

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held March 26, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement  
David W. Sweet, Vice Chairman  
Andrew G. Place  
John F. Coleman, Jr., Statement  
Ralph V. Yanora, Statement

Implementation of Chapter 32 of the  
Public Utility Code Regarding Pittsburgh  
Water and Sewer Authority – Stage 1

M-2018-2640802  
M-2018-2640803

Petition of Pittsburgh Water and Sewer  
Authority for Approval of Its Long-Term  
Infrastructure Improvement Plan

P-2018-3005037  
P-2018-3005039

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Deputy Chief Administrative Law Judge (ALJ) Mark A. Hoyer and ALJ Conrad A. Johnson, issued on October 29, 2019, relative to the above-captioned Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1 (Compliance Plan or CP). Also, before the Commission are the Exceptions and Replies to Exceptions filed with respect thereto.

On November 18, 2019, the following parties filed Exceptions to the Recommended Decision: Pittsburgh Water and Sewer Authority (PWSA or Authority); the Commission’s Bureau of Investigation and Enforcement (I&E); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and Pittsburgh UNITED (UNITED).<sup>1</sup> On December 3, 2019, the PWSA, I&E, the OCA, the OSBA, and UNITED filed Replies to Exceptions.

Also, before the Commission is the Joint Petition for Partial Settlement (Partial Settlement or Settlement) filed on September 13, 2019, by the PWSA, I&E, the OCA, the OSBA, UNITED, and Pennsylvania-American Water Company (PAWC) (collectively, Joint Petitioners). For the reasons stated, *infra*, we shall adopt and modify the Partial Settlement, consistent with this Opinion and Order. Additionally, we shall grant, in part, and deny, in part, the Exceptions filed by the PWSA and I&E, deny the Exceptions of the OCA, the OSBA and UNITED and adopt and modify the ALJs’ Recommended Decision, consistent with this Opinion and Order.

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<sup>1</sup> UNITED is represented through counsel at the Pennsylvania Utility Law Project (PULP) and the Natural Resources Defense Council (NRDC). Neither PULP nor NRDC are independent parties of record. On January 16, 2019, UNITED filed two motions for admission *pro hac vice* for counsel from NRDC, which were granted on February 11, 2019.

## I. Background

The PWSA is a municipal authority, organized and existing under the Pennsylvania Municipality Authorities Act (Authorities Act or MAA), 53 Pa. C.S. § 5601, *et seq.* The 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. The Authority also provides wastewater conveyance service to customers located in the City and conveys wastewater for portions of twenty-four (24) neighboring communities.

On December 21, 2017, Governor Wolf signed Act 65 of 2017 into law whereby the Pennsylvania Public Utility Code (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). Chapter 32 addresses Commission jurisdiction over the utility service of water, wastewater, and storm water provided by Pennsylvania cities of the second class under the MAA. Pittsburgh is the only Pennsylvania city of the second class. Pursuant to 66 Pa. C.S. § 3202(a)(1), the provisions of the Code (except Chapters 11 and 21) apply to the PWSA in the same manner as a public utility effective April 1, 2018.

On January 18, 2018, the Commission requested comments from any interested entities on its proposals to implement Chapter 32. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Tentative Implementation Order*, Docket Nos. M-2018-2640802 (water) and M-2018-2640803

(wastewater) (Order entered January 18, 2018) (*TIO*). Comments in response to the *TIO* were submitted by PWSA, I&E, the OCA, the OSBA, PAWC and UNITED.<sup>2</sup>

In response to the comments, the Commission entered a Final Implementation Order laying out a process for implementation of Chapter 32, including tariff approval, ratemaking, compliance plan, and assessment provisions. *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order*, Docket Nos. M-2018-2640802 and M-2018-2640803 (Order entered January 18, 2018) (*FIO*). In the *FIO*, the Commission established the due date of September 28, 2018, for the PWSA to file a Compliance Plan. *FIO* at 8.

On April 1, 2018, the PWSA's water and wastewater operations became subject to regulation of the Commission pursuant to Section 3202(a)(1) of the Code, 66 Pa. C.S. § 3202(a)(1). The PWSA's currently approved water and wastewater tariffs became effective on March 1, 2019. On September 26, 2018, the Commission issued a Secretarial Letter (*September 2018 Secretarial Letter*) explaining, among other things, that the Commission would publish notice of the PWSA's Compliance Plan, and the procedures related thereto in the *Pennsylvania Bulletin* on October 13, 2018. The Commission further established a comment period of twenty days from the date of publication in the *Pennsylvania Bulletin*. Additionally, the Commission directed that within forty-five days from the date of publication in the *Pennsylvania Bulletin*, it would refer the PWSA's Compliance Plan to the Office of Administrative Law Judge (OALJ) for the resolution of any factual matter. *September 2018 Secretarial Letter*. It directed the OALJ to submit a recommended decision on the issues raised by the PWSA or the parties no later than eight months from the date on which the matter is assigned to OALJ.

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<sup>2</sup> Additional comments were submitted by Michelle Naccarati Chapkis on behalf of the Mayor's Blue Ribbon Panel on Restructuring the PWSA and other individuals.

## II. History of the Proceeding

On September 28, 2018, the PWSA filed: (a) the Compliance Plan at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater); and (b) its Long-Term Infrastructure Improvement Plan (LTIIP), which was docketed at Docket Nos. P-2018-3005037 (water) and P-2018-3005039 (wastewater). These proceedings were subsequently consolidated, upon motion by the PWSA.

On October 18, 2018, the OCA filed an Answer, Notice of Intervention, and Public Statement. The OCA further submitted comments regarding the LTIIP on October 25, 2018 and comments identifying preliminary issues in the PWSA's Compliance Plan on November 2, 2018. On October 18, 2018, the OSBA filed an Answer and Notice of Intervention. I&E entered its appearance and on October 25, 2018, it submitted comments regarding the PWSA's LTIIP.

Petitions to Intervene were filed by PAWC and UNITED on October 30, 2018, and November 1, 2018, respectively. UNITED submitted comments in response to the Compliance Plan on November 1, 2018.<sup>3</sup>

By Corrected Secretarial Letter dated November 28, 2018 (*November 2018 Secretarial Letter*), the Commission provided a Technical Staff Initial Report and Directed Questions<sup>4</sup> – Stage 1 (Stage 1 Initial Report), which lists a variety of specific questions that the PWSA and the Parties were directed to address as part of the Stage 1 litigation.

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<sup>3</sup> UNITED had also filed initial comments in response to PWSA's LTIIP on October 29, 2018, at Docket Nos. P-2018-3005037 and P-2018-3005039.

<sup>4</sup> PWSA reprinted the Commission's questions and sequentially numbered them in Exh. RAW/C-1. The Partial Settlement refers to Directed Questions by the numbering shown in PWSA Exh. RAW/C-1.

The *November 2018 Secretarial Letter* also assigned the PWSA's Compliance Plan to the OALJ for hearings as contemplated in the September 2018 Secretarial Letter and established a two-stage review process for the PWSA's Compliance Plan.<sup>5</sup>

By Prehearing Order dated December 27, 2018, the ALJs, in part, memorialized the litigation schedule and granted the Petitions to Intervene of PAWC and UNITED.

On February 1, 2019, the PWSA filed and served revisions to the Compliance Plan (Compliance Plan Supplement).

On February 14, 2019, the PWSA served its written direct testimony and exhibits.

On April 5, 2019, I&E, the OCA, the OSBA, UNITED, and PAWC served their written direct testimony and accompanying exhibits. On May 6, 2019, the PWSA, the OCA, the OSBA, and PAWC served their written rebuttal testimony and accompanying exhibits.

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<sup>5</sup> On December 11, 2018, UNITED and the OCA filed Petitions for Reconsideration and/or Clarification of the November 2018 Secretarial Letter. On December 18, 2018, the PWSA filed an Answer to the Petitions of UNITED and the OCA. By Order entered December 20, 2018, the Commission declined to reconsider its directive that a two-stage review be utilized for its review of PWSA's Compliance Plan. However, the Commission granted UNITED's request for clarification of the issues related to the PWSA's compliance with Chapter 15, Subchapter B of the Public Utility Code, known as the Discontinuance of Service to Leased Premises Act (DSLPA), and directed that the DSLPA issues be addressed as part of the Stage 1 Compliance Plan proceeding. The Parties have since agreed that PWSA's compliance with DSLPA should be addressed as part of Stage 2 proceeding because the issues are inextricably linked to the PWSA's broader compliance with Chapter 14 of the Code and Chapter 56 of our Regulations – issues which were explicitly reserved by the Commission for the Stage 2 proceeding.

On May 13, 2019, the Parties requested a three-month extension in the Commission-established schedule to permit settlement discussions to attempt to resolve all the issues raised in the proceeding. They also requested that the following consumer-related issues be moved from Stage 1 to Stage 2 of the proceedings so that they might discuss the issues in workshops led by the Commission's Bureau of Consumer Services (BCS): (1) issues concerning residential service termination and collections and (2) issues related to the PWSA's compliance with the DSLPA. Those requests were granted by Secretarial Letter on May 15, 2019 (*May 2019 Secretarial Letter*).

On May 17, 2019, I&E, the OCA, the OSBA and UNITED served their written surrebuttal testimony and accompanying exhibits.

In the Fourth Interim Order dated June 18, 2019, the litigation schedule was amended to accommodate the three-month extension granted by the Commission.

On August 2, 2019, the PWSA and the OSBA served written supplemental direct testimony and exhibits. On August 14, 2019, the PWSA served its written supplemental rebuttal testimony in response to the OSBA's written supplemental direct testimony of August 2, 2019. On August 14, 2019, I&E, the OCA, the OSBA and UNITED served their written supplemental rebuttal testimony and accompanying exhibits. On August 19, 2019, the PWSA served written rejoinder testimony in response to I&E's, the OCA's, the OSBA's and UNITED's written supplemental rebuttal testimony of August 14, 2019.

An evidentiary hearing was held on August 21, 2019. At that time, the parties moved their previously served written testimony and exhibits into the record. In addition to its previously served written testimony and exhibits, the following hearing exhibits on behalf of the PWSA were admitted into the record, with the noted exception of PWSA Hearing Exhibit 6, which was later admitted by Interim Order:

PWSA Hearing Exh. 1	PWSA Petition for Approval of Its Compliance Plan as filed September 28, 2018 (Appendix C is PWSA's Long Term Infrastructure Improvement Plan as filed September 28, 2018)
PWSA Hearing Exh. 2	PWSA Compliance Plan Supplement as filed February 1, 2019
PWSA Hearing Exh. 3	PWSA Long Term Infrastructure Improvement Plan dated August 21, 2019
PWSA Hearing Exh. 4	List of PWSA Written Testimony, including exhibits, and witness verifications
PWSA Hearing Exh. 5	Joint Stipulation PWSA and UNITED Re: Lead Replacement Reimbursements
PWSA Hearing Exh. 6	<i>DEP Consent Order and Agreement</i> Referenced in PWSA St. No. C-1SD at 9-11 (when available)

The Consent Order and Agreement (COA) by the Pennsylvania Department of Environmental Protection (PA DEP or DEP) was finalized on September 6, 2019, and filed by the PWSA on September 9, 2019. A three-day time period for the filing of any objections to the admission of the COA (PWSA Hearing Exhibit No. 6) was established. No objections were filed.

On September 13, 2019, the Joint Petitioners filed the Partial Settlement. On September 19, 2019, the PWSA, I&E, the OCA, the OSBA, and UNITED filed main briefs.

On September 30, 2019, statements in support of the Partial Settlement were filed by the PWSA, I&E, the OCA, the OSBA and UNITED; reply briefs were also filed by these same Parties.

By Interim Order dated October 7, 2019, PWSA Hearing Exhibit 6 was admitted and the record was closed.

In their Recommended Decision issued on October 29, 2019, the ALJs found that the Partial Settlement was in the public interest and recommended its approval without modification. In addition, the ALJs recommended that the 1995 Cooperation Agreement between the PWSA and the City, effective January 1, 1995, be terminated, and business transactions conducted with the City occur on a transactional basis until a new cooperation agreement is filed and approved by the Commission. Further, the ALJs recommended that the Compliance Plan be revised to require: (1) the PWSA to become responsible for the cost of all meter installation in accordance with 52 Pa. Code § 65.7; (2) the PWSA to introduce a flat rate, at a minimum the customer charge for the customer's class for all unbilled customers in its next base rate case, and as customers are metered, to immediately bill full usage; and (3) the PWSA to comply with 52 Pa. Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, and revise its tariff and operations accordingly. R.D. at 1.

Additionally, the ALJs recommended that the Commission approve without modification the PWSA's residential Lead Service Line Replacement Program (LSLR), which was revised over the course of the litigation and to which the PWSA has committed to continue to evaluate to meet its target date of replacing all residential service lines in its system by 2026; and therefore, the ALJs found the PWSA's LSLR Program to be in the public interest. *Id.*

The ALJs further recommended dismissal of the OSBA's request to order the PWSA to include non-residential lead service lines as part of the PWSA's LSLR Program finding that the Commission lacks the power to order a utility to replace privately-owned service lines. Concerning the PWSA's residency policy which generally requires its employees to reside in the City, the ALJs found that the Commission

approval is not required, because the PWSA’s residency policy is a discretionary business decision. According to the ALJs, the residency policy is beyond the power of the Commission to affect or supersede. *Id.*

As previously noted, the PWSA, I&E, the OCA, the OSBA, and UNITED filed Exceptions on November 18, 2019, and Replies to Exceptions on December 3, 2019.

### **III. Legal Standards**

Pursuant to Section 332(a) of the Code, “the proponent of a rule or order has the burden of proof.” 66 Pa. C.S. § 302(a). The burden of proof is the “preponderance of the evidence” standard. *See Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (1950).

Adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S. Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980) (*Norfolk*); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super.

1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Chapter 32 of the Code gives the Commission jurisdiction and oversight over the PWSA. Under Chapter 32, the provisions in the Code apply to the PWSA in the “same manner as a public utility.” 66 Pa. C.S. §3202(a)(1). Therefore, the Commission has jurisdiction over the provision of water and wastewater service by the PWSA. The term “wastewater” includes (but is not limited to) sewage, infiltration or inflow into sewers, and storm water which is or will become mixed within a combined sewer system. *See* 66 Pa. C.S. § 102. The term does not include storm water collected in a (stand-alone) municipal separate storm sewer. *Id.*<sup>6</sup>

Chapter 32 requires the PWSA to file a compliance plan with the Commission. Specifically, Section 3204(b) of the Commission’s Regulations provides, as follows:

Within 180 days of the effective date of this section, an authority shall file a compliance plan with the commission which shall include provisions to bring an authority’s existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission. The compliance plan shall also include a long-term infrastructure improvement plan in accordance with Subchapter B of Chapter 13 (relating to distribution systems).

66 Pa. C.S. § 3204(b).

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<sup>6</sup> We have also interpreted Chapter 32 as providing the Commission with jurisdiction over the stand-alone storm water service provided by the PWSA. *See FIO* at 5. Please note that storm water issues are reserved for Stage 2 of this proceeding. *See* November 2018 Secretarial Letter.

Chapter 32 further provides that the Commission shall review the PWSA's Compliance Plan filing and grants the Commission the authority to order the PWSA to file a new or revised Compliance Plan if the Compliance Plan fails "to adequately ensure and maintain the provision of adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 3204(c). Thus, approval of the Compliance Plan is appropriate if it will ensure adequate, efficient, safe, reliable and reasonable service.

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which amends Chapters 3, 13 and 33 of Title 66. Act 11, *inter alia*, provides water and wastewater utilities with the ability to implement a distribution system improvement charge (DSIC) to recover reasonable and prudent costs incurred to repair improve or replace certain eligible distribution property that is part of the utility's distribution system as defined in 66 Pa. C.S. § 1351. As a precondition to the implementation of a DSIC, a utility must file an LTIP with the Commission in accordance with 66 Pa. C.S. § 1352. The purpose of an LTIP is to ensure that a utility is planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure at an accelerated pace (*i.e.*, faster than it has done historically). *Review of Long-Term Infrastructure Improvement Plan*, Docket No. L-2012-2317274 (Final Rulemaking Order entered May 22, 2014). An LTIP must comply with the Commission's Regulations at 52 Pa. Code §§ 121.1 - 121.8, which became effective December 20, 2014.

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos.

R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7. Despite this policy, the Commission does not simply rubber stamp settlements without determining whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

The ALJs made sixty-three Findings of Fact (FOF or Findings of Fact) in their Recommend Decision. R.D. at 8-19. We shall adopt and incorporate herein by reference the ALJs' Findings of Fact, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Thus, any argument we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

#### **IV. Issues Other than Lead Infrastructure Issues**

Given the complexity of the PWSA's lead remediation plan in this proceeding, the related issues addressed in the Partial Settlement, as well as those reserved for litigation, are specifically addressed below in Section V.

## **A. Joint Petition for Partial Settlement**

The Joint Petitioners identified a total of 186 discrete issues involved in this proceeding. Of these 186 issues, the Joint Petitioners were able to reach agreement on 139 issues (nearly 75% of all identified issues).<sup>7</sup> The Joint Petitioners propose to defer another twenty-five issues to future proceedings (including those issues the Commission has already moved to Stage 2) and to reserve for litigation the remaining issues. According to the Joint Petitioners, “identifying the path forward for these issues involved a significant amount of time and discussion to determine where Commission direction is needed (for example, where Joint Petitioners have a disagreement regarding the application of the law) and/or where the passage of time and the development of additional data in a future proceeding could assist in resolution (for example, addressing a new Cooperation Agreement between the City of Pittsburgh and the PWSA).” Partial Settlement at 16.

The Partial Settlement terms are set forth on pages 20-64 of the Recommended Decision. *See also*, Partial Settlement at 17-57.

### **1. Recommended Decision**

In their Recommended Decision, the ALJs acknowledged that the Partial Settlement was achieved by the Joint Petitioners after an extensive investigation of the PWSA’s filings to include the Stage 1 issues identified in the Compliance Plan, the Supplement to the Compliance Plan and the LTIIP. According to the ALJs, the Joint Petitioners engaged in extensive informal and formal discovery, numerous settlement discussions, and carefully reviewed and considered the direct, rebuttal, surrebuttal,

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<sup>7</sup> Four additional issues are no longer open due to either the passage of time and/or the resolution of other related matters.

supplemental direct, supplemental rebuttal, and rejoinder testimony, along with the supporting exhibits, filed by the Joint Petitioners. Additionally, the ALJs summarized the Statements in Support of the Partial Settlement filed by the PWSA, I&E, the OCA, the OSBA, and UNITED.<sup>8</sup> Upon review, the ALJs concluded that the Partial Settlement was in the public interest and recommended approval without modification. R.D. at 67, 86.

The ALJs noted the Commission’s policy of encouraging parties in contested on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. The ALJs emphasized that such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. R.D. at 66-67.

The ALJs recognized that the PWSA is transitioning to full compliance with the Code, Regulations and Orders of the Commission and has been diligently working to reasonably do so in all areas based on the specific circumstances relevant to each area. Therefore, the ALJs reasoned, the PWSA is not currently in the same compliance position as it was in April 2018 (when the PWSA’s operations became subject to the jurisdiction of the Commission) or November 2018 (when the Commission’s Directed Questions were issued). R.D. at 80 (citing PWSA M.B. at 11).

This proceeding is governed by Section 3204(b) of the Code which required the PWSA to file a “compliance plan. . . which shall include provisions to bring” the PWSA “into compliance with the requirements applicable to other jurisdictional water and wastewater utilities.” 66 Pa. C.S. § 3204(b). The ALJs acknowledged that

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<sup>8</sup> For a summary of the Statements in Support, see pages 68-79 of the Recommended Decision. Although a signatory to the Partial Settlement, PAWC did not file a Statement in Support of it.

implicit in this directive are the following: (1) the PWSA is not currently “in compliance;” and (2) the PWSA needs a plan to come into compliance. R.D. at 80 (quoting PWSA M.B. at 24-25). The ALJs considered the Partial Settlement to be consistent with the directives of the statute because it sets forth a plan, or path by which the PWSA will achieve compliance with respect to the settled issues. R.D. at 80.

Additionally, the ALJs reasoned that the flexibility granted by the Legislature to the Commission in considering the complex issues presented by this compliance filing and the LTIIP is evidenced by 66 Pa. C.S. § 3202(b), which empowers the Commission to suspend or waive the applicability of any provision of the Code to the PWSA. Therefore, the ALJs continued, the Commission is not required to look at the PWSA’s Compliance Plan and determine whether its implementation will result in immediate compliance, but rather, whether the Partial Settlement is a reasonable plan to achieve compliance in the future and therefore in the public interest. Under these considerations, the ALJs found the Partial Settlement to be in the public interest. R.D. at 80.

The ALJs also noted the Joint Petitioners’ recognition that implementation of the Compliance Plan is an ongoing process. The Joint Petitioners included a provision in the Partial Settlement that requires the PWSA to file quarterly Compliance Plan Progress Reports and reports have already been filed by the PWSA. In the Partial Settlement, the PWSA agrees to provide detailed reports on a quarterly basis beginning October 31, 2019. Subsequent reports will be filed January 30, April 30, July 30 and October 31. The Partial Settlement requires these quarterly reports to be filed through October 31, 2025. R.D. at 81.

The ALJs emphasized that the reports will include the information set forth in the PWSA Compliance Plan Progress Report admitted in this proceeding as PWSA Exh. RAW/C-28. The information required in the reports includes an executive

summary, and updates to Compliance Plan Supplemental Requirements and Compliance Plan Requirements for the following areas: (1) Operations; (2) Billing/Customer Service; (3) Lead; (4) Infrastructure; and, (5) Finance, Contractual and Other Issues. The reports will include appendices that provide information regarding areas where the PWSA believes it has come into compliance as well as updates regarding the following metrics: (1) Operating Metrics Identified in I&E St. No. 4 at 5; (2) Low Income Customer Billing Metrics; and (3) Call Center Metrics. R.D. at 81.

The ALJs further explained that the Partial Settlement provides eighteen additional subject areas that must be addressed in the quarterly reports. According to the ALJs, these reporting requirements will assist the PWSA, the Parties and the Commission in bringing the PWSA into compliance while at the same time monitoring progress. R.D. at 81 (citing Partial Settlement at 54).

The ALJs also determined that the Partial Settlement provisions pertaining to the LTIP and the need for future amendments to the LTIP are in the public interest. The ALJs reasoned that the Partial Settlement provisions addressing the LTIP encompass the PWSA's best and continued efforts to comply, which is consistent with the PWSA's obligation to provide adequate, efficient, safe, reliable and reasonable service. R.D. at 81.

The ALJs continued that through the Partial Settlement the PWSA has committed to reporting critical infrastructure information which is necessary to inform its LTIP prioritization and to ensure the safety and integrity of its operations. Specifically, the PWSA has committed to the following: (1) provide a comprehensive materials report and updated information about the types and sizes of valves once its Geographic Information Systems (GIS) are updated; (2) provide progress reports that include additional information regarding its prioritization of main and valve replacements, and (3) notify parties when its computerized maintenance management system (CMMS)

project is implemented. R.D. at 81-82 (citing Partial Settlement at 37-38 and I&E St. in Support at 74).

Additionally, the PWSA's LTIIP is required to identify the types and ages of eligible property for which it will ultimately seek DSIC recovery, and it must also explain how replacement of aging infrastructure will be accelerated. R.D. at 82 (citing, in part, I&E St. No. 4 at 31). At the outset of this case, the ALJs noted that the PWSA's Compliance Plan indicated that the PWSA did not initially have a well-documented method of recordkeeping of maps showing the size, character, and location of each main and valve. Additionally, the records that were available were not adequately portrayed in the PWSA's GIS. R.D. at 81-82 (citing PWSA Compliance Plan at 51 and I&E St. in Support at 74).

The ALJs determined that, by way of the above commitments in the Partial Settlement, the PWSA has proposed a plan to target the deficiencies identified in its Compliance Plan by providing reporting and updated information about the types and sizes of the valves in its system. Furthermore, the PWSA has committed to report on the progress it makes in gaining information necessary to prioritize main replacements, and upon its progress in implementing a maintenance management system that will better target its resources to optimize efforts. R.D. at 82 (citing I&E St. in Support at 75).

At the hearings in this case, the ALJs noted the PWSA entered an updated LTIIP dated August 21, 2019. Although the PWSA has not yet proposed to materially alter its metering spending plan, the PWSA has committed to prioritizing identification of unmetered/unbilled locations to provide that all such locations would be identified by June 29, 2020. Additionally, the PWSA will identify all newly metered and/or previously unbilled properties in the form of status updates provided in the quarterly reports it has agreed to provide through this Partial Settlement. R.D. at 83 (citing, in part, I&E St. in Support at 77).

Regarding workforce development, the ALJs stated that the PWSA revised its LTIIP to provide the information it has available. Specifically, it explained that it quantified its staffing projections by evaluating then-current job openings/postings for the current and projected project demands, coupled with an understanding of the PWSA staff's capacity to handle the projected workload. The PWSA provided much more detailed workforce changes it made, including but not limited to, hiring four Senior Managers to manage operations field services teams, realigning resources to ensure that key program metrics are met (including meter installation rates), hiring laborers, restructuring engineering and hiring additional employees, and soliciting contractors. Although the PWSA cannot presently estimate the exact number of contractors it may need, because this information will be dependent upon the progress of building an internal workforce and final determination of needs, it represents its commitment to build a workforce that meets the needs of its capital spending. R.D. at 83 (citing I&E St. in Support at 79-80).

As to customer service issues, and consistent with the Commission's May 2019 Secretarial Letter, the ALJs proffered that the Partial Settlement defers a number of customer service issues for litigation to Stage 2 of this proceeding. This includes issues related to the PWSA's termination policies and procedures, as well as the PWSA's compliance with the tenant protections contained in Chapter 15 of the Code, known as DSLPA. The ALJs acknowledged that the deferral of these issues to Stage 2 permits the Parties to more fully engage in the workshop process led by BCS, and will allow for a more holistic review of the PWSA's residential billing, collections, and termination procedures as part of a single proceeding. R.D. at 84 (citing UNITED St. in Support at 3-4).

Regarding the PWSA's low income assistance programs (which the PWSA refers to collectively as its customer assistance programs), the ALJs stated, the Partial Settlement establishes a process for additional informal review and input into the

development of the PWSA's Low Income Assistance Program Plan, which the PWSA must file as part of its next base rate proceeding. This additional review process will help to ensure that the PWSA's programs are appropriately designed to achieve the overarching goals of universal service programming: that is, to enable low income consumers to afford water and wastewater service and, in turn, to reduce uncollectible expenses and terminations that result from a consumer's inability to pay. R.D. at 84 (citing UNITED St. in Support at 4).

The ALJs specific discussion of the Partial Settlement provisions pertaining to the PWSA's lead remediation plan is summarized in more detail in Section V below. However, we recognize that the ALJs' general reasons supporting their recommendation that we approve- the Partial Settlement also apply to such provisions.

Acknowledging the PWSA's candid assessment of its responsibilities, the ALJs agreed with the Authority that transition to full compliance will be a process. The PWSA has many issues that need a path forward not only to address a long history of system disinvestment but also to implement the difficult and time-consuming steps needed to transition to full compliance. The ALJs noted the hard reality that the PWSA is not able to simultaneously and immediately complete and finance all of the tasks required for full compliance with the Commission's Regulations and continued compliance with the timelines mandated for capital improvement projects. There is only a certain level of spending that the PWSA will be able to sustain at current rates, along with additional just and reasonable rate increases. Moreover, the ALJs recognized that the PWSA's need to spend money on capital projects and/or Commission regulatory transitional efforts must be balanced against the requirement that the PWSA's rates must be reasonable and not subject its ratepayers to "rate shock." R.D. at 85 (citing PWSA St. in Support at 6).

In recommending approval of the Partial Settlement, the ALJs found that it creates workable and viable paths for the PWSA's transition to full compliance. In some instances, the path consists of a gradual movement towards full compliance. In others, the path includes taking partial steps in order to complete all the tasks necessary for compliance at some later date. The ALJs concluded that the Partial Settlement created a balance that will allow the PWSA to increase its human capital, consultant or support resources to address the outstanding issues in a manner consistent with its ability to effectively manage the agreed upon compliance activities while maintaining its ability to meet its customer requirements and needs. R.D. at 86 (citing PWSA St. in Support at 6-7).

## **2. Disposition**

The policy of the Commission is to encourage settlements. 52 Pa. Code § 5.231. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7. In reviewing a settlement, however, our responsibility is to determine whether the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); and *C. S. Water and Sewer*.

We commend the Parties for their diligent consideration of the issues and their extensive analysis of the issues addressed in the Partial Settlement. Indeed, the Partial Settlement was reached after considerable review of the PWSA's operations through substantial informal and formal discovery, the submission of extensive testimony

by the active Parties, and through negotiations concerning all of the issues raised in the Authority's Compliance Plan and LTIIP. For example, the PWSA responded to 700 interrogatories from the active Parties and responded to forty-two data requests from the Commission's Bureau of Technical Utility Services (TUS). The Parties also submitted seven rounds of written testimony. PWSA Statement in Support at 2-3.

Moreover, I&E acknowledged the unprecedented negotiation process that occurred almost on a weekly basis from May through August 2019. During this time, the PWSA's witnesses, engineering experts, and counsel met with interested parties in efforts to explain the PWSA's operational realities and the efforts it was making to transition to compliance. I&E Statement in Support at 8-9.

The Partial Settlement resolves a variety of the issues necessary for the ultimate resolution of this proceeding. It also removes several potentially contentious issues that would have prolonged or required further litigation or administrative proceedings. The benefits of approving the Partial Settlement are numerous and will result in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Partial Settlement provides regulatory certainty with respect to the disposition of issues which benefits all Parties.

With the exception of certain issues pertaining to partial replacements of lead service lines, as discussed in detail below under Section V, we agree with the ALJs' conclusions that the provisions of the Partial Settlement are in the public interest. We recognize that the PWSA's transition to Commission jurisdiction is a vast and complex undertaking requiring prioritization and allocation of resources and the redevelopment of operations. With the exception of the certain lead issues, the Partial Settlement is consistent with this transition and supports a determination that the PWSA has presented a plan for compliance that it will adequately ensure and maintain the provision of

adequate, efficient, safe, reliable, and reasonable service. Accordingly, with the modifications set forth in this Opinion and Order related to partial replacements of lead service lines, as discussed below in Section V, we shall adopt, in part, the ALJs' recommendation and approve the Partial Settlement.

## **B. Litigated Issues**

The Partial Settlement resolved 139 issues or nearly seventy-five percent of all the identified issues in this proceeding. *See* Partial Settlement, Exh. 1. The Joint Petitioners propose to defer another twenty-five issues to future proceedings, including those issues that the Commission has already moved to the Stage 2 proceeding, and an additional four issues that are no longer open due to the passage of time or the resolution of other related matters. R.D. at 86. The remaining issues are reserved for litigation within the following topic areas:

- A. The Cooperation Agreement between PWSA and City of Pittsburgh effective January 1, 1995
- B. Municipal properties and public fire hydrants within the City of Pittsburgh
  - 1. Responsibility for payment of costs related to metering municipal properties within the City of Pittsburgh
  - 2. Billing plan for unmetered and/or unbilled municipal properties within the City of Pittsburgh
  - 3. Billing plan for public fire hydrants within the City of Pittsburgh

- C. Applicability of the Municipality Authorities Act, 53 Pa. C.S. § 5601, *et seq.*, and the Commission’s Line Extension Regulations at 52 Pa. Code §§ 65.1, 65.21-65.23
- D. PWSA’s residency requirement

*See* Partial Settlement at 57-58.

As mentioned above, given the complexity of the PWSA’s lead remediation program in this proceeding, the Partial Settlement issues and the matters reserved for litigation pertaining to the PWSA’s proposed lead remediation program are addressed below in Section V.

**1. Cooperation Agreement between PWSA and the City of Pittsburgh**

**a. Background**

The PWSA was established as a municipal authority by the City in 1984 and originally served as a financing authority. However, pursuant to the Cooperation Agreement between the Authority and the City, effective January 1, 1995, as amended March 21, 2011 (1995 Cooperation Agreement), the PWSA assumed responsibility from the City for day-to-day operations of Pittsburgh’s water and wastewater systems. Under the 1995 Cooperation Agreement, the PWSA and the City provided various services to each other. Included within the services provisions set forth in the 1995 Cooperation Agreement were the requirements that the Authority pay for the City services and provide the City with 600 million gallons of water each year at no cost. R.D. at 88 (citing Compliance Plan at 14, 107-108, and Appendix B).

Regarding the services provided by the City under the 1995 Cooperation Agreement, the PWSA stated that it paid the City an annual fee of \$7.15 million for a variety of services and costs but provided no detailed invoice for the fee. As to the annual fee, the PWSA acknowledged that expenses charged to ratepayers must be just, reasonable and reasonably known and definite. As such, the PWSA asserted it was negotiating a new Cooperation Agreement to revise the payment to only reflect actual services provided. R.D. at 88 (citing Compliance Plan at 105-106).

On February 4, 2019, the PWSA voted to terminate the 1995 Cooperation Agreement with an effective date of May 5, 2019. According to the PWSA, the terms of the 1995 Cooperation Agreement needed to be updated with a new Cooperation Agreement and the Authority originally projected a new Cooperation Agreement to be executed during the course of this proceeding. However, the PWSA extended the target date for terminating the 1995 Cooperation Agreement several times, citing continuing negotiations for a new Cooperation Agreement as the basis for changes. On July 24, 2019, City Council passed a resolution authorizing the new Cooperation Agreement between the City and the PWSA and providing for the rights and obligations of each party and for payments and cooperation between the parties. The resolution authorized the Mayor to enter into the new Cooperation Agreement and further provided that it be in a form approved by the City Solicitor and shall contain other terms and conditions that may be in the interest of the City. According to the PWSA, any changes to the new Cooperation Agreement would need to be approved by the PWSA. As of the hearing date, the 1995 Cooperation Agreement had still not been terminated. R.D. at 88-89.

**b. Positions of the Parties**

The PWSA argued that the Authority and the City have been negotiating a new Cooperation Agreement to replace the 1995 Cooperation Agreement. The PWSA asserted that it intends to file the new Cooperation Agreement with the Commission for

review under Section 507 of the Code to determine its reasonableness, legality and validity. When filing the new Cooperation Agreement, the PWSA will request that the Commission authorize it to immediately begin operating under those terms, subject to any retroactive modifications and future Commission determinations regarding the impact on rates. As provided in the Partial Settlement, the PWSA agreed that when making this filing, it will request that the Commission refer the new Cooperation Agreement to the OALJ for a formal on-the-record proceeding. According to the PWSA, this approach is more structured and transparent than simply operating on a business-like basis. PWSA M.B. at 16; PWSA R.B at 4.

The PWSA asserted that once the new Cooperation Agreement is filed with the Commission, it is preferable for it to begin to operate temporarily under the new Cooperation Agreement while a Commission investigation is pending. The PWSA submitted that continuing indefinitely to operate under the 1995 Cooperation Agreement would deprive its ratepayers of the many terms in the new Cooperation Agreement that are more favorable for the PWSA and its ratepayers. PWSA M.B. at 17.

