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April 10, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Implementation of Chapter 32 of the Public Utility Code RE: Pittsburgh Water  
and Sewer Authority; Docket Nos. M-2018-2640802 and 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 and P-2018-3005039

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Pittsburgh Water and Sewer Authority's ("PWSA")  
Petition for Reconsideration, Clarification and/or Amendment of the Commission's March 26,  
2020 Final Order with regard to the above-referenced matter. Copies to be served in accordance  
with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Conrad Johnson w/enc.  
Hon. Mark Hoyer w/enc.  
Certificate of Service w/enc.

## **CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of PWSA's Petition for Reconsideration, Clarification and/or Amendment of the Commission's March 26, 2020 Final Order upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: April 10, 2020

A handwritten signature in dark ink, reading "Deanne M. O'Dell". The signature is written in a cursive, flowing style. The first name "Deanne" is written in a larger, more prominent script, followed by "M." and "O'Dell". The signature is positioned above a horizontal line.

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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Chapter 32 of the	:	
Public Utility Code Re Pittsburgh Water	:	Docket No. M-2018-2640802 (water)
And Sewer Authority	:	M-2018-2640803 (wastewater)
	:	
And	:	And
	:	
Petition for The Pittsburgh Water and	:	Docket No. P-2018-3005037 (water)
Sewer Authority for Approval of Its Long-	:	P-2018-3005039 (wastewater)
Term Infrastructure Improvement Plan	:	

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**PETITION OF THE PITTSBURGH WATER AND  
SEWER AUTHORITY FOR RECONSIDERATION,  
CLARIFICATION AND/OR AMENDMENT OF THE  
COMMISSION'S MARCH 26, 2020 FINAL ORDER**

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## **I. INTRODUCTION**

Pursuant to Section 703 of the Public Utility Code<sup>1</sup> and Section 5.572 of the Regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”),<sup>2</sup> The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) files this Petition for Reconsideration, Clarification and/or Amendment (“Petition”) of the PUC’s Opinion and Order entered March 26, 2020 (“Order”) that sets forth the Commission’s decisions regarding PWSA’s Compliance Plan<sup>3</sup> and its Long Term Infrastructure Improvement Plan (“LTIIP”).<sup>4</sup> PWSA appreciates the Commission’s careful review of myriad issues raised in this complex proceeding and remains fully committed to moving forward in accordance with the terms of the Partial Settlement. However, PWSA submits that the Commission should reconsider and modify its final determinations in three narrowly focused areas: (1) elimination of the residency requirement; (2) pronouncements related to the City of Pittsburgh (“City”) unmetered issues; and, (3) revisions to PWSA’s Lead Remediation Program.

First, PWSA requests that the Commission reconsider its decision to eliminate the requirement for its employees to reside in the City of Pittsburgh. In directing elimination of the residency requirement, the Commission overlooked a line of long-standing cases decided by the Pennsylvania Supreme Court which clearly limit the ability of the Commission to interfere with management or business decisions of a public utility. These cases confirm a utility’s right of

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<sup>1</sup> 66 Pa.C.S. § 703.

<sup>2</sup> 52 Pa. Code § 5.572.

<sup>3</sup> PWSA filed its Compliance Plan or “CP” on September 28, 2018 and its “Compliance Plan Supplement” on February 1, 2019.

<sup>4</sup> As stated therein, the Order (1) grants, in part, and denies, in part, the Exceptions filed by the PWSA and the Bureau of Investigation and Enforcement (“I&E”); (2) denies the Exceptions of the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Pittsburgh UNITED (“UNITED”); and (3) adopts and modifies the Recommended Decision (“RD”) of Deputy Chief Administrative Law Judge Mark A. Hoyer and ALJ Conrad A. Johnson (collectively the “ALJs”) consistent with the Order.

self-management and prohibit the Commission from acting as a “super board of directors.”

Despite recognizing that the residency requirement is a management decision by PWSA, the Commission failed to consider the principles espoused by the Pennsylvania Supreme Court. Instead, the Commission erroneously relied on case law that permits the Commission to examine managerial decisions of utilities in the context of the impact on rates paid by consumers. As this is not a rate proceeding, the cases cited by the Commission are inapplicable and do not authorize the interference with PWSA’s management of its business.

Importantly, not a shred of evidence was presented in this proceeding to show any link between PWSA’s residency requirement and any failure on its part to provide adequate and efficient service. Absent such evidence, the Commission is not authorized to direct the elimination of the residency requirement. Not only did the Commission fail to consider the lack of evidence of any violation of the law, regulations or Commission orders, it also overlooked the evidence presented by PWSA of the many steps it has taken and is taking to ensure that it is able to perform its regulatory obligations in connection with providing water and waste water service to its customers.

If the Commission, despite the foregoing, still decides that it has the authority to direct that PWSA eliminate the residency requirement, it should nonetheless not require immediate elimination of the residency requirement for union employees. This is an issue that should be addressed during PWSA’s negotiations with its unions regarding collective bargaining agreements, which are set to expire at the end of calendar year 2020. Generally, the Commission does not interfere with negotiations of collective bargaining agreements between public utilities and their unions. Accordingly, the Commission should defer this issue to Stage 2 of the Compliance Proceeding.

Second, PWSA seeks reconsideration and/or clarification of its intentions regarding issues related to the City. The Order appears to overlook two proceedings<sup>5</sup> in which full evidentiary records will be developed regarding the City issues addressed in the Order. As these two pending on-the-record proceedings will offer a full and fair opportunity to achieve an equitable, reasonable and fair final resolution of matters related to the City payment for services, the Commission inappropriately predetermined and prejudged the issues in this proceeding. The result is to deny the parties their full and fair due process opportunity to support their positions in the pending cases. Importantly, this Compliance Plan proceeding focused on PWSA's compliance with hundreds of Commission requirements and regulations – many of which did not implicate the relationship with the City – it was not conducted pursuant to either 66 Pa. C.S. §§ 507 or 1308. PWSA must not be denied its ability to fully litigate the issues in the two proceedings based on the claim that the Order has already decided them.

Finally, PWSA is seeking clarification and/or amendment of new subsections (v) and (vi) added by the Commission to Paragraph III.VV.1.b of the Partial Settlement. These subparts are problematic, since they (a) will require PWSA to terminate water service to certain groups of customers - even when the ability to authorize or consent to the replacement of a private-side lead service line is out of their control and (b) would create unduly long delays in lead service line replacement projects.

This Petition requests that the Commission clarify and/or amend those subparagraphs in the following respects: First, PWSA is requesting clarification and/or amendment of subsection

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<sup>5</sup> Cooperation Agreement between the City of Pittsburgh and the Pittsburgh Water and Sewer Authority, Docket No. U-2020-3015258 (filed December 20, 2019); and, Pittsburgh Water and Sewer Authority Rate Filing, Docket Nos R-2020-3017951 (water) and R-2020-3017070 (wastewater) (filed March 6, 2020). Both case are or are expected to be assigned to Administrative Law Judge Long. PWSA also plans to file a request to consolidate the two proceedings into the same docket.



