



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 7, 2020

Via Electronic Filing

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

Re: PA Public Utility Commission v. Pittsburgh Water and Sewer Authority
Docket Nos. R-2020-3017951, C-2020-3019348, C-2020-3019305 (water) and
R-2020-3017970, C-2020-3019349, C-2020-3019302 (wastewater) and

Petition of Pittsburgh Water and Sewer Authority For Waiver of Provisions of
Act 11 to Increase the DSIC CAP, to Permit Levelization of DSIC Charges,
and to Authorize the Pay-As-You-Go Method of Financing
Docket No. P-2020-3019019

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's
(I&E) **Statement in Support of Joint Petition for Settlement** for the above-
referenced proceeding.

Consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order
at Docket No. M-2020-3019262 (Re: Suspension of Regulatory and Statutory Deadlines;
Modification to Filing and Service Requirements), electronic copies only are being served on
all active parties of record as evidenced in the attached Certificate of Service. If you have
any questions, please do not hesitate to contact me.

Respectfully,

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
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GLM/jfm
Enclosures

cc: Honorable Mary D. Long (*ALJ, PUC Pittsburgh – via email only*)
Honorable Emily DeVoe (*ALJ, PUC Pittsburgh – via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	Docket Nos.: R-2020-3017951
v.	:	C-2020-3019348
	:	C-2020-3019305
Pittsburgh Water and Sewer Authority – Water	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket Nos.: R-2020-3017970
	:	C-2020-3019349
Pittsburgh Water and Sewer Authority – Wastewater	:	C-2020-3019302
Petition of Pittsburgh Water and Sewer Authority	:	
For Waiver of Provisions of Act 11 to Increase The	:	Docket No. P-2020-3019019
DSIC CAP, to Permit Levelization of DSIC	:	
Charges, and to Authorize the Pay-As-You-Go	:	
Method of Financing	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

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Dated: October 7, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* :
 : Docket Nos.: R-2020-3017951
 v. : C-2020-3019348
 : C-2020-3019305
 Pittsburgh Water and Sewer Authority – Water :

Pennsylvania Public Utility Commission, *et al.* :
 :
 v. : Docket Nos.: R-2020-3017970
 : C-2020-3019349
 Pittsburgh Water and Sewer Authority – Wastewater : C-2020-3019302

Petition of Pittsburgh Water and Sewer Authority :
 For Waiver of Provisions of Act 11 to Increase The : Docket No. P-2020-3019019
 DSIC CAP, to Permit Levelization of DSIC :
 Charges, and to Authorize the Pay-As-You-Go :
 Method of Financing :

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGES MARY D. LONG AND EMILY I. DE VOE

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutors Gina L. Miller and John M. Coogan, hereby respectfully submit that the terms and conditions of the Joint Settlement Petition (“Joint Petition” or “Settlement”) filed in this proceeding on September 30, 2020 are in the public interest and represent a fair, just, and reasonable balance of the interests of Pittsburgh Water and Sewer Authority (“PWSA” or “the Authority”), and its customers.

I. INTRODUCTION

A. Background Information

As noted by several I&E witnesses in their testimony, I&E's charge in this case was to represent the public interest, which involves balancing the interests of PWSA, its ratepayers, and the regulated community as a whole. In order to fulfill its duty to represent the public interest in this case, I&E has spent over six months investigating PWSA's complex and unprecedented filing. PWSA's filing, which requested multi-year increases to water and wastewater total annual operating revenues of approximately \$43.8 million¹, included the following novel proposals that warranted close scrutiny, investigation, and development for the record:

- a. Initiation and implementation of a distribution system improvement charge ("DSIC") at an unprecedented level of 10% of distribution revenue, which is proposed to automatically become effective at the same time as proposed base rates;
- b. A novel alternative ratemaking proposal in the form of a Multi-Year Rate Plan ("MYRP"), which proposed to subject PWSA's ratepayers to a second tier of rate increase, a proposal which has never previously been before the Commission; and
- c. A stormwater tariff, which, to I&E's knowledge, represents the first and only stormwater tariff that parties and the Commission have ever had the authority to consider.

¹ I&E notes that page 4 of the Joint Petition, as well as Paragraph 5 of Appendix A of the Joint Petition, inadvertently listed the requested amount as \$43.4 million; however, in a subsequently-filed Errata sheet, PWSA corrected the errors contained in each of those references to reflect the accurate amount of \$43.8 million.

The complexity of PWSA's filing was further compounded by the fact that the gravity of the COVID-19 pandemic began to be realized just as PWSA submitted its filing on March 6, 2020. Notably, on the same date that PWSA filed this case, Governor Tom Wolf issued a Disaster Proclamation attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19.² The Disaster Proclamation remains in place at this time.

The impact of COVID-19 upon this case is notable not just because it impacted parties' ability to access resources necessary to litigate this case during the prescribed statutory timeline,³ but for two other reasons as well. The first reason is that PWSA's filing did not, and could not have, contemplated COVID-19's impact upon its operations. However, as further referenced and described below, as this case progressed PWSA has already begun to realize an impact in the form of increased expenses and decreased revenue, with continued impacts yet to be determined. The second reason, which is exemplified in much of the testimony that was given during the six public input hearings held in this case on July 7-July 9, 2020, is that the economic impact of COVID-related job losses and business closures have had and will continue to have a direct impact upon PWSA's ratepayers and their ability to pay for service. I&E notes that these hardships are occurring when access to safe and clean water, which is always essential for health and safety, has become even more important during the pandemic.

² The Declaration was made pursuant to subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §§ 7101.

³ *Pa. PUC v. PWSA*, R-2020-3017951, I&E's *Expedited Motion for an Extension of the Statutory Suspension Period of PWSA's Water and Wastewater Base Rate Proceedings*, pp. 11-13 (March 31, 2020).

Aside from the COVID-19 pandemic, an additional hurdle that the Joint Petitioners were challenged to overcome was the adoption of a new law, during the litigation phase in this case, which modified the Commission’s regulatory jurisdiction over certain aspects of the rates that PWSA may charge. More specifically, during the course of the litigation, on July 25, 2020, two days after I&E submitted its direct case, Act 70 was signed by Governor Wolf and became immediately effective. Act 70, inter alia, rescinded the Commission’s authority to regulate the rates that PWSA will charge the City of Pittsburgh (“City”). After careful review in the limited time available, I&E determined that Act 70 eliminated its ability to continue to challenge what the Commission had determined in its PWSA Stage 1 Compliance Plan Order, i.e., PWSA’s attempt to circumvent the Public Utility Code (“Code”) by contract to afford impermissible rate treatment for the City.⁴ Act 70 had an immediate and severe impact upon I&E’s recommendations in this case; however, as required, I&E adapted to the new parameters it imposed and continued to represent the public interest within the confines of the new legal landscape.

Despite the challenges and complex issues described above, I&E avers that the parties’ investigations of PWSA filings, development of the record for this case, and continued settlement discussions have culminated in a Settlement that is in the public interest. I&E notes that the Settlement achieved by the parties was hard-fought and represented a difficult balance of many competing interests at a critical time.

⁴ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Stage I*, M-2018-2640802 et al, Opinion and Order, pp. 72-82 (Entered June 18, 2020).

Accordingly, for the reasons I&E will explain more fully below, I&E respectfully requests that the ALJs recommend, and the Commission approve, the terms and conditions contained in the Settlement without modification.