The PWSA further argued that there is no need for the Commission to determine as part of this proceeding whether the 1995 Cooperation Agreement complies with the provisions of the Code because of the pending negotiations between the PWSA and the City. Moreover, the Parties have agreed as part of the Partial Settlement that several principles should apply to the Commission's review of the new Cooperation Agreement, including the following: (a) any payments to the City must be just, reasonable and substantiated; (b) the City and the PWSA's relationship should be conducted on an arm's length "business-like" basis; and (c) services provided by the City to the PWSA, and vice versa, should be identified with detailed breakdown and be charged based on the related cost of service. PWSA M.B. at 17-18.

During the proceeding, I&E argued that the Commission should reject the PWSA's request that it not consider the harmful operational realities and crippling loss of revenue it has suffered and continues to suffer under its 1995 Cooperation Agreement with the City on the basis that a new agreement is pending. According to I&E, despite the PWSA's continued promises that a new, more equitable agreement would soon become available during the course of this proceeding, no new agreement has materialized. Because of this, and in order to become compliant with the Code, I&E recommended that the PWSA begin operating on a business-like basis with the City as soon as possible and that it not be permitted to extend its 1995 Cooperation Agreement beyond the date that was previously set for termination on October 3, 2019. I&E M.B. at 31-32; I&E R.B. at 10.

I&E also averred that, although no party can quantify the value of lost revenue from providing free water and wastewater service to the City, evidence indicated that this unbilled usage represents upwards of \$11.4 million in foregone annual revenue. According to I&E, each dollar that the PWSA inexplicably forfeits to the City and gratuitously pays to the City is one dollar more that ratepayers have to pay for compromised service. I&E proffered that this result is completely antithetical to the PWSA's obligations as a jurisdictional utility and it cannot be permitted to continue. I&E R.B. at 12.

Further, I&E argued that the PWSA seeks to evade the topic of the 1995 Cooperation Agreement in favor of an anticipated new Cooperation Agreement (Future Cooperation Agreement) that is pending changes from the City Mayor and acceptance by the PWSA Board. I&E noted that the terms of the Future Cooperation Agreement are not identified or available for evaluation. According to I&E, there are significant concerns about the alleged value of City-provided services and the PWSA-provided services and that distorted information in favor of the City could underlie the Future Cooperation Agreement. I&E R.B. at 12-13.

I&E added that under no circumstances should the PWSA be permitted to extend its 1995 Cooperation Agreement beyond October 3, 2019. Additionally, whether by course of the Future Cooperation Agreement, or in the absence of any cooperation agreement, I&E submitted that the PWSA must begin operating on a business-like, arm's-length basis with the City. I&E requested that the Commission order the PWSA to revise its Compliance Plan consistent with these recommendations. *Id.* at 14.

In contrast to I&E's position, the OCA agreed with the PWSA's concerns regarding the delayed implementation of the new Cooperation Agreement and did not oppose its immediate implementation following the PWSA's request and the Commission's approval of the necessary waiver. The OCA asserted that after the negotiated terms are approved by the PWSA and the City, the new Cooperation Agreement will be reviewed in the appropriate proceeding as outlined in the Partial Settlement to determine whether it complies with the Code and the Commission's Regulations. OCA M.B. at 9-10.

**c. Recommended Decision**

In their Recommended Decision, the ALJs agreed with I&E's position. The ALJs found it premature to evaluate the PWSA's new Cooperation Agreement because ratepayers, parties and the Commission would assume the risk of any terms contained in the new Cooperation Agreement. Instead, the ALJs concluded, the merits of the PWSA's plan to request to operate under the new Cooperation Agreement should be considered only if, and when, the PWSA makes the appropriate filing. R.D. at 102.

The ALJs acknowledged the PWSA's preference to begin operating temporarily under the new Cooperation Agreement to be filed rather than interacting with the City on an arms-length transactional basis when the 1995 Cooperation Agreement is terminated. According to the PWSA, while such an interim approach would involve the

PWSA invoicing the City for services on the basis of the fair market value and paying invoices received from the City on the same basis, it would be better than the *status quo*, would not be as transparent to the Commission or interested parties and would be less structured for the PWSA and the City. R.D. at 102 (citing PWSA M.B. at 17). However, the ALJs reasoned, the PWSA does not expound on its assertion that invoicing the City for services on the basis of the fair market value and paying invoices received from the City on the same basis would be less transparent to the Commission and interested parties and less structured for the PWSA and the City. R.D. at 102.

The ALJs explained that any new Cooperation Agreement will involve two parties, the City and the PWSA, and that the PWSA is subject to the Commission's jurisdiction while the City is not. The City would be a contracting party with the PWSA. According to the ALJs, the City's position on contract provisions that are not in compliance with the Code or Commission Regulations, such as arbitration provisions, as well as its position with respect to the Commission's authority to review and modify or revise any cooperation agreement filed by the PWSA pursuant to Section 508 of the Code is not known. R.D. at 102.

The ALJs noted that the PWSA clearly understands that a new Cooperation Agreement must comply with the Code and, therefore, the PWSA should only enter into a new Cooperation Agreement if it believes it is lawful. Further, the ALJs explained that I&E's witness agreed with the PWSA's intention to interact with the City on a transactional basis if no new agreement was negotiated and executed by the original termination date of July 5, 2019, which was later extended to October 3, 2019. R.D. at 103 (citing I&E St. No. 2-SR at 6-7).

The ALJs agreed that the 1995 Cooperation Agreement should not be extended past the October 3, 2019 termination date. The ALJs also concluded that it is premature to address any new Compliance Plan Agreement in this proceeding. Rather,

the ALJs recommended that the PWSA be required to adopt an interim approach and interact with the City on a transactional basis. The ALJs recognized that the invoicing for services provided by the PWSA to the City and by the City to the PWSA is a substantial part of any new Cooperation Agreement, and that the interaction on a transactional basis after October 3, 2019, should not prove to be an onerous task. The ALJs considered this rationale to be especially true considering the fact that the contracting parties are far along in the process of finalizing an agreement. R.D. at 103.

**d. Disposition**

No Parties filed Exceptions to the ALJs' Recommended Decision on this issue. Upon review, we agree with the ALJs' analysis and shall adopt their recommendation.

Here, the 1995 Cooperation Agreement had a termination date of October 3, 2019. In the Partial Settlement, the Parties agreed that the following principles should be incorporated in the new Cooperation Agreement: (a) any payments to the City must be just, reasonable and substantiated; (b) the City and the PWSA's relationship should be conducted on an arm's length "business-like" basis; and (c) services provided by the City to the PWSA, and vice versa, should be identified with detailed breakdown and be charged based on the related cost of service.

During this proceeding, the City and the PWSA indicated they were in the process of formulating a new Cooperation Agreement. The new Cooperation Agreement is not presently before us for review in this proceeding. On January 31, 2020, the PWSA filed a Quarterly Compliance Plan Progress Report in this docket stating that the PWSA signed a new Cooperation Agreement in December 2019, which had been filed with the Commission. A review of the Commission's public records shows that the new Cooperation Agreement was filed on December 20, 2019, at U-2020-3015258. In that

filing, the PWSA requested that the new Cooperation Agreement be referred to the OALJ for a formal on-the-record proceeding and reviewed pursuant to Section 507 of the Code. That request is consistent with PWSA's request in this proceeding as to the process of review for the new Cooperation Agreement.

By letter dated January 15, 2019, I&E requested that the new Cooperation Agreement not be assigned to the OALJ until after the Commission enters this Order in this docket, to avoid duplication and in the interest of conserving the Parties' and the Commission's resources. In response, the review period for the Cooperation Agreement was extended. *See Cooperation Agreement between the City of Pittsburgh and PWSA*, Docket No. U-2020-3015258 (Secretarial Letter issued January 16, 2020). As part of the disposition herein, for the sake of administrative efficiency, we shall grant the PWSA's request and direct Commission Staff to issue a Secretarial Letter at docket number, U-2020-3015258, to refer the new Cooperation Agreement to the OALJ for further proceedings as may be necessary.

Since this new Cooperation Agreement has only recently been filed with the Commission and a full review of it will be conducted in a separate proceeding, we agree with the ALJs that it would be premature to consider and make a decision regarding the new agreement and therefore we decline to approve the PWSA's interim proposal which would permit the PWSA to temporarily begin operations under the new Cooperation Agreement while the Commission's review of that Agreement is pending. In the meantime, we expect that the City and the PWSA will be incorporating a procedure for invoicing services on a transactional basis consistent with the Partial Settlement approved in this proceeding. Thus, the ALJs correctly concluded that in the interim the PWSA should be able to adopt an approach of interacting with the City on a transactional basis. Accordingly, we adopt the ALJs' findings that business transactions conducted with the City occur on a transactional basis until such time as a new Cooperation Agreement is reviewed and approved by the Commission.

## **2. Payment Responsibility of Metering Costs for Municipal Properties within the City of Pittsburgh**

### **a. Background**

Section 65.7 of our Regulations provides, in part, that a water public utility shall, “unless otherwise authorized by the Commission...provide; install at its own expense; and continue to own, maintain and operate all meters” and “provide a meter to each of its water customers...and shall furnish water service...exclusively on a metered basis.” 52 Pa. Code § 65.7. The PWSA asserted that it is generally in compliance with Section 65.7, but that not all customers are currently metered. The Authority explained that there are 200-400 municipal buildings and 500 flat rate customers currently not metered. CP at 56.

Due to the variations in sites and meter needs, the PWSA does not expect to be in compliance with the metering requirement for approximately five years. The PWSA estimated the metering project will cost about \$35 million but expressed hope that it will recover some of the associated costs (*e.g.*, additional plumbing, meter pits, and backflow prevention devices) from the City. *Id.*

In Direct Testimony, the PWSA Witness Robert Weimar stated that the Code does not expressly prohibit a charge for meter installation, meters or meter pits provided by a public utility. PWSA St. No. C-1 at 23. The rebuttal testimony of Mr. Weimar indicated that the PWSA has an agreement with the City to split the costs of meter installations 50/50. PWSA St. No. C-1R at 18. Mr. Weimar also asserted that an additional 300-400 “municipally-owned fountains, pools, etc.” are unmetered. PWSA St. No. C-1R at 16.

In the Partial Settlement, the PWSA agreed to pay the cost of the meter and the meter installation for non-municipal properties which are not currently metered or are flat rate customers. However, the Parties agreed to submit Briefs in response to the issue of metering municipal properties. Partial Settlement at 22, ¶ III.G.3.

**b. Positions of the Parties**

According to the PWSA, the agreement to split the costs of meter installation for municipal properties on a 50/50 basis is a reasonable approach that takes into consideration the historical relationship between the City and the PWSA and the fact that this is an additional new cost that the City will need to fund. The Authority also contended that the approach is an appropriate recognition of the PWSA's tariff provisions which currently require consumers to pay in some circumstances and not in others. PWSA M.B. at 26 (citing PWSA Water Tariff at 42 (Fees for New Meters), 43 (New Meters) and 49 (Customer Facilities Fee)). Thus, according to the PWSA, while the metering of City properties is a new endeavor, the approach whereby the City agrees to equally share in the costs of the metering is not inconsistent with the PWSA's current tariff that allocates these costs differently for specific situations. Ultimately, the PWSA asserted that reaching an agreement with the City to share in the costs is the optimal outcome because it ensures that the PWSA will receive cost recovery for some of its costs. PWSA M.B. at 25-26.

In response, I&E argued, in part, that the PWSA has not provided "an adequate basis why the City should be charged for costs related to metering generally" and the PWSA has no choice, pursuant to 52 Pa. Code § 65.7, but to fully absorb the costs of installing meters to City properties. 52 Pa. Code § 65.7. In Direct Testimony, I&E Witness Ethan Cline stated that the PWSA should be responsible for costs related to meter installation, but the issue would be discussed further in its brief. I&E St. No. 3 at 22-23. In Surrebuttal Testimony, I&E Witness Cline stated, on advice of counsel, the

newly expressed arrangement to split costs of meter installation with the City 50/50 would violate Section 1304 of the Code. 66 Pa. C.S. § 1304. I&E St. No. 3-SR at 11; I&E M.B. at 33.

**c. Recommended Decision**

The ALJs determined that the PWSA must provide meter service and accept responsibility for the costs of meter installation pursuant to 52 Pa. Code § 65.7. The ALJs reasoned that the PWSA has not provided a good reason for deviating from this regulatory requirement and permitting a 50/50 split cost relationship with the City. Although they recognized the historic relationship between the City and the PWSA, the ALJs stated that the purpose of this proceeding is to bring the PWSA into compliance with the Code and Commission Regulations. R.D. at 114.

The ALJs explained that this proceeding is governed by 66 Pa. C.S. § 3204 (b) which required the PWSA to file a “compliance plan. . . which shall include provisions to bring” the PWSA “into compliance with the requirements applicable to other jurisdictional water and wastewater utilities.” Implicit in this directive are the following: (1) the PWSA is not currently “in compliance;” and (2) the PWSA needs a plan to come into compliance. R.D. at 114-115 (citing PWSA M.B. at 25). The ALJs found that the PWSA failed to demonstrate how the proposed 50/50 meter cost sharing relationship with the City is a better pathway to compliance than following Section 65.7 moving forward. Accordingly, the ALJs recommended that the Commission require the PWSA to comply with 52 Pa. Code § 65.7. R.D. at 115.

**d. Exceptions and Replies**

In PWSA Exception No. 2, the Authority argues that the ALJs erred by rejecting the PWSA’s proposed cost sharing for costs related to metering municipal

properties within the City. The PWSA argues that the ALJs' rejection of the meter installation cost sharing proposal was improper for four reasons. PWSA Exc. at 12-15.

First, the PWSA asserts that the ALJs applied too narrow a reading of Section 65.7(b) of our Regulations by implying that public utilities must always bear the full costs of meter installation. Rather, Section 65.7(b) specifically permits the Commission the discretion to authorize a different cost allocation than the one set forth in the Regulation. According to the Authority, the Commission is permitted to authorize the PWSA's proposal and still be consistent with the regulatory requirements. PWSA Exc. at 13.

Second, the PWSA proffers that the ALJs failed to recognize that the proposal is limited to the metering of previously unmetered City properties over the next five years. The Authority contends that as the project is completed, the cost sharing for new City meters will likely depend on how the Commission resolves the line extension issue under PWSA Exception No. 3. PWSA Exc. at 13.

Third, the Authority asserts that the cost sharing approach is a reasonable balance of its historical practices and Commission practices. Historically, the Authority has required customers to pay for the costs of meter installation pursuant to the specific line extension requests under the MAA. PWSA Exc. at 14 (citing 53 Pa. C.S. § 5607(d)(24)(i)). The PWSA explains that the provisions of the MAA differ from general public utility concepts because the MAA is generally focused on keeping the installation cost burden on municipalities as low as possible. The Authority argues that, the proposal to require a 50/50 sharing of costs is a reasonable attempt to reconcile its practice of requiring customers to bear the full costs with the Commission's requirement of having the utility bear the full costs. PWSA Exc. at 14.

Fourth, the PWSA contends that the 50/50 cost sharing proposal is consistent with the pending negotiations that will form the new Cooperation Agreement with the City. The Authority submits that the City has already agreed to pay fifty percent of the costs to install the new meters. According to the PWSA, it makes no practical sense to deny the PWSA the opportunity to recover half of the City meter installation costs while being critical of the Authority's failure to secure full and immediate payment of City usage as meters are installed. *Id.* at 14.

Alternatively, the PWSA suggests that the Commission could defer this matter to the future Cooperation Agreement proceeding. *Id.*

In its Replies, I&E contends that the ALJs properly rejected the PWSA's proposed cost sharing for costs related to metering municipal properties as being contrary to Section 65.7(b) of our Regulations with no basis for deviation. I&E acknowledges that the Commission may authorize a departure from any of its Regulations but contends that the PWSA has not appropriately petitioned for a waiver of 52 Pa. Code § 65.7(b). I&E also argues that the PWSA first raised the issue – that the 50/50 sharing approach is reasonable because it is limited to metering previously unmetered City properties – in its Exceptions. I&E submits that the Commission should reject this argument at this late stage. Even if it had been properly raised, I&E submits that the PWSA provides no support as to why the proposal is reasonable and merits an exception. I&E R. Exc. at 7-8.

I&E also rejects the PWSA's argument that the proposal is limited. According to I&E, the PWSA's Compliance Plan contradicts the Authority's claim, since it estimates metering 200-400 municipal buildings as well as 500 flat rate customers will cost approximately \$35 million over five years. I&E R. Exc. at 8 (citing CP at 56). Even assuming that the alleged "limitation" is valid, I&E continues it still fails to address the defect noted by the ALJs, which is that the PWSA failed to demonstrate how the cost-sharing is a better pathway to compliance. I&E R. Exc. at 8.

I&E also criticizes PWSA's citation to the MAA for support that customers should pay for the costs of meter installation. I&E submits that the PWSA is again introducing a new claim in Exceptions which did not appear in its testimony or briefing. Thus, I&E submits that neither the Parties nor the ALJs gave any consideration to this argument. I&E argues that the PWSA's historical argument pertaining to the MAA should be rejected because the Parties were not provided notice and an opportunity to substantively respond to it. *Id.* at 8-9.

Further, I&E objects to the PWSA's argument that the cost sharing proposal is consistent with its new agreement with the City and that "it makes no practical sense to deny the PWSA the opportunity to receive half of the City meter installation costs from the City while being critical of its failure to secure full and immediate payment of City usage as new meters are installed." I&E R. Exc. at 14 (quoting PWSA Exc. at 14). According to I&E, this statement misses the entire point of the Compliance Plan proceeding which is intended to bring the Authority into compliance with the Code and our Regulations. I&E contends that, although enforcement here will benefit the City rather than the PWSA, that is what 52 Pa. Code § 65.7(b) mandates. I&E proffers that the PWSA's imbalanced relationship with the City in other areas does not merit violating Commission Regulations as to this area. Rather, I&E argues that the goal instead should be consistent, indiscriminate enforcement of the Code and Commission Regulations. I&E R. Exc. at 9.

Lastly, I&E asserts that the PWSA's alternative argument of deferring this issue to a future Cooperation Agreement proceeding should be rejected. I&E submits that the issue should be considered expeditiously in this proceeding. *Id.* at 9-10.

**e. Disposition**

Upon review, we shall deny PWSA Exception No. 2. Although we recognize that the Commission has the discretion to depart from the regulatory provision directing a public utility to provide and install meters at its own expense, we do not find such a waiver to be appropriate in this proceeding. Moreover, failing to adhere to the meter provision set forth in 52 Pa. Code § 65.7(b) and adopting the PWSA's proposal to split the costs of City meter installations would appear to constitute unreasonable discrimination in ratemaking, which is prohibited under Section 1304 of the Code, 66 Pa. C.S. § 1304.

We agree with the ALJs' finding that the PWSA has failed to establish why it would be reasonable to charge only municipal properties fifty percent of the meter installation costs. Here, the PWSA Witness Weimer testified generally that if the Authority must pay for meter installation within a short time frame, it may have to reduce its investments in other critical projects and high-risk priorities. PWSA St. No. C-1R at 19. In response, I&E Witness Cline testified that the "costs of meters have traditionally been socialized and recovered through the customer charge portion of customers' bills and the cost of preparing for meter installation has been borne by the customer, which should also not cause a delay." I&E St. No. 3-SR at 11. Additionally, Witness Cline noted that the PWSA's proposal to refuse to bill the City a minimum customer charge until meters are installed would severely limit the funding available to the PWSA for the installation of the meters. *Id.*<sup>9</sup>

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<sup>9</sup> As discussed below, we are rejecting the PWSA's proposed billing plan for unmetered and/or unbilled municipal properties and are adopting the ALJs' recommendation of a flat rate for unbilled customers and charging full bills once metered. This approach would appear to ameliorate the PWSA's generalized assertions of funding shortfalls if its 50/50 meter cost proposal were rejected.

The PWSA does not adequately explain the rationale for its proposed disparate treatment for municipal properties and why its concern of possible funding shortfalls would not apply equally to all unmetered properties. Indeed, under the Partial Settlement, the PWSA has agreed to pay the cost of the meter and the meter installation for non-municipal properties which are not currently metered or are flat rate customers. Rather, the PWSA points to its unique historical relationship with the City and argues that its approach is a reasonable step toward compliance with the Commission's Regulations. We disagree with the PWSA's proposal and instead determine that the Authority should take the necessary steps of reordering its relationship with the City. Compliance with Section 65.7 of our Regulations – coupled with the revised billing plan for unmetered and unbilled City properties discussed in the next section – are necessary elements of moving toward end-state compliance with the Code and our Regulations as contemplated under Act 65 and our *FIO*.

### **3. Billing Plan for Unmetered and/or Unbilled Municipal Properties within the City of Pittsburgh**

#### **a. Background**

As indicated herein, the City created the PWSA as a municipal authority, and still owns the assets, which it will continue leasing to the PWSA until 2025. In accordance with the most recent Cooperation Agreement with the City, which terminated on October 3, 2019, and is in the process of being renegotiated, the City enjoys certain

privileges of ownership, including the right to receive up to 600 million gallons of water without charge.<sup>10</sup>

- D. In addition to other payments to the City provided for herein, the City shall be entitled to receive up to 600,000,000 gallons of water each year to be used in the City, its departments, agencies and instrumentalities (*i.e.*, Pittsburgh Zoo, Phipps Conservatory, National Aviary in Pittsburgh and Schenley Golf Course) and as the City may be contractually obligated to provide as of the Effective Date hereof. The City shall not receive a credit for any water not so used. To the extent in excess of 600,000,000 is used, the Authority may offset that cost against moneys owed the City hereunder.

PWSA Hearing Exh. 1, Appendix B at § VII.D. Therefore, until recently there has not been a plan to address identifying and metering all City facilities, resulting in unmetered and unbilled City properties.<sup>11</sup> Mr. Weimar indicated that the PWSA is aware of between 200-400 City-owned and/or operated locations where it either does not bill the City for water and wastewater service or where it neither meters nor bills the City for water and wastewater service.<sup>12</sup> PWSA St. No. C-1 at 26. Included in this number are other quasi-municipal or non-profit City affiliated water service locations, such as the Pittsburgh Zoo,

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<sup>10</sup> Because the new Cooperation Agreement was not finalized before hearings, the Parties agreed that once a new Cooperation Agreement is finalized, it will be filed with the Commission for its review under 66 Pa. C.S. § 507, and the PWSA will make a request for a formal on-the-record proceeding. Partial Settlement at ¶ III.P. As earlier indicated, the new Cooperation Agreement was filed with the Commission on December 20, 2019.

<sup>11</sup> The PWSA's Compliance Plan acknowledged that the majority of City properties are unmetered and actual use is unknown and estimated to be higher. PWSA Hearing Exh. 1 at 108.

<sup>12</sup> The PWSA confirmed that customers who are not billed for water service are not billed for wastewater service. PWSA St. No. C-1 at 31.

including PPG Aquarium,<sup>13</sup> Phipps Conservatory and Botanical Gardens, the National Aviary, and Schenley Golf Course. PWSA Hearing Exh. 1 at 109; PWSA Exh. RAW/C-4 at 13; OCA St. No. 2 at 4.

Additionally, prior to coming under Commission jurisdiction, the PWSA offered a fixed monthly rate for unmetered service. As such, the PWSA's Compliance Plan and LTIP acknowledge that currently it has approximately 500 (non-City) flat rate customers that are not metered. PWSA Hearing Exh. 1 at 56; PWSA Hearing Exh. 3 at 25. These flat rate customers are typically either party line customers<sup>14</sup> or locations that are known to not have meters. PWSA Hearing Exh. 3 at 25.

In the PWSA's 2018 base rate proceeding, its first under Commission jurisdiction, the parties were able to reach a Settlement of their disputes. On February 27, 2019, with the approval of the *Joint Petition for Settlement* (2018 Settlement), the Commission approved a series of settlement terms, which among other things, provided that the PWSA has agreed that its Cooperation Agreement with the City will be investigated as part of the Compliance Plan proceeding.<sup>15</sup> 2018 Settlement at ¶ III.G.1.a. Furthermore, the PWSA also agreed that, in the Compliance Plan proceeding, it will consider proposing a flat rate for water and wastewater service for all unmetered and unbilled municipal and government properties or buildings served by the PWSA, for inclusion in its next base rate case. 2018 Settlement at ¶ III.H.6. In the instant proceeding, Mr. Weimar has stated that "PWSA has begun its consideration of the

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<sup>13</sup> The Pittsburgh Zoo is currently operated by a non-profit corporation, the Pittsburgh Zoological Association. PWSA Hearing Exh. 1 at 125.

<sup>14</sup> A party line is a service line that connects to multiple customers but is attached to only one meter. An example of a party line would be a row of townhouses in which each of the residences are connected to a single service line that is read by one meter outside the first home.

<sup>15</sup> *Pa. PUC v. PWSA*, Docket Nos. R-2018-3002646, *et al.* (Order entered February 27, 2019).

proposal for a flat rate for both water and wastewater for all unmetered and unbilled municipal and government properties/buildings served by PWSA,” and “plans to conduct its analysis before the next rate case.” PWSA St. No. C-1R at 22.

Furthermore, in accordance with the Commission’s *FIO*, directing that the PWSA address, *inter alia*, a metering plan identifying unmetered accounts and plans to meter all customers, the PWSA’s Compliance Plan and supporting testimony set forth a proposed transition plan to ultimately achieve full payment by the City for usage at all metered properties. As noted herein, the PWSA has agreed in the Partial Settlement to commit to completing the metering of all unmetered municipal and flat rate properties where meters can be installed within five years or by December 31, 2024.<sup>16</sup> Partial Settlement at ¶ III.G. Pursuant to the proposed plan, the City would agree to start paying for usage for all metered properties at a specific percentage until that percentage reaches 100%.<sup>17</sup> Therefore, in year one, the City would pay 20% of all metered usage. In year two, the City would pay 40% of all metered usage. In year three, the City would pay 60% of all metered usage. In year four, the City would pay 80% of all metered usage. By year five, the City would be paying the PWSA for 100% of all metered usage.<sup>18</sup> PWSA Hearing Exh. 1 at 110; PWSA St. No. C-1 at 27. As part of the plan, the City would pay the percentage applicable in the year in which any new meter is installed. So, for

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<sup>16</sup> The PWSA estimated there are presently approximately 200-400 municipal buildings, 500 flat rate customers, and 300-400 municipally owned fountains, pools, etc. that are not metered. Partial Settlement at § III.G.

<sup>17</sup> Mr. Weimar explained that PWSA charges for water and wastewater conveyance. Wastewater is sent to Allegheny County Sanitary Authority’s (ALCOSAN) interceptor system for treatment, and PWSA passes through the wastewater treatment charges of ALCOSAN. Therefore, the PWSA’s proposed billing approach for the City would treat PWSA’s charges and ALOSAN’s charges in the same manner. PWSA St. C-1 at 31.

<sup>18</sup> Mr. Weimar explained that the PWSA’s proposal is both phased and stepped. PWSA St. No. C-1 at 29-30.

example, for a meter installed in year four, the City would pay 80% of the metered usage. PWSA M.B. at 26-27.

As previously indicated, upon review of the PWSA's proposal, the Commission's Stage 1 Initial Report propounded Directed Questions to be discussed by the Parties. PWSA Exh. RAW/C-1. Regarding the PWSA's phased-in and stepped billing proposal for the City and certain non-profit organizations, the Commission directed parties to address:

- Estimated revenue loss associated with unmetered and unbilled usage (Directed Question No. 82);
- The legality of the proposed PWSA step billing approach (Directed Question No. 83);
- The feasibility of estimating usage based on engineering estimates on all currently unmetered customers and billing immediately based on those estimates (Directed Question No. 84);
- Whether initiating the 20/40/60/80/100 percent step billing proposal immediately based on those engineering estimates would be feasible and legal (Directed Question No. 85);
- Whether any 20/40/60/80/100 percent billing program should be phased as opposed to stepped (Directed Question No. 86);
- The feasibility of immediately applying the monthly customer charge to any known but unbilled or unmetered customer prior to the installation of a meter (Directed Question No. 87);
- The feasibility of immediately implementing a metering and billing triage plan with the following hierarchy (Directed Question No. 88):
  - Metering/estimating and billing high volume customers;

- Metering/estimating and billing mid-volume customers;
- Metering/estimating and billing residential and other low-volume customers.
- If any of the 200-400 City-owned and/or operated locations that are unbilled for water service are billed for wastewater service (Directed Question No. 89).

PWSA Exh. RAW/C-1, Directed Questions Nos. 82-89.

**b. Positions of the Parties**

The evidentiary record indicates the undisputed recognition of the importance of moving forward with metering and billing all properties served by the PWSA, particularly the City-owned properties and non-profit organizations that are currently unmetered and/or unbilled, ending the 600-million-gallon water allowance and achieving full compliance with the Code and Commission Regulations. PWSA Hearing Exh. 1 at 109; PWSA M.B. at 22; I&E M.B. at 41; OCA M.B. at 11.

The PWSA's proposal would allow unmetered City properties and non-profit organizations to remain completely unbilled for water and wastewater service until 2024 or until a meter is installed at the property. The OCA indicated its general acceptance of the PWSA's five-year ramp up of metered rates to be implemented as meters are installed at each City and non-profit property, but only if it is tied to a flat rate charge that also would ramp up during the five-year transition period for properties that remain unmetered. OCA M.B. at 13-14. Alternatively, I&E argued that the PWSA should be recovering at least a portion of the cost (*i.e.*, the customer charge) to provide water and wastewater service to the City and non-profits until metering is completed at each property, at which time bills based on fully metered rates should be issued. I&E St. No. 3 at 56. Each of these approaches results in the eventual metering of all the PWSA

customers and the full billing of those customers for water and wastewater conveyance services by December 31, 2024. The primary disagreement among the PWSA, I&E, and the OCA is the appropriate method of eliminating such foregone revenues that have historically existed as a result of the relationship between the PWSA and the City.

The PWSA advanced several arguments for its proposed billing plan for unmetered and/or unbilled municipal properties and certain non-profit organizations. First, the PWSA argued that its proposal provides “an appropriate transition timeframe during which the City can become knowledgeable about and incorporate into its budgeting process what will be significant new charges....” PWSA M.B. at 24. The PWSA advocated for the City to have what it considers “a reasonable amount of time” to start receiving full bills, or else the City may simply not pay. *Id.* According to the PWSA, the imposition of a potentially substantial new obligation on the City, essentially without notice or any ability for the City to plan and to incorporate the new financial obligations into its budget, almost certainly will result in an inability of the City to pay, until (or if) it could increase taxes to pay for these totally new charges. PWSA M.B. at 23, 28; PWSA St. No. C-1 at 27; PWSA St. No. C-1R at 21.

Next, addressing two of the Directed Questions, 83 and 85, regarding the legality of the PWSA’s proposed approach, the PWSA argued that Section 3204(b) of the Code, which required the PWSA to file the Compliance Plan, only requires a plan with steps towards compliance, not immediate compliance. PWSA M.B. at 24-25. The PWSA argued that its step-billing proposal is a “significant step forward” regarding metering issues and consistent with creating a plan for coming into compliance. PWSA M.B. at 23. Additionally, the PWSA mentioned the Commission’s ability to waive the applicability of any provision of the Code, except 66 Pa. C.S. § 3202. PWSA St. No. C-1 at 28.

Arguing that the resolution of litigated metering issues will not occur until a new Cooperation Agreement is subject to a future Commission proceeding, the PWSA opined that, rather than attempting to estimate usage or bill currently unmetered and/or unbilled properties on an unmetered basis, the focus should be on negotiating a mutually agreeable solution with the City, enabling the PWSA to issue proper bills that the City agrees it will pay. PWSA M.B. at 23-24, 27. In this vein, responding to Directed Questions Nos. 84, 85, and 88, the PWSA argued that estimating the use of unmetered properties is not a feasible tool for developing methods for the PWSA to immediately begin to receive payments whether by using estimates or implementing a metering and billing triage plan immediately. PWSA M.B. at 27-28. The PWSA explained that there is presently no good method of estimating usage attributable to the “key” City and City-affiliated facilities that do not have meters, such as the Zoo, swimming pools, and spray parks. PWSA St. No. C-1 at 28.

An additional noted hinderance of the PWSA’s ability to accurately estimate usage is its lack of information on many buildings which the City owns by default. The PWSA indicated that a certain percentage of these buildings are derelict and will be torn down by the City. However, in response to Directed Question No. 82, regarding estimated revenue loss associated with unmetered and unbilled usage, the PWSA indicated that for those City facilities that currently have the PWSA meters and can be measured, the PWSA estimated that water used at those facilities equates to about \$3.6 million annually in billed usage. *Id.*

Regarding the feasibility of immediately applying the monthly customer charge to known but unbilled and/or unmetered customers prior to meter installation (Directed Question No. 87), the PWSA explained, as previously indicated, that it is evaluating the proposal for a flat-rate charge for all unmetered and/or unbilled municipal and governmental properties/buildings served by the PWSA. According to the PWSA, the development and assessment of a flat rate charge is complicated because buildings are

not homogeneous, and water line size is not necessarily indicative of use. PWSA St. No. C-1R at 22.

Similar to its argument in support of its phased-in and stepped billing proposal, the PWSA does not support immediate implementation of a bill based on a flat-rate approach for Pittsburgh. The PWSA argued that “[t]he City needs lead time” in order to mitigate any potential “rate shock” for the City, which would potentially result in significant unpaid bills by Pittsburgh. PWSA St. No. C-1 at 29-30; PWSA St. No. C-1R at 21. The PWSA explained that utilities should be concerned about the ability of their ratepayers to pay because it impacts the revenues that the utilities are able to realistically depend on receiving, which informs utilities about what money will be available to fund operations and infrastructure needs. The PWSA argued that this is even more important for cash flow utilities, such as the PWSA, because it is solely dependent on revenues received to fund its operations (*i.e.*, PWSA does not have any shareholders or any opportunity to receive a rate of return from ratepayers). PWSA R.B. at 8-9.

As indicated *supra*, the OCA does not oppose the PWSA’s proposed five-year transition plan of unmetered accounts of the City and certain non-profit organizations to metered service, provided that it incorporates a modification to include a flat rate charge that also would ramp up during the five-year transition period for properties that remain unmetered. OCA M.B. at 13-14; OCA St. No. 2 at 7-8. Witness Rubin explained how the OCA’s proposal would be implemented:

[I]n 2020 there should be a flat-rate charge based on the size of the service line serving the property that would approximate 20% of the average bill of metered customers with similar-sized service lines. In 2021 the flat rate would increase to 40% of the average bill for similar-sized service lines, and so on. In that way, the transition from unmetered to metered service would be gradual for all properties. It also would provide a path forward that can be built into the

budgets of the City and the unmetered non-profit organizations. This approach also means that delays in the physical metering of properties would not seriously impact PWSA's collection of revenues from unmetered customers.

OCA M.B. at 13 (citing OCA St. No. 2 at 7-8).