(vi) to permit PWSA to make decisions that would enable customers to continue to receive water service when the customer does not have the authority to permit the replacement of the private lead service line serving their residence or where replacing the private lead service line would be unreasonably burdensome and costly without achieving a commensurate water service or water quality benefit. Second, PWSA is requesting clarification and/or amendment of subsection (v) to ensure that decisions are made timely and that scheduled replacements will proceed at a reasonable pace.

In further support of this Petition, PWSA states as follows:

## **II. BACKGROUND**

1. On April 1, 2018, the PWSA's water<sup>6</sup> and wastewater<sup>7</sup> operations became subject to regulation of the Commission pursuant to Section 3202(a)(1) of the Public Utility Code.<sup>8</sup>

2. In September 2018, as directed by the Chapter 32 of the Public Utility Code,<sup>9</sup> PWSA filed both its Compliance Plan<sup>10</sup> and its LTIP<sup>11</sup> with the Commission.<sup>12</sup>

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<sup>6</sup> PWSA provides water service to approximately 80,000 residential, commercial and industrial customers in: portions of the City of Pittsburgh (Pittsburgh or City); the Borough of Millvale; and portions of Reserve, O'Hara, and Blawnox Townships, Allegheny County.

<sup>7</sup> PWSA provides wastewater conveyance service to customers located in the City and conveys wastewater for portions of twenty-four (24) neighboring communities.

<sup>8</sup> 66 Pa. C.S. § 3202(a)(1).

<sup>9</sup> 66 Pa.C.S. § 3201 to 3209. On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law whereby the Pennsylvania Public Utility Code was amended to add new language to 66 Pa.C.S. § 1301 and to add a new Chapter 32 consisting of Sections 3201 through 3209, 66 Pa.C.S. § 3201, et seq. ("Act 65" or "Chapter 32").

<sup>10</sup> Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater).

<sup>11</sup> Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater).

<sup>12</sup> See 66 Pa.C.S. § 3204(b). The Commission's established a due date of September 28, 2018, for the filing by PWSA of a Compliance Plan and a LTIP. See Implementation of Chapter 32 of the Public Utility Code, Docket Nos. M 2018-2640802 (water) and M-2018-2640803 (wastewater), Final Implementation Order entered Mar. 15, 2018 ("FIO").

3. The parties were able to reach an agreement on the vast majority of the issues,<sup>13</sup> and on September 13, 2019, the parties filed a Joint Petition for Partial Settlement (“Joint Petition” or “Partial Settlement”).

4. In their RD, the ALJs found that the Partial Settlement was in the public interest and recommended its approval without modification. The RD also made recommendations on the topics and issues upon which the parties could not agree. Regarding the litigated issues, the PWSA, I&E, the OCA, the OSBA, and UNITED filed Exceptions on November 18, 2019, and Replies to Exceptions on December 3, 2019.

5. The Order resolves the litigated issues and adopts the resolution of the issues in the Partial Settlement. In doing so, however, the Commission modified Paragraph III.VV.1.b of the Partial Settlement by including new subsections (v) and (vi).

### **III. LEGAL STANDARDS FOR RECONSIDERATION**

6. The Public Utility Code establishes a party’s right to seek relief following the issuance of a decision.<sup>14</sup> Such requests for relief must be consistent with Section 5.572 of the Commission’s regulations and/or section 703(g) of the Public Utility Code.<sup>15</sup>

7. It is well settled that petitions made pursuant to Section 5.572 of the Regulations or 703(g) of the Public Utility Code may properly raise any matters designed to convince the

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<sup>13</sup> The Partial Settlement resolves 139 issues (nearly 75% of all identified issues). It defers 25 issues to future proceedings (including those issues that the Commission has already moved to Stage 2) and an additional four issues are no longer open due to either the passage of time and/or the resolution of other related matters. Only 18 issues were reserved for litigation. Those issues are encompassed within the following five topic areas: 1) the Cooperation Agreement (“1995 Cooperation Agreement” or “Cooperation Agreement”) between PWSA and the City of Pittsburgh (“City” or “Pittsburgh”) effective January 1, 1995; 2) the metering and billing of municipal properties and public fire hydrants within the City; 3) reconciliation of the conflicting Commission Line Extension Regulations and line extension provisions in the Municipality Authorities Act (“MAA”); 4) PWSA’s residency requirement; and 5) lead remediation issues.

<sup>14</sup> 66 Pa.C.S. § 703(f) relating to rehearings and § 703(g), relating to the rescission, clarification and amendment of orders.

<sup>15</sup> 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

Commission that it should exercise its discretion to rescind or amend a prior order in whole or in part.<sup>16</sup> The standards for granting a petition for reconsideration, modification or clarification were set forth in *Duick v. Pennsylvania Gas and Water Company*.<sup>17</sup> Under the standards set forth in *Duick*, such petitions may properly raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior Order, in whole or in part. Such petitions should succeed when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission or in the record.<sup>18</sup> PWSA’s specific requests for reconsideration, amendment or clarification below will explain why the request meets the *Duick* standards.

#### **IV. REQUEST FOR RECONSIDERATION OF TWO LITIGATED ISSUES – RESIDENCY AND CITY OF PITTSBURGH UNMETERED ISSUES**

##### **A. Reconsideration of Elimination of Residency Requirement is Necessary Due to a Long Line of Pennsylvania Supreme Court Decisions that the Order Overlooked in Interfering with a Management Decision of PWSA**

##### **1. PWSA’s Residency Requirement is a Business or Management Decision**

8. Following the City’s Home Rule Charter, which contains a requirement for persons employed by the City to live in the City (except for police officers who have been exempted by the Supreme Court of Pennsylvania), the PWSA Board has adopted a domicile policy requiring PWSA employees to reside in the City. The policy applies to all employees except those specifically exempted from the residency requirements by the PWSA’s Executive Committee.<sup>19</sup>

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<sup>16</sup> *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 et al., Order entered December 17, 1982; 56 Pa. P.U.C. 553 (1982).

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

<sup>18</sup> *Duick*, 56 Pa. P.U.C. at 559.

<sup>19</sup> PWSA St. C-2 (Lestitian) at 14.

9. Section 1501 of the Public Utility Code obligates public utilities to furnish and maintain adequate, efficient, safe and reasonable service and facilities and to make repairs and improvements that are necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Further, such service is required to be reasonably continuous and without unreasonable interruptions or delay.<sup>20</sup>

10. I&E argued during the proceeding that PWSA's residency requirement is incompatible with its duty under Section 1501 to provide adequate and efficient service. Advocating for the elimination of the residency requirement, I&E contended that it impedes PWSA's ability to provide adequate and efficient service and increases PWSA's costs. Notably, I&E presented no evidence of a failure on PWSA's part to provide adequate and efficient service as a result of the residency requirement.

11. The ALJs described the residency requirement as a business or management decision and recommended that the Commission decide it lacks the power to interfere with PWSA's residency requirement, which is determined by the Authority's governing body.<sup>21</sup> In making this recommendation, the ALJs correctly relied on long-standing Pennsylvania Supreme Court decisions (described below) limiting the Commission's authority to interfere in the internal management of a utility company and explaining that the Commission is not empowered to act as a "super board of directors" for the public utilities it regulates.