B. Procedural History

The procedural history of this proceeding is set forth in Appendix A of the Joint Petition. I&E adopts and herein incorporates the procedural history contained in Appendix A. In addition to the history set forth therein, I&E offers the following additional procedural history specific to I&E's participation in this proceeding:

- I&E attended all of the Public Input Hearings held in this proceeding: July 7 at 1:00 and 6:00 p.m., July 8 at 1:00 and 6:00 p.m., and July 9 at 1:00 and 6:00 p.m. Due to the coronavirus pandemic, Public Input Hearings were held telephonically and not in-person in PWSA's service territory.
- In accordance with the litigation schedule in this rate case, I&E served its direct and surrebuttal testimonies, as well as accompanying exhibits, in this case on July 21, 2020, and September 4, 2020, respectively as listed below:
 - I&E Statement No. 1: the Direct Testimony of Anthony Spadaccio
 - I&E Exhibit No. 1: the Exhibit to accompany the Direct Testimony of Anthony Spadaccio
 - I&E Statement No. 1-SR: the Surrebuttal Testimony of Anthony Spadaccio
 - I&E Exhibit No. 1-SR: the Exhibit to accompany the Surrebuttal Testimony of Anthony Spadaccio

- I&E Statement No. 2: the Direct Testimony of D.C. Patel
 - I&E Exhibit No. 2: the Exhibit to accompany the Direct Testimony of D.C. Patel
 - I&E Statement No. 2-SR: the Surrebuttal Testimony of D.C. Patel
 - I&E Statement No. 3: the Direct Testimony of Ethan H. Cline
 - I&E Exhibit No. 3: the Exhibit to accompany the Direct Testimony of Ethan H. Cline
 - I&E Statement No. 3-SR: the Surrebuttal Testimony of Ethan H. Cline
 - I&E Exhibit No. 3-SR- the Exhibit to accompany the Surrebuttal Testimony of Ethan H. Cline
 - I&E Statement No. 4: the Direct Testimony of Joseph Kubas
 - I&E Exhibit No. 4: the Exhibit to accompany the Direct Testimony of Joseph Kubas
 - I&E Statement No. 4-SR: the Surrebuttal Testimony of Joseph Kubas
 - I&E Exhibit No. 4-SR- the Exhibit to accompany the Surrebuttal Testimony of Joseph Kubas
- During the course of this proceeding, I&E and other parties engaged in substantial formal and informal discovery. I&E sent PWSA 110 formal discovery requests, with many requests including numerous subparts.
 - In accordance with Commission policy favoring settlements,⁵ I&E participated in multiple and extensive settlement discussions with PWSA and other parties to the proceeding. Following extensive settlement negotiations, PWSA, I&E, OCA, OSBA, UNITED, and the City (collectively, the “Joint Petitioners”) reached a global settlement.

⁵ 52 Pa. Code § 5.231.

- After being informed of the global settlement, the ALJs held an evidentiary hearing in this case on September 21, 2020. At the hearings, parties moved for the admission of their testimony into the record, and all of I&E's above-referenced testimony and exhibits were admitted into the record.

C. Overall Reasons in Support of the Settlement

As I&E indicated above, the Settlement represents a compromise of all Joint Petitioners interests, which at times were competing, and which at all times were important and worthy of recognition. From a revenue perspective, I&E avers that the Settlement rates, which will provide PWSA with additional annual revenue of \$19 million based on a Fully-Projected Future Test Year ending on December 31, 2021, is only approximately 43% of PWSA's initially-requested \$43.8 million. From I&E's perspective (and apparently PWSA's as a Joint Petitioner), and consistent with the outcome of I&E's investigation, this increase will provide PWSA with sufficient revenue to fulfill its obligation to provide safe and effective service to ratepayers. Additionally, the Settlement revenue is reduced by 57% from PWSA's initial request to make rates more affordable at a time when the COVID-19 pandemic has not only challenged ratepayers' resources, but it has also simultaneously made access to clean and safe water more essential to public health.

I&E also notes that pursuant to the Settlement, PWSA has withdrawn its proposal for a second year of revenue increase for 2022 as part of a multi-year rate plan MYRP. I&E's willingness to resolve this case by Settlement, was, in part, contingent upon

PWSA's the withdrawal of the MYRP for several reasons. These reasons include that I&E's investigation revealed that PWSA's previous rate case revenue forecast was significantly over-projected, additional oversight for PWSA's continually-developing operations is appropriate as it continues its transition to the Commission's jurisdiction, and that prolonging PWSA's time in between rate filings will exacerbate the still undetermined impact of COVID-19 upon its operations.

While I&E avers that protecting ratepayers from inaccurate revenue forecasts and ensuring adequate oversight over PWSA's evolving operations is consistent with the public interest, the Settlement also protects PWSA. The Settlement gives PWSA with an opportunity to seek additional revenue, if necessary, because parties agree to support PWSA's filing of a subsequent water and wastewater base rate case at the same time PWSA files a request for a stormwater fee, no earlier than February of 2021. I&E submits that this result will enable PWSA to file, and if warranted, obtain additional revenue that may be needed to ensure the integrity of its operations. This result will also empower parties and the Commission to review PWSA's water, wastewater, and stormwater filings simultaneously, in the same case, which is an outcome that I&E believes will promote a more thorough and searching review of PWSA's future revenue claims.

Additionally, if the Settlement is approved, PWSA will be able to implement water and wastewater DSICs for the first time, albeit with a cap of 5%, respectively, instead of the 10% PWSA proposed. I&E believes the DSIC-related terms of the Settlement will both facilitate the timelier repair and replacement of PWSA's

infrastructure and also impose accountability safeguards for PWSA's use of ratepayer funds. The 5% water and wastewater DSIC caps outlined in the Settlement are consistent with I&E's recommendation in this case, as I&E determined that PWSA did not have sufficient experience or support to warrant DSIC funding at the level requested.

However, pursuant to the Settlement, PWSA may now implement water and wastewater DSICs in a manner that is consistent with important customer protections that are enshrined in the Code and it will track data necessary to enable PWSA, parties, and the Commission to reevaluate PWSA's use of DSIC funding in the future. I&E submits that all of these results are in the public interest.

The Settlement will also improve the efficiency and accuracy of PWSA's stormwater tariff review process because it provides for deferral of the development and review of a Stormwater Tariff to PWSA's combined water, wastewater, and stormwater filing. I&E submits that this course of action will enable parties and the Commission to review PWSA's proposed Stormwater Tariff at the same time that PWSA is proposing stormwater rates, which was not possible in this proceeding. In this case, PWSA proposed a stormwater tariff, but not a stormwater rate, which did not allow any opportunity to review the tariffs in the context of any proposed rates. The Settlement's deferral of tariff review will now marry the tariffs and proposed rate review so that a full picture of PWSA's proposed provisions for stormwater service and rates can be reviewed simultaneously. Providing parties and the Commission with a full picture of PWSA's proposed stormwater rates will better inform any review of the stormwater tariff that will

ultimately set forth such rates; accordingly, I&E avers that this term is in the public interest.

Additionally, the Settlement provides for a cost allocation and rate design that reflects a compromise of all parties' positions. Moving forward, for its next rate case, PWSA will provide a customer cost analysis as part of its class cost of service study ("CCOSS") in its combined water, wastewater, and stormwater filing as part of its continued exploration of changing its rate design from a minimum charge to a customer charge. I&E supports PWSA's commitment to provide the customer cost analysis to facilitate a potential change in rate design in the future, which I&E recommended. I&E avers that the cost allocation and rate design commitments that PWSA has made in the Settlement are in the public interest.

Importantly, the Settlement also recognizes the existing and continuing impact of COVID-19 upon its own operations and upon its ratepayers. Specifically, by way of the Settlement, PWSA has agreed to seek COVID-19 relief funding, to report its efforts, and to identify, track and reflect any government relief funding it may obtain. I&E supported these commitments because any additional funding PWSA may receive may provide a benefit to its operations and alleviate the burden upon ratepayers. I&E submits that it is in the public interest for PWSA to seek the funding and to be accountable to the Commission and its ratepayers by way of reporting the outcome of its efforts and recognizing any benefit. Furthermore, PWSA has provided for additional relief measures for customers, including waiving certain reconnection fees, performing targeted outreach to customers with existing debt, and expanding qualification parameters for confirmed

low-income customers. Although I&E did not raise these proposals in litigation, I&E supports them because the public interest requires that ratepayers, including the most vulnerable ratepayers, have continued access to water and wastewater service and the COVID-19 pandemic heightens the need for such access.