In opposition to the PWSA's proposed transition plan and alleged support for its modification to include a flat rate charge ramp up, the OCA has advanced arguments that can be broken down into three main points. First, its core contention is that for many years the PWSA has been out of compliance with laws that prohibit the provision of free service to a municipality or non-profit organization. Witness Rubin expressed the OCA's concern that the PWSA is not in compliance with the MAA and the requirement for "reasonable and uniform" rates under 53 Pa. C.S. § 5607(d)(9). OCA St. No. 2 at 5-6. He further opined that, by not charging the City for water or wastewater service, the PWSA is not in compliance with 53 Pa. C.S. § 5612(a.1). Witness Rubin continued by expressing concern over the alleged lack of urgency in resolving these compliance issues by way of implementing a flat rate for non-metered service. OCA St. No. 2 at 6-7.

Second, the OCA submitted that the Code obligates the PWSA to charge rates based on its Commission-approved tariff, and the PWSA's current tariff already includes a flat rate. Tariff Water Pa. P.U.C. No. 1, Original page 9 (effective March 1, 2019). The implementation of flat rate billing would recognize that the municipal/non-profit accounts should be paying a rate for the service being provided. 66 Pa. C.S. § 1303. The flat rate in the PWSA's tariff exists and should be used to ensure that accounts are paying for the service being provided by the PWSA. OCA M.B. at 14.

Lastly, the OCA asserted that its proposed flat rate charge ramp up has the same benefits as the metered rate ramp up because it allows the City and non-profits to

plan for the rates and incorporate the known annual changes in flat rates in the budgets. OCA M.B. at 13-14.

I&E echoed the OCA's concern that the PWSA's step-billing proposal, if implemented, would still allow free water and wastewater service for unmetered City properties and certain non-profit organizations, potentially continuing through 2024. Therefore, I&E recommended that the Commission order the PWSA to introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate proceeding, and as customers are metered, their usage should be billed immediately. I&E M.B. at 40 (citing I&E St. No. 3 at 56).

I&E argued that the PWSA had not provided an adequate reason why, at minimum the City should not be responsible for the customer charge, which would provide needed revenue for the PWSA's operations, including but not limited to infrastructure repair, lead remediation, and meter installation. I&E St. No. 3-SR at 27. I&E stated that it is unaware of any situation where a municipality has been allowed to forego its utility payments based on supposed ability to pay, which I&E asserted has not been established here, and such undue generosity in the face of a historic expansion in capital spending and associated rate increases would exacerbate the already unjust favoring of the City at the expense of all other ratepayers. I&E R.B. at 17-18.

I&E characterized the PWSA's concerns about increasing its uncollectible expense due to lack of City payments as "troubling and misplaced" because, according to I&E, there is "no evidence that the City would be unable to pay bills" and the "City is a sophisticated entity...fully capable of making the arguments PWSA made on its behalf." I&E M.B. at 41. I&E disagreed with PWSA's assertions that the City needs time to understand its obligations, providing the following reasons:

- The City had knowledge that the need to meter and bill for water usage was an issue of public concern at least since the Auditor General’s Report was issued on October 30, 2017;
- The City had notice that its unbilled usage and other City interests would be investigated in this proceeding and, despite such notice, it elected not to participate;
- PWSA provided no factual basis that the City would be unable to pay water bills if it was billed immediately;
- PWSA’s desire to provide “lead time” to the City is an unreasonable preference not offered to other customers;
- On advice of counsel, it is inappropriate for PWSA to raise a claim on behalf of the City, which did not participate in this proceeding;
- PWSA’s concern for the City’s budget is unfounded because the City will have “lead time” to fully absorb costs if the City is not billed until after the next base rate case and PWSA does not finish metering for five years.

I&E M.B. at 39 (citing I&E St. No. 3 at 55-57).

I&E stated that the PWSA should strive to bring itself into compliance as quickly as possible. Although no party can quantify the value of lost revenue from providing free water and wastewater service to the City, I&E indicated that evidence suggests that this unbilled usage represents upwards of \$11.4 million in foregone annual

revenue.<sup>19</sup> I&E R.B. at 12 (citing I&E St. No. 3 at 55). Arguing that ratepayers are burdened with this inequitable relationship as long as this imbalance continues, I&E contended that “[e]very day the City is unbilled for its water usage is a day PWSA is not collecting tariffed revenue and charging discriminatory rates, violating 66 Pa. C.S. §§ 1303 and 1304.” I&E M.B. at 42. Regarding the PWSA’s position that the City should receive special treatment, in the form of an allotment of a “reasonable” amount of time in preparation of receiving full bills, I&E cautioned the Commission that approving such an exception here would “create terrible precedent and invite other unwarranted tests of Commission power rooted in fears of non-compliance.” I&E R.B. at 17.

I&E added that adoption of its approach would still provide the City up to five years of “lead time” to incorporate the costs of billing into its budgets, since I&E’s recommendation would not culminate in full bills until metering is complete, or by December 31, 2024. Further, I&E stated that its proposal would not even be introduced until the next base rate case is filed, so actual implementation would not occur until after the PWSA’s next base rate case concludes. I&E M.B. at 42; I&E R.B. at 17-18.

Furthermore, I&E opposed the PWSA’s view that resolution of litigated metering issues will not occur until a new Cooperation Agreement is subject to a future Commission proceeding, contending that the Commission must decide these issues related to metering in this proceeding based on the following:

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<sup>19</sup> I&E witness, Witness Cline, stated that “because municipal buildings are not metered, the PWSA cannot accurately determine how much free water the City is using. Additionally, the Pennsylvania Department of the Auditor General (Auditor General) performance audit of the PWSA covering the period January 1, 2014 through June 20, 2017 (included as I&E Exhibit No. 2, Schedule 4 attached to I&E Statement No. 2, the direct testimony of I&E witness Patel) cites a PWSA senior manager’s belief that the City’s usage may be close to one billion gallons of water annually. This unmetered, unbilled water results in the PWSA not collecting approximately \$6.84 million to \$11.4 million per year (R-2018-3002645 and R-2018-3002647 I&E Statement No. 3, pp. 11-12).” I&E St. No. 3 at 20.

- The Parties never agreed, nor does the Partial Settlement state otherwise, that metering issues would exclusively be determined in a future proceeding regarding a new Cooperation Agreement;
- Briefing of this issue was advocated for so that the Commission would have the opportunity to weigh in on a contested, on-the-record issue and provide direction to PWSA as soon as possible, particularly since PWSA may file a new rate case soon and the timing of review of a new Cooperation Agreement is uncertain;
- The Commission specifically asked that questions regarding these metering issues be discussed in this proceeding. *See* Stage 1 Initial Report; and
- It is proper that the Commission consider and make a determination regarding these metering issues in this proceeding, since PWSA's step-billing approach was proposed as part of its Compliance Plan generally, not exclusively in the context of a new Cooperation Agreement.

I&E R.B. at 15-16.

**c. Recommended Decision**

The ALJs rejected the PWSA's proposal and recommended that the Commission adopt I&E's proposal that the PWSA introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate proceeding, and as customers are metered their metered usage should be billed immediately. R.D. at 128.

Persuaded by the arguments set forth by I&E, the ALJs acknowledged that “[e]very day that the City is unbilled for its water usage is a day that PWSA is not collecting tariffed revenue and charging discriminatory rates, violating 66 Pa. C.S. §§ 1303 and 1304.” R.D. at 127. The ALJs further concluded that implementation of the PWSA’s step-billing proposal would “condone and perpetuate the imbalanced, discriminatory relationship the City has with PWSA for longer than necessary.” *Id.*

The ALJs rejected the OCA’s proposal to incorporate a modification to include a flat rate charge that would also ramp up during the five-year transition period for properties that remain unmetered, based on the acceptance of the PWSA’s concerns. The ALJs determined that the estimates that such a plan would require are “difficult due to the significant amount of unmetered properties, the presence of numerous derelict properties that will be torn down, the fact that water line size is not necessarily indicative of use and the non-homogeneous nature of municipal buildings.” R.D. at 128 (citing PWSA M.B. at 27-28).

The ALJs characterized I&E’s proposal as a reasonable alternative that would provide “lead time” for the City to incorporate the costs of billing into its budgets. Per I&E’s proposal the unmetered City facilities would be responsible for a customer charge, but not be responsible for its full metered costs until metering is complete, which could be as late as 2024. Therefore, the ALJs agreed with I&E that any concerns of “rate shock,” resulting from I&E’s proposal, are inaccurate and unsupported by evidence in this proceeding. R.D. at 128.

**d. Exceptions and Replies**

In its first Exception, although the PWSA expresses its support of operating on a business-like basis with the City, it argues that the ALJs erred by rejecting the PWSA’s proposals regarding the billing plan for unmetered and/or unbilled municipal

properties within the City. PWSA Exc. at 4. PWSA asserts that the Commission should approve its transition plan regarding payment for City usage as set forth in this proceeding subject to further direction resulting from a future Cooperation Agreement proceeding. *Id.* at 7-11. Alternatively, the PWSA proposes that the Commission could defer resolution of this issue to a future Cooperation Agreement proceeding “that will likely be opened in the next few months.” *Id.* at 6, 11.

The PWSA maintains its argument that its step-billing plan balances the “complicated (and long-standing historical) relationship” with Pittsburgh, while providing the City “a measured path forward to payment for full usage.” *Id.* at 5-6. In its Exceptions, the PWSA asserts that “there is nothing untoward” about Pittsburgh receiving free water, since “the City is the historical and present owner of the water and wastewater conveyance systems that the PWSA is charged with operating.” *Id.* at 8.

The PWSA also continues to argue that if it issues bills to the City, they may simply go unpaid. *Id.* at 6, 9-10. In Exceptions, the PWSA repeated assertions it previously made, stating the City has “limited resources” as a governmental entity and recently terminated its status as a “financially distressed city.” *Id.* at 9. Furthermore, the PWSA claims that because the step-billing plan has been agreed to by the City as part of a future Cooperation Agreement, “it is not reasonable to expect that the City could or would pay something beyond what it has already agreed to pay.” *Id.* at 9-10.

In OCA Exception No. 1, the OCA also challenges the ALJs’ determination regarding the billing plan for unmetered and/or unbilled municipal properties within the City. The OCA excepts to the ALJs’ Recommended Decision, claiming the PWSA’s step-billing plan should be approved, albeit only if tied to the OCA’s flat rate proposal for unmetered properties. OCA Exc. at 2-4.

The OCA submits that the ALJs erred because they accepted the PWSA's concerns based on a mischaracterization of the OCA's position. *Id.* at 2-3. The OCA provides the following clarification:

As Mr. Rubin explained in OCA Statement 2, the rate that would be charged and ramped up over five years, or until a meter is installed, would be based on the size of the service line that is serving the property, not an estimate of the individual property's usage. OCA St. 2 at 7-8. PWSA would use the average bill for metered customers with similarly sized service lines and charge 20% of that average bill in year 1, then 40% of that average bill in year 2, and so on until a meter is installed. *Id.*

OCA Exc. at 3.

Additionally, the OCA repeats a similar assertion made by the PWSA that the City must be allowed time to incorporate the costs of billing into its budgets. The OCA states that its proposal, compared to the ALJs' recommendation, "has the advantage of requiring each City property to contribute additional amounts each year until it is metered rather than keeping the same relatively low minimum charge rate for up to five years and then be switched immediately to a metered rate reflecting all usage." *Id.* at 3-4.

In its Replies, I&E articulates its agreement with the ALJs, and recommends the Commission reject the first Exceptions of both the PWSA and the OCA. I&E R. Exc. at 2. I&E submits that the ALJs properly rejected the PWSA's unreasonable proposal to "step-bill" municipal properties over a five-year period in favor of introducing a flat rate for unbilled customers and charging full bills once metered. I&E R. Exc. at 2-6.

I&E avers that the record supports the ALJs' recommendation and the rejection of the PWSA's position that the "historical relationship" with the City is a valid basis in the record or under the Code to allow its step-billing proposal. *Id.* at 3. I&E further argues that the existence of such an historical relationship does not permit the continuation of a free water allowance to the City, and that such a claim is contrary to the PWSA's Compliance Plan proposal and the consistent position of all parties, including the PWSA, that the City must ultimately pay for its full usage. The litigated issue only concerns timing, *i.e.*, when, not if, the City will receive bills. I&E R. Exc. at 4 (citing PWSA Compliance Plan at 110; PWSA M.B. at 26-29; OCA M.B. at 11-14; I&E M.B. at 36-43).

I&E notes that although the City may not be metered because of its "historical" relationship, lack of metering does not equate to clear evidence of lack of ability to pay once metered. I&E maintains its assertion that there is no evidence in the record that the City will not pay its bills. I&E R. Exc. at 3 (citing I&E R.B. at 17).

Responding to the PWSA's claim that future payments received from Pittsburgh are dependent upon an agreement already made with the City, pursuant to an alleged future Cooperation Agreement, I&E asserts that the PWSA and the City cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement, notwithstanding the unreasonableness of requesting that the Commission hinge resolution of this issue upon the unreliable timeline controlled by an unregulated third party. I&E R. Exc. at 6. I&E notes that, as the ALJs properly determined, the PWSA's arguments in favor of the City fail to overcome the fact that "[e]very day that the City is unbilled for its water usage is a day that PWSA is not collecting tariffed revenue and charging discriminatory rates, violating 66 Pa. C.S. §§ 1303 and 1304." I&E R. Exc. at 2-3 (citing R.D. at 127).

Furthermore, I&E expresses its agreement with the ALJs' conclusion that implementation of the PWSA's step-billing proposal would "condone and perpetuate the imbalanced, discriminatory relationship the City has with the PWSA for longer than necessary," and I&E submits that the PWSA's Exceptions do not refute that conclusion. I&E R. Exc. at 3 (citing R.D. at 127).

Responding to the PWSA's alternative proposal that the Commission simply defer this issue to a future Cooperation Agreement proceeding "that will likely be opened in the next few months," I&E asserts that the PWSA raised this position in briefing, which I&E opposed, and the ALJs rejected. I&E R. Exc. at 4-5 (citing PWSA M.B. at 23; I&E R.B. at 15-16; R.D. at 127-128).

I&E similarly recommends the rejection of OCA Exception No. 1, for the same reasons discussed in opposition to the PWSA's step-billing proposal. I&E states that it is not in favor of any step-billing plan, including in the context of the OCA's proposal, particularly since the OCA has not demonstrated how adoption of its flat rate proposal would transform the PWSA's proposed step-billing plan into a reasonable proposal. I&E R. Exc. at 6.

**e. Disposition**

Based on our review of the applicable law, the Parties' positions, and the Recommended Decision, we shall deny PWSA's Exception No. 1 and the OCA's Exception No. 1. As discussed in several ways throughout the record of this proceeding, the PWSA's current relationship with Pittsburgh is problematic for ratemaking purposes. The City currently does not pay for water or wastewater service and many City-owned properties are not metered. As a result, other customer classes are currently absorbing the costs to serve the City. The PWSA attempted to entertain the existence of a constraint on the PWSA's ability to resolve this existing inequitable relationship by hinging resolution

of this issue upon development of a new Cooperation Agreement with the City, which will be subject to a future Commission proceeding. We are persuaded by I&E's arguments, adopted by the ALJs, that the PWSA cannot circumvent the Code and Commission mandates by making separate arrangements through a Cooperation Agreement with the City. The PWSA is an independent entity from the City,<sup>20</sup> now under the jurisdiction of the Commission. A new Cooperation Agreement will not change this fact. Although the PWSA and the City may not have had the traditional independent utility-customer relationship before coming under Commission jurisdiction as evidenced, among other things, by the PWSA's agreement to provide the City with 600 million gallons of water each year at no cost,<sup>21</sup> they must now.

We agree with the ALJs that issuing anything less than bills based on full metered rates once meters are installed: (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." *See* R.D. at 127.

As directed by the Commission, the PWSA's rates are currently determined on the basis of cash flow, rather than a fair rate of return on a used and useful rate base. *FIO* at 27-28. As such, the PWSA should be permitted to charge rates which produce sufficient revenue to fund an operating budget that enables the PWSA to operate and

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<sup>20</sup> *See e.g., Com. v. Lucas*, 632 A.2d 868, 870 (Pa. 1993) ("[The Pennsylvania Supreme Court] has held that municipal authorities are not the creatures, agents or representatives of the municipalities which organize them; rather, they are independent agencies of the Commonwealth."); and *Com. v. Erie Metro. Transit Auth.*, 281 A.2d 882, 884 (Pa. 1971).

<sup>21</sup> PWSA Hearing Exh. 1, Appendix B at §§ VII.C & VII.D.

maintain the system, pay for needed capital improvements and maintain access to the capital markets at reasonable rates. However, consumers who pay rates high enough to allow the PWSA to furnish free service to other consumers (such as the City) are being discriminated against, and if water and wastewater service revenues have, in the past, been diverted for other City functions, as suggested in the Auditor General performance audit of the PWSA, referenced in the direct testimony of I&E Witness Cline, the rates which permit either of these circumstances are unreasonably high and unjust. I&E St. No. 3 at 20.

Private consumers should not be compelled to bear any part of the cost of the service rendered to Pittsburgh except as they contribute as taxpayers to the general fund of the City. The City is a consumer the same as any of its residents who patronize the PWSA and is not entitled to any privilege as to rates. As each City-owned building and property is metered and duly billed for its usage, the taxpayer, rather than the non-City consumers of the PWSA, will then be appropriately responsible for the water and wastewater service rendered to the City. Furthermore, as I&E pointed out, there is no evidence in the record indicating that the City is not able to take responsibility for, and/or appropriately budget for, the costs the PWSA incurs to provide services to the City; nor has the City elected to participate, despite having received notice of this proceeding and a copy of the PWSA's Compliance Plan, which implicated issues of City interest, and being advised in writing of the opportunity to do so.

The existence of free water service and the tolerance of such going forward, even in a reduced amount, diminishes the incentive for the City to conserve. Without an incentive to implement conservation measures, the City's water usage is likely much greater than comparable entities. This unnecessary use of water increases costs associated with treatment and distribution of water, which are recovered from all billed ratepayers. Therefore, not only are ratepayers covering the cost of foregone revenues,

their rates are also unjustly high, in order to recover increased expenses related to potentially wasteful water usage by City entities.

We are of the opinion that simply because City-owned buildings and properties are not metered does not permit the allowance of free service. Commission Regulations permit flat rate service pending implementation of a reasonable metering program or under special circumstances as may be permitted by the Commission for good cause. 52 Pa. Code § 65.7. Therefore, implementation of a flat rate in the PWSA's tariff for unmetered City-owned buildings and properties will ensure that the City pays the PWSA for its service and alleviate the burden now placed upon the PWSA customers. I&E's proposal, adopted by the ALJs, also acknowledges the potential need for time in order to become fully compliant with the Code and Commission Regulations by recognizing the fact that it will take time for all City-owned properties to be metered and duly billed the full amount for their respective usage.

Furthermore, although, as previously indicated, the City has chosen to not participate in this proceeding, nor is there any indication that the City will not be able to take responsibility for, and/or appropriately budget for, the costs the PWSA incurs to provide services to the City, a potential tool for mitigating any "rate shock" to the City is the development of a cost of service study that includes a separate customer class for certain City-owned properties. For example, PAWC has a separate rate for municipal customers. PAWC defines its Municipal class as including "sales to governmental agencies (other than sales for water for resale)" and "sales of water for municipal and other public purposes, other than fire protection," as well as "sales of water for City, County, State and Federal uses." Supplement No. 2 to Tariff Water – PA P.U.C. No. 5, First Revised Page 84. Identifying a separate class of customers for the City would allow for an appropriate ratemaking treatment to be developed in the PWSA's next base rate proceeding. Currently, the costs associated with service to City-owned properties are not quantified in any way, so they have simply been improperly allocated to other customer

classes. Using the cost of service study as a tool, the subsidy currently provided by other rate classes to the City could be gradually eliminated. While we recognize the fact that the practice of including any subsidy is inconsistent with the cost of service principles, additional factors such as the principles of gradualism, equity and fairness also need to be considered in the setting of rates within the construct of a base rate proceeding.

We conclude that the ALJs properly rejected any step-billing plan, including in the context of the OCA's proposal, which would treat the City more favorably than all other customers and that will enable the PWSA to continue to provide free or reduced cost water and wastewater service to the City, evading full payment of tariffed rates for metered properties. For the above reasons, PWSA's Exception No. 1 and the OCA's Exception No. 1 are denied.

#### **4. Billing Plan for Public Fire Hydrants within the City of Pittsburgh**

##### **a. Positions of the Parties**

The PWSA asserted that it has committed to presenting a rate design reflecting allocation of twenty-five percent of the costs of public fire hydrants to the City in the next rate case and reserved the right to propose a phase-in period at that time. PWSA M.B. at 29 (citing Partial Settlement ¶ III.I.1 at 23). The Authority explained that Section 1328(b)(1) of the Code does not mandate that a public utility be required to recover in rates the full cost of service related to public fire hydrants. Instead, it permits public utilities the ability to seek cost recovery and caps the amount of cost recovery to no more than twenty-five percent of the cost of service with the remainder of the costs to be assessed to all customers. Thus, the PWSA asserted that it is not out of compliance with the Code by virtue of the fact that the Authority does not assess the costs of public fire hydrants to the City. PWSA M.B. at 29-30.

Nonetheless, the PWSA has committed to identifying the costs of public fire hydrants and presenting a proposal to allocate twenty-five percent of the costs to the City in the next rate case filing. Additionally, the Authority contended that the agreement under negotiation with the City would phase-in the public fire hydrant costs using the same percentage stages over a five-year period similar to the billing plan for unmetered and unbilled municipal properties within the City. PWSA M.B. at 30.

I&E opposed any step-billing approach for City public fire hydrant charges. I&E contended that the PWSA has provided no basis for distinguishing why charges related to public fire hydrants should be treated differently than any other water usage by the City. Thus, I&E recommended that the Commission direct the PWSA to charge the City “the full amount of whatever percent allocation is determined in the PWSA’s next rate proceeding.” I&E M.B. at 44.

**b. Recommended Decision**

In the Recommended Decision, the ALJs acknowledged that I&E opposes any type of step-billing approach related to City public fire hydrant charges but noted that this proposal was not before the Commission at this time. The ALJs explained that the new Cooperation Agreement being negotiated with the City would phase-in the public fire hydrant costs similar to the phase-in proposed for City water usage once meters are installed. However, the ALJs reasoned that such an agreement needs to be presented to the Commission for review and final approval. Additionally, as agreed to in the Partial Settlement, the PWSA’s proposed allocation of costs to the City will be presented as part of its next rate case. Accordingly, the ALJs agreed that approval of the Partial Settlement regarding this issue is all that needs to occur at this time. R.D. at 129.

The ALJs clarified that they need not make a recommendation to the Commission with respect to this issue at present. Additionally, the ALJs emphasized

their recommended approval of the Partial Settlement which includes the requirement for a rate design to occur in a future rate case. *Id.*

**c. Exceptions and Replies**

In I&E Exception No. 1, I&E argues that the ALJs erred by finding the step-billing approach for City public fire hydrant charges is not before the Commission at this time. I&E proffers that the ALJs already found the PWSA's step-billing proposal for City properties generally to be unreasonable. However, the ALJs mistakenly referred to step-billing and phase-in as the same concept. According to I&E, the ALJs did not distinguish the two issues or otherwise clearly state that both the phase-in *and* step-billing issues are not ready for Commission action. Because of this purported error, I&E contends that the Commission should prohibit the PWSA's use of a step-billing approach for public fire hydrant charges for the same reason the ALJs found the step-billing approach for City properties generally to be unreasonable. I&E Exc. at 5-7.

In support, I&E explains that the Parties did not agree to a specific definition of a phase-in, but presumed it would be a scenario where the City is charged less than a twenty-five percent cost allocation for public fire hydrants at first, with increasing amounts to be charged at a later time. I&E argues that this is different from the PWSA's step-billing plan which is a specific proposal to charge the City 20% of its bill for water usage in the first year, and for each successive year to charge an additional 20% until 100% of the City bill is charged. I&E Exc. at 7.

I&E acknowledges that the PWSA could propose a phase-in approach that mimics its step-billing proposal and recognizes that charging the City less than a 25% allocation is possible under the Code. Further, I&E submits that the Authority should be permitted to present a proposal so that the Parties and the Commission will have an opportunity to fully evaluate any distinct rate design proposal for public fire hydrant

costs. However, I&E argues that the Commission should grant this Exception to clarify that the PWSA cannot institute its 20/40/60/80/100 step-billing plan, whether for fire hydrants or any other City usage charges. Thus, I&E requests that the Commission order the PWSA to charge the City the full amount or 100% of whatever percent cost allocation is determined appropriate in the next rate proceeding. *Id.* at 7-8.

The Authority responds to I&E Exception No. 1 by asserting that the ALJs properly found that the PWSA's proposed allocation of public fire hydrant costs to the City is not currently before the Commission. The PWSA rejects I&E's characterization that it has proposed in this proceeding to begin billing the City for amounts less than it would propose to allocate to the City for public fire hydrants in the next rate case. Rather, the Authority contends, its proposal and commitment on this issue has always been to present a rate design reflecting an allocation of 25% of the costs of public fire hydrants – the statutory limit under 66 Pa. C.S. § 1328(b) – to the City in the next rate case while reserving the right to propose a phase-in period for payment at that time. PWSA R. Exc. at 3.

The PWSA submits that its approach to public fire hydrants is in contrast to its specific payment plan proposals regarding the installation costs for City meter installation and usage for newly installed City meters. The PWSA contends that it has made no specific proposal in this case asking the Commission to approve the receipt of payments from the City that would be less than amounts allocated to the City as part of a future rate case. Thus, the Authority argues that the ALJs were correct in finding that there is no proposal before the Commission now regarding a plan to receive payments for less than what would be allocated to the City in a future rate case. PWSA R. Exc. at 3-4.

Alternatively, the PWSA suggests that if action is taken on this issue in this proceeding the Commission should defer resolution on it to a future Cooperation

Agreement proceeding that will likely be opened in the next few months. The Authority asserts that while the Commission may elect in that Cooperation Agreement proceeding to approve or reject a payment plan for the costs of City public fire hydrants with the specific amounts to be determined a part of future rate case, the ALJs were correct in concluding that no payment plan relating to these costs for the City is currently before the Commission. *Id.* at 4.

**d. Disposition**

In the Partial Settlement, the Parties agreed that the PWSA would provide a class cost of service study reflecting all public fire hydrant costs in the next rate case. At that time, the PWSA commits to presenting a rate design reflecting an allocation of 25% of all public fire hydrant costs to the City. However, the Partial Settlement makes clear that “PWSA reserves the right to propose a *phase-in period* at that time.” Partial Settlement ¶ III.I.1 at 23 (emphasis added).

In its Exception, I&E argues that the Parties did not agree to a specific definition of a phase-in, but presumed it would be a scenario where the City is charged less than a twenty-five percent cost allocation for public fire hydrants at first, with increasing amounts to be charged at a later time. However, I&E attempts to distinguish the undefined term “phase-in” as meaning something other than the 20/40/60/80/100 step-billing plan for unmetered and unbilled City properties. I&E objects to such a step-billing plan and requests that the Commission prohibit the PWSA from proposing it in its next rate case as it pertains to the cost allocation to the City for public fire hydrants.

We agree with the ALJs that the only Commission action necessary at this point is the approval of the Partial Settlement as to this issue. It would be premature to limit the parameters of the phase-in before the PWSA has had the opportunity to conduct its cost of service study and to present its proposal. Here, the record is unclear as to what

level of phase-in might be appropriate. For example, I&E seems to accept that some type of phase-in would be reasonable but does not elaborate on its position other than to express its objection to the step-billing approach. We find that the consideration of any proposal pertaining to the step-billing for the cost allocation of fire hydrants should occur in the context of the next rate proceeding as contemplated by the Partial Settlement. Accordingly, we shall deny I&E Exception No. 1.

## **5. Line Extensions**

### **a. Positions of the Parties**

According to the PWSA, the rules governing line extensions present a unique problem of reconciling the mandates applicable to the PWSA as a municipal authority governed by the MAA, 53 Pa. C.S. § 5601, *et seq.*, and the regulatory authority of the Commission. In sum, the PWSA argues it is necessary and appropriate for the PWSA to follow the statutory line extension formulas in Section 5607(d)(24) of the MAA rather than the line extension formula in the Commission's Regulations, at 52 Pa. Code §§ 65.1, 65.21-65.23. PWSA M.B. at 12; 31-32.

The PWSA submits that Section 5607(d)(24) of the MAA creates a fair, reasonable and predictable economic statutory standard that cannot be legally circumvented by any municipal authority, including the PWSA. Divergence from said statutory mandates and the PWSA's current practices (which are consistent with the statutory mandates in the MAA) would be complex and costly and could result in litigation (due to the lack of compliance with the mandates in MAA), according to the PWSA. Therefore, the PWSA submits the Commission should conclude that, in this instance, the MAA directives supersede the conflicting requirements of the Commission's line extension regulations. But, even if the Commission determines that the MAA's statutory provisions governing line extensions do not control, the PWSA respectfully

requests that the Commission grant a waiver of the application of the Commission's line extension regulations so as to permit the PWSA to continue to use the formula required by the MAA. PWSA M.B. at 12, 30-47; PWSA R. B. at 15-21.

In response, I&E argues that the PWSA's argument that there is a conflict of law favoring the applicability of the MAA over the Commission's Regulations as to line extensions simply amounts to an elevation of the PWSA's interests above its ratepayers. I&E submits that the PWSA's argument is without merit because, among other things, it is contradicted by the express language of Chapter 32 of the Code, incompatible with the rules of statutory construction, inconsistent with recent and prior case law, and it would produce an unmanageable and absurd result. I&E M.B. at 19-20, 45-57; I&E R.B. at 21-27.

The ALJs discussed the Parties' positions more extensively in the Recommended Decision. *See* R.D. at 131-151.

**b. Recommended Decision**

As to line extensions, the ALJs determined a statutory conflict exists between the provisions of the MAA and Chapter 32 of the Code. The ALJs explained that the MAA, a statute, provides specific rules regarding line extensions, while Chapter 32, also a statute, mandates generally the PWSA's compliance with the Code. Compliance with the Code generally includes compliance with Commission Regulations, and the Commission's Regulations include specific rules regarding line extensions. R.D. at 152.

The applicable rules of statutory construction provide that if a general provision in a statute conflicts with a special provision in another statute, both provisions should be construed to be operable, if possible. If the two provisions are irreconcilable,

the special provision shall prevail to the exclusion of the general provision, *unless* the general provision was (1) enacted later and (2) it is the manifest intention of the General Assembly that such general provision shall prevail. R.D. at 152-153 (citing 1 Pa. C.S. § 1933).

In applying the above rules of statutory construction here, the ALJs concluded that the general provision of Chapter 32 of the Code prevailed over the special provisions of the MAA regarding line extensions. R.D. at 153. To support this conclusion, the ALJs determined that the statutory provisions at issue were irreconcilable. Specifically, the ALJs concluded that it is not possible for the MAA, which includes special provisions regarding line extensions, to be reconciled with Chapter 32, a general provision of the Code, which generally requires the PWSA to follow the Code and thus the Commission Regulations related to line extensions. R.D. at 152. Next, the ALJs found that Chapter 32 was enacted later than the applicable provisions of the MAA.<sup>22</sup> Finally, the ALJs concluded that the legislature expressly prescribed that the Public Utility Code, including the Commission's Regulations implementing the Code, apply to the PWSA. R.D. at 153 (citing I&E M.B. at 49).

Regarding the legislature's intent, the ALJs recognized that Chapter 32 does not specifically reference line extensions. However, the ALJs concluded that the General Assembly intended for the Code and the Commission's rules, regulations and

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<sup>22</sup> The MAA was enacted in 1945 and first amended to allow municipal authorities to recoup costs of sewer line extensions and associated fees in 1947. Act of June 12, 1947 (P.L. 571, No. 249). MAA rules regarding line extensions were amended multiple times thereafter, but Sections (d)(21) through (24), and (d)(30) through (31) of the MAA have been identical to the current version of the MAA, with one exception, inapplicable to PWSA, since 2013. The current version of the MAA regarding line extensions was enacted on July 7, 2017, when Governor Wolf signed Act 19 of 2017 into law. Chapter 32 of the Code was enacted later than any of the above dates, on December 21, 2017, when Governor Wolf signed Act 65 of 2017 into law. R.D. at 153 (citing I&E M.B. at 50).

orders to apply to the PWSA the same as any other Commission-regulated utility, barring a few, limited exceptions.<sup>23</sup> This conclusion is based on the plain language of Section 3202 of the Code, which states:

Beginning on April 1, 2018, unless otherwise provided in this chapter, *the provisions of this title*, except Chapters 11 (relating to certificates of public convenience) and 21 (relating to relations with affiliated interests), *shall apply to an authority in the same manner as a public utility.*

66 Pa. C.S. § 3202(a)(1). R.D. at 153-154 (emphasis in the original).

The ALJs explained that Sections 501 and 1501 of the Code expressly require compliance with the Commission’s Regulations and are applicable to the PWSA under Chapter 32. R.D. at 154 (citing 66 Pa. C.S. § 501(c) (“Every public utility...subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof”); citing also 66 Pa. C.S. § 1501 (“[A public utility’s] service and facilities shall be in conformity with the regulations and orders of the commission”)). The ALJs reasoned that the General Assembly could have expressly limited the Code’s applicability regarding line extensions regulations but did not do so. To the contrary, in addition to Chapters 11 and 21, Chapter 32 limits only the Code’s applicability to establishment of authorities, audits, and compliance with certain financial obligations. R.D. at 154 (citing 66 Pa. C.S. § 3208).

Additionally, the ALJs concluded that Section 3204 of the Code also demonstrates the General Assembly’s intention to place the PWSA under full

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<sup>23</sup> Chapters 11 and 21 of the Code are not relevant to the line extensions rules under 52 Pa. Code §§ 65.21-65.23.

Commission jurisdiction, *e.g.*, subject not only to the Code, but also the rules, regulation and orders of the Commission. Specifically, Section 3204 mandates that this Compliance Plan proceeding's entire purpose is to bring the PWSA's operations into compliance with the same requirements applicable to jurisdictional water and wastewater utilities under the Code and applicable rules, regulations and orders of the commission. R.D. at 154 (citing 66 Pa. C.S. § 3204(b)).

Considering all the above, the ALJs concluded that the General Assembly clearly and expressly intended to require the PWSA to comply with the Code and associated Commission rules, regulations, and orders, barring a few, limited exceptions not applicable to the issue here. R.D. at 154-155 (citing I&E M.B. at 50-51; citing also I&E R.B. at 22-23).

Regarding the PWSA's waiver request, the ALJs concluded that the PWSA's request is untimely, noting that nowhere in the PWSA's Compliance Plan or otherwise in the record did the PWSA indicate it would seek such a waiver. Additionally, the ALJs concluded that a factual record would be necessary to appropriately consider such a request and that the Parties had no opportunity to develop the record regarding the prudence of this request. The ALJs stated that "such a waiver request should be supported on a factual basis." R.D. at 155. Therefore, the ALJs recommended that the Commission direct immediate compliance and for the PWSA to revise its tariff provisions regarding line extensions to comply with 52 Pa. Code §§ 65.21-65.23.