12. While the Commission agreed with the ALJs that PWSA's residency requirement is a business or management decision, and recognized limitations on its authority to interfere with such decisions under the "management discretion doctrine" established by long-standing appellate case law, it declined to adopt the ALJs' recommendation.

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<sup>20</sup> 66 Pa.C.S. § 1501; PWSA St. C-2 (Lestitian) at 14.

<sup>21</sup> R.D. at 162.

2. **The Commission Overlooked or Ignored Long-Standing Pennsylvania Supreme Court Decisions Limiting its Authority to Interfere with Utilities' Business Decisions**

13. The ALJs cited numerous Pennsylvania Supreme Court decisions which clearly limit the Commission's authority to interfere with PWSA's business decision to impose a residency requirement on its employees. Rather than give the weight that is due to this long-standing line of Pennsylvania Supreme Court decisions, the Commission did not even mention them. This is an oversight that must be rectified upon reconsideration.

14. In *Coplay Cement Manufacturing Co. v. Public Service Commission*, the Pennsylvania Supreme Court declared that it was not the intent of the Legislature that the Commission "should be a board of managers to conduct and control the affairs" of public utilities."<sup>22</sup> Since the Commission may not conduct and control the affairs of public utilities, it is not authorized to interfere with PWSA's business and management decision requiring its employees to be residents of the City of Pittsburgh.

15. In *Northern Pennsylvania Power Co. v. Pa. Pub. Util. Comm'n*, the Pennsylvania Supreme Court found that the Commission's "sole power is to see that in the matter of rates, service and facilities," the public utilities' treatment of the public is fair.<sup>23</sup> While the Commission is authorized to oversee public utilities' service and facilities to ensure that the treatment of the public is fair, the Order fails to consider whether PWSA's imposition of a residency requirement on its employees somehow results in treatment of the public that is not "fair" in the matter of service and facilities. Indeed, no evidence was presented by I&E to suggest otherwise.

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<sup>22</sup> *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 61, 114 A. 649 (1921).

<sup>23</sup> *Northern Pennsylvania Power Co. v. Pa. Pub. Util. Comm'n*, 333 Pa. 265, 268, 5 A.2d 133 (1939).

16. The Court in *Northern Pennsylvania Power* also referenced a United States Supreme court opinion in *Southwestern Bell Tel. Co. v. Pub. Ser. Com*, which was similarly overlooked by the Order. The United States Supreme Court emphasized that “while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership.”<sup>24</sup> As the Commission is not clothed with the general power of management incident to ownership, it may not impose its will on PWSA regarding a business decision to require employees to live in the City.

17. In *Bell Telephone Co. of Pa. v. Driscoll*, the Pennsylvania Supreme Court reiterated that the Commission has not been empowered to manage the business of the corporation, and if it could do so, it would be able to determine the economic and fiscal policy of the utility, which would constitute an illegal and unconstitutional delegation of authority.<sup>25</sup> Interfering with PWSA’s management decision concerning the residency of its employees is exactly the type of overstepping by the Commission that the *Driscoll* order prohibits.

18. Accordingly, reconsideration is warranted so that the Commission can fully consider these Pennsylvania Supreme Court decisions and the principles which they espouse. Absent a review and proper application of these compelling decisions limiting the ability of the Commission to interfere with PWSA’s business decision to require employees to reside in the City, the Commission’s elimination of PWSA’s residency requirement will illegally interfere with PWSA’s right to manage its own business affairs.

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<sup>24</sup> *Southwestern Bell Tel. Co. v. Pub. Ser. Com*, 262 U.S. 276, 289 (1923).

<sup>25</sup> *Bell Telephone Co. of Pa. v. Driscoll*, 343 Pa. 109, 118-119, 21 A.2d 912 (1941).

**3. The Cases Relied Upon by the Commission to Examine PWSA's Management Decision Involved Situations Impacting Rates**

19. While the Commission recognized the “management discretion doctrine” and cited the Commonwealth Court’s decision in *Metropolitan Edison C. v. Pa. Pub. Util. Comm’n*, this decision stands for the proposition that the Commission may examine management decisions in the context of their impact on rates.<sup>26</sup> In *Metropolitan Edison*, the Court acknowledged the utility’s right of self-management, while also recognizing the Commission’s ongoing duty to protect the public from unreasonable rates. The standard followed by the Court is that when rates are impacted, the Commission may interfere with the management of a utility if an abuse of discretion or arbitrary action has been shown and that the public interest has been adversely affected thereby. Here, the Commission inappropriately applied that standard when rates are not at issue.

20. Similarly, all of the other cases on which the Commission relied in the Order to find that it had authority to interfere with PWSA’s management decision to require employees to reside in the City, subject to exemptions made by its Board, involved the impact of the utilities’ business decisions on the rates paid by consumers. PWSA does not dispute the ability of the Commission to consider in the pending base rate case whether it prudently incurred costs in engaging consultants and contractors due to the residency requirement and whether it should be permitted to recover those costs.

21. However, as this proceeding did not involve rates – a fact recognized by the Order – any further analysis into the merits of PWSA’s management decision was unwarranted and inappropriate. To the contrary, rather than relying on language from opinions involving the impact of management decisions on rates, it was incumbent upon the Commission to follow the law as set forth in the Pennsylvania Supreme Court decisions that it did not even consider.

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<sup>26</sup> *Metropolitan Edison C. v. Pa. Pub. Util. Comm’n*, 62 Pa. Cmwlth. 460, 437 A.2d 76 (1981).

**4. The Commission Failed to Consider Whether Any Evidence Was Presented Showing a Violation of Section 1501 or Any Other Statutory Provision, Regulation or Order**

22. It is well settled that the Commission's findings must be supported by substantial evidence.<sup>27</sup> Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>28</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>29</sup>

23. The Commission's ability to eliminate the residency requirement is limited to situations in which it determines that PWSA's policy is causing it to be out of compliance with the Public Utility Code or Commission regulations by providing inadequate service or, in the context of a rate case, tending to make PWSA's rates unreasonably high. In this proceeding, only if the Commission finds that the residency requirement is causing PWSA to be out of compliance with a statutory provision or regulation is it empowered to direct its elimination.

24. As the Commission improperly relied upon a legal standard that is applicable to the review of management decisions only in the context of rate impacts, it failed to consider whether any evidence was presented in this proceeding to show that PWSA's residency requirement resulted in a failure on PWSA's part to provide adequate and efficient service as obligated by Section 1501 of the Public Utility Code, or in a violation by PWSA of any provision of the Public Utility Code, or Commission regulations or orders.

25. Indeed, had the Commission performed the requisite analysis, it would have determined that no such evidence was presented to support a finding that PWSA's residency requirement has resulted in any violation of the Public Utility Code, or any Commission regulations

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<sup>27</sup> 2 Pa.C.S. § 704; *Samuel J. Lansberry, Inc. v. Pa PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 529 Pa. 654, 602 A.2d 863 (1992)

<sup>28</sup> *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 59 S. Ct. 206, 217.