Finally, the Settlement provides important customer service and quality of service provisions that will better ensure that PWSA's customers are well-served by PWSA and that they receive safe and effective service. To be sure, ratepayers have a right to expect that PWSA will be responsive to their calls and service inquiries, and the Settlement outlines methods that PWSA will undertake to improve its responsiveness. Additionally, I&E avers that PWSA's statutory duty to furnish and maintain adequate, efficient, safe, and reasonable service that is reasonably continuous and without unreasonable interruptions or delay,⁶ requires it to promptly address quality of service issues. The Settlement outlines a series of steps that PWSA has committed to taking to address quality of service issues raised in this case, and I&E supports these terms because they are intended to improve the manner in which PWSA provides service to its customers.

⁶ 66 Pa. C.S. § 1501.

II. REASONS FOR SUPPORT OF SPECIFIC ISSUES

It is the policy of the Commission to encourage settlements.⁷ The Commission issued the following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.⁸

The above-referenced policy statement highlights the importance of settlement in Commission proceedings. The instant rate case was filed on March 6, 2020; therefore, for over six months, the parties engaged in extensive formal and informal discovery, preparation of testimony, and lengthy settlement discussions. All signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, the issues raised by I&E have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons

⁷ 52 Pa. Code § 5.231.

⁸ 52 Pa. Code § 69.401.

articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJs and the Commission without modification:

A. Revenue Requirements
(Joint Petition, Section III.A)

(1) Rates
(Joint Petition, Section III.A.1)

At the outset of this case, PWSA originally requested a \$43.8 million overall revenue increase. PWSA’s complex proposal represented an increase of approximately 25.45% of annual revenue in the Fully Projected Future Test Year (“FPFTY”) ending December 31, 2021. This \$43.8 million overall proposed increase was comprised of the following: (1) a \$24.2 million increase to annual base rates (\$17.5 million allocated to water and \$6.7 million allocated to wastewater) for 2021; (2) an additional \$19.6 million in revenue generated by the requested DSIC (\$12.7 million from the water operations and \$6.9 million from sewer operations) for 2021; and (3) a proposed MYRP that would increase base rates in the year ending December 31, 2022 by \$12.6 million. The second requested increase of \$12.6 million in the year ending December 31, 2022 allocated \$6.5 million to water operations and \$6.1 million to sewer operations.⁹

However, pursuant to the Joint Petition, the Settlement Rates are designed to produce additional annual operating revenue of only \$19 million for 2021, inclusive of DSIC funding, with no additional increase for 2022.¹⁰ I&E notes that Settlement

⁹ PWSA St. No. 3, pp. 2-6; Joint Petition, p. 3, ¶ 4.

¹⁰ Joint Petition, p. 5, ¶ III(A)(1).

provides PWSA with only about 43%, less than half, of the increase that it requested in its original filing.¹¹ The Settlement increase is comprised of an increase in annual revenue for water service by approximately \$14.15 million, or about 19% less than proposed for its FPFTY, and an increase to PWSA's total annual revenues for wastewater conveyance service by approximately \$4.85 million, or about 28% less than PWSA proposed for its FPFTY,¹² and no additional revenue for the originally proposed future test year of 2022. Appendix F of the Joint Petition provides a summary that compares both the water and wastewater customer billing impacts at the revenue increase requested by PWSA, and the agreed upon increase contained in the Settlement; however, while Appendix F reveals that ratepayers rates for 2021 will be less than PWSA proposed, it must also be noted that no ratepayer will receive the second increase that PWSA proposed for 2022.

In arriving at the Settlement Rates, I&E, along with the other Joint Petitioners, analyzed the ratemaking claims contained in PWSA's base rate filings including its operating and maintenance expenses, debt service coverage ratio, and rate structure. The Settlement represents a \$24.8 million savings for PWSA's customers compared to proposed rates, which is 57% less than PWSA proposed. I&E avers that the significant reduction in PWSA's requested revenue is appropriate here, where I&E's initial litigation position recommended that PWSA receive no increase because I&E's investigation concluded with the determination that its existing rates warranted a decrease.¹³ I&E's

¹¹ Joint Petition, Appendix A, p. 17, ¶61.

¹² Joint Petition, p. 1, footnote 2.

¹³ I&E St. No. 1, p. 7.

initial determination was largely predicated upon adjustments to PWSA's operating and expense claims,¹⁴ as well as revenue adjustments mainly resulting from imputing revenue to PWSA that, from I&E's analysis, it should have been collecting from the City and reflecting it its filing.¹⁵

By way of further context regarding rate treatment for the City, and as I&E witness Cline explained in his direct testimony, a significant portion of I&E's revenue adjustment in this case resulted from I&E's recommendation that municipal metered and unmetered rate classes for both the water and wastewater divisions be billed 100% of the cost of service rates based on the cost of service study and usage levels I&E recommended.¹⁶ I&E's recommendation for the City, the sole municipal customer, to be billed 100% of the cost of service rates took into consideration the history of the City's inequitable relationship with PWSA and its effects on the other rate classes.¹⁷ Additionally, I&E's recommendation relied, in part, on the fact that PWSA's proposal to have the City pay rates equal to the commercial class but to only assess the water, wastewater conveyance, and public fire rates at 40% of the total rates in 2021 and 60% of the total rates in 2022, had been rejected by the Commission in the Stage 1 Compliance Plan Order.¹⁸ From I&E's perspective, the public interest requires ensuring that no ratepayer receives unwarranted favorable rate treatment at the expense of other ratepayers. As PWSA ratepayer Catherine Brosky testified to at a public input hearing

¹⁴ I&E St. No. 2, p. 5.

¹⁵ I&E St. No. 3, pp. 22-39 ; I&E St. No. 4., pp. 12-14.

¹⁶ I&E St. No. 3, p. 37.

¹⁷ I&E St. No. 3, p. 36.

¹⁸ I&E St. No. 3, p. 16.

held in this case at 6 p.m. on July 9, 2020, requiring other ratepayers to subsidize City usage places “an undue burden on private citizens.”¹⁹

Unfortunately, on July 23, 2020, only two days after I&E served its direct testimony in this case, I&E’s recommendation regarding the City’s rates was superseded by Act 70 which essentially codified the terms of a Cooperation Agreement between the City and PWSA. The Cooperation Agreement underlies the rates that PWSA proposed for the City, has “the force and effect of law” until January 1, 2025, unless PWSA and the City mutually agree to an earlier termination date. Act 70 provides that the 2019 Cooperation Agreement shall “supersede, during the term of the cooperation agreement, any provision of 66 Pa. C.S. Pt. I, a commission regulation, policy statement, order and regulatory proceeding as they pertain to issues covered by the cooperation agreement, including the authority’s rates, terms and conditions of service rendered to the city and the respective rights and duties between the authority and the city.”²⁰ As a result of Act 70, I&E was forced to withdraw its position on what rates the City pays and its corresponding revenue adjustment.²¹ Accordingly, a significant part of I&E’s revenue recommendation became untenable by operation of law.

Aside from the impact of recognizing Act 70, I&E’s agreement to the Settlement rates reflects a compromise of its overall revenue position in this case that takes into account, among other things, PWSA’s debt service obligations as well as its need to provide safe and effective service. I&E notes that PWSA is unique in that the General

¹⁹ Hearing Tr. at 319.

²⁰ 71 P.S. § 720.213(a); PWSA St. No. 2-R at 1-3.

²¹ I&E St. No. 3-SR, p. 11.

Assembly has imposed a specific statutory obligation upon the Commission to ensure that PWSA is permitted to impose, charge or collect rates or charges as necessary to permit it to comply with its covenants to the holders of any bonds or other financial obligations.²² In this case, PWSA argued that under I&E’s revenue requirement, PWSA would “have difficulty” in keeping its health above minimum standards, particularly if there are unanticipated changes in the FPFTY.²³ I&E notes that evidence in this case supports the fact that PWSA has already incurred unanticipated changes that will impact its FPFTY projections by way of the impact of COVID-19 upon its operations.