**c. Exceptions and Replies**

In PWSA Exception No. 3, the PWSA argues that the ALJs erred in concluding that the MAA does not govern the PWSA's line extension processes and urges the Commission not to adopt the statutory analysis of the R.D. PWSA Exc. at

15-27. However, if the Commission adopts the statutory analysis of the R.D., the PWSA respectfully requests the Commission to grant a waiver of its line extension regulations to permit the PWSA to continue to use the formula and processes required by the MAA. PWSA Exc. at 26. Finally, the PWSA requests that, if the Commission declines to permit the PWSA's current processes to continue (consistent with the MAA) and declines to grant the PWSA's requested waiver, rather than directing immediate compliance, then the Commission should permit the status quo to remain until further Commission action and grant the PWSA one year to either file a petition for waiver or a compliance plan detailing how it will revise its processes. *Id.* at 26-27.

In support thereof, in relevant part, the PWSA argues the R.D. erred in concluding that: (1) the PWSA did not timely request a waiver; and (2) a sufficient factual record does not exist upon which to grant the PWSA's requested waiver.

First, the PWSA argues the ALJs incorrectly concluded that the PWSA did not timely request a waiver. The PWSA argues that Section 3202(b) permits the Commission to "suspend or waive the applicability of any provision of [the Public Utility Code] to the authority." 66 Pa. C.S. § 3202(b). The PWSA submits that nothing in this Section specifies when such request must be made nor deems that if any such request is not made in a specific timeframe, the Commission loses the ability to grant a waiver where deemed appropriate. Moreover, the PWSA asserts that the entire purpose of this Compliance Plan proceeding is to determine how and to what extent the PWSA should be required to adhere to Commission rules and regulations, and where it is reasonable to waive such rules and regulations, thus obviously negating the need for a separate waiver petition. PWSA Exc. at 24-25.

Next, the PWSA argues that the R.D. erred in concluding that a sufficient factual record does not exist upon which to grant the PWSA's requested waiver. *Id.* at 25-26 (citing, in part, PWSA St. No. C-4 at 31-34 and PWSA St. No. C-4R at 36-38).

The PWSA's Witness Quigley provided testimony explaining the practical issues relating to upending its historical line extension practices. *Id.* The PWSA submits that this testimony supports granting a waiver by establishing that divergence from the PWSA's current practices would be complex and costly and could result in litigation and potential damage awards. PWSA Exc. at 26-27 (citing *inter alia* PWSA St. C-4R at 36-38). The PWSA submits that this information provides the factual record necessary upon which the Commission could elect to grant the PWSA a waiver of compliance with its line extension regulations. PWSA Exc. at 27.

In Replies, I&E responds that the ALJs properly found that the rules of statutory construction dictate that Chapter 32 of the Code supersedes conflicting sections of the MAA. I&E R. Exc. at 10-13. I&E also contends that the PWSA's waiver request is untimely and unsupported by the factual record. *Id.* at 13-15. Finally, I&E asserts that the PWSA failed to support its alternative request for an extension of time to file a waiver or file a compliance plan detailing how it will revise operations. *Id.* at 16. I&E acknowledges that the crux of this alternative request is that the PWSA needs time to understand the Commission's expectations and to formulate an approach while it deals with other complicated and significant transitional issues. However, I&E submits it is unclear why the PWSA requires an entire year to file for a waiver and I&E cannot support it without any meaningful opportunity to evaluate the basis of the request. *Id.*

#### **d. Disposition**

We shall grant, in part, and deny, in part, PWSA's Exception No. 3 and modify the ALJs' R.D. consistent with the discussion that immediately follows.

We concur with and shall adopt the ALJs' statutory analysis and conclusion that the Code and the Commission's line extension regulations control as to the PWSA's line extension processes. *See* R.D. at 152-155.

However, we concur with the PWSA's Exception that our authority under Chapter 32 to grant waiver to the PWSA of the applicability of any provision of the Code is broad and not limited as to the timing of when such request is made. 66 Pa. C.S. § 3202(b). Moreover, we acknowledge that the PWSA made this request in this Compliance Plan proceeding, the main purpose of which is for the Commission to oversee and approve the PWSA's plans and processes for coming into compliance with the Code, Commission Regulations and Orders. 66 Pa. C.S. § 3204(b). Additionally, we concur with the PWSA that it has established in the record, unrebutted, that its current line extension processes and practices are compliant with the MAA and that divergence from the PWSA's current practices would be complex and costly and could result in litigation and potential damage awards. We also recognize, as I&E did as well, that the PWSA is managing, at this time, its many complex and significant processes and practices to come into compliance with the Code and Commission Regulations.

Considering the above, we believe it is in the public interest to grant a temporary waiver of the Code's applicability as to compliance with the Commission's line extension Regulations. This will permit the PWSA's current processes as to line extensions (consistent with the MAA) to remain the status quo until further Commission action. We will grant the PWSA one year from the entry date of this Opinion and Order to study the line extension Regulations and its current practices. Before or on the expiration date of that one-year period, the PWSA shall file with the Commission either a petition for a permanent waiver of the line extension Regulations or a supplemental compliance plan detailing how it will revise its processes to be compliant with the line extension regulations. Should the PWSA decide to file a petition for a permanent waiver of the line extension Regulations, we expect such petition to explain and detail how the application of the MAA's formula and processes results in a just and reasonable economic standard and reasonable service, including a comparison/contrast with the Commission's line extension Regulations.

## **6. Residency Requirement for PWSA's Employees**

### **a. Positions of the Parties**

The PWSA developed a residency requirement to mirror the City's Home Rule Charter, which required persons employed by the City to live in the City. The PWSA's residency requirement requires all employees, except those specifically exempted from the requirements by its Executive Committee, to live within the City. PWSA St. C-2 at 1. The PWSA explained that it has only deviated from this requirement in the case of specific exemptions made by the PWSA's Executive Committee. PWSA M.B. at 47.

The PWSA acknowledged that the residency requirement has limited the Authority's ability to attract and retain capable and skilled individuals as well as meet the diversity goals set out in the Code. According to the Authority, the domicile requirement is problematic because 300,000 people live in the City, compared to 2.36 million people in the Pittsburgh metropolitan area, leaving the PWSA access to less than sixteen percent of the greater metropolitan population as a pool of potential employment unless an individual is willing to relocate to the City or otherwise receives an exception to the residency requirement. As a result, the PWSA admitted that it has had to engage consultants and retain contract workers at a cost premium of approximately more than \$2 million per year to the PWSA's annual non-unionized workforce cost. The reliance on contractors and consultants who become familiar with the PWSA's operations and who do not join its permanent workforce make it difficult for the Authority to create redundancy among its staff. *Id.* at 48-49.

While the PWSA acknowledged the many issues related to its adherence to the residency requirement and the challenges they present to fulfilling the requirements of the Code, the PWSA maintained that it has taken sufficient steps to remediate such

issues. R.D. at 158; M.B. at 49; R.B. at 21. Specifically, those measures included 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 convert them to permanent employees (*i.e.*, having individuals establish domicile within the City limits within six months). Also, under the PWSA's domicile policy, the Executive Committee can exempt employees from this requirement. PWSA R.B. at 21-22. Moreover, the PWSA contends that I&E has failed to offer any specific concerns related to the residency requirement and noncompliance with the Code. R.D. at 158.

The PWSA averred that the Commission may not act as a "super board of directors" or micromanage the managerial decisions of a utility company under its purview unless such a violation of the Code or Commission Regulations occurs. The PWSA recognizes that if such a violation had occurred the Commission would have the authority to direct the elimination of the residency requirement. PWSA M.B. at 50. According to the PWSA, the Commission's ability to eliminate the residency requirement is limited to situations in which it determines that the PWSA's policy is causing it to be out of compliance with the Code or Commission Regulations by providing inadequate service or tending to make the PWSA's rates unreasonably high. The PWSA argued that only if the Commission finds that the residency requirement is causing the PWSA to be out of compliance with a statutory provision or regulation is it empowered to direct its elimination. The PWSA conceded that the record supports a Commission finding that the residency requirement is increasing costs to the PWSA and impeding its ability to provide adequate and efficient service. PWSA R.B. at 22.

I&E argued that the Commission does have the authority to remove the Residency requirement because through the PWSA's own admissions, the Authority is spending a disproportionate amount of its budget on contractors and is unable to hire sufficient help while still complying with the residency requirement. Moreover, I&E averred that the only possible reason that the PWSA would maintain this inefficient

requirement would be to appease the City and improperly elevate the interests of the City above the interests of the ratepayers. As explained further below, I&E argued that the residency requirement violates Section 1301 and 1501 of the Code and frustrates the Commission's policy to promote a diverse utility workforce. I&E M.B. at 60, 62-65.

More specifically, I&E submitted that the residency requirement would result in the PWSA's violation of Section 1301 of the Code because it would increase rates without adding any benefit to the ratepayers. I&E argued that the ratepayers suffer direct harm by the residency requirement, as demonstrated by the PWSA's own admission that because it cannot hire adequate levels of qualified staff due to the residency requirement, it must retain contractors and consultants at a cost premium, estimated to be \$2 million annually. Such an increase in cost is imposed directly on the PWSA ratepayers through rates and are the type of "imprudent, unreasonable costs that result in the type of unlawful taxation of consumers that the Commission must prohibit." *Id.* at 61-63.

I&E further argued that the residency requirement would result in the PWSA's violation of Section 1501 of the Code because the limitations discussed above as well as the PWSA's admitted inability to keep redundancy among staff is unequivocally at odds with its obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities and should therefore be eliminated. Lastly, I&E averred that the PWSA has admitted that they are excluding 84% of the Pittsburgh metropolitan area from its employment pool and therefore, the PWSA's residency requirement frustrates its ability to comply with the Commission's diversity policy goals as set forth in Sections 69.801-69.809 of our Regulations, 52 Pa. Code §§ 69.801-69.809. I&E M.B. at 65-66. Thus, I&E contended that the residency requirement hinders the PWSA's ability to comply with its obligations under the Code, Commission Regulations and Orders. Therefore, I&E recommended that the Commission direct its elimination. I&E R.B. at 31.

**b. Recommended Decision**

In their Recommended Decision, the ALJs agreed with the PWSA's position. The ALJs determined that the residency requirement is essentially a management decision and the Commission cannot interfere with a management decision of a utility under its purview unless there has been an abuse of managerial discretion and the public interest has been adversely affected. R.D. at 163 (citing *Metropolitan Edison Company v. Pa. PUC*, 437 A.2d 76 (Pa Cmwlth. 1981) (*Met-Ed*)). The ALJs reasoned that the PWSA's decision to hire from the territory it serves does not violate the Code, Commission Regulations, or Orders. Moreover, the ALJs determined that the residency requirement could not be found to be arbitrary because there are many plausible reasons that the PWSA would desire that its employees reside in the City. The ALJs discussed several possibilities such as providing ready access to employees in case of an emergency, expecting residents to be more invested in issues facing the Authority, or wanting the workforce to look like the community it serves. *Id.*

The ALJs acknowledged that the PWSA had admitted that the Authority's residency requirement makes it challenging to meet workforce obligations. However, the ALJs reasoned that a challenge does not translate to a violation of the Code. Furthermore, as to I&E's argument that the residency requirement frustrates the Authority's compliance with the Code, the ALJs determined that a frustration does not equate to a violation of the Code. Therefore, the ALJs recommended that the Commission determine that we lack the authority to alter the PWSA's residency requirement. *Id.*

**c. Exceptions and Replies**

In I&E Exception No. 2, I&E makes the following arguments in three subparts: (1) the PWSA’s residency requirement would violate Section 1301, based on the increased cost that would be passed on to ratepayers without value or benefit; (2) the PWSA’s residency requirement would violate Section 1501 by excluding various qualified individuals for failure to satisfy the residency requirement and preventing redundancy among staff; and (3) the PWSA’s residency requirement is arbitrary and the ALJs erred in finding that the record did not support the conclusion that the residency requirement is not arbitrary. I&E Exc. at 8-17.

No Party, including the PWSA, filed Replies to this Exception.

**d. Disposition**

As discussed above, the ALJs determined that establishing the residency requirement was a management decision on the part of the PWSA. We agree.

The Commission has long recognized the “management discretion doctrine,” which established that it is not within the province of the Commission to interfere with the management of a utility, including decisions relating to the necessity and propriety of operating expenses, unless the Commission finds an abuse of discretion or arbitrary action by the utility has been shown based on the record evidence. *See Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 561 A.2d 1224, 1226 (Pa. 1989) (citing *Lower Chichister Township v. Pennsylvania Public Utility Commission*, 119 A.2d 674, 678 (Pa. 1976)); *see also Natural Fuel and Gas Distribution Corporation v. Pa. PUC*, 464 A.2d 546, 558 (Pa. Cmwlth. 1983). The Commission is not a “super-board of directors” for the public utility companies and it has no right of

management over them. *Peoples Cab Co. v. Pa. PUC*, 137 A.2d 873, 878 (Pa. Super. 1957).

As noted above, the Commission has routinely recognized that where the evidence demonstrates an abuse of managerial discretion *and* the public interest has been adversely affected, the Commission is empowered to intervene. *Met-Ed*, 437 A.2d at 80. However, to find an abuse of discretion or arbitrary action by the utility company, the Commission may only consider the information the utility's management knew or should have known at the time of the decision at issue. *City of Pittsburgh v. Pa. PUC*, 88 A.2d 59 (Pa. 1952).<sup>24</sup>

It is worth noting that if we determine the residency requirement to be a ratemaking decision, then we would have the right and the duty to review it, without needing to apply the “management discretion doctrine.” *Philadelphia Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1051 n.6 (Pa. Cmwlth. 2002). While it is likely that the PWSA will attempt to recoup the increased costs that it has incurred as a result of the residency requirement, we find that classifying the residency requirement as a ratemaking decision would be premature as the PWSA is not proposing to recover these costs in the proceeding before us. Therefore, for the purposes of this proceeding, we shall view the residency requirement as a management decision and consider any ratemaking implications that may result in a future rate case. Based on the foregoing discussion, we shall deny the first subpart of I&E’s Exception No. 2 because I&E has failed to demonstrate a violation of Section 1301 at this time.

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<sup>24</sup> Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time the judgment was exercised can be considered. Hindsight review is impermissible. *Re Salem Nuclear Generating Station*, 60 Pa. P.U.C. 249 (Order entered Oct. 24, 1985).

However, based on the record evidence, we find that the continuation of the residency requirement is an abuse of managerial discretion and will adversely affect the public interest for the reasons discussed below. As a result, we shall grant the second subpart of I&E's Exception No. 2. In sum, it has been demonstrated in this proceeding, in large part through the PWSA's own admission, that the residency requirement results in a lack of adequate employees in the PWSA's workforce and a lack of reasonable levels of redundancy among the PWSA's workforce. These results show that if the residency requirement was permitted to be implemented in the Compliance Plan, it would appear to frustrate and seriously impede the PWSA's ability to comply with Section 1501 of the Code.

Traditionally, we have viewed abuses of managerial discretion based on concrete and discernable impacts on consumers such as increased costs for maintenance or imprudent improvements to facilities. *See Park Towne v. Pa. PUC*, 433 A.2d 610, 615-16 (Pa. Cmwlth. 1981); *Re Limerick Unit No. 2 Nuclear Generating Station*, 60 Pa. P.U.C. 600 (1985). The PWSA has estimated that its work force is comprised of over 10% of full-time contractors, who work at a 150% to 200% cost premium; and this has added over two million dollars per year to its non-unionized work force cost. I&E Exc. at 12-13 (citing I&E Ex. No. 2, Sch. 7, at 2). Additionally, implementing the residency requirement has prevented the PWSA from recruiting from the vast majority of the surrounding Pittsburgh metropolitan area and has reduced its ability to maintain reasonable levels of redundancy among its staff. These are the type of concrete and discernable impacts that have been traditionally associated with abuses of managerial discretion.

However, even with an abuse of managerial discretion, we are not empowered to intervene unless there is an adverse effect to the public interest. Here, we can determine from the evidence before us that the PWSA's residency requirement if implemented in its Compliance Plan would appear to frustrate and seriously impede the

PWSA's future ability to comply with Section 1501 of the Codes. Section 1501 of the Code requires, in part, that "[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities...." 66 Pa. C.S. § 1501 for the reason stated below.

Despite the benefits cited to by the ALJs, foreclosing 86% of a qualified working population would in our opinion cause harm to consumers. Putting the increased costs aside, a lack of adequate, qualified technical employees, including reasonable redundancies of such employees, to provide necessary daily operation and maintenance of the PWSA's system is inconsistent with a utility's duty to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. While the PWSA's contractors may be qualified to deal with day-to-day operations and any emergencies that may arise, the lack of redundancy will more likely lead to a drain of institutional knowledge that will interfere unreasonably with the PWSA's duty to provide adequate, efficient, safe and reasonable service. Therefore, the results of the PWSA's residency requirement is inconsistent with its obligations under Section 1501. It bears repeating that the PWSA has already admitted that "the record here supports a Commission finding that the residency requirement is increasing costs to the PWSA and *impeding its ability to provide adequate and efficient service.*" PWSA R.B. at 22 (emphasis added).

Since the PWSA has admitted that the residency requirement impedes its ability to provide adequate and efficient service, to permit the residency requirement to be implemented in the PWSA's Compliance Plan would be inconsistent with Section

1501 of the Code.<sup>25</sup> Accordingly, we direct the PWSA to revise its Compliance Plan to remove the residency requirement as currently proposed.

Moreover, we also reject the residency requirement on the basis that it is arbitrary and capricious. When asked about the absence of the residency requirement in the Compliance Plan, the PWSA simply indicated that its board chose to adopt the City's residency requirement. PWSA St. No. C-2 at 14. The PWSA has not presented any evidence nor advanced any argument to indicate that its board of directors had the public interest in mind when deciding to implement the residency requirement. The only argument that had been raised by the Parties in this proceeding was I&E suggesting that the PWSA adopted the residency requirement to appease the City. I&E M.B. at 61-64. In the Recommended Decision, the ALJs advanced several possibilities as to why the residency requirement could be in the public interest, however, since the PWSA had not advanced these arguments or provided evidence in support, we will not consider them. As stated above, there has been no argument proffered to support the proposition that the residency requirement was enacted to support the public interest. We shall grant I&E's third subpart of its Exception No. 2 because it is clear from the record that the PWSA made no meaningful effort to determine whether its implementation of the residency requirement would benefit the public. *See Met-Ed*, 437 A.2d. at 81.

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<sup>25</sup> The purpose of this Chapter 32 Compliance Proceeding is to oversee PWSA's plans and efforts to come into compliance with the Code, Commission Regulations and Orders. For this reason, and based on the evidence, we refrain from concluding that the PWSA's residency requirement is a current violation of Section 1501, as the record demonstrates that the PWSA has hired sufficient numbers of consultants and contractors to compensate for its inability to hire adequate levels of qualified employees. However, there is sufficient evidence to support our finding that if it were to allow the PWSA to continue the implementation of this hiring policy going forward, the effects of this policy would appear to frustrate and seriously impede the PWSA's ability to comply with Section 1501 of the Code.

Therefore, for all the foregoing reasons, we shall order the PWSA to revise its Compliance Plan and eliminate the residency requirement.

## **V. Lead Infrastructure Issues**

### **A. Partial Settlement on Lead Service Lines**

The PWSA's proposed plan to remedy residential lead service lines (LSLs) existing within and connected to its water distribution system is set forth in the following documents filed in this proceeding: (1) the Compliance Plan filed September 28, 2018 (CP); (2) the Compliance Plan Supplement filed February 1, 2019 (CP Supplement); (3) the LTIIP dated August 21, 2019 (PWSA Hearing Exh. 3) (LTIIP);<sup>26</sup> (4) PWSA's Board Policy dated July 26, 2019 (PWSA St. C-1SD, Exh. RAW C-46) (July 2019 Policy); and (5) the Parties' relevant expert testimony. The PWSA's plan to address residential LSLs consisted of the following general components:

- Goal, objective and eligibility criteria;
- Inventory of public-side LSLs;
- Retroactive private-side replacements to be performed by PWSA for partial replacements of public-side LSLs previously completed by PWSA between February 1, 2016 and December 31, 2018;
- Systematic program replacements performed by PWSA after January 1, 2019 for public-side and private-side LSLs;
- Terms and conditions of private-side LSL replacements performed by PWSA;
- Ad hoc replacements of private-side LSLs initiated by property owners after January 1, 2019;
- Partial replacements of public-side LSLs performed by PWSA after January 1, 2019;

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<sup>26</sup> The PWSA originally filed an LTIIP on September 28, 2018 as part of the CP. The revised LTIIP dated August 21, 2019 was admitted at the evidentiary hearing as PWSA Hearing Exh. 3.

- Post-replacement measures, including notices and distribution of testing kits and water filters;
- Filter distribution (not in connection with LSL replacements);
- Community engagement; and
- Corrosion control.

As noted above, the active Parties in this case engaged in comprehensive litigation with respect to the PWSA's proposed lead plan. The Partial Settlement modifies, to the extent of the terms contained therein, the PWSA's plan. **Appendix A** attached hereto provides a full summary of the PWSA's proposed lead plan in this proceeding, as modified by the Settlement provisions, to remedy residential LSLs existing in, and connected to, its water distribution system.

The Settlement addresses many of the components of the PWSA's plan to remedy LSLs within its service territory (with the exception of three issues that the Parties reserved for litigation, as discussed below). It reflects the Parties' compromise on certain issues and recommendations raised during this proceeding. A full discussion immediately follows of the various issues that were litigated in this proceeding with respect to the PWSA's plan, for terms that the Parties agreed upon in the Partial Settlement.

## **1. LTIIIP and Private-Side Residential Lead Service Lines**

### **a. Statement of the Issue**

In its LTIIIP, the PWSA's accelerated replacement program is designed to address critical water supply risks. PWSA St. C-1 at 69. This includes, but is not limited to, the acceleration of the replacement of LSLs and Small-Diameter Water Mains (SDWMs). *Id.* at 69.

In its LTIIIP, the PWSA had estimated only the number of the PWSA-owned LSLs in its system (*i.e.*, the public-side LSLs) LTIIIP at 28; UNITED St. C-2 at 11, 30, 32. In 2018, it was estimated that there were about 12,300 residential public-side LSLs within PWSA's water system.<sup>27</sup> LTIIIP at 28. The PWSA estimated the number of residential customers potentially with public-side LSLs after 2020 to be around 6,000. LTIIIP at Table 2-7 (PWSA Hearing Exh. 3). The PWSA acknowledged it is under a DEP mandate, under existing state and federal laws<sup>28</sup> and the DEP COA,<sup>29</sup> to inventory its estimated 71,000 residential service line connections system-wide and to identify all LSLs by December 21, 2020. LTIIIP at 16; CP at 120; I&E St. 4 at 24; UNITED St. C-2 at 33.

The PWSA did not propose in its LTIIIP to estimate the number of customer-owned LSLs connected to the PWSA's service lines (*i.e.*, private-side LSLs). UNITED St. C-2 at 11, 32. UNITED's expert testified that there are likely several thousand private-side LSLs in the PWSA's service area and is estimated to be between 8,000 and 20,000 after 2020. UNITED St. C-2 at 32; UNITED St. C-1SUPP-R at 5, Appendix A, 1. According to UNITED's experts, these lines are an equal potential source of lead contamination. UNITED St. C-2 at 32. UNITED's expert concluded that if the PWSA does not know where these lines are, it cannot replace them; and, if

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<sup>27</sup> The PWSA has yet to perform its inventory of non-residential service line materials. PWSA St. C-1R at 60-61; PWSA C-1SD at 24; PWSA Exh. RAW/C-44; PWSA St. C-1R-Supp. at 2, 5-6; PWSA St. C-1RJ at 4, 16-17. Once the residential inventory is completed in 2020, PWSA will be working to complete an inventory of non-residential LSLs by December 31, 2022. *Id.*

<sup>28</sup> 25 Pa. Code §§ 109.1107(a)(6)(i), 109.1103(g)(1); 40 C.F.R. §§ 141.84(b)(1), 141.86(a) (requiring utilities with water lead levels that exceed the lead action level (*i.e.*, if lead concentrations exceed 15 parts per billion in more than ten percent of customer taps sampled) to prepare a materials evaluation that identifies the number of lead and copper pipes in their systems).

<sup>29</sup> PA DEP COA ¶ 3(c)(iii).

customers do not know that they receive drinking water through LSLs, they are less likely to take actions to protect themselves. *Id.*

**b. Terms of the Settlement**

The PWSA commits in the Settlement to file “at the appropriate time” a Petition to Amend its LTIP to include estimates of the number of private-side LSLs connected to its system and the expected expenditures for their replacement, to the extent that the Commission has authorized or directed the PWSA to replace such facilities. Partial Settlement at ¶ III.HH.1.

**c. Statements in Support**

The PWSA states that these terms are reasonable, are in the public interest, and should be approved as a framework that will provide the Parties with the opportunity to meet and exchange information and allow adequate time for review of all aspects of the recovery of costs for private-side lead line replacements. PWSA Statement in Support at 79.

I&E supports requiring the PWSA to set forth a plan that provides for it to replace private-side LSLs and thereafter pursue cost recovery permitted under Section 1311(b) of the Code. I&E Statement in Support at 75. Because a resolution of I&E’s and other Parties’ recommendations on this issue will necessarily impact the PWSA’s LTIP planning, I&E supports the PWSA’s commitment to amend its LTIP consistent with the final resolution of this issue. I&E Statement in Support at 75-76.

The OCA supports including the information regarding the replacement costs of private-side LSLs in the PWSA’s LTIP, noting that inclusion of such information is consistent with information that should be included in the LTIP. The

OCA states that the information provided will ensure that the PWSA is in full compliance with the Commission's LTIP requirements. OCA Statement in Support at 28.

UNITED did not take a position on this provision of the Settlement pertaining to the inclusion of the inventory of private-side LSLs in the PWSA's LTIP. UNITED Statement in Support at 6. However, UNITED supported the provisions of the Settlement, discussed *infra*, requiring the PWSA to estimate the number of private-side LSLs in its system and the methods the PWSA has committed to undertake to improve its inventory. *Id.* at 21.

## **2. Inventory of Residential Lead Service Lines**

### **a. Statement of the Issue**

UNITED's expert expressed concern that the PWSA's inventory of the estimated number and location of residential LSLs existing within and connected to its' system was still incomplete. UNITED C-2 at 30-32. UNITED's experts testified that the PWSA lacked a sufficient plan for completing the inventory of residential LSLs. *See e.g.*, UNITED St. C-2 at 29-32; UNITED St C-3 at 42-43; *see also* UNITED St. C-2SR at 2, 6-7.

I&E's expert likewise expressed concern over the PWSA's inability to accurately and completely inventory its service lines, a crucial step toward identifying and replacing LSLs. I&E St. 4 at 27.

In July 2019, prior to the evidentiary hearing in this proceeding, the PWSA presented DEP with its revised comprehensive plan to inventory service line materials in its distribution system. PWSA St. C-1SD at 24; PWSA Exh. RAW-C-44. In this

inventory plan, in addition to other methods, the PWSA revealed that it started working with the University of Pittsburgh to develop a machine-learning model that will improve LSL inventories.<sup>30</sup> PWSA Exh. RAW-C-44 at 8-9. The PWSA indicated that it expects the model to be complete by the end of 2019. *Id.* at 9. The PWSA revealed also that it is improving its inventory by recording the composition of private-side service lines when it replaces water meters. *Id.* at 7.

#### **b. Terms of the Settlement**

Per the Settlement the PWSA must estimate the number of private-side LSLs in its system. *Id.* at ¶ QQ.2.a. The PWSA is required to execute the inventory plans it has already made and submitted to DEP and to further improve the PWSA's inventory methods. *Id.* at ¶ III.QQ. The PWSA is obligated under the Settlement to use the machine-learning model to predict the location of LSLs and complete the modeling by March 31, 2020. Settlement at ¶ III.QQ.1.b. Using the modeling, existing database information, and other sources of information the PWSA continues to collect, the PWSA will establish an estimated inventory of the number of private-side LSLs connected to residential structures by December 31, 2020, and will update it annually as it completes replacement work in the future. *Id.* at ¶ III.QQ.1.c.

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<sup>30</sup> University of Pittsburgh professors and students are working closely with the methods employed by the developers of the Flint, Michigan inventory model to create a similar model for the data available in the PWSA water service area using a combination of Curb Box Inspection (CBI) results, service line inspection results, service line replacement information, meter replacement information, historical records, water sample data, and Allegheny County property data. The results of the model will be used to predict the location of LSLs throughout the remaining 22,890 water service locations in the PWSA service area. Preliminary efforts in developing the model show good correlation between the Flint model and PWSA efforts, although the PWSA model will be customized to take into account differences between Flint and PWSA. PWSA Exh. RAW-C-44 at 9.

In addition, once the machine-learning model generates predictions for service line composition, the PWSA must inform the public of those results. *Id.* at ¶ III.QQ.1.b. Further, the PWSA must present the Community Lead Response Action Committee (CLRAC)<sup>31</sup> with a plan for investigating the model’s predictions and to consider the CLRAC’s feedback. *Id.* at ¶ III.QQ.1.c.

**c. Statements in Support**

The PWSA asserts that the above-described framework is reasonable, is in the public interest, and is a compromise acceptable to Parties representing a variety of consumer interests as well as the public interest and is consistent with PA DEP regulations and the PA DEP COA, the MAA, and the Public Utility Code.<sup>32</sup> PWSA Statement in Support at 94.

I&E commends the PWSA's approach to inventory LSLs in its system, describing it as “innovative” and, while predictive and not definite, a certainly helpful guide as the PWSA continues its inventory efforts. I&E Statement in Support at 89.

The OCA submits that, overall, the settlement terms relating to lead ensure that the PWSA makes meaningful progress toward removing lead from the water system and provides customers with meaningful measures to address lead in drinking water. Separating its analysis of the Settlement’s lead provisions from the lead issues reserved

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<sup>31</sup> The CLRAC is comprised of representatives from local community groups, academics, a public health expert, and other interested parties. Rate Case Settlement at 11, Section III.C.1.a.

<sup>32</sup> The PWSA’s general statement in support is repeated in support of other provisions of the Settlement. Thus, for the sake of brevity, we will refer to this as “PWSA offers its general reasons in support of the above-described terms of the Settlement” and cite to the page reference in its Statement in Support, rather than fully repeating the general reasons in each of the individual sections below.

for litigation, the OCA submits that the terms agreed to provide significant benefits to the public in reducing potential lead exposure and provide a framework for additional future progress. As such, the OCA submits that these and all the terms in the Settlement are in the public interest and should be approved. OCA Statement in Support at 33-37.<sup>33</sup>

UNITED submits these terms of the Settlement are in the public interest because they commit the PWSA to developing a reliable and comprehensive inventory of its service lines and to sharing relevant information about the inventory with the CLRAC and the PWSA customers; that information, in turn, will support the PWSA's broader lead remediation efforts. UNITED Statement in Support at 21.

### **3. PWSA's 2026 Goal and Its Plans to Achieve It**

#### **a. Statement of the Issue**

In its CP, LTIP, and public statements, the PWSA expressed a goal of removing "all LSLs" from its system by 2026. But this goal referred to the removal of all public-side LSLs, not all private-side LSLs. LTIP at 28; CP at 120; PWSA St. C-1 at 54; UNITED St. C-2 at 14-16.

Pursuant to the rate case settlement, the PWSA has worked with the CLRAC to prioritize LSL replacements conducted through its neighborhood-based program according to children's blood lead levels, population of women of child-bearing age and children under six, and income. Rate Case Settlement, at 14, ¶ III.C.1.a.v. The PWSA proposed in this proceeding to discontinue its neighborhood-based replacement

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<sup>33</sup> The OCA's statement in support is general and does not address the specific provisions of the terms regarding lead. Thus, for the sake of brevity, the OCA's general reasons for supporting the settlement provisions will not be repeated in each of the individual sections.

program after completing replacements funded by PennVEST in September 2020. PWSA St. C-1 at 56-58; PWSA St. C-1R at 51-52;<sup>34</sup> PWSA St. C-1SD at 27; UNITED St. C-2 at 12, 27. Between 2020 and 2026, the PWSA proposed to conduct most LSL replacements through its accelerated SDWM replacement program. LTIIP at 28; PWSA St. C-1 at 56; UNITED St. C-2 at 12. The PWSA is seeking to accelerate replacement of its SDWMs in order to reduce service disruptions from main breaks. LTIIP at 18; UNITED St. C-2 at 12. The PWSA informed the Parties that it did not plan to consider public health criteria when selecting SDWMs for replacement from 2021 onward. PWSA St. C-1R at 62-63; UNITED St. 3-CSR at 7-8.

With respect to the PWSA's SDWM replacement program for 2020, the PWSA identified SDWMs for replacement. UNITED St. C-2 at 12; PWSA St. C-1 at 63; Exhibit RAW/C-25. These mains are located in the same areas as those covered by the 2019 neighborhood-based LSL replacement program. UNITED St. C-2 at 12; PWSA St. C-1 at 63. For 2021 through 2026, the PWSA had not identified SDWMs for replacement. UNITED St. C-2 at 13; PWSA St. C-1 at 63. The PWSA indicated its plans to select mains for those years through a prioritization scoring scheme. UNITED St. C-2 at 13 (citing LTIIP at 20-23; St. C-2 Appendix B, 17, UNITED IV-3). However, before the PWSA can implement such a scheme, it must first complete a two-year project to add information about its SDWMs to its GIS database. PWSA St. C-1 at 63; UNITED St. C-2 at 13 (citing UNITED St. C-2 Appendix B, 6, UNITED I-8).

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<sup>34</sup> The PWSA's witness Mr. Weimar explained that, once tap water monitoring results fall below the lead action level (*i.e.*, fewer than ten percent of tap water samples do not exceed lead levels of 15 parts per billion), the DEP COA will no longer mandate the PWSA to replace LSLs. Mr. Weimar expressed his expectation that the PWSA's DEP-approved orthophosphate water treatments will reduce lead monitoring results to levels below the action level. PWSA St. C-1 at 48-50; PWSA St. C-1SD at 23. Relying on his expectation for the future, Mr. Weimar referred to the absence of the obligation in the PA DEP COA to replace service lines as the reason to end its neighborhood-based program after 2020 and to conduct LSL replacements primarily through the SDWM replacement program, which he describes as a more cost-effective program. PWSA St. C-1R at 51-52.

UNITED's experts expressed concern that the PWSA's current replacement programs, including the neighborhood-based program and the SDWM replacement program, will not replace all public- and private-side LSLs in the PWSA's system by 2026 and that the PWSA does not yet have a plan for removing LSLs not addressed by these efforts. UNITED St. C-2, at 26-27, 30-32; UNITED St. C-SUPP-2, at 4-5. UNITED noted that the PWSA expected to replace public-side LSLs on approximately 138 miles of a total 720 miles of SDWMs in the PWSA's system. LTIP at 18; UNITED St. C-2 at 13 (citing UNITED St. C-2, Appendix B, 1, UNITED I-1). UNITED's experts expressed concern that any LSLs attached to the remaining approximately 580 miles of SDWM will not be replaced for another three decades, which is well beyond the 2026 goal. UNITED St. C-2 at 26-27; UNITED St. C-2, Appendix B, 9, UNITED I-13; UNITED C-2SUPP-R at 4. Therefore, UNITED's experts recommended that the PWSA include private-side LSLs in its 2026 goal and develop a comprehensive, just, and equitable plan capable of achieving that goal. UNITED St. C-2 at 14-21.