<sup>29</sup> *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).



or orders. As the ALJs recognized, the residency requirement is a management decision and “PWSA’s business or management decision to hire from within the territory that it serves does not contravene the Public Utility Code or a Commission regulation or order.”<sup>30</sup> While PWSA has acknowledged that the residency requirement makes it challenging to fulfill its regulatory obligations, the ALJs correctly determined that “a challenge does not translate into a violation of the Public Utility Code.”<sup>31</sup> Further, the ALJs appropriately concluded that to the extent “PWSA’s residency requirement frustrates the Authority’s compliance with the Public Utility Code, a frustration does not constitute a violation of the code.”<sup>32</sup> Indeed, neither I&E nor any other party in this proceeding presented an iota of evidence showing any link between PWSA’s residency requirement and a failure on the part of PWSA to provide adequate and efficient service.

26. Yet, in the absence of such evidence of a violation, the Commission summarily concluded that “the continuation of the residency requirement is an abuse of managerial discretion and will adversely affect the public interest.”<sup>33</sup> The Commission’s rationale was based solely on its conclusion that the residency requirement “would appear to frustrate and seriously impede the PWSA’s ability to comply with Section 1501 of the Code.”<sup>34</sup>

27. In reaching this conclusion, the Commission not only ignored the lack of evidence to support it but also wholly overlooked the evidence presented by PWSA explaining the steps it is taking to address the hiring challenges caused by the residency requirement. Those measures include efforts to stabilize the workforce through the hiring of permanent workers, engaging consultants, and temporarily hiring project managers who do not reside in the City and seeking to

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<sup>30</sup> R.D. at 163

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Order at 81.

<sup>34</sup> Order at 81.

convert them to permanent employees (i.e., having individuals establish domicile within the City limits within 6 months). Also, under PWSA's domicile policy, the Executive Committee can exempt employees from this requirement.<sup>35</sup>

28. The Order further finds that the residency requirement is "arbitrary and capricious."<sup>36</sup> However, the Order cites no legal authority for the proposition that the Commission may find that a utility's management or business decision is arbitrary and capricious, particularly outside the context of a ratemaking proceeding, without any evidence of a violation of the Code, regulations or an order. It was not incumbent upon PWSA to establish that the residency requirement benefits the public. To the contrary, it was incumbent upon I&E to present evidence showing that the residency requirement has resulted in PWSA providing inadequate service under Section 1501 of the Public Utility Code. It simply has not done that.

5. **At a Very Minimum, the Commission Should Not Require Immediate Elimination of Residency Requirement for Union Employees**

29. If the Commission, despite the foregoing, still decides that it has the authority to direct that PWSA eliminate the residency requirement, it should nonetheless not require immediate elimination of the residency requirement for union employees. This is an issue that should be addressed during PWSA's negotiations with its unions regarding collective bargaining agreements, which are set to expire at the end of the calendar year 2020. Generally, the Commission does not interfere with negotiations of collective bargaining agreements between public utilities and their unions. Accordingly, the Commission should defer this issue to Stage 2 of the Compliance Proceeding.<sup>37</sup>

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<sup>35</sup> PWSA M.B. at 47-49.

<sup>36</sup> Order at 86.

<sup>37</sup> See Secretarial Letter served November 28, 2018; Reconsideration Order entered December 20, 2018.

**B. Reconsideration and/or Clarification of City of Pittsburgh Unmetered Issues Is Necessary Due to Pending Section 507 and Base Rate Proceedings**

30. PWSA respectfully requests that the Commission reconsider and/or clarify its intentions regarding issues related to the City. Reconsideration is appropriate because the Commission overlooked that two other proceedings (a Section 507 proceeding and a Rate Case Proceeding) are pending to formally resolve issues regarding City payments to PWSA. As these are the appropriate on-the-record proceedings through which an equitable, reasonable and fair final resolution of matters related to the City payment for services can be achieved, the Commission inappropriately predetermined and prejudged the issues in this proceeding, denying the parties their full and fair due process opportunity to support their positions in those cases. Importantly, this Compliance Plan proceeding focused on PWSA's compliance with hundreds of Commission requirements and regulations – many of which did not implicate the relationship with the City – it was not conducted pursuant to either 66 Pa. C.S. § 507 or 1308. PWSA must not be denied its ability to fully litigate the issues in the two proceedings based on the claim that the Order has already decided them.

31. The Order decides three issues related to payments from the City to PWSA: (1) usage for metered properties; (2) a flat fee for unmetered properties; and, (3) costs to install meters (“City Issues”). The Order directs PWSA to “invoice services on a transactional basis.”<sup>38</sup> Specific rates are not determined because this proceeding was not designed to deal with rate issues, nor was it a Section 507 review of either the historical or recently negotiated cooperation agreement between PWSA and the City. As such, there is no record upon which to direct specific rates that PWSA is to charge the City. Guidance on the specific rates (to include how to address potential revenue

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<sup>38</sup> Order at 32.

shortfalls from any anticipated nonpayment) must be provided in the following two pending proceedings<sup>39</sup> and only after a full evidentiary record is developed.

- The first proceeding involves the Commission’s review and adjudication of a new City Cooperation Agreement between the City and PWSA that was filed on December 20, 2019.<sup>40</sup> (“Section 507 Proceeding”). PWSA is seeking approval of the new City Cooperation Agreement pursuant to 66 Pa. C.S. § 507 and the Final Order assigned the matter to ALJ Long for an on-the-record proceeding.
- The second proceeding involves PWSA’s March 6, 2020 base rate filing pursuant to 66 Pa. C.S. § 1308.<sup>41</sup> (“Rate Case Proceeding”). PWSA is proposing to implement a multiyear base rate increase of \$43.4 million for 2021 and \$12.6 million for 2022.<sup>42</sup> As part of this filing, PWSA also presents its analysis of the costs to serve the City of Pittsburgh and a proposal for how to manage an expected shortfall related to these costs, given the result of the negotiations between the City and PWSA as reflected in the new City Cooperation Agreement currently before the Commission. This case has also been assigned to ALJ Long.

32. While the Commission acknowledges the Section 507 Proceeding, it appears to have overlooked that the purpose of the Section 507 Proceeding is to address agreements for rates and charges that are not contained in a utility’s tariffs. The Commission never references the Rate Case Proceeding and, therefore, appears to have overlooked that it will address the ratemaking aspects of the City Issues in that docket.

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<sup>39</sup> Given the interplay of the new City Cooperation Agreement with the financial data presented with PWSA’s rate case, PWSA fully supports consolidation of the two dockets. Such consolidation will enable the Commission and all the interested parties to access the relevant and necessary financial data in the context of one proceeding so that all of the important factors underlying resolution of the City Issues can be addressed comprehensively.

<sup>40</sup> Docket No. U-2020-3015258.

<sup>41</sup> PWSA filed for rate increases for both its water service and its wastewater conveyance services. The water case is docketed at R-2020-3017951 and the wastewater case is docketed at R-2020-3017970. On March 6, 2020, PWSA filed a Petition Of The Pittsburgh Water And Sewer Authority For Consolidation Of Water And Wastewater Rate Proceedings And For Authorization To Use Combined Water And Wastewater Revenue Requirements requesting consolidation of the two rate case dockets. The Consolidation Petition is still pending.