As discussed more thoroughly in subsequent sections below, PWSA’s March 6, 2020 filing did not contemplate the COVID-19 pandemic; however, the evidence in this case proves that as of July 31, 2020 it has already incurred \$1,109,433.79 in COVID expenditures.²⁴ Additionally, PWSA witness Huestis testified that COVID-19 has already had a negative effect on the Authority’s revenue, as it is lower by approximately 5% as of July 31, 2020 with forecasted revenues expected to be down \$28,298,353 or 11%.²⁵ Although these claims were not available when PWSA made its original filing, I&E recognizes that COVID-19 poses a novel and still unknown challenge to utility operations, and in I&E’s view, the Settlement rates attempt to recognize this challenge by ensuring that PWSA will be able to continue to operate. Accordingly, I&E, and apparently PWSA and all other Joint Petitioners, believe that the Settlement will provide

²² 66 Pa. C.S. § 3208 (c)(1); I&E St. No. 1, p. 10.

²³ PWSA St. No. 3-R, p. 6.

²⁴ PWSA St. No. 5-R, p. 3.

²⁵ PWSA St. No. 6-R, p. 3.

PWSA with sufficient revenue to protect its financial health while providing safe and effective service.

Although for purposes of necessary context, I&E has elected to highlight the above revenue requirement considerations that are unique to PWSA's operations as they pertain to a change to the Commission's oversight by way of Act 70, and recognition of the unprecedented COVID-19 pandemic, it is important to note, however, that due to the "black box" nature of the Settlement, there is no agreement upon individual issues. Instead, the Joint Petitioners have agreed to an overall increase to base rates that is less than what was requested by PWSA. Line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement satisfies the public interest nor could such a result be achieved as part of a settlement. Black box settlements benefit ratepayers because they allow for the resolution of a contested proceeding at a level of increase that is below the amount requested by the regulated entity and in a manner that avoids the significant expenditure of time and resources related to further litigation.

Black box settlements are not uncommon in Commission practice. Indeed, the Commission has endorsed the use of black box settlements, as discussed in the following Order approving such a settlement:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered

January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.²⁶

I&E individually, and the Joint Petitioners collectively, considered, discussed, and negotiated all issues of import in this Settlement. From a holistic perspective, each party has agreed that the Settlement benefits its particular interest. The Commission has recognized that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."²⁷ The Settlement in this proceeding promotes the public interest because a review of the testimony submitted by all parties demonstrates that the Joint Petition reflects a compromise of the litigated positions held by those parties. Therefore, I&E submits that the Settlement balances the interests of PWSA and its customers in a fair and equitable manner.

Public utility regulation as it applies to PWSA allows for the recovery of prudently incurred expenses as ensuring that PWSA is permitted to impose, charge or collect rates or charges as necessary to permit it to comply with its covenants to the holders of any bonds or other financial obligations. The increases proposed in this Settlement respect

²⁶ *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013).

²⁷ *Pa. P.U.C. v. C S Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991).

this principle. Ratepayers will receive safer and more reliable service at just and reasonable rates while allowing PWSA sufficient additional revenues to meet its operating and capital expenses and, as statutorily required, to satisfy its bond covenants and financial obligations. Accordingly, I&E submits that the proposed Settlement is in the public interest and requests that it be approved by the ALJs and the Commission without modification.

(2) DSIC
(Joint Petition, Section III.A.2)

As part of this case, PWSA proposed to implement water and wastewater DSICs. PWSA also requested waivers as necessary to implement 10% DSIC caps for both water and wastewater, to permit levelization of DSIC charges, and to authorize the Pay-As-You-Go method of Financing.²⁸ I&E opposed only the first of those waiver proposals. Consistent with I&E's recommendation in this case, by way of the Joint Petition, PWSA has agreed that when it implements both its water and wastewater DSICs on or after January 21, 2020, they will be implemented at 5%, respectively,²⁹ instead of at the 10% it proposed for each of them in its original filing.³⁰

As I&E witness Kubas explained, a DSIC is a special surcharge that utilities may use to cover the costs of new distribution system improvements in-between rate cases.³¹ In his testimony, witness Kubas explained that Section 1358 of the Code contains important safeguards to protect ratepayers from unwarranted DSIC charges. Specifically,

²⁸ PWSA DSIC Petition, p. 1.

²⁹ Joint Petition, p. 5, ¶III(A)(2)(a).

³⁰ PWSA DSIC Petition, p. 1.

³¹ I&E St. No. 4, p. 3.

Mr. Kubas identified statutory protections that are at issue in this case include a 5% DSIC cap for water utilities and a 7.5% water cap for wastewater utilities, which could only be waived upon a showing that a waiver would be necessary for the utility to maintain adequate, safe, and reliable service.³² Witness Kubas indicated that PWSA had not met the standard necessary to warrant an award of either the 10% water or wastewater DSICs for several reasons.

First, witness Kubas explained that PWSA had no experience that would support a need for the level of DSIC funding requested because it had never implemented any DSIC in the past, and it had never received permission for a DSIC at any level. Additionally, PWSA did not provide evidence to support a determination that exceeding the statutory DSIC cap was necessary for it to provide safe and adequate service.³³ Finally, Mr. Kubas opined that DSIC charge revenues should not be used to fund debt service coverage, as PWSA proposed.³⁴

Additionally, witness Kubas recommended that any awarded DSIC charges for water and wastewater be kept separate because, among other things, the funding source should be used to specifically fund the DSIC-eligible property specific to each utility operation. Mr. Kubas opined that the absent separation, the intent of the DSIC would be thwarted because pooling the combined funds and using them arbitrarily for either capital projects or debt service for either water or wastewater was not consistent with the

³² I&E St. No. 4, p. 6.

³³ I&E St. No. 4, p. 13.

³⁴ I&E St. No. 4, p. 22.

statutory safeguards.³⁵ Although, as explained below, the Settlement accounts for Mr. Kubas's recommendation, in rebuttal testimony, PWSA also confirmed that as part of an earlier proceeding it had already agreed separately track and account for all DSIC proceeds and expenditures.³⁶

I&E notes that the Joint Petition honors the recommendations outlined in I&E's testimony, both by capping PWSA's water and wastewater DSICs at 5%³⁷ and by agreeing that billed revenues for the DSIC will be reconciled at end of year with actual DSIC-eligible costs as approved in PWSA's LTIPs for water and (separately) wastewater for that one-year.³⁸ I&E avers that these outcomes are in the public interest not only because they comport with the statutory safeguards prescribed,³⁹ but because they will, at the same time permit PWSA to implement a DSIC in order to repair and replace its infrastructure to ensure safe and effective service. To be sure, I&E never opposed PWSA establishing a DSIC in this case. I&E acknowledges, and believes the Settlement recognizes, PWSA's position that as a highly leveraged utility, PWSA should not rely exclusively on issuing debt on an ongoing basis for its capital needs.⁴⁰ As PWSA witness Barca indicated, disinvestment in infrastructure repair and replacement has directly resulted in PWSA being currently under a Consent Order and Agreement to replace the Clearwell at the Water Treatment Plant, as well as an Administrative Order to

³⁵ I&E St. No. 4, p. 21.

³⁶ PWSA St. No. 5-R, p. 23.

³⁷ Joint Petition, p. 5, ¶II(A)(2)(a).

³⁸ Joint Petition, p. 5, ¶III(A)(2)(c)(i).

³⁹ 66 Pa. C.S. § 1358.

⁴⁰ PWSA St. No. 6-R, p. 11.

upgrade the Membrane Filtration.⁴¹ I&E does not dispute Mr. Barca's position, and avers that DSIC funding agreed upon in the Settlement will enable PWSA to implement its recently-approved LTIP to the benefit of ratepayers.⁴²

While the Settlement permits PWSA to utilize DSIC revenue to recover amounts associated with bond funding of DSIC-eligible projects, there are several protections in place in advance of such usage.⁴³ First, I&E will be consulted before such usage, as PWSA has committed to meeting with the parties to the Settlement to discuss the parameters and procedures. Additionally, PWSA also agreed that it will provide notice to the Commission of its intent to use DSIC revenue to recover bond related funding. Finally, I&E, as well as all other parties, will reserve their right to reevaluate the use of DSIC revenue for PAYGO or bond related funding as part of a future base rate proceeding. Although I&E witness Kubas opposed PWSA use of DSIC for debt payment, I&E recognizes PWSA commitment to limit recovery only to amounts associated with bond funding of DSIC-eligible projects. Therefore, to the limited extent that PWSA may attempt to use DSIC funding for debt payment, it will not only have to ensure that it is tied to DSIC-eligible project financing, but it will also have to consult with I&E, other parties, and notify the Commission in advance of using such DSIC funding. I&E believes that these layers of protection are sufficient to ensure the DSIC funding is used appropriately and in a way that promotes infrastructure repair and replacement as intended.