Additionally, UNITED's health expert, Dr. Bruce Lanphear, concluded that the PWSA must prioritize service line replacements in neighborhoods with the highest concentrations of at-risk populations. UNITED St. C-3 at 24-28. At risk populations include children and pregnant women since they are particularly vulnerable to adverse health effects from lead exposure, and the proportion of children in Pittsburgh with elevated concentrations of lead in their blood is much higher in some neighborhoods than others. UNITED St. C-3 at 6-8, 11-14. According to Mr. Lanphear, low income, Black, and Latina individuals are also at disproportionate risk of lead exposure because they are more likely to live in older homes and rental homes with aging and poorly maintained infrastructure. *Id.* at 7-8, 13; UNITED St. C-3SUPP-R at 3, 5.

The OCA submitted that the PWSA must develop a comprehensive plan for removing LSLs from its water system and to remove LSLs in the most efficient manner possible. OCA St. 2 at 13-14; OCA St. 2R-Supp at 1-7.

## **b. Terms of the Settlement**

In the Settlement the PWSA committed to the goal of replacing all residential public- and private-side LSL in its system by 2026. The PWSA committed to offering private-side LSL replacements at no direct customer cost to property owners where the PWSA replaces a public-side service line connected to a private-side LSL (subject to the PWSA obtaining the residence owner's consent and determining the replacement of service line to be operationally feasible). Partial Settlement at ¶ III.QQ.2.

Using the inventory that the PWSA commits to establish by December 31, 2020, the PWSA also commits to formulate a “plan and timeline” for removing all known public- and private-side LSLs connections to a residential structure by 2026 by March 31, 2021. Partial Settlement at ¶ III.QQ.2.a-b. It will submit the plan to the CLRAC for feedback. *Id.* at ¶ III.WW.4.i. The plan must identify the methods the PWSA will use to replace LSLs and establish milestones for measuring PWSA's progress. *Id.* at ¶ III.QQ.2.b. The PWSA may revise the plan and its 2026 target date based on new information, but, if it does so, it must explain its reasons to the CLRAC and set a new target date for removing all LSLs from its system. *Id.* at ¶ III.QQ.2.c.

Starting in 2021, the PWSA will endeavor to replace at least ten miles of SDWM per year in Priority Lead Neighborhoods, which are designated after consideration of children's blood lead levels, prevalence of children under six years of age and women of childbearing age, income, LSL density, or any combination of lead related or public health-related factors recommended by CLRAC. Partial Settlement at ¶ III.VV.

In addition to an overall plan and timeline, the PWSA will prepare annually a plan describing the areas in which it intends to replace SDWM (pursuant to its SDWM replacement program). Partial Settlement at ¶ III.QQ.3. This detail will first be prepared

by September 30, 2019 (for 2021), and each year thereafter until September 30, 2026. The detailed plan will include: (1) the number and location of LSL replacements in the preceding year; (2) the mileage of SDWMs and the number of LSLs occurring in Priority Lead Neighborhoods; (3) the number estimated to be removed in the following year and the number of LSLs remaining to be removed. *See* Partial Settlement, Section III.OO. Starting with the September 2022 update, if the PWSA does not meet its commitment to replace at least ten miles of SDWMs in Priority Lead Neighborhoods, the PWSA will also explain the reasoning why it failed to do so and how it will address this deficiency in the future. Partial Settlement at ¶ III.QQ.3.c.

The PWSA commits to making a good faith effort to identify additional funding sources for lead line replacements, and it will request funding where appropriate. Partial Settlement at ¶ III.VV.1.c. In addition, prior to conducting a private-side LSL replacement, the PWSA will provide the property owner with information about the property damage that might occur during the replacement and will describe the restoration that the PWSA will perform. Partial Settlement at ¶ III.VV.1.d.

Finally, the Settlement establishes effective dates for the Settlement, which unless otherwise specifically noted, indicate that the provisions would take effect on the date that the Commission issues an order approving the Settlement, and extend until December 31, 2026. Partial Settlement at ¶ III.PP.

**c. Statements in Support**

The PWSA describes as “key” its commitments in the Settlement to replace, by 2026, one hundred percent of its known public and private LSLs attached to a residential structure (provided the property owner grants permission to replace the private side and no technical issues make replacement infeasible) and a detailed procedure by which the PWSA will inventory all residential LSLs and establish a “plan” and timeline

for accomplishing its goal. PWSA Statement in Support at 90. In addition to offering its general reasons in support of the above-described terms of the Partial Settlement, the PWSA highlights that such provisions exceed the requirements under the Lead and Copper Rule, DEP Regulations and the DEP COA. PWSA Statement in Support at 94, 97, 106, 107-108.

I&E supports the applicable timeline because it will provide set expectations and certainty for the PWSA's planning and budgeting purposes. I&E Statement in Support at 88. I&E fully supports these terms of the Settlement because they provide important expectations upon which Parties and the Commission can gauge the PWSA's progress in identifying and replacing LSLs. I&E submits that the PWSA's timely identification and replacement of LSLs is consistent with its obligation to provide adequate, efficient, safe and reasonable service under the Public Utility Code. In the case that the PWSA cannot meet the 2026 goal, it must now account for the reasons and thereafter provide an updated plan with new milestone target dates. I&E Statement in Support at 90-91.

Additionally, I&E supports the PWSA's commitment to pursue additional funding sources in order to facilitate increased levels of replacement. Finally, I&E supports the PWSA's agreement to target Priority Lead Neighborhoods for replacement, as the record evidence shows that these areas are comprised with the most at-risk population. I&E Statement in Support at 96 (citing UNITED St. C-3 at 25). Accordingly, I&E submits that the lead line replacement terms outlined in this Settlement are in the public interest and they are necessary steps to facilitate the PWSA's ability to provide adequate, efficient, safe and reasonable service. I&E Statement in Support at 96.

UNITED supports these provisions of the Settlement because they enact many of the recommendations made by UNITED's experts in this proceeding. UNITED states that these provisions are in the public interest and should be approved because they

require the PWSA to commit to a long-term goal to remove all LSLs and develop a detailed plan to reach that goal, with ongoing input and feedback from a broad range of stakeholders. UNITED Statement in Support at 21-22. Also, UNITED supports the PWSA's commitment to prioritize LSL replacements for vulnerable communities as part of its SDWM replacement program by working with the CLRAC to identify Priority Lead Neighborhoods and reporting on its progress. UNITED Statement in Support at 23-24.

#### **4. Partial Replacements of Lead Service Lines**

##### **a. Statement of the Issue**

A partial LSL replacement is the replacement of a public-side service line made of any material without the simultaneous replacement of a connected private-side LSL. UNITED St. C-2 at 9-10; Partial Settlement at ¶ III.OO.6.

Partial replacements are dangerous to public health because they can cause spikes in drinking water lead levels that can last for months, as documented by post-replacement tap water monitoring in Pittsburgh. UNITED St. C-2 at 5, 9-10, 22-25; UNITED St. C-3 at 15-24.

The active Parties took the position that the PWSA should avoid partial LSL replacements.

The PWSA's Board adopted a policy to refrain from and minimize partial LSL replacements. LTIIP at 16, 56; July 2019 Policy at 1 (PWSA Exh. RAW/C-46).

## **b. Terms of the Settlement**

In the Settlement, the PWSA commits that it will limit partial LSL replacements to only four situations. Three of the situations involve instances where a property owner does not consent to the PWSA's offer to replace the private-side LSL at the same time it is replacing the public-side portion of the service line. The Settlement effectively defines the number and types of attempts the PWSA must make to contact the property owner and obtain consent. Specifically, the three situations are defined as follows: (1) when the PWSA is replacing a public-side LSL as part of its systematic programs (as part of its SDWM replacement program or moving a residential service line from an abandoned water main to a different water main) and the PWSA cannot obtain consent from the property owner to replace a private-side LSL after making at least one attempt by mail, by telephone and in-person; (2) when a property owner who also resides at the property signs a formal agreement stating that they do not consent to a free private-side LSL replacement and that they understand the risks of a partial replacement; or (3) when the PWSA is replacing a public-side service line as a result of an emergency circumstance (*e.g.*, water main leak, broken curb stop, or damage to other infrastructure) and the PWSA cannot obtain consent from the property owner to replace a private-side LSL after making at least one attempt by phone and in-person. Partial Settlement at ¶ III.VV.1.b.ii-iv.

The fourth scenario does not involve situations where the customer rejects the PWSA's offer. Rather, it involves extraordinary circumstances. More specifically, the PWSA may exclude a residence from the offer to complete the simultaneous service line replacement and not replace the private-side LSL if the PWSA determines, in its sole discretion, one of the following: (1) that replacement of the private-side portion of the LSL at the particular residence is not technically feasible; (2) that the residence is unsafe from a structural or sanitary condition; or (3) that the replacement will result in excess expense, due to conditions, such as length, terrain, obstructions, structures,

pavements, trees, or other utilities. Partial Settlement at ¶ III.VV.1.b.i; July 2019 Policy at 2, ¶ 3.3.

In all four situations above, the PWSA will provide residents who receive partial LSL replacements with information regarding the risks of lead exposure from partial LSL replacements. Partial Settlement at ¶ III.TT.3.a.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement and highlights that such provisions exceed the requirements under the Lead and Copper Rule, PA DEP Regulations and the PA DEP COA. PWSA Statement in Support at 98.

I&E supports the LSL replacement provisions offered here because they are geared toward ensuring that the number of partial lead line replacements are mitigated, an outcome that is consistent with avoiding significant spikes in lead levels. I&E Statement in Support at 96 (citing UNITED St. C-2 at 16). I&E supports the PWSA's attempt to avoid these spikes by limiting instances of partial replacements to unavoidable circumstances like those presented by structural issues or those rejected by an informed but unwilling recipient. I&E Statement in Support at 96.

UNITED expressed its support for the Settlement provisions because they are intended to reduce the instances of partial replacements and increase transparency and reporting related to instances where a partial replacement is performed. Additionally, the Settlement extends the bar on performing partials at residences that are not occupied by the property owner. Settlement III.VV.1.b.3. However, other than summarizing the PWSA's overall commitments to reduce partials, UNITED does not explain how the Settlement provisions addresses its experts' testimony in the record regarding the dangers

to human health wherever and whenever a partial replacement is indeed performed. UNITED Statement in Support at 24-26.

## **5. Interior Plumbing Inspections**

### **a. Statement of the Issue**

It is generally recognized that the PWSA is not responsible for diagnosing or repairing a customer's internal plumbing or associated equipment. Settlement at ¶ III.VV.1.d. At the same time, it is recognized that beyond private-side service lines, older homes may have lead-bearing interior plumbing. UNITED St. C-2 at 6, UNITED St. C-2SUPP-R at 9; UNITED St. C-3 at 7-8, 13; UNITED St. C-3SUPP-R at 4-5. It was recommended that the PWSA should assist residents with inspecting their interior plumbing and identifying potential sources of lead exposure, such as galvanized pipes, lead solder, or brass fixtures. UNITED St. C-2 at 36-37.

### **b. Terms of the Settlement**

Section RR of the Settlement reaffirms the PWSA's existing practice to inspect the interior plumbing adjacent to the water meter whenever it replaces the meter or when it replaces a private-side line, and to inform customers in writing if the interior plumbing is observed to be composed of galvanized steel or iron, and to inform customers of the risks of lead release from such plumbing. Specifically, under the Settlement, the PWSA agreed that whenever the PWSA replaces a residential water meter, the PWSA will inspect the interior plumbing adjacent to the water meter and inform residents in writing of the materials observed. If the interior plumbing is composed of galvanized steel or iron, the PWSA will inform customers of the risks of lead release from such plumbing. Partial Settlement at ¶ III.RR.1-2.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement and highlights that such provisions exceed the requirements under the Lead and Copper Rule, DEP Regulations and the DEP COA. PWSA Statement in Support at 99-100.

I&E supports the PWSA's adoption of these important terms which are intended to inform customers of plumbing-related lead release risks which they might not have knowledge of and therefore the ability to protect against. To that end, I&E submits that these terms are in the public interest and consistent with the PWSA's obligation to provide adequate, efficient, safe and reasonable service. I&E Statement in Support at 91-92.

UNITED did not address this specific provision of the Settlement.

**6. Meter Replacements**

**a. Statement of the Issue**

The PWSA is embarking on a five-year effort to replace 50,000 water meters in its distribution system. LTIIP at 25; PWSA St. C-1 at 31. The PWSA is undertaking a comprehensive metering program to identify and replace nonworking or aged meters (of all sizes), upgrade testing processes and equipment, and ensure that the PWSA has the technical ability to reasonably accommodate customer requests for meter testing. Partial Settlement at ¶ III.J.1.

There are health dangers surrounding the replacement of meters at residences that still have a private-side LSL. UNITED St. C-3 at 40-41. Studies have

shown that water meter replacements can cause tap water lead levels to increase sharply by physically disrupting an LSL. UNITED St. C-3 at 41; UNITED St. C-2 at 37. However, it is not clear whether water meter replacements in Pittsburgh are having a similar effect. *See* PWSA St. C-1R, at 54.

**b. Terms of the Settlement**

Under the Settlement, the PWSA agreed to take actions to ensure that a new meter installed at any residence is “lead free,” as defined at 42 U.S.C. § 300g-6(d). Settlement at ¶ III.SS.4. The PWSA has agreed that starting on September 1, 2019, and ending three months later, it would provide a free tap water lead testing kit whenever it places a water meter at a residence that has a private-side lead or galvanized service line or lead-bearing or galvanized interior plumbing adjacent to the water meters. Partial Settlement at ¶ III.SS.1.

The PWSA further agreed to provide, at no charge, a tap water lead testing kit to any resident within its service area who requests one. Partial Settlement at ¶ III.TT.1.

In addition, the PWSA agreed to conduct a study to examine lead effects from meter replacement. Starting September 1, 2019, the PWSA will conduct a three-month study to determine the potential impact of replacing a water meter at locations with LSLs or adjacent lead-bearing or galvanized interior plumbing. Partial Settlement at ¶ III.SS.1. If the PWSA determines that when replacing a water meter that lead levels exceed ten parts per billion for more than 10% of the sample, the PWSA will start providing to those customers water filters and filter cartridges to remove lead. By January 31, 2020, the PWSA will present CLRAC with the results of the samples received to demonstrate the potential impacts and will solicit feedback from CLRAC, or

it will take immediate action as determined to be necessary by the results of the study. Partial Settlement at ¶ III.SS.3.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement and highlights that such provisions exceed the requirements under the Lead and Copper Rule, DEP Regulations and the DEP COA. PWSA Statement in Support at 101.

I&E supports the PWSA's commitment to implement a testing period in order to gauge the lead levels resulting from water meter replacement, and asserts that identifying the lead level impact is critical to protect the health and safety of ratepayers who may not otherwise know that they are being impacted. Additionally, I&E supports the PWSA's commitment to providing the National Sanitation Foundation (NSF)-certified water filters and water testing kits in the event that the testing threshold is met, because in that instance, such action is necessary to ensure the health and safety of the impacted customers. Accordingly, I&E supports these commitments as being in the public interest and consistent with the PWSA's obligation to provide adequate, efficient, safe and reasonable service. I&E Statement in Support at 92-93.

UNITED stated that the terms requiring the PWSA to conduct a study to examine lead effects from meter replacement will help the PWSA identify and, if necessary, mitigate risks to customers from water meter replacements. UNITED Statement in Support at 27-28.

## **7. Tap Water Filter Distribution**

### **a. Statement of the Issue**

Filters can offer short-term protection from elevated lead levels in drinking water. UNITED St. C-3 at 30. Pursuant to the rate case settlement, the PWSA currently offers filters and replacement cartridges free of charge to: (1) customers who receive LSL replacements; (2) any customer who submits a tap water sample that reveals lead concentrations above fifteen parts per billion; and (3) low income customers eligible for the PWSA's Customer Assistance Programs. *See* Rate Case Settlement, at 13, ¶ III.C.1.a.iv & 17, ¶ III.C.1.d.v. The Compliance Plan and LTIP did not indicate whether the PWSA would continue providing filters in these circumstances after 2019.

The active Parties sought to improve the PWSA's distribution of tap water testing kits<sup>35</sup> and water filters.<sup>36</sup> UNITED recommended that the PWSA should offer water filters to residential customers whose tap water tests have lead levels exceeding five parts per billion as opposed to fifteen parts per billion. UNITED St. C-3 at 4, 28-35.

### **b. Terms of the Settlement**

Section TT of the Settlement reaffirms the PWSA's existing practice regarding tap water testing. The PWSA will provide at no charge a tap water lead testing kit to: (i) any resident within its service territory who requests a kit; and (ii) any resident within its service territory who had a partial LSL replacement, full LSL replacement, or private-side only LSL replacement. Partial Settlement at ¶ III.TT.3. The PWSA has agreed to provide test kits and water filters to any resident within its service territory who

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<sup>35</sup> UNITED St. C-3 at 40, 46.

<sup>36</sup> UNITED St. C-1 at 51; UNITED St. C-2 at 37; UNITED St. C-3 at 4, 28-35; UNITED St C-3SR at 10-13.

receives a meter replacement with lead or galvanized plumbing identified, if the PWSA determines, after a three-month test that lead levels are exacerbated due to meter replacement (pursuant to section (SS)). Partial Settlement at ¶ III.TT.1.c.

If the results of the test show lead at above ten parts per billion, the PWSA will provide at no charge water filters and filter cartridges for up to six months and will continue to provide both testing kits and water filters if the tests show lead levels above ten parts per billion (ppb). *See* Partial Settlement at ¶ III.TT.1.a-b., TT.3.b. If the three-month follow-up test result shows lead levels above ten ppb, the PWSA will assist the resident in determining why lead levels remain elevated. Partial Settlement at ¶ III.TT.3.c.

In addition, until the PWSA's Lead and Copper Rule sampling results fall below the lead action level during two consecutive six-month monitoring periods, the PWSA will offer, at no charge, an NSF-certified water filter to remove lead and six months of filter cartridges to any customer enrolled in the PWSA's Customer Assistance Programs and any tenant that would be eligible for the PWSA's Customer Assistance Programs if they were a customer, when the PWSA's records (including predictions from the machine-learning model described above in Paragraph III.QQ.1 of the Settlement) indicate that the customer's or tenant's residence has a public-side or private-side service line made of lead or unknown material. Partial Settlement at ¶ III.TT.2.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement and highlights that such provisions exceed the requirements under the Lead and Copper Rule, DEP Regulations and the DEP COA. PWSA Statement in Support at 103.

I&E commends the PWSA's commitment to provide a free water lead testing kit to any resident within its service areas who requests one because it empowers customers to self-identify elevated lead levels in their water so that action can be taken to address those levels. Absent such testing, the impacted customers may not become aware of harmful lead levels as is necessary to address and remediate those levels. Additionally, I&E supports the PWSA's commitment to providing the NSF-certified water filters and water testing kits in the event that the testing threshold is met, because in that instance, such action is necessary to ensure the health and safety of the impacted customers. Accordingly, I&E supports these commitments as being in the public interest and consistent with the PWSA's obligation to provide adequate, efficient, safe and reasonable service. I&E Statement in Support at 93-94.

UNITED states that the Settlement commits the PWSA to continuing its existing filter programs but also expands those programs in important respects. First, the PWSA will now provide free filters and replacement cartridges whenever tap water samples reveal lead levels in excess of ten parts per billion, rather than the previous threshold of fifteen parts per billion. Although UNITED recognizes that there is no safe level of lead in drinking water, lowering this threshold will better protect public health. UNITED Statement in Support at 26 (citing UNITED St. C-3 at 32-33). Second, UNITED supports that the terms of the Settlement require the PWSA to expand its low-income filter program to include not just low-income customers, but also low-income tenants who are not customers but who would qualify for one of the PWSA's Customer Assistance Programs. Partial Settlement at ¶ III.TT.2. Purchasing a filter can be a financial burden for any low-income resident, regardless of whether they rent or own their home. UNITED St. C-1 at 48-49; UNITED St. C-1SUPP-R at 10. The Settlement thus better protects tenants from the risks of drinking lead-contaminated water while LSL replacement efforts are underway. Noting that UNITED is litigating the PWSA's proposed income-based reimbursement program, UNITED asserts that if the PWSA's program is approved, certain tenants may never have their LSL replaced and filters will

indefinitely be relied upon to help minimize their exposure to lead in drinking water. Thus, ensuring low-income tenants have ongoing access to free filters is of critical importance. UNITED Statement in Support at 26-27.

## **8. Bottled Water and Flushing Assistance**

### **a. Statement of the Issue**

The PWSA follows, and will continue to follow, all federal and state requirements with regard to follow-up water sampling post-LSL replacement. PWSA St. C-1R at 58. The PWSA provides bottled water and assists customers with flushing their line if any post replacement sample shows water lead levels above 100 ppb. *Id.* UNITED recommended that the PWSA use thresholds much lower than 100 ppb. UNITED St. C-3 at 38. In response, the PWSA indicated its willingness to reduce said threshold from 100 ppb to 50 ppb. PWSA St. C-1R at 58-59. Dr. Lanphear testified that the threshold is arbitrary and should be even lower than 50 ppb to be sufficiently health protective. UNITED St. C-3SR at 12-13.

### **b. Terms of the Settlement Terms**

Under the Settlement, the PWSA agreed that if a residence's tap water lead test reveals lead concentrations above 50 ppb, it will deliver to the residence at least one case of bottled water per day until the PWSA completes a meter drop and flush at the residence. Partial Settlement at ¶ III.UU.1. Residents who receive a meter drop and

flush will remain eligible for additional filter cartridges and other assistance as described above in Paragraphs III.TT.1 and III.TT.3 of the Settlement. Partial Settlement at ¶ III.UU.1.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement. PWSA Statement in Support at 104.

I&E believes the PWSA's commitment to provide an alternate source of water impacted residences with at least one case of bottled water per day is essential to protecting the health and safety of consumers at those residences. I&E Statement in Support at 94. I&E also supports the PWSA's agreement to provide follow-up testing and water filters to residences that have a drop and flush so that lead levels can be monitored and water filtration assistance will be provided until lead levels are no longer above ten ppb (5 ppb below the actionable level). In this case, the PWSA has articulated commitments it will undertake when it is not providing safe water, and while the intent of this Settlement is to guard against such circumstances, I&E supports these terms as necessary health and safety protections. I&E Statement in Support at 94-95.

UNITED did not address this provision of the Settlement.

**9. Community Lead Response Advisory Committee**

**a. Statement of the Issue**

The settlement of the PWSA's rate case created the CLRAC. Rate Case Settlement at 11, Section III.C.1.a. The CLRAC consults with and provides feedback to the PWSA on its LSL Replacement Project and lead remediation efforts. I&E St.

4 at 3. Although the initial CLRAC term was set to expire in 2021, UNITED recommended that the PWSA extend the term through at least 2026. UNITED St. C-3 at 27. In response, the PWSA indicated its willingness to extend the terms of the CLRAC and to continue to consult with the CLRAC. PWSA St. C-1R at 63.

**b. Terms of the Settlement**

The Settlement extends the CLRAC's term through 2026 (subject to the active participation of its members). Partial Settlement at ¶ III.WW.1. The Settlement permits the PWSA to terminate the CLRAC after January 1, 2022, if there are just and reasonable circumstances for its termination, including insufficient participation and/or engagement in the CLRAC. Termination of the CLRAC will be effective 120 days after notice is provided by the PWSA to CLRAC members. Partial Settlement at ¶ III.WW.2.

It commits the PWSA to consulting with the CLRAC regarding lead remediation efforts on a quarterly basis on various topics including: (1) prioritization of residences for LSL replacement; (2) information on instances on when the PWSA has been unable to replace private-side LSLs because of conditions such as technical infeasibility or refusal of the property owner to give consent; (3) information regarding the costs incurred by customers seeking reimbursement for private-side LSLs; (4) information regarding the PWSA's efforts to secure funds from government sources to supplement the cost of LSL replacement; (5) information about the PWSA's water filter distribution policy; (6) information about improving outreach efforts and exploring other methods for obtaining customer consent for private-side LSL replacements; (7) efforts to increase customer participation in pre and post LSL replacement and post meter replacement tap water lead testing programs; (8) information about the PWSA's machine running model predictions regarding location of public- and private-side LSLs in the PWSA's service territory; and (9) the PWSA's overall plans for replacing all known

remaining LSLs connection to residential properties, including the number of private service lines located in the service area, etc. Partial Settlement at ¶ III.WW.

The PWSA also committed to gather information for presentation to the CLRAC to help ensure that the Committee has the data it needs to provide meaningful feedback. For instance, the PWSA must report to the CLRAC twice each year the number of partial LSL replacements it performs. *Id.* at ¶ III.W.4.b. In addition, the PWSA will provide both to the CLRAC and also the Commission and the parties, quarterly updates regarding the PWSA's orthophosphate program which includes testing results after the orthophosphate has been fully operational. Partial Settlement at ¶ III.XX.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement. PWSA Statement in Support at 110.

I&E supports the extension of the CLRAC's term and advisory input because it provides an important role in providing feedback and advisory input regarding the PWSA's lead remediation efforts. I&E views the PWSA's lead remediation efforts as central to the PWSA's customer safety and reliability of service; therefore, I&E asserts the extension of the CLRAC is in the public interest and will help ensure that the PWSA's lead remediation efforts are implemented efficiently and effectively. I&E Statement in Support at 97-98.

UNITED supports these terms of the Settlement. UNITED explained that it has participated in each of the seven CLRAC meetings to date and has found the committee to be an effective way to communicate community preferences and concerns to the PWSA about its lead remediation programming. UNITED described the PWSA as

having been well-prepared for the CLRAC meetings and as appearing to be carefully considering the feedback it receives. UNITED described the CLRAC members as contributing unique expertise – ranging from public health to community organizing to engineering – in service of their shared goal of making the PWSA’s lead remediation efforts as effective as possible. While recognizing that the ultimate decision-making authority regarding lead remediation programming remains with the PWSA and the Commission, UNITED asserts that the CLRAC promotes the PWSA’s accountability to its customers. Therefore, UNITED supports this provision of the Settlement as being in the public interest. UNITED Statement in Support of 18-19.

## **10. Corrosion Control**

### **a. Statement of the Issue**

With PA DEP’s approval, the PWSA has implemented a corrosion control method for its drinking water using orthophosphate. PWSA St. C-1 at 48-50; PWSA Exh. RAW/C-21; PWSA St. C-1R-Supp at 7. By introducing orthophosphate into the PWSA’s system in April 2019, the PWSA is mitigating the health concerns associated with LSLs. PWSA St. C-1R-Supp at 7. The PWSA expects that the orthophosphate treatment process will result in reduced lead levels to far below action levels at homes with LSLs. PWSA St. C-1 at 48-50. The PWSA began adding orthophosphate in April 2019. PWSA St. C-1R-Supp at 7; PWSA St. C-1SD at 23. It will take (an undefined amount of) time for the orthophosphate to become fully effective. PWSA St. C-1RJ at 17-18; UNITED St. C-2SUPP-R at 9.

I&E Witness Gray recommended for the PWSA to provide quarterly corrosion control updates, which the PWSA agreed to during the pendency of this case. I&E St. 4 at 8.

**b. Terms of the Settlement**

Under the Settlement, the PWSA will provide the Commission, the Parties, and the CLRAC with quarterly updates regarding the progress of the PWSA's orthophosphate program, when the PWSA started testing for lead levels, and the results of the lead level testing. Partial Settlement at ¶ III.XX.1. The PWSA's obligation to provide the quarterly updates (under the Settlement) will cease when it is no longer required to provide quarterly updates on its orthophosphate program to DEP. Partial Settlement at ¶ III.XX.2.

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement. PWSA Statement in Support at 111.

I&E submits that the PWSA's agreement to report the results of its lead level testing as its orthophosphate program progresses is essential to gauging the program's effectiveness in addressing lead levels in the PWSA's water. The effectiveness of the orthophosphate will be a critical metric in evaluating the PWSA's overall success in reducing lead levels in its water, and ensuring the Commission and Parties are kept apprised of testing results while lead levels are actionable and PA DEP reporting requirements remain in place as necessary to ensure safe service and protect the public interest. I&E Statement in Support at 98.

UNITED did not address this specific provision of the Settlement.

## **11. Rate Treatment**

### **a. Statement of the Issue**

Whether the PWSA asserted that certain costs that are included in the PWSA's rates is an issue that goes beyond the scope of the Compliance Plan proceeding. PWSA St. C-2R at 11. Nevertheless, the active parties sought additional commitments regarding the LSL replacement costs.

### **b. Terms of the Settlement**

The Settlement provides that the PWSA will separately identify all projected LSL replacement costs and details on its cost projections in its rate filings. Settlement at ¶ III.YY.1. When the PWSA adopts the National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA), it will show projected and actual LSL replacement costs as a sub account; and, the PWSA will determine whether it would be appropriate to include in a sub account of Account 333. Partial Settlement at ¶ III.YY.3.

In addition, the PWSA will continue to provide information regarding actual replacement costs as part of its quarterly report provided to the parties pursuant to the Rate Case Settlement Par. A.2.c. (Docket Number R-2018-3002645) that includes quarterly and cumulative year-to-date data. Partial Settlement at ¶ III.YY.2. This reporting requirement will continue through the term of the LSLR Program. *Id.* Actual replacement costs will be evaluated in future base rate proceedings and shared with the CLRAC (and the parties to the case). *Id.*

**c. Statements in Support**

The PWSA offers its general reasons in support of the above-described terms of the Settlement. PWSA Statement in Support at 113.

I&E describes the PWSA's commitments regarding rate treatment of LSL replacement costs as "important" because they will act to ensure that important cost information will be available in a navigable format when the PWSA submits its rate filings. Specifically, the PWSA's agreement to identify all projected LSL replacement costs and details on its cost projections in its rate filings will ensure that parties and the Commission understand the basis and forecasting assumptions that underlie any cost recovery claims the PWSA will make, which is essential to protecting ratepayers and will promote rate accountability. Additionally, the PWSA's commitment to providing information regarding actual replacement costs as part of the quarterly reporting obligation that it assumed as part of the rate case is essential to ensuring that parties and the Commission have accurate information about the actual amounts the PWSA has expended to ensure rate accountability. Finally, the PWSA's commitment that, when it adopts the NARUC USOA it will show projected and actual LSL replacement costs as a sub account, will be essential to ensure that the information is accessible and appropriately tracked. For these reasons, I&E supports these terms and submits that they are in the public interest. I&E Statement in Support at 99.

UNITED did not address this specific provision of the Settlement.

**12. Recommended Decision**

The ALJs explained that the Partial Settlement contains several terms relating to lead remediation issues that will enhance the adequacy, reliability, and safety of PWSA's service. R.D. at 82-83, 85.

The ALJs explained that the Partial Settlement includes a term memorializing the PWSA's commitment to, if determined necessary, amend its LTIIP once it is able to estimate the number of customer-owned lead service lines, and the expected expenditures for the replacement. The ALJs recognized that the PWSA is under a mandate to inventory its estimated 71,000 residential service line connections system-wide and to identify all lead lines by December 21, 2020. R.D. at 82-83 (citing Partial Settlement at 38, I&E St. No. 4 at 24, and Compliance Plan at 120).

In addition, the PWSA will develop a plan, in consultation with the CLRAC to find and replace all lead service lines in its system by 2026. The Authority will conduct lead service line replacements through its SDWM replacement program in neighborhoods with the greatest vulnerability to lead exposure. The PWSA will also continue its efforts to minimize harmful partial lead service line replacements and provide free tap water filters to the customers with the highest risk of lead exposure. According to the ALJs, the Partial Settlement builds on many of the provisions contained in the settlement of the PWSA's rate case, approved by the Commission on February 7, 2019. R.D. at 85 (citing UNITED St. in Support at 4-5).

While the ALJs' specific discussion of the Partial Settlement provisions pertaining to the PWSA's lead remediation plan is summarized here in this Section V, the ALJs' general reasons stated in support of their recommendation to approve the Partial Settlement, as summarized above in Section IV.A.1 of this Order, also apply to these provisions.

### **13. Disposition**

#### **a. Modification of Settlement Terms Relating to Partial Replacements**

We commend the important commitments made by the PWSA in the Settlement to minimize partial replacements of LSLs. Chief among them is the PWSA's commitment to replace a private-side LSL, at no direct cost to the property owner and subject to certain reasonable terms and conditions, simultaneously when the PWSA replaces a public-side service line, regardless of the material, under one of its systematic replacement programs.<sup>37</sup>

The Settlement defines four circumstances in which the PWSA will not complete the replacement of a private-side LSL simultaneously with the replacement of a public service line. Three of the situations involve instances where a property owner does not consent to the PWSA's offer to replace the private-side LSL, but the fourth situation is where the PWSA determines that performing the replacement would be operationally infeasible and/or produce excessive cost. In all four situations, the PWSA has committed to making reasonable attempts to obtain a property owner's consent and providing residents with information regarding the risks of lead exposure from partial LSL replacements.

The record in this proceeding is complete and contains unrefuted expert testimony showing that partial replacements of LSLs endanger public health because they can disturb the protective scales inside service pipes that help to prevent water from

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<sup>37</sup> Also chief among them is the PWSA's commitment to replace a public-side LSL at the same time a customer elects to replace the connecting private-side LSL as part of PWSA's ad hoc replacement program. The parameters of the PWSA's ad hoc replacement program, specifically the tiered income-based reimbursements, is the subject of litigation in this proceeding and is discussed further below.

leaching lead by shaking loose lead-containing scales from the pipe's interior, which flow to the household tap. UNITED St. C-2 at 10, 22; UNITED C-3 at 19. The potential for physical disruption of the lead scale on a private-side LSL is the same regardless of whether the public-side service line removed was made of lead or some other material. UNITED St. C-2 at 24-25. Partial replacements can cause spikes in drinking water lead levels from days to several months or potentially even longer, as documented by post-replacement tap water monitoring in Pittsburgh.<sup>38</sup> UNITED St. C-2 at 10, 22-25; UNITED St. C-3 at 15-24.<sup>39</sup> The negative effects of partial service line replacements are well documented in scientific literature, and, given the risk they pose to the public, the Allegheny County Health Department's Lead Task Force currently prohibits plumbers from replacing the private-side portion of a LSL when the public side of the service line is left in place. UNITED St. C-2 at 23; UNITED St. C-3 at 21.

The permanent negative health effects from lead exposure, especially to uniquely vulnerable populations of developing fetuses, infants and children, is explained in the unrebutted testimony of Dr. Lanphear, the only qualified medical expert in this proceeding. *See* UNITED St. C-3 at 5-14.

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<sup>38</sup> UNITED St. C-2 at 22 (citing, in part, the EPA's Science Advisory Board, EPA-SAB-11-015, available at <https://www.epa.gov/dwstandardsregulations/science-advisory-board-evaluation-effectiveness-partial-lead-service-line>, which observed that partial replacements "have not been shown to reliably reduce drinking water lead levels in the short term, ranging from days to months, and potentially even longer.").