<sup>42</sup> The rate increase request includes a Distribution System Improvement Charge (“DSIC”) assessed at 10% of the base rates. On March 3, 2020, PWSA filed a Petition for Waiver of the Provisions of Act 11 to Increase the DSIC Cap to Permit Levelization of DSIC Charges and to Authority the Pay-as-You-Go Method of Financing at Docket No. P-2020-3019019. On March 6, 2020, PWSA filed a Petition to consolidate the Petition with the rate case proceeding. The Consolidation Petition is still pending.

33. PWSA does not (nor has it ever) disagreed with the main themes of the Order as it relates to the City, including: (1) “PWSA should take the necessary steps of reordering its relationship with the City;”<sup>43</sup> (2) PWSA’s current relationship with the City is problematic for ratemaking purposes;<sup>44</sup> (3) PWSA and the City need to move to the more “traditional independent utility-customer relationship;”<sup>45</sup> (4) the City needs to pay PWSA for its service and alleviate the burden now placed upon PWSA’s customers;<sup>46</sup> and, (5) identification of the costs to serve the City would enable PWSA to develop appropriate ratemaking treatment founded on the principles of gradualism, equality and fairness.<sup>47</sup> PWSA is well on its way to achieving these goals through the Section 507 Proceeding and the Rate Case Proceeding and urges the Commission to be clear that its Order here is not intended to preempt or prejudice the outcome of either of those proceedings or to prevent the parties from developing a record that supports their views on these issue as appropriate in those proceedings.

**1. Section 507 Proceeding**

34. Although the Order states that “it would be premature to consider and make a decision regarding the new [City Cooperation] Agreement,”<sup>48</sup> the Final Order’s resolution of the three City issues appears to do just that. All three issues – in addition to numerous other ones – are included within the new City Cooperation Agreement that the Commission has referred to the OALJ for further proceedings pursuant to Section 507 of the Public Utility Code. By substantively adjudicating the three City issues in this proceeding, the Final Order has created uncertainty as to

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<sup>43</sup> Order at 40.

<sup>44</sup> Order at 58.

<sup>45</sup> Order at 59.

<sup>46</sup> Order at 61.

<sup>47</sup> Order at 62.

<sup>48</sup> Order at 32.

whether these issues are still to be reviewed in the Section 507 proceeding or what weight these “opinions” should be given therein.

35. For example, the Order “rejects any step-billing plan. . . which would treat the City more favorably than all other customers. . . evading full payment of tariffed rates for metered properties.”<sup>49</sup> However, the purpose of the Commission’s review pursuant to 66 Pa. C.S. § 507 is to examine and make a determination concerning the reasonableness of terms of contracts between municipalities (in this case, the City of Pittsburgh) and a utility (PWSA) which are not contained in “regularly filed and published tariff rates.”<sup>50</sup> Therefore, Section 507 contemplates that the terms of a municipal agreement filed under Section 507 would diverge from the utility’s otherwise applicable tariff. Importantly, there are no rates for usage in PWSA’s currently effective tariffs for the City, and the City does not fit into any of PWSA’s existing rate classes. Rather, as is appropriate pursuant to Section 507, PWSA is asking the Commission to approve the payment arrangement as set forth in the new City Cooperation Agreement. Predetermining now that such payment arrangement cannot be implemented prior to undertaking a full evaluation of all the terms of the new City Cooperation Agreement is error.

36. Similarly, the Order also directs PWSA to become responsible for the costs of all meter installation for the City.<sup>51</sup> However, the new City Cooperation Agreement proposes that these costs be shared equally between the City and PWSA.<sup>52</sup> Again, there is no specific meter

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<sup>49</sup> Order at 64.

<sup>50</sup> 66 Pa. C.S. §507. *See also Red Lion Mun. Auth. v. Pa. PUC*, 219 A.3d 730, 730 (Pa. Commw. Ct. 2019)(Section 507 merely provides a mechanism by which a public utility may seek an exception to tariff rules, and the PUC may approve a contract for service at a rate other than the tariff.)

<sup>51</sup> Order at 179.

<sup>52</sup> This issue is more factually complex than simply assessing an already approved tariff rate for meter installations due to: (1) the current applicability of PWSA’s historical line extension procedures pursuant to the Municipal Authorities Act, 52 Pa. C.S. § 5607(d)(24)(i); and, (2) the nature of what may be required to install meters for City properties. Recognizing that many city facilities may need plumbing and other improvements (backflow prevention for example) that significantly increase the overall costs, the 50% allocation of the meter installation costs was an attempt to define a level of contribution from each party.

installation rate for the City in PWSA's currently effective tariff. Rather, as is appropriate pursuant to Section 507, PWSA is asking the Commission to approve this agreed-to cost sharing proposal as set forth in the new City Cooperation Agreement. When viewed in the context of the overall flow of money between PWSA and the City, the Commission could very well be persuaded that the equal cost sharing arrangement as proposed in the Section 507 Proceeding is appropriate in the context of the overall Agreement. Rejecting this proposal now in this proceeding, when a proceeding is already underway whereby a full record can be developed on this and all other interrelated issues, is mistaken.

37. Moreover, the Commission's directive to develop and implement a flat rate for unmetered City-owned properties and buildings<sup>53</sup> is problematic because the new City Cooperation Agreement does not contemplate such a flat rate. The parties must be free to develop the record in the Section 507 Proceeding as appropriate to support their positions on all of these issues. Once the Commission has the new City Cooperation Agreement and the full record before it, then a substantive decision can be made about whether or not such proposal is approved.

38. Importantly, the three City Issues are only three pieces of the new City Cooperation Agreement, and prejudging the resolution of these issues without consideration of the other "puts and takes" in the new City Cooperation Agreement deprives the ability of the parties to develop a full record for the Commission's consideration. The Section 507 Proceeding offers the opportunity for a full vetting of the negotiated agreement between the City and PWSA.

39. While the Final Order also admonishes PWSA that it "cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City,"<sup>54</sup> the entire purpose of the Section 507 Proceeding is to examine and make a

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<sup>53</sup> Order at 61.

<sup>54</sup> Order at 59.

determination concerning the reasonableness of terms of contracts between municipalities (in this case, the City of Pittsburgh) and a utility (PWSA) which are not contained in “regularly filed and published tariff rates.”<sup>55</sup> The fact that the Section 507 Proceeding is currently open and available is clear evidence that PWSA is most decidedly not attempting to circumvent the Code or the Commission’s mandates. All parties will have their opportunity to present their view of the new City Cooperation Agreement, and the Commission will have a full evidentiary record upon which to make a decision. The only “circumvention” of rights would be denying PWSA its full and fair opportunity to litigate the new City Cooperation Agreement because the Order has predetermined or prejudged the outcome here.