⁴¹ PWSA St. No. 5-R, pp. 27-28.

⁴² Joint Petition, Appendix A, p. 3, ¶ 1.

⁴³ Joint Petition, p. 6, ¶III(A)(2)(e).

Furthermore, the Settlement contains additional provisions that will ensure that PWSA is accountable to ratepayers by establishing reporting and tracking metrics. More specifically, the Settlement provides that any DSIC amounts billed but not expended will be refunded to customers over a one-year period commencing on April 1 of the following year. Additionally, in order to minimize over or under collections, PWSA will adjust the DSIC percentage by October 1 if projected total billings and expenditures for the remainder of the year indicate that a material over or under collection of plus or minus 2% is likely to occur, subject to the DSIC cap. Finally, in each quarter, regardless of whether or not it changes the DSIC percentage, PWSA has committed to filing schedules supporting the DSIC rate, including total DSIC revenue billed, total DSIC recoverable costs, over and under collections and interest, by month.⁴⁴

I&E submits that PWSA's commitments outlined in three provisions above are in the public interest for several reasons. First, these terms ensure that PWSA has a process in place to credit customer accounts for over collections and collections for ineligible projects, which is an important customer protection required by the Code.⁴⁵ Additionally, by way of the terms, PWSA has also agreed to a process for reconciliation, a required customer protection⁴⁶ which will ensure that PWSA is accountable to ratepayers for DSIC spending. Finally, the Settlement memorializes PWSA's obligation to file schedules that support its DSIC rate, by month, which I&E submits is essential to enable parties and the Commission to gauge the effectiveness of PWSA's DSIC as it is

⁴⁴ Joint Petition, pp. 5-6, ¶III(A)(2)(c)(i)-(iii).

⁴⁵ 66 Pa. C.S. §1358(d)(2).

⁴⁶ 66 Pa. C.S. §1358(e)

implemented for the first time. Empowering PWSA, the parties, and the Commission to track PWSA's DSIC spending, impose accountability, ensure compliance, and gauge efficiency is necessary to protect the public interest; therefore, because the Settlement contains parameters necessary to facilitate these outcomes, I&E avers that it warrants approval.

Accordingly, permitting PWSA to implement a DSIC within the parameters of the Settlement will facilitate the timely repair and replacement of infrastructure necessary to serve its ratepayers in a manner that is consistent with the intent of the DSIC statute and is in the public interest. Additionally, the 5% cap established in the Settlement will enable PWSA to repair and replace its infrastructure in a way that both respects the ratepayer protections outlined in Section 1358 and in a manner that will provide PWSA with its first opportunity to implement a DSIC and to gauge its effectiveness for further review. I&E avers that these outcomes are also in the public interest. Finally, I&E notes that the DSIC terms of the Settlement were the result of an extensive investigation that transpired over 6 months, involved multiple layers of review, and incorporated the input of multiple technical experts and experienced legal counsel. For these reasons, I&E respectfully requests that the DSIC terms of the Settlement be approved without modification.

(3) MULTI-YEAR RATE PLAN
(Joint Petition, Section III.A.3)

In addition to the requested increase for 2021, PWSA's March 6 filing included a request for an additional \$12.6 million or 6.4% increase in base rates for 2022. PWSA

explained its MYRP was filed for the purpose of recovering incremental debt costs for 2022 without needing to file a new general rate case.⁴⁷

I&E recommended that the Commission deny PWSA's MYRP proposal.⁴⁸ I&E acknowledges that the Code allows utilities to seek approval of alternative rate making mechanisms, including a MYRP.⁴⁹ However, for multiple reasons, I&E could not support PWSA's MYRP proposal. First, PWSA has not demonstrated its projections are reliable. Reference to prior projections are critical to assess the reliability of future projections.⁵⁰ I&E witness Cline cited to a National Regulatory Research Institute ("NRRI") article regarding MYRPs that noted "[c]hecking for the accuracy of past forecasts is essential. Since regulation is a repeated game, regulators can learn from the credibility of past utility forecasts and a utility's attributes as regulators observes the utility's actions and performance over time".⁵¹ Although PWSA has only had one prior base rate filing before the Commission, PWSA's 2018 base rate filing contained significant overprojections.⁵² In its 2018 rate filing, PWSA projected an ending balance of -\$553,471 for 2019.⁵³ However, PWSA's actual performance for 2019 resulted in a surplus of \$16,426,970 for 2019.⁵⁴ In addition to raising concerns about the accuracy of PWSA's projections generally, this disparity is larger than the MYRP second year

⁴⁷ PWSA Statement No. 3, p. 21.

⁴⁸ I&E Statement No. 1, pp. 22-24; I&E Statement No. 3, pp. 44-54; I&E Statement No. 1-SR, pp. 11-12; I&E Statement No. 3-SR, pp. 16-29.

⁴⁹ I&E Statement No. 3, p. 44 (citing 66 Pa. C.S. § 1330).

⁵⁰ I&E Statement No. 3, p. 48.

⁵¹ I&E Statement No. 3, p. 48 (citing I&E Exhibit No. 3, Schedule 12, p. 36).

⁵² I&E Statement No. 1, p. 23.

⁵³ I&E Statement No. 3, p. 49.

⁵⁴ I&E Statement No. 3, p. 49.

increase of \$12.6 million.⁵⁵ Should a similar overprojection occur again, PWSA's expressed need for a MYRP will be negated.

Second, PWSA's filing was made on March 6, 2020, prior to the widespread impact of the COVID-19 pandemic.⁵⁶ In other words, PWSA's filing does not contemplate any impact of COVID-19 on its operations, revenues, and costs.⁵⁷ Current events related to the COVID-19 pandemic heighten the tenuity of PWSA's projections into 2022. PWSA itself admits it is too early to identify the impacts to revenue and expenses or to borrowing costs from COVID-19.⁵⁸ Therefore, the inaccuracies resulting from PWSA's inability to factor the impact of COVID-19 into the FPFTY (i.e., 2021) would be further compounded if a MYRP allowed an additional rate increase in 2022.⁵⁹

Third, I&E questioned certain assumptions that further impact PWSA's proposed MYRP. Although a municipal rate will not be established in this proceeding because of Act 70, the amount of revenue PWSA will be receiving from the City will change over the FPFTY and into 2022 as more City properties are metered and billed per the 2019 Cooperation Agreement between PWSA and the City.⁶⁰ Therefore, it is not known with certainty the revenue PWSA will receive from municipal properties in either the FPFTY

⁵⁵ I&E Statement No. 3, p. 49.

⁵⁶ For example, Governor Wolf issued his Proclamation of Disaster Emergency due to the COVID-19 pandemic on the same day PWSA made its filing.

⁵⁷ I&E Statement No. 3, p. 49.

⁵⁸ I&E Statement No. 1, pp. 23-24 (citing PWSA Statement No. 3-SD, pp. 2-3 and PWSA Statement No. 5-SD, pp. 1-3).

⁵⁹ I&E Statement No. 3, pp. 49-50.

⁶⁰ I&E Statement No. 3, p. 50. Although I&E withdrew its recommendations regarding establishment of a municipal rate in surrebuttal testimony, the 2019 Cooperation Agreement still mandates PWSA bill the City at incremental annual rates as properties are metered.

or 2022.⁶¹ Additionally, PWSA admits it must monitor the impact of COVID-19 on customer usage to identify trends.⁶² Therefore, the usage data relied upon by PWSA may be unreliable and the problem would only be exacerbated if this usage data were allowed to serve as a basis for projections into 2022.⁶³

Fourth, PWSA faces further uncertainty as a newly regulated utility under the Commission's jurisdiction.⁶⁴ PWSA is still coming into compliance with the Code, introducing uncertainty into PWSA's projections and processes.⁶⁵ Additionally, PWSA has experienced turnover in management that could impact PWSA's operations and planning activities.⁶⁶ I&E witness Cline cited to the same NRRI article noted above that a key challenge in assessing forecasting is that regulators do not have as much knowledge as utilities about the correlation of forecasted costs and utility-management competence.⁶⁷ The Commission's ability to gauge this correlation and, by extension, the prudence of the MYRP is even greater here with the turnover in management.⁶⁸

Fifth, I&E contested PWSA's assertion that a MYRP would benefit customers by providing the ability to reliably predict rates through 2022.⁶⁹ Specifically, PWSA is planning to soon introduce a separate tariff and charge for stormwater service.⁷⁰ As a

⁶¹ I&E Statement No. 3, p. 50.