<sup>39</sup> Dr. Lanphear's testimony contains two graphs that reflect and reconcile data of the PWSA post-replacement samples taken within one week of partial replacements and full replacements. The graph for partial replacements showed 46.6 percent of sample results > 15 and ≤ 50 ppb compared to 8.6% for full replacements. Partial replacements showed that 26.7 percent of sample results > 50 ppb compared to only 1.4% for full replacements. Partial replacements showed 0 percent of results > 5 and ≤ 15 ppb, compared to 28.6 percent for full replacements. Finally, partial replacements showed only 26.7 percent of results ≤ 5 ppb compared to 61.4% for full replacements. UNITED St. C-3 at 20 (citations omitted).

As mentioned, the foregoing evidence was unrebutted in this proceeding. In that regard, we note that no expert testimony was presented to demonstrate the existence of any effective techniques, upstream or downstream of the curb stop, to mitigate the elevated exposure to lead in tap water following the completion of a partial replacement. As for upstream mitigation, for example, no expert testimony was presented to demonstrate that orthophosphate water treatment will effectively mitigate the elevated exposure to lead in the short term resulting from the disturbance of the protective scale in the service pipe caused by a partial replacement. In fact, the record shows the opposite – it could take up to a year for the corrosion control benefits of orthophosphate water treatment to be fully realized. UNITED St. C-2 at 16-18; UNITED St. C-3 at 21, 34; UNITED St. C-3SR at 8.

As for downstream mitigation, we recognize that it has been presented in this proceeding, as if it were an established fact, that informing customers on the risks of lead exposure and providing them with instructions on flushing, testing kits and water filters are effective in mitigating exposure to lead following the completion of a partial replacement. However, no expert testimony supported this. Specifically, no expert testimony showed that customers, or any and all members of customers' households, who drink water from the tap and who employ any amount of informed or practical testing, flushing, use of water filters, or even a temporary discontinuance of tap water for drinking and cooking, will effectively mitigate the elevated exposures to lead in the short term following the completion of a partial replacement.

Therefore, based on the factual record before us, as summarized above, we find substantial record evidence that supports the PWSA's commitment in the Settlement to replace a private-side LSL simultaneously when it replaces the public-side service line at no direct cost to the property owner, as being in the public interest.

**(1) Partial Replacements Where a Residential Customer Rejects PWSA's Offer to Replace the Private-Side LSL**

In any instance where a customer does not consent to the PWSA's offer to replace the private-side LSL at the same time the PWSA is replacing the public-side portion of the service line, we are concerned with the PWSA allowing the private-side LSL to reconnect to the PWSA's system after it has replaced the public-side of the service line. As summarized above, based on the factual record before us, we find little to no evidentiary support for allowing the private-side LSL to reconnect to the PWSA's system after the PWSA has disturbed the public-side of the service line by removing old pipe and installing new service pipe. Following the PWSA's replacement of the public-side service line, we are unable to conclude from the factual record that it would constitute adequate, efficient, safe or reasonable water service, or be in the public interest, for the PWSA to permit the private-side LSL to reconnect to PWSA's water system.<sup>40</sup>

Recognizing that a customer is free to reject the PWSA's offer to replace the private-side LSL, we are concerned about the effects of a customer's rejection of the PWSA's offer. One effect of a rejection, assuming the PWSA completes the partial replacement, is, at worst a proven exposure to harm via the unmitigated, elevated lead levels in tap water, and at best, a waste of drinking water for an undefined period. Another effect of rejection, assuming the PWSA temporarily halts the replacement of the public-side of the service line, is to allow the customer's rejection to slow the pace of the

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<sup>40</sup> The evidence in this proceeding established that partial LSL replacements result in elevated lead levels in tap water. Therefore, allowing a private LSL to reconnect to PWSA's water system, without being replaced, would endanger public health. The Commission has the authority to direct that proper service and facilities be observed, furnished, enforced, or employed, in order to prevent harm. *See* 66 Pa. C.S. §§ 1501, 1505; *see also Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Order entered March 28, 2019) at 29-31.

PWSA's removal of lead infrastructure existing in its system and thereby drive up the costs related to this work and increase street dislocations and inconvenience. PWSA St. C-1R-Supp. at 3-5. It bears repeating that it has been demonstrated in this proceeding that it is in the public interest to approve the provisions of the Settlement affirming the PWSA's commitment to accelerate the replacement of LSLs existing within and connected to the PWSA's system by a target date certain. Thus, neither of the foregoing results appears to be reasonable.

The PWSA's currently effective tariff<sup>41</sup> provides the PWSA the right to refuse connection with a private-side LSL and to not allow reconnection of service until the customer certifies the removal of the lead service pipe. To the extent the customer-owned portion of the service line is comprised of lead or galvanized iron, the enforcement of these existing tariff provisions will result in a cessation of service to those customers who reject the PWSA's offer to replace the private-side LSL at the same time the PWSA is replacing the public portion of the service line and who otherwise fail to replace their private-side LSL in order to reconnect to the PWSA's system. Such result is already authorized in the PWSA's tariff and is, therefore, presumed reasonable.<sup>42</sup>

More specifically, in the PWSA's tariff, the PWSA's right to determine the type and material of a customer service line and its right to refuse connection with a private-side service line made of lead-based materials are clear. The tariff states:

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<sup>41</sup> *The Pittsburgh Water and Sewer Authority, Tariff Water – Pa. P.U.C. No. 1*, effective March 1, 2019 (PWSA Tariff), filed in compliance with the Order of the Commission entered February 27, 2019, at Docket No. R-2018-3002645.

<sup>42</sup> A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa. C.S. § 316, *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (*Kossmann*); and *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth. 1977) (*Stiteler*).

## Section B – Construction and Maintenance of Facilities

1. Customer Service Line: The customer service line shall be furnished, installed, maintained and/or replaced, when necessary by and at the sole expense of the customer. *The Authority reserves the right to determine the size, location, type, material, and depth of customer service lines.*
- ...
4. Right to Reject: The Authority may refuse to connect with any piping system or furnish water through a service already connected if such system or service is not properly installed or maintained. *The Authority may also refuse to connect if lead based materials, as defined in the Safe Drinking Water Act, have been used in any plumbing beyond the Authority's curb stop. It shall be the customer's responsibility to provide the Authority with a certification which may be required to verify the absence or removal of such materials.*

PWSA Tariff, Section B, Rule 4, Page No. 31 (emphasis added). These tariff provisions are not unique to the PWSA, but rather are consistent with other Commission-approved water utility tariffs.<sup>43</sup> Additionally, the PWSA's right to terminate service to a customer for the willful waste of water through improper pipes and/or the material violation of any provision of its tariff is equally clear. Specifically, the tariff states:

4. Termination by Authority: Service to the customer may be terminated for good cause, including, but not limited to, the following:

...

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<sup>43</sup> See e.g., *Pennsylvania-American Water Company, Tariff Water- PA P.U.C. No. 5*, effective January 5, 2020 (PAWC Water Tariff), Rule 4.1, Page 46; *Aqua Pennsylvania, Inc., Tariff-Water-PA P.U.C. No. 2*, effective December 10, 2019 (Aqua Water Tariff), Rules 21, 54, Pages 42, 52; *Suez Water Pennsylvania Inc., Water – Pa. P.U.C. No. 7*, effective January 1, 2020 (Suez Water Tariff), Rules 6, 12B, Pages 40, 41.

- b. willful...waste of water through improper or imperfect pipes...
- ...
- h. material violation of any provisions of this tariff.

PWSA Tariff, Section C, Rule 3, Original Page Nos. 39, 40. Again, these tariff provisions are consistent with other Commission-approved water utility tariffs.<sup>44</sup>

In our opinion, for those customers who refuse the PWSA's offer to replace the private-side LSL, a termination of service with prior notice, along with the PWSA's commitment in the Settlement to provide prior notice of the risks of lead exposure from partial LSL replacements,<sup>45</sup> unless and until the customer certifies that it has removed the lead service line, constitutes reasonable service under Section 1501 of the Code. This is so especially because the PWSA will effectively close any potential economic gaps for customers by offering to simultaneously complete the replacement of the private-side LSL, at no direct cost to the customer and subject to certain terms and conditions, at the time it is replacing the public-side portion of the line. Enforcing these applicable, existing tariff provisions along with the PWSA's Settlement commitments in ordinary circumstances establishes a viable path forward for the PWSA to provide water service in compliance with its obligations under Section 1501 of the Code.<sup>46</sup>

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<sup>44</sup> See e.g., PAWC Water Tariff, Rules 12.1-12.2, Page 60; Aqua Water Tariff, Rule 56, Page 53; Suez Water Tariff, Rule 31, Page 47.

<sup>45</sup> Partial Settlement at Paragraph III.TT.3.a.

<sup>46</sup> We recognize that our conclusion here does not address the issue raised in litigation during this proceeding as to whether the PWSA is required under Section 1501 to complete the replacement of the private-side LSL when it completes the replacement of the public-side service line. That is a separate question. However, as discussed below, we find that question is now moot, as the PWSA has already committed to the goal of replacing all qualifying residential LSLs in its system, private and public, by a target date certain, in order to avoid partial replacements.

## (2) Partial Replacements in Extraordinary Circumstances

In the fourth situation defined in the Settlement, the PWSA may exclude a residence from its offer to complete the simultaneous replacement and not replace a private-side LSL if the PWSA determines, in its sole discretion, that replacement of the private-side portion of the LSL at the particular residence is not technically feasible, the residence is unsafe from a structural or sanitary condition, or the replacement will result in excess expense, due to conditions, such as length, terrain, obstructions, structures, pavements, trees, or other utilities.

We acknowledge that the above exceptions to the PWSA's commitment to complete the simultaneous service line replacement at no direct cost to the customer may be necessary or reasonable due to the existence of extraordinary circumstances, as defined in the Settlement. However, whether a customer's circumstances meet the exception to PWSA's commitment should be determined on a case-by-case basis according to standards clearly defined within PWSA's Commission-approved tariff.<sup>47</sup> Moreover, even in these extraordinary circumstances, based on the record before us, there remains little to no evidentiary support for the PWSA to allow the private-side LSL to reconnect to the PWSA's system after the PWSA has disturbed the public-side of the service line. *See supra*.

That said, we are concerned that the PWSA's enforcement of its tariff to refuse reconnection to a private-side service line comprised of lead-based materials could

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<sup>47</sup> To illustrate our concern, for example, conditions such as length, terrain, obstructions, structures, pavement, trees, or other utilities, may be factors that result in a higher expense level required to complete the replacement of a single private-side LSL. At the same time, however, based upon an average of such factors for a particular neighborhood, the expense may not be excessive in relation to other customers in the neighborhood and, therefore, should not be deemed an exception to PWSA's offer to complete the private-side replacement.

constitute, in certain situations, a *de facto* abandonment of service to the customer, such as, for example, if the conditions of performing the replacement, such as length, terrain, obstructions, structures, pavements, trees, or other utilities, would effectively prohibit even the customer from replacing the private-side LSL.

In the Settlement, the PWSA has committed to providing an update to the CLRAC every six months on the number of instances in which the PWSA has been unable to replace a private-side lead service line because of the conditions set forth in Section III.VV.1.b. *See* Partial Settlement at ¶ III.WW.4.b.

We direct the PWSA to monitor these particular situations closely and to refrain from performing the replacement on the public-side of the service line until it has had the opportunity to report the factual circumstances to and consult with the CLRAC. After consulting with the CLRAC, the PWSA should make a determination as to the appropriate next steps, including, but not limited to, potentially not replacing the public-side of the line while corrosion control treatments and distribution of water filters remain in place. We also direct PWSA, in the context of its next rate case (as either part of its direct case or supplemental direct case), to propose reasonable changes, substitutions and extensions in or to service and facilities as may be necessary or proper for the accommodation and safety of customers in these extraordinary circumstances and to quantify any specific limits on PWSA's financial responsibility for a private-side lead service line replacement in such extraordinary circumstances.

### **(3) Modifications to Settlement**

Based on the foregoing, we shall modify Paragraph III.VV.1.b, to include new subsections (v) and (vi), stating 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 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 should make a determination as to the appropriate next steps, including, but not limited to, potentially not replacing the public side of the line while corrosion control treatments and distribution of water filters remain in place 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 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.
  
- 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. PWSA will begin the process to terminate service to the residence with prior notice in accordance with PWSA's tariff at Section C, Rule 3.j. Reconnection of service shall not be permitted until the customer certifies the removal of the private-side lead service line in accordance with PWSA's tariff at Section B, Rule 4.

The above modifications are reflected in **Appendix A** attached to this Order.

Should any of the Parties wish to withdraw from the Settlement based on this modification to the Settlement, that Party shall e-file or hand deliver to the Secretary of the Commission and serve on all Parties to this proceeding an election to withdraw within five (5) business days from the date that this Opinion and Order is entered. If such an election to withdraw is filed, the Settlement shall be disapproved, without further action by this Commission, and this matter shall be returned to the Commission's Office of Administrative Law Judge for further action as deemed appropriate. Partial Settlement at ¶ 58.

**b. Approval of Remaining Settlement Terms and Direction to File a Compliance Filing and an Amended LTIP**

We commend the PWSA for working with the Parties in this proceeding and setting forth a comprehensive service plan to execute on its goal to complete the replacement of all qualifying LSLs, public-side and private-side, in its system by 2026.

With the exception of the Partial Settlement provisions addressing partial replacements, as addressed above in subsection (a) of this disposition section, we find that the reasons offered in the Parties' Statements in Support of the Settlement are supported by substantial evidence in the record. We find that the terms of the Settlement pertaining to the PWSA's plan to remedy residential lead service lines existing in and connecting to its water distribution system are reasonable and in the public interest.

As we stated above, we repeat that our approval of the Partial Settlement will result in savings of time and expenses for all Parties by avoiding the necessity of further administrative proceedings and possible appellate court proceedings, conserving precious administrative resources. Additionally, the Partial Settlement provides regulatory certainty with respect to the disposition of issues which benefits all parties.

Given these approvals herein, similar to the views expressed by I&E and the OCA in this proceeding, we fully expect the PWSA to pursue cost recovery (subject to appropriate notice and Commission review and approval), as permitted under Code Section 1311(b) (re: recovery of replacement of customer-owned water service lines) and Section 1353 (re: recovery of DSIC-eligible property) associated with its work to remove lead service lines existing within and connected to its system. We note the Partial Settlement expresses the PWSA's and the active Parties' intent for the PWSA to seek the Commission's approval of a DSIC mechanism under Section 1353 in its next base rate case and to seek the necessary waivers related thereto. Partial Settlement at ¶ III.LL.2.3.

Pursuant to Act 120 of 2018 (Act 120), effective December 23, 2018, public utilities providing water service must obtain prior approval from the Commission for the replacement of a customer-owned lead water service line by filing a new tariff or supplement to existing tariffs under Section 1308. 66 Pa. C.S. § 1311(b)(2)(v). However, PWSA's efforts to replace customer-owned lead water service lines began in January of 2018, prior to both Commission oversight and the enactment of Act 120. While we are approving the PWSA's request to replace customer-owned lead service lines in this proceeding, we direct the PWSA to include in its next base rate case filing with the Commission (either as part of direct testimony or supplemental direct testimony) a *pro forma* tariff or tariff supplement with changes necessary to conform PWSA's processes and procedures regarding the replacement of customer-owned lead water service lines with the requirements of Act 120 including, but not limited to, establishing an expenditure cap on the maximum number of customer-owned lead water service that can be replaced annually. Such an expenditure cap will be subject to review and approval in the next base rate case. The expenditure cap should be clearly linked to its expenditure commitments in its LTIP (relating to PWSA's SDWM replacement program) (and as it relates to customer-owned lead service lines, only after such costs are deemed to be eligible property) and reflect realistic estimates of spending required to meet its goal to replace all residential LSLs in its system by a Commission-approved target date (*i.e.*, the

2026 target date approved in this proceeding or such other target date as may be proposed by PWSA in accordance with the Partial Settlement and approved by the Commission). 66 Pa. C.S. §§ 1311(b)(2)(v), (vi).

Because the PWSA's plan relating to LSLs will be tied closely to the PWSA's systematic main replacement programs set forth in the LTIIP and because the PWSA has agreed in the Partial Settlement to include an inventory of private-side LSLs in the LTIIP once the information becomes available through its planned inventory efforts, we believe it is appropriate for all of the PWSA's commitments addressing the inventory and replacement of residential lead infrastructure be contained in its LTIIP.<sup>48</sup> Moreover, given the circumstances of this case, where the PWSA's overall commitments are contained in numerous documents – *i.e.*, the CP, CP Supplement, LTIIP, the PWSA's Board July 2019 Policy, relevant testimony and the Partial Settlement – we believe it would be helpful for the PWSA to consolidate the plan into a single document so as to provide ongoing clarity and administrative efficiency for the Commission in terms of reviewing, modifying and enforcing the PWSA's commitments as well as determining the appropriate rate recovery related thereto.

Accordingly, we direct the PWSA to include in its revised Compliance Plan a single document, similar in substance to the **Appendix A** of this Order, setting forth the entirety of the PWSA's lead infrastructure plan, as approved in and consistent with this Opinion and Order. PWSA is directed to file this single document at this docket within 30 days of the effective date of this Order. To the extent the substantive information set forth in the single document is materially different from the summary contained in **Appendix A** of this Order, PWSA shall specify such difference(s) and provide record cites in support thereof.

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<sup>48</sup> Our authority to enforce a utility's compliance with a Commission-approved LTIIP is clear. 52 Pa. Code § 121.8. The remedy for any noncompliance with an LTIIP is the termination of the utility's approved DSIC mechanism. *Id.* § 121.8 (c).

We also direct the PWSA to amend its LTIIIP incorporating the relevant approved components of its lead infrastructure plan, consistent with this Opinion and Order, and to file the amended LTIIIP with TUS and serve a copy thereof on all active Parties in this proceeding. We request that the amended LTIIIP, in addition to incorporating any necessary changes in the body of the LTIIIP, include an appendix, containing a summary of all LTIIIP-related components of its lead infrastructure plan, as approved in and consistent with this Opinion and Order. TUS is directed to review the amended LTIIIP anew, subject to the Commission's findings herein, and prepare an order consistent with standard data request responses and LTIIIP review. However, costs associated with the replacement of the customer-owned portion of lead water service lines will not be considered eligible property unless and until the Commission either approves a new tariff or a supplement to existing tariff that is consistent with Act 120 or provides a waiver pursuant to 66 Pa. C.S. § 3202(b).

We remind the PWSA and the Parties that our Regulations governing LTIIIPs provide separate procedures if a utility elects to incorporate a major or minor modification to its Commission-approved LTIIIP. 52 Pa. Code § 121.5. Additionally, a utility with an approved DSIC must file for informational purposes an annual asset optimization plan (AAO plan) with the Commission that reports certain information relating to the status of the utility's implementation of the LTIIIP and the prior year's AAO plan. *Id.* § 121.6. With that, we recognize that the PWSA has committed in the Settlement to formulate a plan and timeline by March 31, 2021, for removing all known residential public- and private-side LSLs in its system, based on additional information obtained through its inventory efforts. Partial Settlement ¶ III.QQ.2.a. Depending on the content of the anticipated plan and timeline, it may constitute a major modification to the PWSA's LTIIIP.

## B. Litigated Issues

Based upon our review of the Partial Settlement, for residential customers, it does not appear to be a question of *whether* a residential private-side LSL is covered under the PWSA's service proposal, but *how* and *when*. The issues reserved for litigation in this proceeding for residential LSLs address certain questions relating to the *how* and *when*. However, with respect to non-residential LSLs, the question is *whether* the PWSA's proposal should cover these lines. Specifically, the Joint Petitioners reserved the following issues for litigation:

### E. Selected LSL remediation issue

1. Replacement of private-side lead services lines not scheduled for replacement through PWSA's current LSL replacement programs
  - a. Income-based reimbursement for private-side LSL replacements initiated by property owner
  - b. Continuation of neighborhood-based replacement program
2. Replacement of non-residential LSLs

*See* Partial Settlement at 58.

The Exceptions filed by the Parties overlap with the outlined issues which the Parties reserved for litigation. We shall address the Exceptions within the general context of the remaining issues, as discussed below.

## 1. Private-Side Lead Service Lines: Jurisdictional Questions

### a. Positions of the Parties

The PWSA asserted that while the Commission has jurisdiction to decide matters of water service, the issues with its' lead service line pipes are water quality issues which the Commission does not have jurisdiction to regulate. PWSA M.B. at 66. The PWSA further asserted that because the issues of lead in the PWSA's water supply are water quality issues any regulation would fall under the jurisdiction of the PA DEP and the federal Environmental Protection Agency (EPA). *Id.* at 68. The PWSA concluded that the comprehensive requirements and regulations imposed upon them by the PA DEP sufficiently remediates any issues with water quality safety and that the Commission must defer to the PA DEP on these issues. *Id.* at 69.

Furthermore, the PWSA argued that even if the Commission had some level of jurisdiction over its lead remediation efforts, the Commission plainly lacks jurisdiction to order replacement of customer-owned lead lines. *Id.* The PWSA cites to Sections 1501 and 1505 which relate to the services and facilities of public utilities and not privately-owned lines. *Id.* The PWSA also relies on its tariff which unequivocally states that the private service lines are the responsibility of the customer. *Id.* at 69-70. For these reasons, the PWSA concluded that the Commission lacks jurisdiction to order it to replace customer side lead service line replacement. *Id.*

Alternatively, I&E argued that the PWSA's "water quality" argument fails to consider the origin of the actionable lead levels which is directly attributable to the lead infrastructure which falls squarely in the jurisdiction of the Commission. I&E M.B. at 81. I&E further argued that the evidence presented shows clearly that there is significant harm from lead exposure, and that lead is present in the PWSA's service lines; therefore, the PWSA is not providing safe service to its ratepayers in violation of

Section 1501. *Id.* at 83.<sup>49</sup> I&E alleged that the authority of the Commission is not limited to public service lines as the specific language of Chapter 32 indicates “the Commission may require an authority to maintain repair and replace facilities and equipment used to provide services.” I&E R.B. at 37 (citing 66 Pa. C.S. §3205(a) (emphasis added)). Therefore, I&E concluded that the language of Sections 3205 and 1501, grants the Commission authority to order replacement of all lead service lines, even if they are customer owned. *Id.* at 39.

Similarly, UNITED argued that the lead is a direct result of the corroding pipes that the PWSA uses to convey water to customer taps and therefore results in joint jurisdiction with PA DEP. UNITED R.B. at 11. UNITED further alleged that the consent order allows the PWSA to conduct partial line replacements despite broad recognition that such replacements causes adverse health effects. *Id.* UNITED further argued that there is no record evidence that suggests the Commission enforcing additional standards upon the PWSA would in any way conflict or potentially conflict with PA DEP or EPA directives or obligations. *Id.* at 12. UNITED claimed that the Commission should also maintain jurisdiction on the PWSA’s private-side lead line replacement program. *Id.* at 14. UNITED supported this proposition by stating that *Public Utility Commission v. Mercer Gas* grants the Commission authority to require the PWSA to replace customer-owned service lines. *Id.* UNITED also stated that even though the PWSA’s tariff and Section 1311(b)(2) of the Code do not require it to replace private-side lead service lines, they do not preclude it and the PWSA is still obligated under Section 1501 of the Code to provide safe service. *Id.* UNITED concluded that water that contains lead is unsuitable for basic domestic purposes such as drinking and cooking, and

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<sup>49</sup> The OCA and OSBA also asserted that the Commission has jurisdiction based on public safety. The OCA and OSBA echoed I&E’s argument that customers are at risk of lead exposure as a direct result of private lead services lines and such a result runs directly contrary to Section 1501 of the Code. OCA R.B. at 8-9; OSBA R.B. at 6-7.

therefore would preclude the PWSA from their obligation to provide safe service. *Id.* at 15.

In its Reply Brief, the PWSA argued that no party had made a compelling argument that the issue before the Commission is plainly a water quality issue. PWSA R.B. at 22-23. The PWSA asserts that the claim that the Commission has the authority to take steps to ensure that customers are not drinking lead-contaminated water is unsupported. *Id.* at 23. The PWSA counters I&E's allegations because even though the harm in water quality was inherently due to the lead service lines, this does not grant the Commission jurisdiction and no Commission decision supports this conclusion. *Id.* at 25. Moreover, the PWSA asserts once again that the Commission is preempted by PA DEP and cannot impose additional obligations upon it. *Id.* Therefore, the PWSA concluded that the lead remediation program sufficiently covers any obligations they may have and if the Commission were to impose further obligations, the Commission would overstep the authority granted to it by the State Legislature, in regard to water quality and ordering the replacement of private-side lead service lines. *Id.* 25-27.

#### **b. Recommended Decision**

The ALJs began with the finding that the adverse health conditions associated with residential lead service lines are undisputed in this proceeding. Next, the ALJs acknowledged jurisdictional questions about how to resolve the problem with the residential lead service lines. "The crux of the issue is the Commission's jurisdiction over PWSA as distinguished from the Commission's power to order PWSA to replace residential lead service lines." R.D. at 207.

First, the ALJs addressed the PWSA's argument that the issue is one of "water quality" under DEP's jurisdiction. The ALJs determined that the PWSA's argument fails to recognize that water quality and water service are inseparable in this

proceeding. According to the ALJs, there would be no need for water quality, if the Authority were not delivering water service to its customers. *Id.* at 207.

The ALJs reasoned that the General Assembly enacted Chapter 32 to place the PWSA under the Commission's jurisdiction and that the Commission's authority is interrelated under Section 1501 of the Code. Additionally, the ALJs found that Section 1501 requires the PWSA to make repairs and changes to its facilities necessary to ensure safe service and public safety. Under both Sections 1501 and 3205 of the Code, the ALJs continued, the Commission has authority over the PWSA's service lines, as a service issue if the water quality is not safe. Thus, the ALJs concluded that the Commission has jurisdiction over the PWSA's water service. R.D. at 208.

Next, as to the PWSA's second argument, however, the ALJs agreed with the Authority's position. The ALJs found that the Commission lacks jurisdiction to order the PWSA to replace customer-owned lead lines. Here, the ALJs responded to the arguments of I&E, the OCA and UNITED that the Commission should compel the PWSA to replace all residential lead service lines in its system under the Commission's safe and reasonable requirement and/or authority to order the PWSA to repair its facilities. According to the ALJs, these opposing parties did not offer any specific statutory language or regulatory authority which would give the Commission the power to order the PWSA to enter upon an owner's property and replace lead service lines without the owner's consent. R.D. at 208.

Additionally, the ALJs concluded that the EPA's Lead and Copper Rule , which PA DEP enforces, specifically state that a water utility has no obligation to replace the owner's privately-owned service line. *Id.* at 208-209 (citing 40 CFR § 141.84(d)). As such, the ALJs recommended that the Commission approve the PWSA's LSL Replacement Program, as revised by its Board of Directors on July 26, 2019. *Id.* at 209.

**c. Exceptions and Replies**

In PWSA Exception No. 4, the Authority addresses the preliminary determination of the ALJs that the Commission has jurisdiction regarding water quality. The PWSA proffers that the ALJs erred in making this determination and that the Commission lacks jurisdiction over water quality. PWSA Exc. at 27-36.

The Authority argues that the Commission has jurisdiction to decide matters relating to a utility's facilities and service. However, the PWSA asserts that the Commonwealth Court has made clear that there is a distinction between water service, which the Commission may regulate pursuant to Section 1501 and 1505 of the Code, and water quality which is outside the Commission's jurisdiction. PWSA Exc. at 32 (citing *Sheldon R. Rovin, D.D.S. v. Pa. PUC*, 502 A.2d 785 (Pa. Cmwlth. 1986) (*Rovin*); and *Susan K. Pickford, et al., v. Pa. PUC*, 4 A.3d 707 (Pa. Cmwlth. 2010) (*Pickford*)).

Specifically, the PWSA objects to the ALJs' statement that "water quality and water service are inseparable in this proceeding." PWSA Exc. at 32 (quoting R.D. at 207). The Authority contends that, if the Commission adopts this language and the finding that it has jurisdiction over lead remediation issues, Commission directives could result in conflicts with directives of the PA DEP. The PWSA proffers that utilities may not be able to comply with conflicting water directives and that consumers would suffer while utilities attempt to manage and pay the costs of potentially conflicting directives and the likely litigations that would result. The PWSA argues that it is in the public interest for the Commission to reject the ALJs' finding that it has jurisdiction over the PWSA's lead service line remediation efforts. PWSA Exc. at 34-36.

In its Replies, I&E argues that the ALJs properly determined that the Commission has jurisdiction over the PWSA's lead service lines pursuant to Sections 3205 and 1501 of the Code. I&E R. Exc. at 16-21. The OCA in its Replies contends that

the ALJs properly found that the Commission has jurisdiction over the quality of service provided by the PWSA to its customers. OCA R. Exc. 2-9. Additionally, the OSBA submits that the ALJs correctly concluded that the Commission has jurisdiction regarding water quality. OSBA R. Exc. at 4-7.

In its response to PWSA Exception No. 4, UNITED argues that the ALJs properly concluded that the Commission has jurisdiction over the PWSA's water service. UNITED R. Exc. at 2-8. According to UNITED, lead contamination caused by utility infrastructure is a water service issue and PA DEP oversight does not deprive the Commission of authority to ensure the PWSA is providing safe service. *Id.* at 2-6. Additionally, UNITED asserts that the Commission's directives on lead remediation will not conflict with either the PA DEP Consent Order or the federal Lead and Copper Rule. *Id.* at 6-8.

In I&E Exception No. 3, I&E contends that the ALJs correctly concluded that the Commission has jurisdiction over the PWSA's water service; however, I&E submits that the ALJs incorrectly determined that the Commission lacks jurisdiction to order the PWSA to replace customer-owned service lines in this case. I&E Exc. at 17-24.

Likewise, in OSBA Exception No. 1, the OSBA contends that the ALJs erred by finding that the Commission lacks the jurisdiction to order the PWSA to replace customer-owned lead service lines. OSBA Exc. at 4-5.

In response to I&E Exception No. 3 and OSBA Exception No. 1, the PWSA proffers that the ALJs appropriately determined that the Commission lacks jurisdiction to order PWSA to replace customer-owned lead service lines. PWSA R. Exc. at 4-10.

In OCA Exception No. 2, the OCA also criticizes the ALJs recommendation to adopt the PWSA's plan for lead service line replacements. OCA Exc. 4-19 (citing R.D. at 164-209; OCA M.B. at 15-28; OCA R.B. at 11-15).

Likewise, in OSBA Exception No. 3, the OSBA argues that the ALJs erred in recommending that the Commission approve the PWSA's LSLR Program, as revised by its Board of Directors on July 26, 2019. OSBA Exc. at 6-7.

The PWSA responds to OCA Exception No. 2 and OSBA Exception No. 3 by asserting that the Commission lacks jurisdiction to order it to replace customer-owned lead service lines. PWSA R. Exc. at 4-10. Additionally, the PWSA argues that the ALJs properly recommended that the Commission not interfere or modify the PWSA's 2019 LSLR Program, including its income-based reimbursement program. PWSA R. Exc. at 12-18. In further response to OSBA Exception No. 3, the PWSA adds that the scope of the PWSA's LSLR Program should not be expanded to cover all non-residential customers. PWSA Exc. at 18-19.

UNITED further argues in its Exception No. 2 that the ALJs erred by approving the PWSA's 2019 LSLR Policy without considering any record evidence. UNITED Exc. at 24-31.

The PWSA argues in response to UNITED Exception No. 2 that the ALJs properly recommended that the Commission not interfere or modify the PWSA's 2019 LSLR Program, including its income-based reimbursement program. PWSA R. Exc. at 12-18.

#### d. Disposition

The Parties' Exceptions as to private LSLs not scheduled for replacement distinguish the jurisdictional arguments into two questions: 1) whether the Commission has the authority to regulate the level of lead in tap water; and 2) whether the Commission can direct the PWSA to complete the replacement of customer-owned lead service lines (*i.e.*, service lines that the PWSA does not own). Although both of these arguments pertain generally to important questions of customer health and safety, they are theoretical considerations which are not ripe for adjudication and are unrelated to the Commission's ultimate responsibilities in this proceeding. Our responsibilities in this proceeding are limited to determining whether the PWSA has met its burden of proof of showing compliance with Act 65/Chapter 32 of the Public Utility Code.

Again, we commend the PWSA for its overall commitment in the Partial Settlement to replace all residential LSLs by 2026, including its commitments to replace or fund the replacement of private-side residential LSLs. However, because the PWSA has made these commitments, and submitted them for our approval in this proceeding, the question of whether we had the initial authority to require the PWSA to undertake them is now moot. Given the substantial record evidence before us and the Settlement commitments of the PWSA to ultimately replace *all* residential lead service lines, we need not (nor should we) make determinations about tangential questions of regulatory authority<sup>50</sup> when such questions have been rendered moot. Accordingly, we will exercise judicial constraint and avoid an unnecessary decision on the merits of the Parties' arguments on the above questions.

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<sup>50</sup> "A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic." *Gulnac by Gulnac v. South Butler County School Dist.*, 526 Pa. 483, 488, 587 A.2d 699, 701 (1991). The PWSA's arguments herein are akin to requesting a ruling on a matter which would be academic.

The PWSA objects to the ALJs' general finding that water quality and water service are inseparable in this proceeding. The PWSA expresses concerns that the implicit recommendation of the ALJs would improperly expand Commission jurisdiction to water quality issues such as lead remediation that are fully regulated by other government agencies. PWSA Exc. at 31. However, in the R.D. the ALJs carefully clarified that Section 1501 of the Code requires the PWSA to make repairs and changes to its facilities necessary to ensure safe service and public safety. The ALJs also emphasized that the Commission would have the authority over the PWSA's service lines as a service issue if the water quality is not safe and determined that the Commission has jurisdiction over the Authority's water service. R.D. at 208. We agree with the ALJs' conclusion as to our authority. Indeed, it is upon this proper foundation of authority that our decisions, above and below, to modify the partial replacement provisions of the Settlement and to approve the exclusion of non-residential customers in the PWSA's current lead infrastructure plans rest.

The distinctions set forth in the Commonwealth Court's decisions in *Rovin* and *Pickford* – that the Commission regulates water service and PA DEP regulates water quality – are not in dispute. Our decision above, to approve the PWSA's proposed plan to remedy residential LSLs with the modifications to the PWSA's partial LSL replacement plan, is integral to our authority over the safety of water service and PA DEP's authority over water quality. Importantly, our approval and modification of the PWSA's Settlement commitments herein do not overlap with or impinge upon and will not impact PA DEP's oversight authority or primary enforcement responsibilities under the Federal Safe Drinking Water Act. Specifically, nothing in our determination alters or impacts the Consent Order and Agreement between PA DEP and the PWSA dated November 17, 2017, or PA DEP's continued responsibility for monitoring the lead action levels.