40. Thus, to remove any uncertainty about the extent of the Order’s directives regarding the City Issues in relation to the Section 507 Proceeding, PWSA respectfully requests that the Commission grant this reconsideration and clarify that the Final Order in no way prejudices or prevents any party from fully supporting their views on these issues in the Section 507 Proceeding and that the opinions expressed by the Commission in the Compliance Plan Order are not preclusive or binding on the Commission’s decision on these same issues in the Section 507 Proceeding. Doing this furthers the previously stated “main themes” of the Final Order to reset the relationship between the City and PWSA in a structured and orderly manner that safeguards the due process rights of all parties.

## **2. Rate Case Proceeding**

41. In addition to prematurely addressing the City Issues, which are squarely within the pending 507 proceeding, the Final Order also prematurely address issues that are a part of PWSA’s pending rate case proceeding which was filed on March 6, 2020. Though filed twenty days prior to

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<sup>55</sup> 66 Pa. C.S. §507. See also *Red Lion Mun. Auth. v. Pa. PUC*, 219 A.3d 730, 730 (Pa. Commw. Ct. 2019)(Section 507 merely provides a mechanism by which a public utility may seek an exception to tariff rules, and the PUC may approve a contract for service at a rate other than the tariff.)



the entry of the Order, there is no mention of the filing in the Order. Therefore, the Commission may have overlooked that PWSA's rate proposals, including its proposed ratemaking treatment of the City Issues, are already a part of the Rate Case Proceeding.

42. While the Order is correct that this record did not include any information about the costs associated with service to City-owned properties, PWSA has undertaken to identify these costs as part of the Rate Case Proceeding. The Rate Case Proceeding also includes PWSA's proposal to address the anticipated shortfall in payments from the City to cover the projected costs to serve the City. Thus, as a result of PWSA's efforts to prepare and file the Rate Case Proceeding, all the information necessary to consider the Order's suggestion is available for a full on-the-record process.

43. Importantly, both the Section 507 Proceeding and the Rate Case Proceeding are integral to the process of "reordering the relationship" between PWSA and the City consistent with the statement in the Order. The Section 507 Proceeding involves the results of a significant and lengthy negotiation between these two entities wherein the City continues to own (through 2025) the water and wastewater conveyance systems that it authorized PWSA to manage. As part of the Section 507 Proceeding, a record will be developed to enable the Commission to decide the reasonableness of the pathway set forth in the new City Cooperation Agreement by which the City, the current owner, is transitioned to a user/customer, and – at that point – is charged the full costs of service. The Rate Case Proceeding will focus on ratemaking principles – as mentioned in the Order – to address cost allocation issues and the appropriate rate to be charged to the City. None of these matters were before the Commission in this Compliance Plan Proceeding and prejudging the outcome of the proceedings or preventing parties from developing a full record on all the issues is not appropriate and is a circumvention of due process.

44. In sum, because this Compliance Plan proceeding was neither a 66 Pa. C.S. § 507 proceeding nor a 66 Pa. C.S. § 1308 base rate case proceeding, it is appropriate for the Commission to clarify that its Order is not intended to prejudge or predetermine the final resolution of the City Issues. Rather the final resolution will occur once the full record is developed and presented to the Commission in the pending proceedings. For the reasons discussed previously, the currently underway Section 507 Proceeding and the Rate Case Proceeding are appropriate proceedings through which an equitable, reasonable and fair final resolution of these matters can be achieved, and the Commission should reconsider its Final Order to permit the resolution of the three City Issues in those dockets and/or clarify that the Commission's expressed opinions in this Proceeding are not preclusive or binding upon the Commission in these other proceedings.

**V. REQUEST FOR CLARIFICATION AND AMENDMENT OF COMMISSION REVISIONS OF THE PARTIAL SETTLEMENT REGARDING LEAD SERVICE LINE REMEDIATION ISSUES**

45. As noted above, while the Commission's Order adopted the resolution of the issues in the Partial Settlement with respect to PWSA's Lead Remediation Program, it also modified Paragraph III.VV.1.b of the Partial Settlement by including new subsections (v) and (vi). Both new subsections create new requirements for PWSA's lead remediation efforts.<sup>56</sup>

46. These new subsections were unilaterally presented by the Commission. The Commission did not receive any evidence on requirements or potential alternatives thereto. Nor did

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<sup>56</sup> PWSA's filing of information or entering into a settlement with respect to its lead remediation efforts (or otherwise) should not be construed as acquiescence to, or a waiver by PWSA of the right to challenge the Commission's jurisdiction, since the Commission cannot obtain jurisdiction by silence, agreement, waiver or estoppel. *See, e.g., Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967); *Commonwealth v. VanBuskirk*, 449 A.2d 621 (Pa.Super. 1982); *Scott v. Bristol Twp. Police Dep't*, 669 A.2d 457 (Pa.Cmwlth. 1995); *In Re Borough Of Valley-Hi*, 420 A.2d 15 (Pa.Cmwlth. 1980). Stated otherwise, the Commission must act within, and cannot exceed, its statutory jurisdiction. *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945). The level of lead in tap water (even though the lead stems from a service line) is undeniably a "water quality" issue that is clearly regulated by Pennsylvania Department of Environmental Protection ("PADEP"), and not the Commission, as argued by PWSA in its Briefs, Exceptions and Reply Exceptions. It remains PWSA's position that any conflict between the PADEP and the Commission regarding lead remediation needs to be resolved in favor of the PADEP.

the Commission receive any criticism and/or advice regarding these subsections from the parties, since the first time that PWSA (or, presumably, any other Party), saw the language creating the new requirements was in the Order itself.

47. PWSA elected not to withdrawal from the Partial Settlement notwithstanding the addition of these new provisions.<sup>57</sup> PWSA believes that it would have been counter-productive to disregard the resolution of 139 identified issues in the Partial Settlement, merely because the Commission unilaterally created two totally new (binding) requirements regarding lead remediation efforts upon PWSA.

48. Instead, PWSA requests that the PUC work with the Authority to attempt to clarify and revise these provisions in a manner that furthers the Commission's apparent goal (shared by PWSA) of attempting to minimize the instances of partial replacements, but does so in a fair and equitable manner that is not going to result in customers unreasonably losing their water service.

49. PWSA submits that the two subsections added by the Commission to Paragraph III.VV.1.b of the Partial Settlement should be clarified and amended as follows:

v. In the event PWSA determines it will not complete the replacement of a private-side lead service line due to any of the circumstances described in III.VV.1.b.i., PWSA will temporarily not replace the public-side **lead** service line until it has reported the factual circumstances to the CLRAC in accordance with the Settlement at III.WW.4.b. After consulting with the CLRAC, PWSA **has made** ~~should make~~ a determination as to the appropriate next steps, including, but not limited to, **proceeding with a partial replacement**, potentially not replacing the public side of the **lead service** line while corrosion control treatments and distribution of water filters remain in place **(not applicable to service lines being replaced as part of a Water Main Replacement or emergency replacement situation)** or potentially receiving Commission approval to make reasonable changes, substitutions and extensions in or to service and facilities as may be necessary or proper for the accommodation and safety of patrons with these

<sup>57</sup> <http://www.puc.state.pa.us/pcdocs/1659540.pdf>. Nonetheless, PWSA is willing to accept the additions that the PUC has added to the Partial Settlement if the Commission modifies them in the manner requested by PWSA, or in a manner that meets PWSA's goals in asking for the revisions: to eliminate the requirement to terminate service to a property where the lead service line replacement is not presently possible or would create an extreme burden on the homeowner.

extraordinary circumstances or potentially receiving Commission approval of tariff provisions quantifying specific limits on PWSA's financial responsibility for a private-side lead service line replacement in extraordinary circumstances. **PWSA will notify the CLRAC, for review and advisory input by the CLRAC, of each such situation and PWSA's determination. Such notification will occur in accordance with provisions of the Partial Settlement at III.WW.4.b.**

vi In the event PWSA does not complete the replacement of a private-side lead service line due to any of the circumstances described in III.VV.1.b.ii-iv., PWSA will not permit the re-connection of the private-side lead service line to the newly installed public-side service line in accordance with PWSA's tariff at Section B, Rules 1 and 4 **(except as permitted in this subsection); and** PWSA will begin the process to terminate service to the residence **based on the non-replacement of the private-side lead service line** with prior notice in accordance with PWSA's tariff at Section C, Rule 3.j.