⁶² I&E Statement No. 3, p. 50 (citing PWSA St. No. 3-SD).

⁶³ I&E Statement No. 3, p. 50.

⁶⁴ I&E Statement No. 3, pp. 50-51.

⁶⁵ I&E Statement No. 3, p. 51.

⁶⁶ I&E Statement No. 3, p. 51. I&E witness Cline noted PWSA has had three different Executive Directors from 2017 to present, including a change in the Executive Director during the present rate case where the previous Executive Director submitted direct testimony.

⁶⁷ I&E Statement No. 3, p. 51 (citing I&E Exhibit No. 3, Schedule 11, pp. 35-36).

⁶⁸ I&E Statement No. 3, p. 51.

⁶⁹ I&E Statement No. 3, pp. 52-53.

⁷⁰ I&E Statement No. 3, p. 52.

result, wastewater rates will change, which could cause wastewater rates to increase at the beginning of the FPFTY, decrease during the FPFTY, then increase again in 2022 as a result of the MYRP.⁷¹ Rather than lead to predictability, this could cause customer confusion.⁷² Additionally, predictability should not be a goal in itself if, for the reasons cited above, PWSA's projections are inaccurate and therefore rates are not just and reasonable.⁷³

Rather than rely on a MYRP, I&E witness Cline expressed support for filing a full base rate case after the current rate case has ended.⁷⁴ As I&E witness Cline stated, it would be more accurate for PWSA to propose recovery of costs in a future base rate filing as projections are refined, rather than rely on its MYRP proposal, which was developed before the COVID-19 crisis.⁷⁵ The OCA also opposed PWSA's proposed MYRP, while the OSBA and UNITED generally opposed any rate increase.⁷⁶

The Joint Petitioners agree that PWSA will withdraw its proposed MYRP without prejudice. However, the Joint Petitioners support PWSA's filing of a subsequent water and wastewater base rate case at the same time PWSA files a request for a stormwater fee, to be filed no earlier than February 2021.

I&E supports these Settlement terms as reasonable because, consistent with I&E's testimony, PWSA may return to file a new base rate case, rather than institute a MYRP.

⁷¹ I&E Statement No. 3, pp. 52-53.

⁷² I&E Statement No. 3, p. 53.

⁷³ I&E Statement No. 3, p. 53; I&E Statement No. 3-SR, p. 26.

⁷⁴ I&E Statement No. 3-SR, pp. 26-27.

⁷⁵ I&E Statement No. 3-SR, p. 27.

⁷⁶ OCA Statement No. 1, pp. 34-36; OCA Statement No. 4, pp. 4-13; OCA Statement No. 7, p. 28; OSBA Statement No. 1, pp. 4-7; UNITED Statement No. 1, pp. 7-9.

I&E is aware of the newly-applicable regulatory requirements and aged infrastructure facing PWSA.⁷⁷ That is exactly why I&E supports PWSA's ability to return for a future base rate filing after this case concludes. However, I&E also seeks to balance the needs of PWSA with PWSA's customers. Given the uncertainty present in PWSA's filing in relation to its MYRP proposal as outlined above, approving a MYRP risks implementing rates to recover for inaccurate projections. PWSA's customers are better served by PWSA providing an updated proposal through a new base rate proceeding, rather than relying on a MYRP for 2022 appended to 2021 figures. Although PWSA will incur expenses to return for a base rate filing, I&E expects PWSA will achieve some economies of scale by filing a new water and wastewater base rate proposal at the same time PWSA was already planning to file in the near future for approval of stormwater rates.

B. Stormwater Tariff and Compliance Plan Stage 2 Proceeding
(Joint Petition, Section III.B)

To comply with the Commission's March 15, 2018 Final Implementation Order for Act 65 of 2017, PWSA filed a stormwater tariff with its current base rate filing.⁷⁸ However, PWSA's proposed stormwater tariff was not accompanied by a proposed stormwater rate. I&E will assess the proposed stormwater rates and underlying costs and revenue requirement when PWSA submits a stormwater rate proposal.⁷⁹ OCA opposed consideration of stormwater-related issues in this case for various reasons, including lack

⁷⁷ I&E Statement No. 3-SR, p. 28.

⁷⁸ See I&E Statement No. 3, p. 54.

⁷⁹ I&E Statement No. 3, pp. 55, 58-59.

of customer notice and incomplete analysis of stormwater costs in the COSS.⁸⁰ Instead, OCA indicated it supported consideration of the stormwater tariff at the same time PWSA files its stormwater rate case.⁸¹

I&E agrees it would be advantageous to consider stormwater issues all together at one time. Therefore, I&E supports the Joint Petition's terms that development of PWSA's stormwater tariff will be deferred to PWSA's combined water, wastewater, and stormwater filing as discussed in Section III.A.3 of the Joint Petition. Parties further agree to request that the Commission, as part of approval of the Joint Petition, to consolidate the Compliance Plan Stage 2 stormwater issues with PWSA's upcoming combined water, wastewater, and stormwater filing.

As PWSA admits, it filed a stormwater tariff in this proceeding to comply with the Commission's Final Implementation Order. As both I&E and OCA have described, further information is required to fully review PWSA's stormwater proposals. Therefore, I&E agrees it would be prudent to fully evaluate PWSA's stormwater tariff at the same time PWSA files stormwater rates. Similarly, to streamline all stormwater related issues, I&E agrees Compliance Plan Stage 2 Stormwater issues should be consolidated with PWSA's stormwater rate filing. Accordingly, I&E supports these Settlement terms as reasonable because I&E intends to comprehensively review stormwater issues when PWSA submits a stormwater rate filing.

⁸⁰ OCA Statement No. 1, pp. 52-56.

⁸¹ OCA Statement No. 1, p. 56.

C. Cost Allocation and Rate Design Issues
(Joint Petition, Section III.C)

The Joint Petitioners agree to the class revenue allocations consistent with Appendix C to the Joint Petition. The rates to collect the settlement level of water and wastewater revenues from each class are shown on Appendix D to the Joint Petition. All parties reserve their right to address the issue of how to allocate the costs of PWSA's customer assistance programs and its lead service line replacement programs in a future post pandemic case. PWSA will account for the costs of Infiltration and Inflow ("I&I") as part of its combined water, wastewater, and stormwater filing and, to the extent PWSA does not account for all I&I costs as part of its filing, PWSA will address the total costs for the separate system in its subsequent water/wastewater/stormwater rate proceeding. PWSA will also provide a customer cost analysis as part of its CCOSS in its combined water, wastewater, and stormwater filing as part of its continued exploration of changing its rate design from a minimum charge to a customer charge.

I&E generally agrees PWSA's proposal to use the Base/Extra Capacity methodology to develop its CCOSS model is reasonable.⁸² However, I&E had several concerns regarding PWSA's assumptions made regarding the usage of City properties. As PWSA admits, "information related to actual and estimated volumes of water service provided to the City of Pittsburgh is unknown and not readily available since many of the City's connections are unmetered."⁸³ Therefore, the lack of usage data prevents PWSA

⁸² I&E Statement No. 3, p. 6.