Regarding the PWSA's proposal on partial LSL replacements, we explained that there is substantial, un rebutted evidence showing that undertaking partial LSL replacements endangers public health through the proven exposure to elevated lead levels in tap water caused by the disruption to the Authority's service line that is connected to the customer's service line. Sections 1501 and 1505 of the Code provide the authority for us to direct proper service and facilities in order to prevent such harm. Our modifications to the Partial Settlement direct the PWSA to enforce its existing tariff provisions to refuse a private-side LSL's re-connection to the PWSA's system after the PWSA has disturbed the public-side of the service line by removing the old service pipe and installing new service pipe made of non-lead material. Our modifications to the Partial Settlement are, therefore, limited to preventing the adverse health effects to the public in the context of the PWSA's proposal to conduct partial LSL replacements of the public side portion of its service lines. Accordingly, we shall decline to address the broader arguments about water quality jurisdiction and shall modify the Recommended Decision consistent with this determination.

Although we decline to answer the above broader legal questions as to the extent of our jurisdiction, to be clear, this does not obfuscate our authority over the PWSA's plan going forward. In this proceeding the PWSA requests our approval of its plan to remedy lead infrastructure existing in and connected to its system, as submitted by the PWSA and as modified by the Parties' agreed-to terms of the Settlement. In this Order, we approve and modify that plan and direct the PWSA to revise its Compliance Plan and amend its LTIIP incorporating the plan consistent with this Opinion and Order. Accordingly, in our opinion, the entirety of that plan as well as the PWSA's implementation of that plan constitute "service" under Section 102 of the Code subject to our jurisdiction.

The term “service” is defined broadly under Section 102 of the Code, in relevant part, as follows:

**“Service.”** Used in its broadest and most inclusive sense, includes all acts done, rendered, or performed, and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities. . .in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .

66 Pa. C.S. § 102. The statutory definition of “service” is to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Based on the foregoing discussion, we shall modify the R.D. consistent with this Opinion and Order, deny the PWSA Exception No. 4 and deny the Parties’ overlapping Exceptions as to the general approval of PWSA’s LSL Program as follows: OCA Exception No. 2, I&E Exception No. 3, OSBA Exception Nos. 1 and 3 and UNITED Exception No. 2.

## **2. Income-Based Reimbursement and Neighborhood-Based Replacement Programs**

### **a. Positions of the Parties**

**Appendix A** attached hereto provides a full summary of the PWSA’s service plan, as modified by the Partial Settlement provisions, to remove residential LSLs existing in and connected to its water distribution system. Described therein is the PWSA’s income-based reimbursement policy, which is also outlined in Section 10.d of its July 2019 Policy and established in order to offer financial assistance to residential customers that do not want to wait for a private-side LSL replacement via the SDWM

replacement program or a potential future neighborhood-based program. Appendix A of this Order at ¶ I; PWSA M.B. at 73, 77; PWSA R.B. at 31.

That policy provides, in pertinent part, that for homeowners electing to replace their private-side LSLs after January 1, 2019, the PWSA will: (1) reimburse the entire cost of the private-side LSL replacement for households with income levels below 300 percent of the federal poverty level, as adjusted annually; (2) reimburse 75 percent of the cost of the private-side LSL replacement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually; and (3) reimburse 50 percent of the cost of the private-side LSL replacement for households with income levels between 401 and 500 percent of the federal poverty level, as adjusted annually. The policy provides that all other households will be offered a \$1,000 stipend towards the replacement cost of a private-side LSL replacement. PWSA Exh. RAW/C-46 at 4.

The PWSA explained that its income-based reimbursement policy was established after considering the “availability of public funds, equipment, personnel and facilities and the competing demands of the authority for public funds, equipment, personnel and facilities.” PWSA St. No. C-1RJ at 5-6. Based on its analysis of demographics in its service territory, the PWSA indicated that its income-based parameters will fully reimburse over 50 percent of households in its service territory for a private-side LSL replacement initiated by the customer, and provide 75 percent of households with a reimbursement of 50 percent or greater. PWSA M.B. at 63, 73. Furthermore, based on the PWSA’s analysis, it expects that the PWSA ratepayers will save between \$8 to \$18 million as a result of implementation of its income-based reimbursement policy.<sup>51</sup> PWSA M.B. at 63 (citing PWSA St. C-1SD at 32). The PWSA

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<sup>51</sup> Estimated savings include an assumption that the PWSA would expend \$1,000 for administrative costs to enroll each low- and moderate-income customer in the program to qualify them to be exempt from cost contribution. PWSA M.B. at 63-64.

generally justifies the policy by stating that it “fairly balances the goals of eliminating lead in the PWSA system while controlling costs.” PWSA M.B. at 64.

As explained herein, the need to move forward with removal of lead pipe is undisputed in this proceeding. Likewise, the parties are not opposed to the replacement of customer-owned, private-side LSLs and share the belief that replacement of the entire LSL, excluding partial replacements, will eliminate a major potential source of lead contamination and is in the best interests of the ratepayers. However, I&E, the OCA, and UNITED each oppose the PWSA’s income-based reimbursement policy, in favor of a comprehensive plan to replace LSLs in its system at no direct cost to customers.<sup>52</sup> Their opposition is primarily premised on the contention that the PWSA’s income-based reimbursement provision will unnecessarily compromise lead remediation. I&E M.B. at 74-94; OCA M.B. at 19-20; UNITED M.B. at 26-36. This contention, collectively held

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<sup>52</sup> It should be noted that neither I&E nor the OCA oppose the discontinuation of the PWSA’s neighborhood-based program. I&E explained in its Main Brief that its concerns regarding the PWSA’s plan to discontinue the neighborhood-based replacement program were addressed in the Joint Petition for Partial Settlement. I&E M.B. at 96. The OCA stated that it does not necessarily oppose the discontinuation of the PWSA’s neighborhood-based program in 2020 but suggests the development of a more comprehensive plan. OCA M.B. at 27-28. In disagreeing with the PWSA reimbursement policy, UNITED proposed that the PWSA should continue with the neighborhood-based program, submitting:

PWSA need not reinvent the wheel to find an effective approach to private-side lead service line replacements. Its neighborhood-based program stands as a proven model for removing large numbers of lead service lines with speed, efficiency, and prioritization for vulnerable residents. In contrast to the income-based reimbursement program, the neighborhood-based program offers free, PWSA-coordinated replacements to all eligible customers living within designated work order areas.

UNITED M.B. at 36.

by the aforementioned parties, has been allegedly supported by the advancement of arguments that can be categorized into two main points. First, the PWSA's income-based reimbursement policy may hinder some ratepayers' ability to participate and access LSL replacements. Second, the parties argued that should the PWSA's income-reimbursement policy be implemented, it would be at the expense of producing excessive administrative costs, contributing to the inefficient use of the PWSA's resources. In addition to these shared arguments of the parties, the OCA also expressed concern that the policy may be discriminatory under Section 1304 of the Code. OCA M.B. at 27 (citing 66 Pa. C.S. § 1304).

I&E, the OCA, and UNITED all offered arguments that the PWSA's income-based reimbursement policy would be cost-prohibitive for certain low- and moderate-income customers and it would be unrealistic to expect these customers to pay thousands of dollars up front for LSL replacements and await reimbursement. I&E M.B. at 86-88; OCA M.B. at 21-22; UNITED M.B. at 28-29. I&E submitted that the disadvantages to low- and moderate-income customers inherent in the PWSA's reimbursement policy is particularly concerning since the PWSA offered no explanation of how the determined parameters of its policy are tied to ratepayer affordability or the likelihood of those parameters facilitating private-side LSL replacements. I&E M.B. at 84. UNITED's Witness, Mitchell Miller, after reviewing the PWSA's proposed reimbursement program, concluded that "by distributing this program's assistance through reimbursements, PWSA effectively and disproportionately excludes low income customers from participating." UNITED St. C-1SUPP-R at 6. Testimony submitted by the expert witnesses for I&E and the OCA echoed the same concern of depressed customer participation created by the policy's cost-prohibitive nature. I&E St. No. 4-RS at 6; OCA St. 2R-Supp at 5-6. The Parties argued that such a significant direct expense will likely deter or entirely prevent many of these customers from replacing their lead service line, resulting in more lead lines remaining in the water system and continued potential lead exposure.

The OCA noted that the PWSA estimates that the average cost of direct construction work to replace a private-side LSL by a customer's private contractor is \$5,500. PWSA Exh. RAW/C-46 at 2. OCA Witness Rubin and UNITED Witness Miller provided testimony, citing statistics, to support that customers in the PWSA's service territory cannot afford the high cost of such replacements, let alone wait for reimbursement of those costs. OCA St. 2R-Supp at 5-6; UNITED St. C-1SUPP-R at 5-6. Witness Rubin explained his concern as follows:

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

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Young families, single mothers, and other households may have incomes that exceed 300% of the FPL but lack access to \$1,000 or more to fund their portion of a service line replacement.

OCA St. 2R-Supp at 5-6.

In addition to the claims regarding the cost-prohibitive nature of the PWSA's reimbursement policy, UNITED submitted that the program's reliance on customers to initiate and arrange for LSL replacements will also significantly deter participation or hinder a customer's ability to participate, particularly among low-income customers. UNITED M.B. at 30-35. UNITED contended that the myriad of steps to finding and replacing lead service lines are routine for the PWSA, but they may confuse customers and dissuade them from pursuing a lead service line replacement. *Id.*

UNITED emphasized that the path is also full of pitfalls for customers who are not experts in LSL replacement. For example, customers trying to determine if participation in the income-based reimbursement program is worth their time and expense might look to a tap water lead test to see if their drinking water has elevated lead levels. If customers are not aware that there is no safe level of lead in drinking water or that lead levels can fluctuate over time, they might incorrectly conclude that they are not at risk. UNITED M.B. at 32-33 (citing UNITED St. C-3SUPP-R at 5; UNITED C-2SUPP-R at 3-4). UNITED explained that selecting a contractor to perform an LSL replacement is not straightforward, asserting that even a customer who has time to collect and compare contractors' estimates may not know to probe those contractors on the replacement method they will use. *Id.* at 33. The OCA echoed UNITED's argument in its Main Brief that these factors will make it much less likely that customers will replace their private-side only LSL than if the PWSA performed the work. OCA M.B. at 20.

UNITED continued by arguing that requiring customers to initiate LSL replacements will also disadvantage tenants. *Id.* at 33-34. UNITED contended that since landlords decide whether to replace a private-side LSL and have less of a stake in whether or not the LSL is replaced, a replacement program that will cost time and money will discourage a landlord's participation. *Id.*

Countering the opposing arguments, the PWSA retorted that the assertions of I&E, the OCA, and UNITED that its income-based reimbursement policy will result in fewer LSLs being replaced are simply not correct. PWSA R.B. at 27. First, the PWSA asserted that the Partial Settlement already reflects the PWSA's comprehensive plan for addressing lead remediation issues. *Id.* at 26-27 (citing Partial Settlement at 43-53).

The PWSA has explained its commitment to a SDWM replacement program<sup>53</sup> that will eventually remove 100 percent of the residential public-side LSLs and to replacing the private-side line when the public side is replaced – to avoid partial replacements – or when it otherwise touches the service line. PWSA M.B. at 61. The PWSA further indicated that its target is to replace all residential LSLs (of which it is aware and are operationally feasible to replace) in its system by 2026. *Id.* at 57. The PWSA explained that the goal of the income-based reimbursement policy is to simply offer financial assistance to customers that do not want to wait for a replacement via the SDWM replacement program. *Id.* at 64-65. The PWSA emphasized that the issue is therefore not whether these private-side LSLs will be replaced but when the lines will be replaced. PWSA R.B. at 27.

In further responding to the opposing arguments, the PWSA contended the income-based reimbursement policy reasonably balances the somewhat conflicting policy goals of effectuating the full replacement of LSLs throughout its system as soon as reasonably possible while controlling ratepayer costs and being fair to ratepayers generally. *Id.* at 28. The PWSA reiterated that it has voluntarily agreed to replace residential private LSLs whenever it replaces the public side and to create a plan for the eventual replacement of all residential LSLs – public AND private. The PWSA stated that the Partial Settlement also contains several other commitments, including that the PWSA will estimate all LSLs in its territory (connected to a residence) by the end of 2020, and by March 31, 2021, formulate a plan and timeline for removing the known public and private-side LSLs connected to a residence. The PWSA added that its future plans to remove all known residential public- and private-side LSLs may include a neighborhood LSLR program. PWSA M.B. at 77; Partial Settlement at ¶ III.QQ.2.a.

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<sup>53</sup> The PWSA noted that its 2019 LSLR Program, which replaces service lines on a neighborhood basis, will be complete in 2020. Afterwards, the PWSA intends to focus on replacing LSLs through its SDWM replacement program.

The PWSA emphasized that those remediation efforts will cost hundreds of millions of dollars, and while the PWSA is committed to finding any and all public financing or low interest loans it can secure to offset this cost, the great bulk of the burden will have to be recovered from the PWSA ratepayers. Moreover, the PWSA maintained that it has also implemented a corrosion control program using orthophosphate which will reduce lead levels to well below the PA DEP/EPA “Action Levels,” further reducing the urgent need to replace all lead lines. *Id.*

Additionally, the PWSA suggested that the opposing parties’ concern that the income-based reimbursement policy will unfairly require households to cover the cost of replacement upfront is unfounded. As the PWSA explained, it is “willing to work with third parties so the PWSA would pay the customer’s contractor (usually a plumber) directly, thereby obviating the need for the customer to initially ‘front’ the entire cost.” PWSA M.B. at 63, 73-74. Furthermore, the PWSA submitted that it also expressed a willingness to work with the CLRAC to enable tenants of eligible multi-family dwellings to qualify for the program based on the income of the tenants and not the landlord. In addition, the PWSA contended that it is willing to commit to consulting with CLRAC regarding the development of its outreach program for the income-reimbursement policy. PWSA M.B. at 76-77.

In response to UNITED’s concern that the steps required by customers in order to participate in the income-based reimbursement program would be too burdensome for low-income customers, the PWSA argued that UNITED’s concern is not supported by any empirical evidence and that it does not envision that the requirements for participation in the reimbursement program will be materially different than the steps that low-income customers are required to take to enroll in one of the PWSA’s low-income programs. PWSA St. C-1RJ at 16.

The opposition to the PWSA's reimbursement policy was also cohesively manifested through the arguments of I&E, the OCA, and UNITED that allege the high inefficient costs necessary to administer the program will further diminish the PWSA's LSL replacement efforts, with little or no meaningful savings.

The Parties contended that the PWSA's estimated cost for administering the program, \$1,000 per customer,<sup>54</sup> will significantly dilute the PWSA funds that could otherwise be used towards lead line replacement. Specifically, I&E explained in its Main Brief, the high cost of administering the policy would be better spent as construction dollars towards the replacement of private-side LSLs. I&E M.B. at 85 (citing I&E St. No. 4-RS at 6). Both the OCA and UNITED joined I&E in its contention that rather than undertaking the significant burden of overseeing the income-based reimbursement policy, the PWSA and its customers would be better served to put this funding and operational capacity toward replacing LSLs at no direct cost to customers. OCA M.B. at 22-23; UNITED M.B. at 31. OCA Witness Rubin noted that the parties "do not have sufficient time to evaluate the reasonableness of this cost, but it appears to be very high." OCA St. 2R-Supp at 5.

Additionally, the OCA and UNITED questioned whether any actual cost savings would be achieved through the income-based reimbursement program, as claimed by the PWSA. As previously indicated, the PWSA claimed that ratepayers would see a cost savings of between \$8 to \$18 million (depending on the total number of private-side LSLs located) if the reimbursement policy goes forward. However, the OCA and UNITED contended that any claims of cost savings by the PWSA are all speculative and unsupported by substantial evidence given that the PWSA does not know how many LSLs are in the system, where the LSLs are located, nor has it offered critical details about the program, including a detailed budget, how long it will take to process and

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<sup>54</sup> UNITED St. C-1SUPP-R, Appendix A, 1 and 2.

distribute reimbursements to customers, or how it will calculate customers' income. OCA M.B. at 22; UNITED M.B. at 31; UNITED St. No. C-1Supp-R at 16.

I&E simply maintained its argument that any purported claims of cost savings through implementation of the income-based reimbursement program is outweighed by the need for ratepayers to have safe drinking water. I&E submitted that the PWSA proposes its reimbursement policy, which will put private-side LSL replacements out of reach for many impacted ratepayers, while simultaneously requesting that the City be permitted to continue to receive free or reduced cost water and wastewater, among other things. I&E M.B. at 92. In part, I&E argued that the PWSA is well-positioned to generate revenue for residential LSL replacements by eliminating free water and wastewater service to the City, charging the City tariffed rates, and otherwise transacting with the City on an arm's-length, business-like basis. *Id.* at 93.

Furthermore, although no party provided cost estimates in support of the PWSA (or PWSA contractor) performing all private-side LSLs and absorbing the full cost of such replacements, they did argue that the PWSA's reimbursement policy, in addition to diverting resources through high administrative costs, undermines economies of scale and is simply unnecessary given the cost recovery available to the PWSA under 66 Pa. C.S § 1311(b). OCA M.B. at 27-28; UNITED M.B. at 16; I&E M.B. 88-94. The OCA asserted that the ad hoc or "one-off" private-side only LSL replacements that would occur under the income-based reimbursement policy are very inefficient and miss economies that could be gained by a more systematic geographic approach. OCA M.B. at 27-28; OCA St. 2R-Supp at 3-5. UNITED similarly stated that the PWSA's reimbursement policy would create an inefficient patchwork of LSL replacements rather than a far more efficient block-by-block replacement program. UNITED M.B. at 16. I&E opined that the inefficiencies inherent in the PWSA's reimbursement policy for private-side LSL replacements are added to by ignoring the mechanism available to it under Section 1311(b) of the Code, which provides the PWSA with the ability to replace

customer-owned LSLs and to thereafter recover the cost of such replacements. I&E M.B. at 88-94.

In support of the OCA's contention that the PWSA's reimbursement policy lacks the level of efficiency seen in similar LSLR Programs, OCA Witness Rubin compared the PWSA's policy with programs being undertaken by York Water Company (York Water), Pennsylvania-American Water Company (PAWC), and the Philadelphia Water Department (PWD). Specifically, Witness Rubin summarized the differences of the approaches for the replacement of customer-owned LSLs in circumstances when the utility is not replacing its portion of the service line as follows:

- PWD will provide the customer with a 60-month, zero interest loan, PWD does not assume responsibility for the work;<sup>55</sup>
- York Water will replace the line and will pay an amount not to exceed the company's average contracted cost for replacing customer-owned LSLs in the year the replacement is made. Customers are required to pay the difference;<sup>56</sup>
- PAWC will group customer requests by geographic location and it will undertake replacements when the number of customer requests in a given location allows the company to realize reasonable economies of scale by doing those replacements as a single project. PAWC will proceed with

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<sup>55</sup> <https://www.phila.gov/water/wu/drinkingwater/lead/Pages/programs.aspx>; <https://www.phila.gov/water/educationoutreach/customerassistance/Pages/HelpLoan.aspx>

<sup>56</sup> *Petition of York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record the Costs of Certain Customer-Owned Service Line Replacements to the Company's Service Account*, Docket No. P-2016-2577404 (Opinion and Order entered March 8, 2017) (*York Water*), Joint Petition for Settlement (January 23, 2017).

replacements at the actual costs of such replacements up to the budget amount of \$6 million per year;<sup>57</sup>

- PWSA will reimburse customers for customer-owned LSL replacements based on their income levels. Specifically, for households with income levels below 300 percent of the federal poverty level, as adjusted annually, PWSA will reimburse the entire cost of the private-side LSL replacement. PWSA will reimburse 75 percent of the cost of private-side LSL replacement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually. For households with income levels between 401 percent and 500 percent of the federal poverty level, as adjusted annually, PWSA will reimburse 50 percent of the cost of the private-side LSL replacement. The policy provides that all other households will be offered a \$1,000 stipend towards the replacement cost of a private-side LSL replacement.

OCA St. 2R-Supp at 2-4.

Lastly, the OCA argued that the PWSA's income-based reimbursement policy may also be discriminatory toward customers with private-side only LSLs. OCA M.B. at 26-27. The OCA submitted that the PWSA's reimbursement policy provides an unreasonable preference or advantage to customers served by both public- and private-side LSLs and thus is discriminatory in violation of Section 1304 of the Code. OCA M.B. at 27 (citing 66 Pa. C.S. § 1304).

As rationale for its proffer, the OCA submitted that customers with private-side only LSLs may have received a partial lead service line replacement in the past (i.e., before 2018) through no fault of their own. *Id.* at 26-27. For example, before 2018 when the PWSA's LSLR Program began, if there was a water main break, the PWSA may have replaced the public line but would have left the associated private-side LSLs in place.

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<sup>57</sup> *Petition of Pennsylvania-American Water Co. For Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Serv. Pipes*, Docket No. P-2017-2606100 (Final Order entered October 3, 2019) (PAWC), Joint Petition for Settlement on Remand (July 17, 2019).

According to the OCA, customers in this situation would not be eligible to have their private-side LSL replaced at no direct cost under the PWSA's policy. The OCA maintained these customers are also paying for other customers' LSL replacements through the PWSA's base rates, while they would be required to replace their private-side only LSL independently and seek some amount of reimbursement under the PWSA's income-based reimbursement policy. The OCA argued that the PWSA has provided no reasonable basis for drawing this line and requiring customers with private-side only LSLs to make a significant out-of-pocket contribution toward replacing their LSL while other customers receive an LSL replacement at no direct cost. Thus, the OCA submitted that the PWSA's policy violates Section 1304 of the Code. *Id.* at 27.

Concerning the Parties' objections that the administrative costs for the PWSA's income-based reimbursement program are too high, the PWSA submitted that even with the administrative costs, roughly \$1,000 per homeowner, the income-based reimbursement program is nonetheless millions of dollars less expensive than if the PWSA replaced all of these lines. Thus, on net, the PWSA argued that its reimbursement program will lower the overall cost to ratepayers compared to if the PWSA performed the work directly. PWSA R.B. at 29-30.

Countering the arguments that the LSL replacements under the income-based reimbursement policy are inefficient, the PWSA explained that private-side replacements are typically performed by smaller plumbing firms that utilize trenchless technology which eliminate the cost efficiencies of grouping requests geographically. PWSA St. C-1RJ at 9. The PWSA asserted that its plan would have customers hire contractors (potentially from a pre-approved list to make it easier for them to find a qualified plumber) to conduct the private-side work. PWSA R.B. at 28-29. The PWSA continued by explaining that it has found that a homeowner can replace a private-side LSL at about 75 percent of the direct construction cost that the PWSA averages (\$5,500),

which does not include an additional cost of up to \$2,000 for indirect construction costs.<sup>58</sup>  
*Id.* at 29.

Responding to I&E's contention that the PWSA has ignored the statutory mechanism available to it for the recovery of costs for the replacement of private-side LSLs, the PWSA explained that while Section 1311 of the Code permits recovery of the costs of replacing private-side LSLs, I&E misses the real concern, which is the impact on the affordability of rates given all the urgent infrastructure improvements that the PWSA is planning, many of which are mandated by DEP, in addition to financing the full cost of private-side LSL replacements. The parties in opposition to the PWSA's income-based reimbursement policy have essentially called for the PWSA to take on even more financial obligations and to impose additional rate burdens on its lower income customers in order to relieve other customers of a financial contribution to replace their own private-side LSL even when that customer arguably has the financial wherewithal to make such a contribution. The PWSA argued that in formulating its plan for reimbursement of customer initiated private-side LSL replacements, its actions were consistent with the statutory provision, providing that a municipal authority shall consider the availability of public funds, equipment, personnel and facilities and the competing demands of the authority for public funds, equipment, personnel and facilities before using public funds for the replacement of private-side LSLs. PWSA St. C-1RJ at 5-6 (citing 72 P.S. § 1719-E).

Lastly, in response to the argument offered by the OCA that the PWSA's income-based reimbursement policy may be discriminatory towards customers with

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<sup>58</sup> The PWSA maintained during most of this proceeding and in official policy documents that \$5,500 is the average cost of replacements. *See* PWSA Exh. RAW/C-46 at § 3.2. The PWSA modified its position in rejoinder testimony and stated that if indirect construction costs are included, the actual average cost for the PWSA to replace a lead service line is \$7,500. PWSA St. No. C-1RJ at 6.

private-side only LSL (lines where the public-side has already been replaced at some time in the past), the PWSA contended that, contrary to the OCA's assertion, its current policy does provide that residential customers that received a partial public LSL replacement after February 1, 2016 (and now have a private-side only LSL), are eligible to have their private-side LSL replaced by the PWSA at no direct cost to the customer.<sup>59</sup> Moreover, the PWSA pointed out that the Partial Settlement reflects that the PWSA will offer to replace a private-side only LSL at no direct cost to a property owner that is within a work order area of a neighborhood-based LSLR program where replacements are performed after completion of the 2019 LSLR Program. Partial Settlement at ¶ VV.1.a.ii. Finally, if they exist, these lines will also be replaced at no direct cost to the customer when they are "touched" pursuant to the PWSA's SDWM replacement program. PWSA R.B. at 30.

The PWSA concluded by asserting that the Partial Settlement sets forth the PWSA's agreed upon comprehensive plan for addressing lead remediation issues and submitted that its future plans, which may include a neighborhood-based program, will be established based on the results of the lead line inventory (agreed to in the Partial Settlement), available resources and the location of SDWM replacements. The PWSA reiterated that it "cannot adequately plan for a neighborhood LSLR until probably 2024 when it knows where all the 2020-2026 [SDWM replacement] areas will be." PWSA R.B. at 34-35 (citing PWSA St. C-1RJ at 17). The PWSA submitted that through the Partial Settlement, it has committed to evaluating future plans for LSL replacements to meet its target. PWSA R.B. at 36.

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<sup>59</sup> July 2019 Policy at § 3.1. In addition, the LSLR Policy provides for reimbursement of costs to customers that replaced their own private-side LSLs as a result of a PWSA public-side replacement performed between February 1, 2016 and December 31, 2018. *See* July 2019 Policy at § 3.2.

**b. Recommended Decision**

The ALJs carefully detailed the arguments of I&E, the OCA, and UNITED in opposition to the PWSA's lead remediation program on pages 177 through 198 of the Recommended Decision, as well as the PWSA's responses thereto. R.D. at 177-207.

In their Recommended Decision, the ALJs recommended approval of the PWSA's LSLR Program without modification, as revised by its Board of Directors on July 26, 2019, which includes the PWSA's income-based reimbursement provision for when a homeowner elects to replace their private-side LSL after January 1, 2019. R.D. at 208-209.

**c. Exceptions and Replies**

The Exceptions of I&E, the OCA, and UNITED take issue with not only the ALJs' recommendation concerning the PWSA's LSLR Program, but also with the subprogram set forth in the LSLR Program to reimburse residential customers when they elect to replace their private-side LSL on their own, using an income-based sliding scale. I&E Exc. No. 4; OCA Exc. No. 2; UNITED Exc. No. 2.

In its Exception No. 4, I&E submits that the ALJs erred by failing to strike the income-based reimbursement provision of its LSLR Program. As support, I&E maintains the previous arguments delineated in its Main Brief advocating for the rejection of the PWSA's reimbursement policy because: (1) it relies upon arbitrary income parameters; (2) it will make customer replacement cost-prohibitive; (3) it will divert the PWSA resources that could be used towards replacement to cover excessive administrative costs; (4) it unfairly and unnecessarily ties safe drinking water to income by ignoring the PWSA's ability to replace customer-owned lead water service lines and to thereafter recover its costs. I&E Exc. at 5, 24-31.

In its Exception No. 2, the OCA similarly asserts that the ALJs have erred by adopting the PWSA's plan that requires customers to pay for replacements of customer-owned LSLs and then be reimbursed by the PWSA. The OCA maintains that the PWSA's income-based reimbursement policy is inconsistent with the PWSA's stated goal of removing all LSLs from its system for the reasons previously outlined in its Main Brief. OCA Exc. at 4-19; *See* OCA M.B. at 19-27. The OCA maintains that: (1) the PWSA's income-based reimbursement policy will likely result in fewer LSLs being replaced with little to no meaningful savings; (2) LSLs represent a significant public health and safety risk and should be removed from the PWSA's system in their entirety; and (3) PWSA's income-based reimbursement policy may not be in compliance with the Code. OCA Exc. at 19.

UNITED further argues in its Exception No. 2 that the ALJs erred by approving the PWSA's 2019 LSLR Policy without considering any record evidence. UNITED Exc. at 24-31. UNITED maintains that the program suffers from three major deficiencies: (1) it requires customers to pay for replacements up front; (2) it does not offer free replacements to all customers; and (3) it requires customers to initiate and arrange for replacements. *Id.* 26-29. UNITED submits that given these claimed flaws, which will disproportionately exclude low-income households and people of color, the income-based reimbursement policy should be rejected and replaced with a fairer, more effective plan for replacing private-side LSLs, such as by continuing the neighborhood-based program. *Id.* at 30.

In response to the Parties' Exceptions urging the Commission to strike the income-based reimbursement provision of the PWSA's LSLR Program, the PWSA responds that the Exceptions should be denied, and instead, advocates for the Commission to endorse the PWSA's current policies which set forth a comprehensive, fair and reasonable approach to replacing LSLs given its constrained financial and other resources currently available. PWSA R. Exc. at 12-18. The PWSA argues that the ALJs

properly recommended that the Commission not modify the PWSA's 2019 LSLR Program, including its income-based reimbursement program. *Id.*

**d. Disposition**

Based on our review of the record in this proceeding and the positions of the Parties, we concur with the ALJs' recommendation to not modify, at this time, the PWSA's income-based reimbursement program for residential customers that elect to replace their own private-side LSL.

Based on the record, we understand the PWSA's income-based reimbursement policy is designed to offer financial assistance to residential customers who elect to replace their private-side LSL at a time when the PWSA is not replacing public-side infrastructure, by funding either all or a portion of the costs of the private-side replacement based on the customer's income level. In doing so, this program may apportion some financial responsibility for the replacement to the customer, basing such policy on the notion that customers having the wherewithal to fund such a replacement should do so. To the extent the private-side LSL is connected to a public-side LSL, under this program, to avoid partial replacements, PWSA has committed to replace the public-side LSL at the same time the customer's contractor replaces the private-side LSL.

This particular ad hoc replacement program, as summarized above, must be viewed in the context of the PWSA's overall plan to remedy residential LSLs existing within and connected to its system. As explained above, the PWSA's overall plan includes the commitment to replace all private- and public-side LSLs in its system by 2026 and includes the PWSA's commitment to avoid performing partial replacements

wherever possible going forward.<sup>60</sup> To achieve its goal by the target date of 2026, the PWSA has proposed certain systematic replacement programs, as summarized in Appendix A of this Opinion and Order. However, the PWSA recognized that there would be customers who may elect to replace a private-side LSL at a time when public infrastructure is not being replaced by the PWSA under one of its systematic replacement programs. This ad hoc replacement program addresses these customers.

Other utilities with lead programs regulated by the Commission, namely, York Water and PAWC, have also adopted ad hoc replacement programs to address similarly-situated customers as part of their overall efforts to remove lead infrastructure in their systems, according to the approved Settlements in their respective proceedings. The ad hoc programs adopted by York Water and PAWC are structured differently from the PWSA's ad hoc program in that either the utility does not tie reimbursement to the customer's income level or the utility (rather than the customer's contractor) performs the replacement of the private-side line after the utility determines a sufficient demand has materialized to justify the efficient mobilization of utility crews. The OCA's witness, Witness Rubin, argued that the ad hoc programs employed by York Water and PAWC constitute adequate and efficient service and that the Commission should direct the PWSA to implement one of these programs rather than PWSA's proposed income-based reimbursement program. At this time, however, we do not find this comparison sufficient to direct the PWSA to modify its proposed income-based reimbursement program.

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<sup>60</sup> Here, we recognize that the PWSA is committed to offering eligible residential property owners who replaced their private-side LSLs as a result of a PWSA partial public-side replacement under one of its systematic replacement programs (a LSLR contract, the PWSA operations replacement, or water main replacement) between February 1, 2016 and December 31, 2018, a direct reimbursement for costs incurred up to a maximum of \$5,500, based on the average cost for the PWSA to replace private-side LSLs. *See* PWSA Exh. RAW/C-46 at § 3.2.

In support thereof, we recognize the PWSA's anticipation that the income-based reimbursement policy will reduce the overall costs of completing private-side LSL replacements. The PWSA has estimated that even with the anticipated administrative costs, the PWSA expects that ratepayers will save between \$8 to \$18 million if the income-based reimbursement program goes forward. PWSA Exh. RAW/C-46 at § 3.2; PWSA St. C-1SD at 32. Moreover, to alleviate certain concerns raised in this proceeding, the PWSA has committed to implement its income-based reimbursement policy by working directly with the customers' contractors to reimburse the contractor directly for the work, which will eliminate the need for customers to cover the cost of replacements upfront and await reimbursement. Additionally, the PWSA offered to consult with the CLRAC regarding development of its outreach program. PWSA R.B. at 29; PWSA M.B. at 77.

Moreover, the Settlement commitments made by the PWSA overall are contrary to I&E's contention that the PWSA has ignored its ability to replace customer-owned LSLs and thereafter recover its costs through the mechanism provided by 66 Pa. C.S. § 1311(b). The evidence shows that the PWSA intends for the income-based reimbursement program to be a tool for reducing the overall rate impact of its plan on residential customers, and not a means for placing unnecessary uneconomic burdens on ratepayers. As the PWSA has noted, its experience to date with its reimbursement program indicates that a homeowner can replace a private-side LSL at about 75% of the direct construction cost that the PWSA averages (\$5,500) because it does not include an additional cost of up to \$2,000 for indirect construction costs typically incurred by the PWSA in such work. PWSA St. C-1RJ at 9-10.

Notwithstanding the PWSA's anticipated cost savings in implementing the proposed income-based reimbursement program, we agree that currently the potential cost savings are uncertain, as are administrative and program budgets, and recognize it is possible that the PWSA's experience in implementing the program may justify a

modification to the program. With that said, we also recognize that the PWSA has emphasized its Settlement commitment to formulate a plan and timeline by March 31, 2021, for removing all known residential public- and private-side LSLs in its system. Partial Settlement at ¶ III.QQ.2.a. Should the PWSA propose to continue its income-based reimbursement program without modification in its March 31, 2021 plan, we direct the PWSA to address the effectiveness of the income-based reimbursement program based on the information available to the PWSA at that time. Such information should assess the net benefits of the income-based reimbursement program, such as the total number of residential customers that have elected to participate to date, the percentage of participants that have qualified for each tier of reimbursement under the income-based program, detailed analysis of cost savings to date along with an updated projection of total cost savings, and details about the program's design and implementation, customer eligibility and enrollment criteria, and administrative and program budgets.

We emphasize that the implementation of the PWSA's income-based reimbursement policy is intended by the PWSA as a cost-effective means of facilitating the PWSA's LSL remediation efforts in meeting its goal of replacing 100 percent of residential LSLs (of which it is aware and are operationally feasible to replace) in its system by 2026, independent of whether residential customers choose to participate in the program. We expect the PWSA to use available funds in the most efficient manner, maximizing savings and public health, and that the PWSA's March 2021 plan will maintain such efficiencies.