**Provided, that PWSA will not begin or complete the process to terminate service to such a residence based on the non-replacement of the private-side lead service line if, upon investigation, PWSA determines that: 1) customer and/or occupant does not have the legal authority to authorize or consent to the replacement of the private-side lead service line; 2) property owner costs associated with replacing the private-side lead service line would be excessive, unduly burdensome and unreasonable to the owner (e.g., restoration of landscape or hardscape (including retaining walls, walk-ways, driveways, etc.); and/or 3) emergency replacements of the public-side lead service line are needed and time limitations will not permit PWSA to obtain the necessary authorization or consent to replace the private-side lead service line.**

**When such non-termination situations are encountered during replacements under the neighborhood LSLR program, PWSA will not replace either the public-side lead service line or the private-side lead service line.**

**When such non-termination situations are encountered during replacements under the SDWMR program, PWSA will only replace the public-side lead service line and will reconnect to the private-side lead service line.**

**When such non-termination situations are encountered under either the neighborhood LSLR program or the SDWMR program, PWSA will continue to work with the property owner to attempt either (a) to obtain necessary authorization or consent to replace the private-side lead service line or (b) to do the replacement of the private-side lead service line in a way that would reduce the owner's costs to acceptable levels.**

**When service is terminated due to the non-replacement of a private-side lead service line, r**Reconnection of service shall not be permitted until the customer

certifies the removal of the private-side lead service line and the installation of a conforming private-side service line in accordance with PWSA's tariff at Section B, Rule 4.

50. The above clarifications and amendments meet the *Duick* standard and are warranted because the subsections were raised by the Commission for the first time in its Final Order and, as written by the Commission, overlook or fail to address several situations in which the requirements will be problematic for either PWSA's customers or PWSA (or both). PWSA will discuss the requested modifications to Subsection (vi) first and then discuss Subsection (v).

**1. Subsection (vi)**

51. Subsection (vi), as written by the Commission, would require PWSA to terminate service in each of the situations described below. In contrast, the above-described clarifications and amendments submitted by PWSA would enable some, if not all, of those customers to continue to receive water service without placing an undue hardship on the customer.

**Issues with Property Ownership**

- a. PWSA does not have the right to enter onto private property to do work – which is why PWSA requires the property owner to sign an agreement authorizing and consenting for PWSA to do work on their private property. For some of our customers, the property owner is deceased, and a relative or other person is living in the residence. For many of these locations the property never went through probate, either because of the low value of the property, inability of the relative living there to afford to go through the process, or a dispute between potential heirs. PWSA typically tries to connect these customers to a lawyer or Neighborhood Legal Services to assist them in resolving these issues, however this process can take, at a minimum, several months to be resolved. Since PWSA usually is not aware of this issue until it reviews the signed agreement that it receives, PWSA's LSLR work in that neighborhood/street is typically completed long before the ownership can be cleared and resolved. In these cases, the proposed PUC Order Settlement Modification would require PWSA to terminate water service to a customer who has no ability to provide authorization, but would nonetheless lose water service.
- b. Another issue faced by PWSA are private service lines for one property located on property owned by someone else. In these instances, PWSA needs, ideally, an easement that allows for the maintenance and/or replacement for PWSA to do the work, although PWSA may be able to proceed with written permission from both property owners. PWSA has been able to obtain the necessary approvals by obtaining

replacement authorization from all parties, but this does not happen in every case. In these “access legality” cases, the Settlement Modification would require PWSA to terminate water service to a customer who has no ability to provide authorization, but would nonetheless lose water service.

### **Excessive Property Owner Costs**

- c. Currently, property owners can opt-out of private side replacement because of unreasonably large impacts to their property. Current PWSA policy is that PWSA will install the service line and backfill any excavations necessary to do so, but PWSA does not restore any landscape or hardscape (including retaining walls, walkways, driveways, etc.). Property owners opt-out for many different reasons (in PWSA’s experience to date typically there is about a 4% opt-out rate), but some of these owners opt out because of the costs to them for restoration due to the need to remove a retaining wall or some extensive landscaping or hardscaping they have in place. In these locations, PWSA’s work may impose unaffordable costs on PWSA’s customers (one of the issues PWSA commonly hears about at community meetings). PWSA does not have the resources to both replace a lead service line and pay for all restorative work, including landscaping, hardscaping etc., especially when the necessary restoration work is extensive.

### **Unresponsive Landlords**

- d. A portion of PWSA’s unresponsive locations are tenant occupied, and the landlord has not responded to PWSA’s offer to replace the private side. In these cases, the Settlement Modification would require PWSA to terminate water service to a customer who has no ability to provide authorization, but would nonetheless lose water service.

### **Urgent Locations with Unresponsive or Unavailable Property Owners (similar to Unresponsive Landlords)**

- e. When PWSA does an emergency repair, PWSA’s current approach is to provide a temporary connection and to engage a contractor (with property owner approval) to replace the private-side lead service line. At some locations, however, a temporary service is not possible due to weather conditions or the configuration of the structure or plumbing. If PWSA cannot get in contact with the property owner, or the property owner is not local and cannot respond in a timely manner, PWSA may need to reconnect to the private-side lead service line to ensure the residents are not without water. In these cases, PWSA provides the requisite water testing for lead, drinking water filters with instructions, and satisfies other applicable requirements of the PaDEP and County Health Departments.

### **Covid-19**

- f. PWSA has several situations where we do not terminate water service for bill payment issues, including the Winter Moratorium, medical cases and the present situation where we have extended the winter moratorium to ensure that PWSA’s

customers are able to have water necessary for sanitary purposes to address the Covid-19 crisis. In these situations, PWSA does not believe that water service should be terminated when a private line replacement cannot be readily implemented.