⁸³ I&E Statement No. 3, p. 8.

from calculating or estimating the actual cost to serve municipal properties.⁸⁴ PWSA projects metered municipal customers will use 225,528,000 gallons in the FPFTY and unmetered municipal customers will use 47,052,000 gallons in the FPFTY.⁸⁵ However, I&E contested that the 47,052,000 gallons figure is accurate, and instead recommended PWSA base its cost allocations on total municipal usage of 600 million gallons, i.e., in addition to the 225,528,000 gallons used by meter municipal customers in the FPFTY, unmetered municipal customers will be projected to use 374,472,000 gallons in the FPFTY.⁸⁶

I&E's estimation of total municipal usage of 600 million gallons was based on several factors. As the Commission noted in its March 2020 Order in PWSA's Stage 1 Compliance Plan proceeding ("March 2020 Order"), the City was granted 600 million gallons of water from PWSA free of charge as part of the 1995 Cooperation Agreement.⁸⁷ However, PWSA itself has estimated total annual usage by the City is likely in excess of 600 million gallons. Specifically, PWSA's Compliance Plan states "[b]ased on estimates, however, it is suspected that the total used by the City is in excess of 600 million gallons."⁸⁸ Further, as noted by the Commission's March 2020 Order, the Pennsylvania Auditor General cited a PWSA senior manager's belief that the City's usage may be close to one billion gallons of water annually.⁸⁹ PWSA's estimates are also questionable

⁸⁴ I&E Statement No. 3, p. 8.

⁸⁵ I&E Statement No. 3, p. 10 (citing I&E Exhibit No. 3, Schedule 1).

⁸⁶ I&E Statement No. 3, p. 11.

⁸⁷ I&E Statement No. 3, pp. 11-12.

⁸⁸ I&E Statement No. 3, p. 12 (citing p. 119 of PWSA's Compliance Plan).

⁸⁹ I&E Statement No. 3, p. 12 (citing March 2020 Order, p. 52, fn. 19).

when it estimates 78 metered customers are using 225,528,000 gallons annually, but 79 unmetered customers are using only 47,052,000 gallons.⁹⁰

I&E's concern with inaccurate reporting of municipal usage is that underestimation leads to artificially lowering PWSA's cost to serve municipal properties, unfairly causing costs to be allocated to other rate classes.⁹¹ Following from I&E's recommendation regarding municipal usage, I&E also recommended that both unmetered and metered municipal properties be charged an undiscounted rate for 600 million gallons of usage per year.⁹² I&E's recommendation was consistent with the Commission's March 2020 Order, which recognized free or discounted service to the City outlined in the 2019 Cooperation Agreement was at the expense of other customer classes and, therefore, PWSA's step-billing plan (i.e., discount) for the metered municipal service should be rejected and unmetered municipal service should incur a flat rate charge.⁹³ However, subsequent to I&E's filing of direct testimony, Governor Wolf signed Act 70 into law, which gave the terms of the 2019 Cooperation Agreement the effect of law. The 2019 Cooperation Agreement allows metered municipal properties to be charged stepped-in rates and unmetered properties to continue to receive free service. Therefore, through surrebuttal testimony, I&E withdrew any recommendation it had regarding establishment of a municipal rate, including the recommendation that the Commission

⁹⁰ I&E Statement No. 3, p. 13.

⁹¹ I&E Statement No. 3, p. 13.

⁹² I&E Statement No. 3, pp. 22-44.

⁹³ See I&E Statement No. 3, p. 23. The Commission explained charging the City anything less than bills based on full metered rates "(1) prevents the PWSA from collecting tariffed revenue; (2) results in charging discriminatory rates; (3) 'condone[s] and perpetuate[s] the imbalanced, discriminatory relationship the City has had with the PWSA for longer than necessary;' and (4) requires 'non-City ratepayers to foot their full bill for future rate increases while the City is still receiving free water service.' March 2020 Order, p. 59.

charge municipal metered and unmetered rate classes for both the water and wastewater divisions at 100% of the cost of service.⁹⁴

Finally, I&E also recommended that PWSA provide a customer cost analysis as part of its CCOSS in PWSA's next base rate case because adjusting the rate design from a minimum charge to a customer charge in this proceeding is not reasonable.⁹⁵ OCA and OSBA recommended a variety of changes to PWSA's cost allocation and rate design proposals.⁹⁶

After consideration of all parties' positions, I&E supports these Settlement terms as reasonable because it resolves Joint Petitioners competing concerns regarding cost allocation and rate design by balancing parties' interests. Although PWSA does not agree with I&E's estimations of usage by the City, these Settlement terms do not contradict I&E's position regarding usage by the City and, as noted above, this is a black box settlement where there is no agreement on this particular issue. As it is expected PWSA will be filing a new base rate case shortly, I&E will continue to monitor the municipal usage figures reported by PWSA and make recommendations for future adjustments as appropriate. Additionally, I&E supports this settlement because, as part of the continued analysis of PWSA moving from a minimum charge to a more traditional customer charge, PWSA agreed to I&E's recommendation that a customer cost analysis be provided as part of PWSA's CCOSS in its next base rate filing.

⁹⁴ I&E Statement No. 1-SR, p. 13; I&E Statement No. 3-SR, pp. 11-16; I&E Statement No. 4-SR, pp. 5-8.

⁹⁵ I&E Statement No. 3, p. 22.

⁹⁶ OCA Statement No. 1, pp. 36-52; OSBA Statement No. 1, pp. 8-51.

D. Additional COVID-19 Relief Measures
(Joint Petition, Section III.D)

The Joint Petition includes terms for additional COVID-19 customer-relief measures, including waiver of reconnection fees, increased outreach, and refinement to PWSA's payment arrangement and Hardship Grant Program terms. I&E did not submit any testimony related to these measures. However, I&E was involved in the discussion of these terms, and does not oppose them as they are necessary for a collective resolution of this case.

E. COVID-19 Related Costs and Relief Funding
(Joint Petition, Section III.E)

I&E's agreement to resolve this case hinged, in part, upon PWSA's willingness to recognize, account for, and report upon the COVID-19 related costs it experiences, as well as any relief funding it may receive. I&E notes that on the same date that PWSA made its filings for this case, March 6, 2020, Governor Tom Wolf issued a Disaster Proclamation attesting to the existence of a disaster emergency in Pennsylvania due to COVID-19 ("the coronavirus").⁹⁷ The issue of timing is relevant because when PWSA prepared its filings, it did not have information necessary to account for the existence of the coronavirus pandemic, to gauge how the coronavirus would impact its operations and capital project schedules, or to account for expenses it may now incur that were not then contemplated, yet alone quantifiable.

⁹⁷ Joint Petition, p. 5, ¶9.

As an example, in his direct testimony, I&E witness Patel testified that the COVID-19 pandemic may impact PWSA’s ability to fill employment vacancies in the FPFTY, but the impact is not yet known.⁹⁸ To be sure, PWSA also recognizes that while it has begun to experience revenue and cost impacts of the COVID-19 pandemic, the full extent of those impacts “are only beginning to emerge.”⁹⁹ As PWSA itself has admitted, it is too early to identify the impacts to revenue and expenses or to borrowing costs from COVID-19.¹⁰⁰ I&E submits that, at the time this document is being submitted, each passing day makes the outcome and impact of the COVID-19 pandemic less certain as current events unfold. The uncertainty of COVID-19’s impact upon both PWSA’s operations and its ratepayers supports the need for the Settlement to impose a level accountability upon PWSA to track and record COVID-19 costs, maintain records necessary to support such costs, and to track and report any type of relief funding it may receive to ensure the efficient use of those funds. I&E submits that the COVID-19 costs and relief funding terms of the Settlement are in the public interest because they will ensure that PWSA meets these accountability standards.

First, consistent with the Commission’s May 13 Secretarial Letter “COVID-19 Cost Tracking and Creation of Regulatory Asset,”¹⁰¹ and in order accurately account for prudently incurred incremental extraordinary, nonrecurring expenses related to COVID-

⁹⁸ I&E St. No. 2, p. 16.

⁹⁹ PWSA St. No. 3-SD, p. 2.

¹⁰⁰ I&E Statement No. 1, pp. 23-24 (citing PWSA Statement No. 3-SD, pp. 2-3 and PWSA Statement No. 5-SD, pp. 1-3).

¹⁰¹ “COVID-19 Cost Tracking and Creation of Regulatory Asset,” Secretarial Letter, Docket No. M-2020-3019775 (May 13, 2020).

