking the significant burden of overseeing the income-based reimbursement policy, PWSA and its customers would be better served to put this funding and operational capacity toward replacing lead service lines at no direct cost to customers, thus ensuring that lead lines are being expeditiously removed from its system. Id. PWSA's change also would not address the OCA's concern that the policy may be discriminatory under Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304.

As demonstrated in the OCA's Main and Reply Briefs, PWSA has not met its burden of showing that the income-based reimbursement policy is just, reasonable, and otherwise in compliance with the Public Utility Code. OCA M.B. at 15-27; OCA R.B. at 14. PWSA generically justifies the policy by stating that it "fairly balances the goals of eliminating lead in the PWSA system while controlling costs." PWSA M.B. at 64. While the OCA supports the goal of removing all lead from the distribution system at a reasonable cost to ratepayers, PWSA has not demonstrated that the income-based reimbursement policy will achieve either facet of this goal. In fact, the proposed policy will require PWSA to assume a significant administrative burden with high costs to ratepayers, just to implement a program that will likely result in many private-side lead lines

remaining in service. See OCA M.B. at 19-23. The OCA further shares PWSA's concern about "the level of rate burden that PWSA ratepayers will have to bear in the coming years..." PWSA M.B. at 75. The income-based reimbursement policy, however, has not been shown to alleviate the ratepayer burden in any way. The OCA submits that PWSA should instead focus on replacing all lead service lines, both public and private, at no direct cost to customers in the most efficient manner possible. The ad hoc or "one-off" private-side only lead service line replacements that would occur under the income-based reimbursement policy are very inefficient and miss economies that could be gained by a more systematic geographic approach. OCA M.B. at 27-28; OCA R.B. at 15; OCA St. 2R-Supp at 3-5. PWSA also recognizes that a program similar to its current neighborhood-based program may be a reasonable approach in the future. PWSA M.B. at 77.

As noted above, the Commission is authorized to determine whether a public utility is meeting the requirements set forth in the Public Utility Code. The Commission has plenary authority under Section 501 of the Public Utility Code to carry out and enforce the Public Utility Code and any rules, regulations, orders, or other requirements. 66 Pa. C.S. § 501. One such requirement is that:

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 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 Code, therefore, places upon every public utility the obligation to remedy any deficiencies in the system to ensure that its customers receive "adequate, efficient, safe, and reasonable service." Id.

The Commission's standard for determining that water service is safe and adequate for purposes of 66 Pa. C.S. § 1501 was set forth in Pa. P.U.C. v. Pennsylvania Gas and Water Co., which states that "every customer is entitled to water that is fit for the basic, domestic purposes (e.g. cooking, drinking, washing and bathing)." 61 Pa. PUC 409, 416, 74 PUR4th 238, 245 (1986) (PG&W 1986); see also Pa. P.U.C. v. Pennsylvania-American Water Co., 71 Pa. PUC 210, 218-19 (1989). The Commission defines basic household purposes as including "drinking, washing, bathing and cooking." Pa. P.U.C. v. National Utilities, Inc., 87 Pa. PUC 1, 5 (1997).

In PG&W 1986, the Commission stated in more detail what is necessary to support claims of inadequate and unreasonable water service:

In reaching a determination as to whether a utility has provided adequate and reasonable service, we note that *every* customer is entitled to water that is fit for the basic, domestic purposes (e.g., cooking, drinking, washing and bathing). Although a few isolated or sporadic instances or complaints of water received by customers . . . that is unfit for the aforementioned basic, domestic purposes would not warrant a finding that a utility has failed in its provision of adequate and reasonable service, we believe that probative evidence in a particular case showing a *significant* failure on the part of a utility to provide adequate and reasonable service would provide a basis for a conclusion that a utility has provided inadequate service. Finally, we point out that customers are entitled to adequate and reasonable service at the time they are paying their bills, not some optimistic point in the future.

61 Pa. PUC at 416. These statements were made in the context of a base rate proceeding, but the description of "adequate and reasonable service" is no less applicable in this compliance proceeding. Further, the Commission has stated that:

It is our opinion that in exchange for the utility's provision of safe, adequate, and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return to the utility's investors. Thus, as the OCA contends, a quid pro quo relationship exists between the utility and its ratepayers.

PG&W 1986, 61 Pa. PUC at 415-16.