52. In its Order, the Commission directed that PWSA initiate termination efforts in each and every situation that falls within the scope of subsection (vi). In doing so, the Commission did not clearly indicate that it considered the situations described above, where (a) the customer or occupant who has no ability to authorize the replacement of the customer service would face termination and/or (b) the owner would be forced to bear excessive, unduly burdensome and unreasonable costs as a result of replacing the private side line. PWSA submits that it is unreasonable and contrary to the overall public interest to deny water service to customers<sup>58</sup> when they cannot reasonably replace their private side line or control the replacement process, or there is some other valid reason why PWSA should not terminate service. While PWSA shares the Commission's general concern with creating "partial" lead service lines, it believes that the harm to the resident and the system from terminating service to customers who don't have the legal or practical ability to permit PWSA to replace their lead service line is greater than the temporary impacts of a partial lead service line replacement. Importantly, PWSA has committed to providing household flushing instructions, lead test kits, NSF-certified lead removal pitchers, and six months' worth of filter cartridges for all partial replacement locations. The Authority also conducts follow-ups if the customer does not return the lead test kit, and, if they do and lead levels are higher than 10 parts per billion are seen, PWSA supplies additional filter cartridges. PWSA's approach is

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<sup>58</sup> Access to clean water is fundamental to good health. Lack of water in the home compromises the ability of people to wash their hands, clean their home, and safely prepare food. The loss of water service causes tremendous hardship and stress, and may have a disproportionate impact on disadvantaged communities. *See* United St. 1 at 6 (stating, in part, that low income households are disproportionately likely to face involuntary loss of service). The termination of water service may also have a greater impact on tenants who could find themselves being forced to move (due to the lack of water service) if their landlord refuses to replace the private-side lead service line either by the timely acceptance of PWSA's offer or by timely efforts by the landlord.

consistent with the accepted approach adopted by many other water utilities. In addition, since PWSA's successful implementation of a new corrosion control treatment process, the effects of the partial line replacements are expected to be short term as the orthophosphate addition allows the creation of scale inside the lead pipe to reduce potential corrosion.

53. PWSA's requested clarifications/amendments to Paragraph III.VV.1.b. (vi) of the Partial Settlement also reflect the distinctions between a Small Diameter Water Main Replacement ("SDWMR") program and the neighborhood LSLR program. PWSA proposes that when non-termination situations are encountered during replacements under the neighborhood LSLR program, PWSA will not replace either the public-side lead service line or the private-side lead service line. When such non-termination situations are encountered during replacements under the SDWMR program, PWSA proposes to replace the public-side lead service line and reconnect to the private-side lead service line.

54. Distinct treatment of the public-side lines is warranted due to the nature of the SDWMR program. In the SDWMR program, PWSA excavates the road, sidewalk and other infrastructure to shut off, discontinue and replace the old water main. Since the installation of the new water main disturbs the connecting public-side lead service lines, it has a similar impact to a partial replacement (even though the main replacement is not technically a partial replacement under the Lead and Copper Rules). Since the installation of the new main disturbs the public-side line and the road and other infrastructure is already opened/disturbed, the public-side lines should be replaced for efficiency and water quality purposes.

55. PWSA therefore respectfully requests that the Commission revise Paragraph III.VV.1.b.(vi) of the Partial Settlement (Section J.2.(iv) of Appendix A to the Order), in the manner set forth above, in order to permit PWSA to not terminate water service in the situations described



above, where termination would be unreasonable, and to reflect the distinction between the SDWMR program and the neighborhood-based LSLR program.

## **2. Subsection (v)**

56. PWSA also believes that Subsection (v) requires modification. In consideration of the requirements of Subsection (v), as written by the Commission, it is important to understand the fairly infrequent nature of the situations covered by Subsection (v). During PWSA's 2019 LSLR Program, PWSA has opted-out at approximately 75 locations out of the almost 7,000 customer locations at which replacement work has occurred. At virtually all of the 75 locations, replacing the private lead service line presented an unacceptable risk to the health and safety of PWSA's employees and construction staff, which lead to the Authority's refusal. About two thirds of these 75 locations were properties owned by the City of Pittsburgh (e.g., taken for non-payment of taxes) and were in deplorable condition.

57. Accordingly, requiring consultation with CLRAC before PWSA proceeds with public side replacements in these circumstances would create unduly long delays in lead service line replacement projects without justification. If a replacement falls within the scope of subsection (v), ongoing efforts would need to stop until action (consultation from CLRAC) occurred. This could take place at the next (or subsequent) quarterly meeting of the CLRAC. Beyond the delay, this would impose increased costs upon PWSA (and PWSA's ratepayers). Moreover, in virtually all of these instances, there would little benefit that a consultation with CLRAC would produce, since the only likely outcome is to complete a public replacement only.

58. In contrast, the above-described clarifications and amendments submitted by PWSA seek to ensure that decisions are made timely and that scheduled replacements will proceed at a reasonable pace. PWSA proposes to continue to report these situations to CLRAC so that CLRAC and the Authority can explore whether there are steps that can be taken in the future to reduce or

eliminate the issues that resulted in not replacing the private lead line. (PWSA has already agreed in the Partial Settlement, at Paragraph III.W.4.b., to report these instances on a semi-annual basis).

59. PWSA therefore respectfully requests that the Commission revise Paragraph III.VV.1.b.(v) of the Partial Settlement (Section J.2.(i) of Appendix A to the Order) in the manner set forth above, so as to ensure that decisions are made timely and that scheduled replacements will proceed at a reasonable pace.

60. As an alternative to PWSA's requested clarifications and amendments to the two subsections added by the Commission to Paragraph III.VV.1.b of the Partial Settlement, PWSA proposes a collaborative process open to interested parties to this proceeding and to craft, for review by the Commission, a fair, reasonable and equitable policy regarding: (1) a process for PWSA to consult with CLRAC regarding instances in which PWSA determines it will not complete the replacement of a private-side lead service line due to any of the circumstances described in III.VV.1.b.i.; and (2) instances in which PWSA will undertake termination of service to residences based on the non-replacement of the private-side lead service line in instances where PWSA does not complete the replacement of a private-side lead service line due to any of the circumstances described in III.VV.1.b.ii-iv.

**VI. CONCLUSION**

For the reasons set forth above, PWSA respectfully requests that the Commission (1) grant this Petition; (2) reconsider, clarify and/or amend its Order in the above captioned matter consistent with the discussion herein; and, (3) grant any other relief in favor of PWSA as may be just and proper under the circumstances.

Respectfully submitted,



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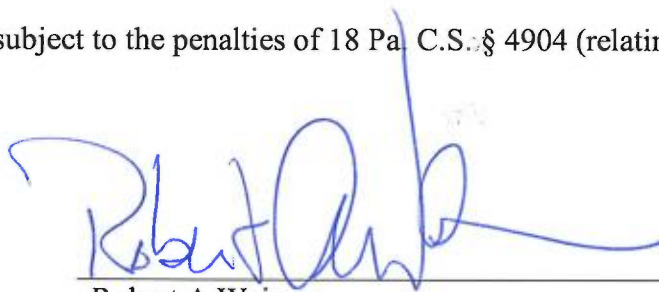
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Date: April 10, 2020

Attorneys for  
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## VERIFICATION

I, Robert A Weimar, am the Executive Director for The Pittsburgh Water and Sewer Authority ("PWSA" or "Authority"), and I hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and that I expect the Authority to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).



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Robert A Weimar  
Executive Director  
The Pittsburgh Water and Sewer Authority