19, PWSA will be permitted to track, and record as a regulatory asset, all COVID-19 Pandemic Costs. Additionally, PWSA shall be permitted to claim COVID-19 Pandemic Costs for ratemaking purposes in PWSA's next general rate proceeding to be determined in that proceeding. COVID-19. COVID Pandemic Costs that cause PWSA's operating costs for the specific NARUC¹⁰² account to exceed budgeted FTY and FPFTY levels shall be eligible for recovery for ratemaking purposes.¹⁰³

As a condition of the Settlement, PWSA will be obligated to track any operating costs that are reduced as a result of pandemic operating limitations and use those amounts to offset areas of increased cost in the regulatory asset account.¹⁰⁴ I&E submits that this provision is in the public interest because it will provide PWSA with a mechanism to address COVID-19 costs that were not foreseeable or quantifiable when it made its rate filing, but which could compromise its operations and ability to provide safe and effective service, as required by the Code,¹⁰⁵ if not recognized. I&E submits that ensuring that PWSA is able to reflect and recover costs related to a *force majeure* event like the COVID-19 pandemic is an essential part of ensuring that PWSA has an avenue to maintain the integrity of its operations, which the public interest requires.

At the same time, the Settlement provides ratepayers with protection from paying unwarranted costs because it provides that costs that are not specifically identifiable as COVID-19 Pandemic Related Costs shall not be eligible for recovery for ratemaking

¹⁰² I&E notes that the Joint Petition inadvertently referenced FERC; however, in a subsequently filed Errata sheet, PWSA corrected the error to correctly identify NARUC.

¹⁰³ Joint Petition, p. 9, ¶III(E)(1).

¹⁰⁴ Joint Petition, p. 9, ¶III(E)(2).

¹⁰⁵ 66 Pa. C.S. § 1501.

purposes. The Settlement identifies COVID-19 Pandemic Related Costs as “reasonably and prudently incurred incremental labor-related costs; costs incurred to maintain employee and contractor availability; incremental health care related costs; incremental worker’s compensation costs; incremental occupational safety equipment, contractor, personnel costs, and annual uncollectible accounts expense.¹⁰⁶” I&E submits that the limitations of COVID-19 cost recovery imposed by the Settlement definition will ensure that while PWSA can recover reasonable and prudent costs that are tied to COVID-19, it will not be eligible to recover beyond these carefully developed parameters.

Because the Settlement requires PWSA to maintain records, documents, and other information necessary to demonstrate any claimed costs qualify as COVID-19 pandemic costs, PWSA will have the burden to support any claimed costs, ensuring that they can and will be scrutinized before any recovery is permitted. I&E notes that all parties have reserved their right to review the prudence and reasonableness of the claimed costs in any proceeding in which PWSA may attempt cost recovery. Recognition of the right to review ensures that I&E, other parties, and the Commission will have an opportunity to review claimed costs before PWSA may recover them, as is appropriate.¹⁰⁷ I&E submits that this result is in the public interest because while it provides PWSA with a mechanism to recover defined costs, it will protect ratepayers against payment of unwarranted costs.

Finally, the Settlement requires PWSA to track any government benefits it receives and to report them, as well as amounts obtained and their intended use as part of

¹⁰⁶ Joint Petition, p. 9, ¶III(E)(1).

¹⁰⁷ Joint Petition, p. 9, ¶III(E)(2).

its next base rate case. PWSA has also agreed to detail its efforts to obtain relief funding and to report upon its efforts, including the basis for denial of any requested funds.¹⁰⁸ I&E fully supports this term because while it cannot be determined at this point, PWSA may receive COVID-19 relief funding in the future. I&E notes that the evidence in this case illustrates that PWSA is, in fact, actively pursuing COVID-19 relief funding opportunities, and that it has a team responsible for tracking and analyzing all relief funding opportunities.¹⁰⁹ In the event that it does receive such funding, as a regulated jurisdictional entity, I&E submits that PWSA has an obligation to both report the amount of money it obtains and to maximize the use of funding for the benefit of its operations and its ratepayers.

By way of the Settlement terms, PWSA efforts to obtain funding, the outcome of those efforts, and the extent and use of any funding award will become reportable events to the Commission in PWSA's next base rate case.¹¹⁰ I&E submits that ensuring that PWSA pursues funding in good faith and that any awarded funds are tracked and used efficiently for the benefit of ratepayers is always in the public interest, but it becomes even more important in light of the economic climate and uncertain impact now imposed by the COVID-19 pandemic. Accordingly, I&E supports this Settlement term and urges PWSA to continue its efforts to obtain any relief funding opportunities for which it is eligible to both its own benefit, as well as its ratepayers.

¹⁰⁸ Joint Petition, p. 9, ¶III(E)(3).

¹⁰⁹ PWSA St. No. 5-R, p. 3.

¹¹⁰ Joint Petition, p. 9, ¶III(E)(3).

F. Low-Income Customer Assistance Issues
(Joint Petition, Section III.F)

The Joint Petition includes terms related to low income customers, including increased data tracking and reporting, institution of a Pilot Arrearage Forgiveness Program, refinement to PWSA's various customer assistance programs, and increased customer outreach. I&E did not submit any testimony related to these measures. However, I&E was involved in the discussion of these terms, and does not oppose them as they are necessary for a collective resolution of this case.

G. Customer Service Issues
(Joint Petition, Section III.G)

The Joint Petition includes terms related to customer service, including institution of customer service satisfaction surveys, elimination of fees for residential customers to make Interactive Voice Response and on-line payments, improvement to call center performance, and performance standards for leak responses. I&E did not submit any testimony related to these measures. However, I&E was involved in the discussion of these terms, and does not oppose them as they are necessary for a collective resolution of this case.

H. Quality of Service Issues
(Joint Petition, Section III.H)

The Joint Petition includes terms related to quality of service issues, including reporting on Unaccounted for Water, exercising of isolation valves, meter testing, flushing, maintenance of wastewater laterals, coordination with neighboring utilities and governmental agencies, revision to the warranty for lead service line replacements, and

data reporting and maintenance. I&E did not submit any testimony related to these measures. However, I&E was involved in the discussion of these terms, and does not oppose them as they are necessary for a collective resolution of this case.

I. Additional Terms and Conditions
(Joint Petition, Section IV)

The Joint Petition includes various additional terms and conditions, including that the Settlement represents a balance of Joint Petitioners interests and therefore should not be construed as approval of any Joint Petitioner's position. I&E agrees with these terms because, as noted above, this is a black box settlement, and therefore there is no resolution of individual issues except to effectuate the terms and agreements of the settlement. Additionally, I&E agrees it will waive the filing of Exceptions if the ALJs adopt the Settlement without modifications and will otherwise support the terms and conditions of the Settlement if unmodified by the ALJs and the Commission.

III. CONCLUSION

I&E represents that all issues raised in testimony have been satisfactorily resolved through discovery and discussions with PWSA or are incorporated or considered in the resolution proposed in the Settlement. The very nature of a settlement requires compromise on the part of all parties. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. Further line-by-line identification of the ultimate resolution

of the disputed issues beyond those presented in the Settlement is not necessary as I&E represents that the Settlement maintains the proper balance of the interests of all parties.

I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the Settlement.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition for Settlement as being in the public interest and respectfully requests that Administrative Law Judge Mary D. Long and Administrative Law Judge Emily I. DeVoe recommend, and the Commission approve, the terms and conditions contained in the Settlement without modification.

Respectfully submitted,



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Dated: October 7, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al : Docket Nos. R-2020-3017951
: C-2020-3019348
v. : C-2020-3019305
:
Pittsburgh Water and Sewer Authority - Water :

Pennsylvania Public Utility Commission, et al : Docket Nos. R-2020-3017970
: C-2020-3019349
v. : C-2020-3019302
:
Pittsburgh Water and Sewer Authority - Wastewater :

Petition of Pittsburgh Water and Sewer Authority For : Docket No. P-2020-3019019
Waiver of Provisions of Act 11 to Increase The DSIC :
CAP, to Permit Levelization of DSIC Charges, and to :
Authorize the Pay-As-You-Go Method of Financing :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Statement in Support** dated October 7, 2020 in the manner and upon the persons listed below:

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