Water does not need to be a public health risk in order to be unsuitable for all domestic purposes. Pa. P.U.C. v. Lake Latonka Water Co., 71 Pa. PUC 507, 522 (1989) (holding that a utility provides inadequate water even when the water “has non-health, aesthetic quality problems”); see Kessler v. Shickshinny Water Co., 64 Pa. PUC 290, 296-97 (1987) (holding that ground debris in pipes resulting in “dirty, smelly water which was unsatisfactory for virtually every purpose except toilet flushing” violated 66 Pa. C.S. § 1501). In Ashbaugh v. Fitz Henry Water Co., 51 Pa. PUC 287 (1977), the Commission held that water was inadequate despite being safe to drink. 51 Pa. PUC at 291. Customers of Fitz Henry testified to the discoloration of their water and produced filters with sediment. Id. at 288. Testing by the Pennsylvania Department of Environmental Resources determined that, although the water was somewhat acidic, it was mostly within the recommended public health limits for drinking water that were in place at the time. Id. at 289. However, the Commission ruled that the water was inadequate because of the water’s “unpleasant taste, sediment, and unsuitability for laundry purposes” and held that the utility had violated its statutory obligation. Id. at 291.

These long-standing legal standards establish the Commission’s authority and obligation to require a utility to take the necessary actions to effect improvements in quality of service. Lead service lines raise significant public health and safety concerns, from the perspective of water quality as regulated by the Pennsylvania Department of Environmental Protection (DEP), as well as the quality of water service provided by water utilities as regulated by the Commission.

In the instant proceeding, the parties’ concerns relate to PWSA’s infrastructure and whether the quality of service provided to customers meets the “adequate, efficient, safe, and reasonable service and facilities” standard under Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. PWSA explained that “[t]here is no detectable lead in PWSA’s water when it leaves the treatment

plant and travels through PWSA's water mains. However, lead can enter drinking water through lead service lines." PWSA M.B. at 51 (citations omitted). Thus, lead is leaching from the lead service lines into drinking water, resulting in service and facilities that are not "adequate, efficient, safe and reasonable" as required by Section 1501 of the Public Utility Code.

The OCA is seeking to address serious deficiencies in the water provided to customers because the water at the customers' taps, when there are private lead service lines, puts customers at risk of lead exposure, which the OCA submits constitutes unsafe, unreasonable, and inadequate service in violation of Section 1501 of the Public Utility Code. The Commission has the authority to ensure that PWSA takes the necessary steps to address the inadequate service that PWSA is providing. 66 Pa. C.S. §§ 501, 1501, 1505, and 3205. Section 1505 of the Public Utility Code provides Commission authority to prescribe the facilities to be furnished or employed including "all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public." 66 Pa. C.S. § 1505. This authority is specifically captured in Section 3205(a), which gives the Commission the authority to maintain, repair and replace facilities and equipment used to provide service "to ensure that the equipment and facilities comply with section 1501...." 66 Pa. C.S. § 3205(a).

As discussed in the OCA's Main Brief, recent changes in Pennsylvania law allow and encourage water utilities to replace private side lead service lines. OCA M.B. at 18-19. In addition, Act 44 of 2017 amended the Fiscal Code to clarify that municipal authorities have the ability to replace private water or wastewater laterals in order to benefit public health. 72 P.S. § 1719-E(c)(1). The legislature clearly intended to encourage water utilities and municipal authorities to replace the customer-owned portion of lead service lines, and PWSA is one of a

number of water utilities in Pennsylvania that will be replacing the customer-owned lead service lines.⁴

The Pennsylvania General Assembly has recognized the significant public health issue created by lead service lines and has taken action to encourage water utilities to replace customer-owned lead service lines. As of December 2018, the amended Section 1311(b) of the Public Utility Code, 66 Pa. C.S. § 1311(b), *inter alia*, established a framework for water utilities replacing the customer-owned portion of lead service lines, including Commission-approved budget caps, and established a cost recovery mechanism that permits the inclusion of the lead service line replacement costs in the utility's rate base. While these changes were primarily aimed at investor-owned utilities (as a municipal authority, PWSA does not have a rate base on which it can earn a return), this amendment to the Public Utility Code is indicative of Pennsylvania's policy goals.

The ALJs state that the opposing parties “do not offer any specific statutory language or regulation which give the Commission the power to order PWSA to enter upon an owner's property and replace lead service lines without the owner's consent.” R.D. at 208. The OCA's

⁴ PWSA describes York Water Company's plan to replace lead service lines, but this description is incomplete. See PWSA M.B. at 72. First, York obtained a temporary waiver of the portion of its tariff that did not allow the Company to bear the costs associated with replacing customer-owned lines. Petition of York Water Company, Docket No. P-2016-2577404, Order (March 2, 2017). Regarding private-side lead service lines, the Commission stated as follows:

Rather than rely upon customers to replace their lead service lines, **which would result in a haphazard approach**, York Water proposes to assume that responsibility at its initial expense. While performing the replacement of the Company-owned lead service lines, York Water proposes to simultaneously replace the customer-owned portions of the lead service lines as they are discovered. In instances where the customer-owned lead service line is connected to a Company-owned non-lead service line, York Water would still replace customer-owned lead service lines, as they are discovered. York Water proposes to pay up to the Company's average contracted cost for replacing a customer-owned lead service.

Id. at 4 (emphasis added). The customer's portion can be paid in a lump sum or added to the customer's bill for up to one year. Petition of York Water Company, Docket No. P-2016-2577404, Joint Petition for Settlement at ¶ 16 (Jan. 23, 2017). York will not charge interest and will not terminate a customer for non-payment; rather, any unpaid portion will be written off as uncollectible and included in a regulatory asset account. Id.

proposal is not to replace customer-owned service lines without the owners' consent. The process that PWSA has used and that would continue to use under the OCA's proposal, would obtain the owner's consent before replacing the customer's lead service line as PWSA has done with all of the customer-owned lead service line replacements it has done to date.

The ALJs have adopted PWSA's plan that requires customers to pay for replacement of customer-owned lead service lines and then be reimbursed by PWSA. R.D. at 208-09. In its Main Brief, in support of its reimbursement plan, PWSA argued that replacing customer-owned lead service lines is discretionary on the part of the utility and thus cannot be required by the Commission. PWSA M.B. at 71-72. PWSA based its argument on the language of Act 44, which allows municipal authorities to replace private-side lead service lines, "if the authority determines that the replacement or remediation will benefit the public health, public water supply system or public sewer system." 72 P.S. § 1719-E(c)(1). This argument should be rejected. First, unlike PWSA, the municipal authorities referenced in Act 44 are not subject to Commission jurisdiction, which includes the authority provided for in Sections 501, 1501, 1505, and 3205 as discussed above. Second, PWSA's argument here is moot given that PWSA has already made a determination that replacing private-side lead service lines will benefit the public health and the public water supply, since the Authority has already replaced thousands of private-side lead service lines and continues to do so. PWSA has already determined that replacing private-side lead service lines will benefit the public health and the public water supply; the issue in this proceeding relates to how PWSA is implementing its program, as discussed below.

As discussed above, the income-based reimbursement policy is not based on any substantiated data; rather, the policy is arbitrary and is inconsistent with PWSA's stated goal of removing all lead service lines from its system, and inappropriately singles out a group of

customers that will have to pay some amount for a private-side lead service line replacement while other customers receive these replacements from PWSA at no direct cost. See OCA M.B. at 19-20. For these reasons and those discussed in the OCA's Main and Reply Briefs, the OCA maintains that: (1) the proposed income-based reimbursement policy will result in fewer lead service lines being replaced with little to no meaningful savings to the Authority; (2) lead service lines represent a significant public health and safety risk and should be removed from the PWSA's system in their entirety; and (3) this policy may not be consistent with Section 1304 of the Public Utility Code. Accordingly, the OCA requests that the Commission reject the income-based reimbursement policy and direct PWSA to submit a single, comprehensive plan for replacing all public- and private-side lead service lines in its system.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, the OCA respectfully requests that the Commission grant the OCA's Exceptions and adopt the OCA's positions as discussed above. Specifically, the Commission should: (1) require PWSA to begin charging a flat rate to unmetered and/or unbilled municipal properties and non-profits which "ramps up" during a five-year transition period; and (2) reject PWSA's income-based reimbursement policy and direct PWSA to develop a comprehensive plan to replace all lead service lines in its service territory at no direct cost to customers.

Respectfully submitted,



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