As for the issue of the PWSA's systematic programs and its specific proposal to discontinue its neighborhood-based LSLR Program and transition to its SDWM replacement program in 2020, the Parties' Exceptions devote little attention to this matter. In recognition of the PWSA's goal of removing all LSLs from its system by 2026 (or such other target date as may be defined pursuant to the Settlement provisions), concerns were expressed that transitioning to the SDWM replacement program and

discontinuing the neighborhood-based LSL may jeopardize the PWSA's ability to meet its target for lead removal. The Parties' Exceptions tended to conflate this issue regarding the PWSA's systematic programs with the PWSA's proposed income-based reimbursement program, but we view these issues as being separate.

As part of the Partial Settlement, the Parties have agreed to a number of terms regarding LSL remediation that define the PWSA's overall plan for removing LSLs existing within and connected to its system by 2026. The Partial Settlement outlines how the PWSA will inventory the LSLs in the system, including working with the University of Pittsburgh to develop a machine-learning model to predict the location of lead service lines. Partial Settlement at ¶ III.QQ. The PWSA will complete its inventory by December 31, 2020 and, by March 31, 2021, will "formulate a plan and timeline for removing the known public-side and private-side lead service lines connected to a residential structure that will not be replaced by PWSA's other lead service line replacement efforts...." Partial Settlement at ¶ III.QQ.2. The PWSA's current target is to replace all lead service lines by December 31, 2026, but this target date could be modified if not feasible pursuant to the process laid out in the Settlement. Partial Settlement at ¶ III.QQ.2.c.

Additionally, starting in 2021, the PWSA has committed to endeavor to replace at least ten miles of SDWM per year in Priority Lead Neighborhoods, which are designated after consideration of children's blood lead levels, prevalence of children under six years of age and women of childbearing age, income, LSL density, or any combination of lead related or public health-related factors recommended by the CLRAC. Partial Settlement at ¶ III.VV. Furthermore, the PWSA will provide updates each year to the CLRAC on the PWSA's plan for areas where SDWM replacements will occur in the following program year, as well as an inventory including lead service lines replaced in the preceding year. Partial Settlement at ¶ III.QQ.3, ¶ OO. Starting with the September 2022 update, if the PWSA does not meet its commitment to replace at least ten miles of

SDWMs in Priority Lead Neighborhoods, the PWSA will also explain the reasoning why it failed to do so and how it will address this deficiency in the future. Partial Settlement at ¶ III.QQ.3.c.

Therefore, we are of the opinion that the PWSA's overall plan, as modified by its Settlement commitments, has sufficiently addressed the Parties' concerns at this time and that the Parties have not presented compelling evidence or argument to modify the PWSA's proposed systematic programs at this time. This is so, especially given the PWSA's commitment to submit a plan and timeline by March 31, 2021, based on the additional information it obtains through its inventory efforts and implementation experience.

Based on the foregoing discussion, we shall adopt the ALJs' R.D. consistent with this Opinion and Order, deny I&E Exception No. 4 and deny the overlapping Exceptions of OCA Exception No. 2 and UNITED Exception No. 2.

### **3. Objections to Certain Findings of Fact**

#### **a. Recommended Decision**

Among the ALJs' sixty-three Findings of Fact in the Recommended Decision, the ALJs made findings related to the PWSA's lead remediation programs. Findings of Fact Nos. 38, 50-51 and 56-58 are the subject of UNITED's Exception discussed below. R.D. at 13-14, 16-17.

#### **b. Exceptions and Replies**

In UNITED Exception No. 3, UNITED contends that the ALJs' Findings of Fact Nos. 38, 50-52 and 56-58, relating to the PWSA's lead remediation and income-

based customer-initiated replacement programs are incomplete or inaccurate and should be vacated or altered to include additional or revised Findings of Fact consistent with the evidence on the record in this proceeding. UNITED Exc. at 31. In Replies, the PWSA contends that UNITED's Exception should be denied because the ALJs' various Findings of Fact are supported by the record. The PWSA claims this Exception represents UNITED's attempt to reiterate its prior concerns with the PWSA's programs and insert these concerns into the final Commission Order without crediting the PWSA's evidence. PWSA R. Exc. at 20-24.

Finding of Fact No. 38 states:

38. PWSA anticipates that orthophosphate will very shortly reduce lead levels in residential tap water to well below PA DEP actions levels. *See* Partial Settlement, § III.M.2.c, III.XX; PWSA St. C-1RJ (Weimar), pp. 17-18; PWSA St. C-1R-Supp (Weimar), p. 7; PWSA St. C-1SD (Weimar), pp. 22-23; PWSA St. C-1R (Weimar), pp. 2-3, 37-38; PWSA St. C-1 (Weimar), pp. 48-49.

R.D. at 13-14.

UNITED alleges that FOF No. 38 properly reflects the PWSA's expectation about the effectiveness of adding orthophosphate but ignores evidence that shows orthophosphate can take years to take full effect, water can remain dangerous in the meantime, and that orthophosphate is not a permanent solution. UNITED Exc. at 31. The PWSA asserts that FOF No. 38 is complete because it captures the PWSA's expectation that orthophosphate will reduce lead levels below action levels as illustrated by the PWSA's un rebutted testimony. PWSA R. Exc. at 20.

Findings of Fact Nos. 50 and 52 state as follows:

50. PWSA has committed to voluntary efforts to fully remediate lead at residential properties on its system in PWSA's 2019 Lead Service Line Replacement Policy. Exhibit RAW/C-46 (July 2019 Policy).
52. PWSA has committed to formulating a plan that will, over time, completely eliminate lead in its water system (not including private customers who simply refuse to have their private lines replaced – whether free of charge or with a stipend or non-residential customers who may replace their galvanized iron lines at their expense). PWSA St. C-1RJ, p.15.

R.D. at 16.

UNITED contends that FOF Nos. 50 and 52 are inaccurate as the program does not remediate issues such as galvanized plumbing and lead dust, paint, and soil and thus lead will not be “completely eliminated” from its system. UNITED Exc. at 32-33. The PWSA replies that FOF Nos. 50 and 52 are not misleading because the PWSA does not own any of the internal plumbing that may cause lead to remain after lead pipes are removed and remediation of these sources are outside of Commission jurisdiction. PWSA R. Exc. at 20-21.

Finding of Fact No. 51 states:

51. PWSA's July 2019 Policy was formulated to address all known residential lead service lines in PWSA's system. PWSA St. C-1RJ (Weimer), p.4.

R.D. at 16.

UNITED argues FOF No. 51 is inaccurate because the policy will not result in replacement of all known residential lead services lines and the income-based reimbursement program will not properly fill the void and “disproportionately exclude low income, Black, and Latino customers who are especially vulnerable to lead exposure.” UNITED Exc. at 32. In Replies, the PWSA agrees that the LSLR Policy will not replace all known residential service lines because neither the PWSA nor the Commission can force a customer to agree to replacement of their service lines. The PWSA suggests that if FOF No. 51 is revised, it be revised to read as “PWSA’s July 2019 Policy was formulated to address all known residential lead service lines in the PWSA’s system that a residential property owner consents to having replaced and that is technically feasible to replace.” PWSA R. Exc. at 21-22.

Finding of Fact No. 56 states:

56. Over 50% (53%) of households in its service territory would be fully reimbursed for a private-side lead line replacement requested by a customer who does not wish to wait for PWSA to replace his/her private lead service line as part of its SDWMR program, and 75% would qualify to receive a reimbursement of 50% or greater. The remaining customers would receive a \$1,000 stipend to help defray the costs of a private-side lead line replacement.

R.D. at 17.

UNITED argues that FOF No. 56 is misleading and that the small-diameter water main program that the PWSA proposed in its LTIP will only replace approximately 20% of small-diameter water mains in the PWSA’s system by 2026. UNITED further avers that it would take nearly thirty years to replace all small diameter water mains and their attached lead service lines, which is a step that PWSA has not committed to. UNITED Exc. at 33-34. The PWSA claims that FOF number 56 should

be retained as it properly summarizes the PWSA's analysis of the reimbursement or stipend provided to persons in their territory who decided to replace their own lead service line. PWSA R. Exc. at 22-23.

Finding of Fact No. 57 states:

57. PWSA's income-based reimbursement plan is similar to the private service replacement programs implemented by other utilities.

R.D. at 17.

UNITED asserts that FOF No. 57 is unsupported by the record because the other utilities that performed similar lead line replacements did not require upfront payment for private-side lead service replacements nor do they have to engage with private contractors. UNITED Exc. at 34. The PWSA further argues that FOF No. 57 should be affirmed because other companies, such as the York Water Company and PAWC, pay a portion of customer-owned lead service line replacements and are under no legal obligation to fund the replacements. PWSA R. Exc. at 22-23.

Finding of Fact No. 58 states as follows:

58. PWSA is willing to modify the program so that customers need not come up with the full cost of the replacement and then be reimbursed.

R.D. at 17.

UNITED challenges FOF No. 58 as incomplete because the PWSA has not yet committed to revising the income-based reimbursement program to limit the initial cost to customers. UNITED Exc. at 35. The PWSA asserts that UNITED's challenge to

FOF No. 58 is unfounded because the FOF accurately reflects the PWSA's on the record commitment to exploration of options to ease the financial burden for customers who cannot afford the upfront cost of utilizing its reimbursement program. PWSA R. Exc. at 23.

UNITED concludes by requesting that the above-referenced Findings of Fact be removed or altered and further requested that UNITED's Proposed Findings of Fact 14-17 and 31 be adopted. UNITED Exc. at 35-36 (citing UNITED M.B., Appendix A at 2-3, 5). The PWSA asserted that the Commission should reject the proposed Findings of Fact that UNITED requested, because they were properly considered and rejected by the ALJs. The PWSA's concluding recommendations were that the Commission should decline: (1) to change or remove the questioned Findings of Fact and (2) to include UNITED's Proposed Findings of Fact. PWSA R. Exc. at 24.

**c. Disposition**

Upon review, we shall deny UNITED's Exception No. 3.

Regarding FOF No. 38, UNITED asserts that the orthophosphate corrosion control treatment, which the PWSA added to the water in April 2019, will take time for full effect and, until it does, the PWSA's customers will be subjected to dangerous conditions. However, the FOF only relates to the PWSA's expectation that the orthophosphate will be a sufficient temporary measure while work is completed in the lead line replacement program. The testimony of Mr. Weimar stated that the PWSA's expectation is that the orthophosphate will lower the levels of lead to below PA DEP action levels. PWSA St. C-1 at 48-49. We agree that FOF No. 38 accurately captures this testimony and the PWSA's expectations pertaining to the application of orthophosphate. Therefore, we shall dismiss the Exception as to FOF No. 38.

UNITED also expresses concerns with potential additional threats to clean drinking water such as galvanized interior plumbing, lead solder, and lead bearing internal plumbing fixtures contained within the residence or property of the consumer. Although these possible sources of lead within the residence of a consumer are a potential concern, they are plainly beyond the scope of FOF Nos. 50 and 52. FOF Nos. 50 and 52 relate to remediation efforts in the PWSA's Lead Service Line Replacement plan to address lead service lines *existing within and connected to its water system* and do not address the replacement of customer-owned plumbing fixtures within residences.<sup>61</sup> Accordingly, we shall deny the Exception pertaining to FOF Nos. 50 and 52.

FOF No. 51 relates to the PWSA's LSLR Policy which UNITED challenges as not addressing the inadequacies of the SDWM replacement program. As discussed, above, we find that the PWSA's overall plan, as modified by its Partial Settlement commitments, sufficiently addressed the Parties' concerns pertaining to SDWMs and that the Parties have not presented compelling evidence or argument to modify the PWSA's proposed systematic programs at this time. Thus, we shall deny the Exception pertaining to FOF No. 51.

The other FOFs that UNITED challenged (Nos. 56-58) relate to the PWSA's Income-Based Customer-Initiated Replacement program. Consistent with our discussion above, it is our opinion that the ALJs properly assessed the evidence and arguments presented by the Parties in crafting the Recommended Decision. Therefore, we shall deny the Exception as to FOF Nos. 56-58.

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<sup>61</sup> We note, however, the PWSA has agreed to interior plumbing inspections adjacent to the water meter whenever it replaces the meter or when it replaces a private-side line and to notify the customer if components are comprised of lead and the resulting risks of lead release from such plumbing. *See* Partial Settlement at ¶¶ III.RR.1-2.

Lastly, UNITED asks us to adopt proposed Finding of Fact numbers 14-17 and 31 presented in their Main Brief, pertaining to orthophosphate and corrosion control treatment, health and safety risks posed by lead service lines. The proposed findings also relate to allegations that the PWSA's LSLR Program will not result in removal of all known lead from its system and to arguments against the PWSA's income-based reimbursement program. *See* UNITED M.B., Appendix at 2-3, 5. Each of these issues have been addressed in our discussion of the Partial Settlement as modified by this Opinion and Order or in our disposition of the litigated issues. Based on the record before us, we shall deny UNITED's request to adopt its Proposed Findings of Fact.

#### **4. Non-Residential Lead Service Lines**

##### **a. Positions of the Parties**

The OSBA challenges the PWSA's plan to remedy LSLs existing within and connected to its system on the basis that it excludes non-residential customers from the benefits being made available to the PWSA's residential customers. The OSBA submits that the Commission should modify the PWSA's plan as follows: (1) include non-residential customers in the PWSA's LSLR Programs; (2) replace what would normally be classified as the "public-side" of such service lines (*i.e.*, the portion of the service line that runs from the water main to the customer's curb stop) at no charge to the non-residential customer; and (3) if, and where, the PWSA offers financial reimbursements to residential customers, offer non-residential customers a stipend of \$1,000 to offset the costs of replacing the "private-side" side of their lines running from the curb stop to the meter. R.D. at 210-211 (citing OSBA M.B. at 1; OSBA St. 1 at 5).

To support its position, the OSBA relies upon the testimony of its witness, Brian Kalcic, an economist and principal of Excel Consulting, in which he states, "If lead service lines are to be replaced because they are deemed a public health hazard, then all

LSLs should be eligible for the PWSA’s LSLR Program.” R.D. at 211 (citing OSBA St. 1 at 5; OSBA St. 1-S at 2; OSBA St. 1-SD at 2; OSBA St. 1-SR at 2-3).

In response, the PWSA explains that non-residential service lines are structured differently than residential lines, which warrants different treatment of the lines. R.D. at 209, 212-213 (citing PWSA M.B. at 77-78; PWSA St. C-1R-Supp at 4). The primary distinction is that the non-residential customer owns the entire service line connecting the main to the consumption point – in other words, there is no “public-side” of a service line owned by a non-residential customer. R.D. at 209, 213 (citing PWSA M.B. at 79; PWSA St. C-1R Supp at 4). The PWSA’s commitments for residential customers are principally to avoid the elevated lead levels in water caused by partial replacements. R.D. at 209 (citing PWSA St. C-1R-Supp at 3-5). Since there is no concern about increasing water lead levels by creating “partials” for non-residential customers, there is no similar public health policy reason to have the PWSA ratepayers pay the cost of such replacements. R.D. at 209-210.

Furthermore, the PWSA argues that orthophosphate treatments approved by the PA DEP are expected to reduce lead levels in tap water to well below the lead action level established by federal and state drinking water regulations. R.D. at 209-210, 213 (citing PWSA M.B. at 61; 25 Pa. Code § 109.1102 (a)(1)).

Finally, the PWSA submits that its decision to replace residential private LSLs is due, in part, to its concerns that, without providing such economic support, an unacceptable percentage of private-side lead service lines would remain due to customer inability to fund such an investment. This will, in turn, create an unacceptably high level of “partial” replacements or cause the PWSA to skip over the public-side replacements (to avoid partials) thereby driving up the cost and increasing street dislocations and inconvenience. R.D. at 210 (citing PWSA St. C-1R-Supp. at 3-5). The PWSA submits that the OSBA did not attempt to challenge the PWSA’s explanation that its decision to

replace residential private LSLs can be attributed, in part, to the distinct financial positions of residential and non-residential customers. R.D. at 213 (citing PWSA St. C-1RJ at 9-10). Additionally, the PWSA submits that there is no evidence in the record that indicates that business owners are incapable of funding these replacements or that the cost that would be imposed on remaining ratepayers would be reasonable. R.D. at 213 (citing PWSA M.B. at 80). For non-residential customers, Witness Weimar posits, replacing a private LSL can reasonably be viewed as a “cost of doing business,” in the same manner as utility service itself. R.D. at 210 (citing PWSA St. C-1RJ at 9-10). Thus, the PWSA maintains that the OSBA’s positions on this issue should be rejected.

**b. Recommended Decision**

Citing to federal regulations under the EPA’s Lead and Copper Rule, as enforced by PA DEP, the ALJs concluded that the Commission does not have authority to order the PWSA to replace service lines that it does not own. R.D. at 213 (citing R.D. at 208; citing also 40 CFR Part 141.84(d)). Accordingly, the ALJs recommended that the Commission dismiss the OSBA’s request that the Commission order the PWSA to include non-residential lead service lines in its LSL replacement plan. R.D. at 213.

**c. Exceptions and Replies**

In OSBA Exception No. 2, the OSBA proffers that the ALJs erred by finding that the Commission lacks jurisdiction to order the PWSA to include non-residential lead service lines in its LSL replacement plan. OSBA Exc. at 5-6. The OSBA reiterates that the safety concern posed by LSLs does not dissipate simply because a customer is classified as non-residential, and in support thereof, relies upon the testimony of its Witness Kalcic, an economist, as noted above. OSBA Exc. at 5-6 (citing OSBA M.B. at 11). The OSBA submits that the record supports the conclusion that removal of

all LSLs is the only way to eliminate the safety risks posed by lead in the PWSA's water system. OSBA Exc. at 6 (citing OSBA M.B. at 11; OSBA R.B. at 7).

In OSBA Exception No. 3, the OSBA argues it is “inherently unfair” to disqualify non-residential customers from any form of private-side reimbursement, while simultaneously providing reimbursement to residential customers. OSBA Exc. at 7 (citing OSBA M.B. at 12). According to the OSBA, non-residential customers facing similar circumstances to residential customers should be afforded the same treatment and benefits, and should receive at least a \$1,000 stipend, as that is the minimum amount residential customers are guaranteed under the PWSA's LSL reimbursement program. OSBA Exc. at 7 (citing OSBA R.B. at 8).

In its Replies, the PWSA argues that the ALJs appropriately concluded that the Commission lacks jurisdiction to order the PWSA to include non-residential lead service lines in its LSL plan. PWSA R. Exc. at 10-12. The PWSA reiterates that non-residential service lines are structured differently than residential lines, which warrants different treatment of the lines. PWSA R. Exc. at 10-11. The PWSA submits that its plan provides for the replacement of private-side residential LSLs when the public side is being replaced to avoid “partial” replacements (*i.e.*, replacing one part of the lead service line and not the other). *Id.* at 11. The avoidance of “partial” replacements is the public health issue being addressed by the PWSA in its voluntary decision to cover private lead service line replacements. *Id.* As there is no concern about increasing water lead levels by creating “partials” for non-residential customers, there is no similar public health policy reason to have the PWSA ratepayers pay the cost of such replacements. *Id.* Moreover, the PWSA submits that its orthophosphate corrosion control program will reduce lead levels in tap water to below the Lead and Copper Rule lead action level.

Furthermore, the PWSA reiterates that its decision to dedicate its limited financial resources on replacing residential LSLs at this time reflects the distinctions

between residential and non-residential service lines and the public health hazard of “partial replacements” that may impact residential customers but are not a concern for non-residential customers (because there is not a public and private side of a non-residential service line – the non-residential service line is wholly owned by the commercial or industrial customer). PWSA R. Exc. at 19. The PWSA submits that no evidence was presented in this proceeding that non-residential customers are incapable of funding these replacements or that the cost of a PWSA funded replacement (that would be imposed on remaining ratepayers) would be reasonable. PWSA R. Exc. at 12. Thus, it is not “inherently unfair” but rather is reasonable. PWSA R. Exc. at 12, 19. The PWSA submits that the Commission has frequently recognized differences in treatment between residential and non-residential customers. PWSA R. Exc. at 19.

**d. Disposition**

We shall deny the OSBA’s Exceptions. Like the ALJs, we shall not adopt the OSBA’s requests but for reasons different from the R.D. Accordingly, we shall modify the ALJs’ R.D. consistent with this Opinion and Order.

As part of its overall plan to remedy LSLs existing within and connected to its water distribution system, the PWSA has proposed to replace or fund the replacement of all qualifying residential LSLs, in large part, to avoid the exposure to harm of elevated lead levels in tap water caused by partial replacements. As discussed extensively above, based on the factual record before us, we find substantial record evidence supports the PWSA’s commitment to avoid performing partial replacements on residential LSLs.

With respect to non-residential customers, however, the PWSA demonstrated that the basis for excluding non-residential customers is based on the real distinction between the ownership structure of service lines. Residential customers own only a portion of the service line (*i.e.*, the private-side from the curb stop to the

consumption point) while the PWSA owns the remaining portion of that same line (*i.e.*, the public-side from the curb stop to the main). Unlike residential customers, non-residential customers own the entire service line that is from the main to the consumption point. The PWSA does not own any portion of the non-residential service line. As a result, the PWSA has demonstrated that non-residential service lines will not be subject to the same partial replacements as residential LSLs would be.

The OSBA presented little evidence in this proceeding to demonstrate how the PWSA's plan to not replace non-residential LSLs will be inconsistent with its obligation to provide adequate, efficient, safe and reasonable service. The only record evidence the OSBA cited in support of its position is its Witness Kalcic's generalized statement challenging the PWSA's proposal. *See supra*; *see also* R.D. at 211 (citing OSBA St. 1 at 5; OSBA St. 1-S at 2; OSBA St. 1-SD at 2; OSBA St. 1-SR at 2-3). However, as Witness Kalcic's background and employment is in economics, he was not qualified as an expert in this proceeding in the areas of engineering, medical health and/or lead in drinking water, requiring us to assign the appropriate weight to his generalized opinion.<sup>62</sup> Other than raising this challenge, the OSBA did not go forward with presenting evidence to show that the PWSA's plan to not replace any portion of a non-residential LSL while the PWSA carries out its mains infrastructure replacement program will endanger public health. To the extent a non-residential customer elects not to replace its LSL, the PWSA submitted that its orthophosphate corrosion control

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<sup>62</sup> The Pennsylvania Rules of Evidence permit a qualified expert witness to testify "in the form of an opinion or otherwise . . ." Pa. R.E. 702. However, this rule does not change the Pennsylvania rule for qualifying a witness to testify as an expert. *See* Comment to Pa. R.E. 702; *see also Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995) ("The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.")

program, as approved by the PA DEP, is expected to reduce lead levels in tap water to below the Lead and Copper Rule lead action level.

Finally, the PWSA showed that its plan to exclude non-residential customers is also based on the distinction in financial capabilities between these customer classes. The OSBA presented no evidence in this proceeding to show that non-residential customers are incapable of funding these replacements or that the cost of a PWSA-funded replacement, which would be spread among ratepayers in rate recovery, would be reasonable. The OSBA did not show that the PWSA's plan is "inherently unfair" as it proffers; the Commission has frequently recognized differences in treatment between residential and non-residential customers. PWSA R. Exc. at 19.

Therefore, based on the fully developed record before us, we do not find substantial record evidence exists to support the OSBA's proposals to modify the PWSA's plans. Therefore, we shall deny the OSBA's Exception Nos. 2 and 3 and modify the ALJs' R.D. consistent with this Opinion and Order.

## **VI. Conclusion**

For the reasons stated, *supra*, we shall adopt and modify the Partial Settlement, consistent with this Opinion and Order. Additionally, we shall: (1) grant, in part, and deny, in part, the Exceptions filed by the PWSA and I&E; (2) deny the Exceptions of the OCA, the OSBA and UNITED; and (3) adopt and modify the ALJs' Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by the Pittsburgh Water and Sewer Authority on November 18, 2019, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions filed by the Commission's Bureau of Investigation and Enforcement on November 18, 2019, are granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That the Exceptions filed by the Office of Consumer Advocate on November 18, 2019, are denied consistent with this Opinion and Order.

4. That the Exceptions filed by the Office of Small Business Advocate on November 18, 2019, are denied consistent with this Opinion and Order.

5. That the Exceptions filed by Pittsburgh UNITED on November 18, 2019, are denied consistent with this Opinion and Order.

6. That the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson, issued on October 29, 2019, is adopted, as modified, consistent with this Opinion and Order.

7. That the Joint Petition for Partial Settlement filed by the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water

Company on September 19, 2019, is approved as modified by this Opinion and Order subject to the condition set forth in Ordering Paragraph No. 9, below.

8. The Joint Petition for Partial Settlement filed by the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water Company on September 19, 2019, is modified under Paragraph III.VV.1.b to include new subsections (v) and (vi), stating 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 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 should make a determination as to the appropriate next steps, including, but not limited to, potentially not replacing the public side of the line while corrosion control treatments and distribution of water filters remain in place 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 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.
- 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. PWSA will begin the process to terminate service to the residence with prior notice in accordance with PWSA's tariff at Section C, Rule 3.j. Reconnection of service shall not be permitted until the customer certifies the removal of the private-side lead service line in accordance with PWSA's tariff at Section B, Rule 4.

9. That, if any of the Parties wishes to withdraw from the Joint Petition for Partial Settlement based on the modification set forth in Ordering Paragraph No. 8, above, that Party shall e-file or hand deliver to the Secretary of the Commission and serve on all Parties to this proceeding an election to withdraw within five (5) business days from the date that this Opinion and Order is entered. If such an election to withdraw is filed, the Joint Petition for Partial Settlement shall be disapproved, without further action by this Commission, and this matter shall be returned to the Commission's Office of Administrative Law Judge for further action as deemed appropriate.

10. That, within thirty (30) days of the entry date of this Opinion and Order, a revised Compliance Plan be filed consistent with this Opinion and Order regarding the litigated issues in this proceeding, specifically as follows: (1) that the 1995 Cooperation Agreement be terminated, and business transactions conducted with the City of Pittsburgh be required to occur on a transactional basis until a new Cooperation Agreement is reviewed and approved by the Commission; (2) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to become responsible for the cost of all meter installation in accordance with 52 Pa. Code § 65.7; (3) that the Compliance Plan be revised to require the Pittsburgh Water and Sewer Authority to introduce a flat rate, at minimum the customer charge for the customer's class, for all unbilled customers in its next base rate case, and, as customers are metered, to immediately bill full usage; (4) that the Compliance Plan be revised to eliminate the residency requirement; and (5) that the Compliance Plan be revised to include a single

document, similar to the **Appendix A** of this Order, setting forth the entirety of Pittsburgh Water and Sewer Authority's lead infrastructure plan, as approved in and consistent with this Opinion and Order.

11. That, pursuant to 66 Pa. C.S. § 3202(b), the Pittsburgh Water and Sewer Authority is granted a temporary waiver, of one year from the date of entry of this Opinion and Order, from compliance with 52 Pa. Code §§ 65.21-65.23 regarding a utility's duty to make line extensions, consistent with this Opinion and Order. Before or on the expiration date of that one-year period, the Pittsburgh Water and Sewer Authority shall file with the Commission either a petition for a permanent waiver of the line extension Regulations or a supplemental compliance plan detailing how it will revise its processes to be compliant with the line extension regulations. Should the Pittsburgh Water and Sewer Authority file a petition for a permanent waiver of the line extension Regulations, such petition shall explain and detail how the application of the formula and processes under the Municipal Authorities Act results in a just and reasonable economic standard and reasonable service, including a comparison/contrast with the Commission's line extension Regulations.

12. That the Pittsburgh Water and Sewer Authority include, in its next base rate case filed in accordance with 66 Pa. C.S. § 1308 (relating to voluntary changes in rates), a *pro forma* tariff supplement proposing the following:

- (a) An expenditure cap on the maximum number of customer-owned lead water service lines that can be replaced annually, pursuant to 66 Pa. C.S. §§ 1311(b)(2)(v), (vi). Such an expenditure cap shall be clearly linked to its expenditure commitments in its Long-Term Infrastructure Improvement Plan and reflect realistic estimates of spending required to replace all qualifying residential lead service lines in its system by 2026, as approved in this Opinion and Order. The Pittsburgh Water and Sewer Authority

shall file any necessary compliance tariffs in this proceeding consistent with, and within thirty (30) days of the entry date of, the Opinion and Order entered in Pittsburgh Water and Sewer Authority's next base rate case approving such expenditure cap.

- (b) Any reasonable changes, substitutions and extensions in or to service and facilities as may be necessary or proper for the accommodation and safety of customers in extraordinary circumstances as set forth in the modification to the Joint Petition for Partial Settlement in Ordering Paragraph No. 8, above, and to quantify any specific limits on the financial responsibility of the Pittsburgh Water and Sewer Authority for a private-side lead service line replacement in such extraordinary circumstances.

13. That, within thirty (30) days of the entry date of this Opinion and Order, the Pittsburgh Water and Sewer Authority file an amended Long-Term Infrastructure Improvement Plan at Docket Nos. P-2018-3005037 and P-2018-3005039, as approved in and consistent with this Opinion and Order, with the Commission's Bureau of Technical Utility Services and serve a copy thereof on all active Parties in this proceeding. The amended Long-Term Infrastructure Improvement Plan shall include, *inter alia*, an appendix containing a summary of all relevant components of its lead infrastructure plan, as approved in and consistent with this Opinion and Order.

14. That the Bureau of Technical Utility Services shall complete its review of the amended Long-Term Infrastructure Improvement Plan filed pursuant to Ordering Paragraph No. 13 and submit an Order for Commission consideration.

15. That the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and

Pennsylvania-American Water Company shall comply with the terms of the Joint Petition for Partial Settlement, as modified, as though each term therein were the subject of an individual ordering paragraph.

16. That the Secretary's Bureau shall refer the Cooperation Agreement filed by the Pittsburgh Water and Sewer Authority at Docket No. U-2020-3015258 to the Office of Administrative Law Judge for further proceedings as may be deemed necessary.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: March 26, 2020

ORDER ENTERED: March 26, 2020

## Appendix A

### Pittsburgh Water and Sewer Authority (PWSA)

**Docket Nos.: M-2018-2640802; M-2018-2640803; P-2018-3005037; P-2018-3005039**

PWSA's service plan to remedy residential lead service lines (LSLs) existing within and connected to its water distribution system is contained in the following documents in this proceeding: Compliance Plan (CP), CP Supplement, the Long-Term Infrastructure Improvement Plan dated August 21, 2019 (Hearing Exh. 3) (LTIIP), PWSA's Board July 2019 Policy (Exh. RAW C/46), relevant expert testimony, and the Partial Settlement filed September 13, 2019. In the Opinion and Order entered in this proceeding (Final Order), the Commission, *inter alia*, approved in part and modified in part PWSA's LSL plan. Based on the foregoing documents and the Final Order, below is a summary of PWSA's LSL plan. The modifications made to PWSA's LSL plan in the Final Order are indicated below with ALL CAPITAL LETTERS font.

#### **PWSA's Service Plan to Remove Lead Service Lines Existing in and Connected to its Water Distribution System**

- A. **Effective Dates:** The terms in this section will take effect on the entry date of the Final Order. Unless specifically noted, each term in this section will remain in effect until December 31, 2026. Partial Settlement at ¶ III.PP.
- B. **Goal:** PWSA's current goal is to complete the replacement of all public- and private-side lead service lines in its system by 2026. Partial Settlement at III.QQ.2. "Public-side service line" means the portion of the service line on the street side of the curb box. "Private-side service line" means the portion of the service line on the residence side of the curb box. Partial Settlement at ¶ III.OO.3-4.
- C. **Objective:** To refrain from performing partial lead service line replacements at residential properties. July 2019 Policy at 1. "Partial lead service line replacement" means the replacement of a public-side service line, made of any material, without the simultaneous replacement of a connected private-side lead service line. Partial Settlement at ¶ III.OO.6.
- D. **Eligibility Criteria:** This plan applies to:
  - 1. Any lead service line: (Partial Settlement at ¶ III.QQ.2)
    - a. serving any residence (as defined in Partial Settlement at ¶ III.VV.1.a.i) (defined below);
    - b. of which PWSA is aware;

- c. the replacement of which is operationally feasible (as determined pursuant to ¶ 3.3 of PWSA’s Board July 2019 Policy (defined below); and,
  - d. in the case of a private-side line, the owner authorizes the replacement or replaces the line in accordance with PWSA policy. (Partial Settlement at ¶ III.QQ.2)
2. “Service Line” means the pipe or pipes that connects a water main to a building inlet and any pigtail, gooseneck, or other fitting connected to the pipe or pipes. Partial Settlement at ¶ III.OO.2.
  3. “Lead service line” includes any service line made of lead, galvanized iron, or galvanized steel. Partial Settlement at ¶ III.OO.5.
  4. “Residence” means a residential property with no more than four (4) dwelling units or a dual use property (commercial & residential) with service lines 1-inch in diameter or less, for which the PWSA has maintenance responsibility for the water service line from the water main to and including the curb stop, as more fully described in PWSA Rules and Regulations. Partial Settlement at ¶ III.VV.1.a; *see* Partial Settlement at 49, n. 36.
    - a. Includes any lead service line greater than 1-inch diameter that is connected to a single-family residence. If PWSA discovers such a line, PWSA will replace the line with a suitable-sized line. *See* Exhibit RAW/C-2, PWSA’s response to TUS-I-4.
  5. If PWSA determines, in its sole discretion, that replacement of the portion of the lead service line owned by the property owner at a particular residence or related interior plumbing modification is not technically feasible, the residence is unsafe from a structural or sanitary condition, or will result in excess expense, due to conditions, such as length, terrain, obstructions, structures, pavements, trees, or other utilities, PWSA may exclude such residence and not replace private side of the LSL. Partial Settlement at ¶ III.QQ.2; July 2019 Policy at 2, ¶ 3.3 (PWSA Exh. RAW/C-46).

**E. Inventory of LSLs:**

1. PWSA is working with the University of Pittsburgh to develop a machine-learning model that will predict the material composition of public-side and private-side service lines, based on a model used in Flint,

Michigan. PWSA will continue to collaborate with the University of Pittsburgh on this project. Partial Settlement at ¶ III.QQ.1.

- a. After the model is peer-reviewed and quality assurance / quality control review is completed for its predictions of the locations of public- and private-side LSLs, PWSA will use the data from the model predictions as part of the lead service line mapping on PWSA's website. Partial Settlement at ¶ III.QQ.1.a.
  - b. PWSA will publicize these updates by, at a minimum, issuing a press release once they are final. Partial Settlement at ¶ III.QQ.1.b.
  - c. After the machine-learning model generates predictions for the composition of all public- and private-side service lines and no later than March 31, 2020, PWSA will present to the Community Lead Response Advisory Committee (CLRAC), for its information and advisory input, PWSA's plan for completing its inventory of service lines, including the steps PWSA will take to further investigate the composition of service lines based on the model's predictions. Partial Settlement at ¶ III.QQ.1.c.
2. By December 31, 2020, PWSA will establish (and provide to the CLRAC, for its review and advisory input), an estimate of the number of private-side lead service lines connected to residential structures in PWSA's service area. Partial Settlement at ¶ III.QQ.2.a.
  3. PWSA will provide an update to this inventory on an annual basis as described below in Section III.QQ.3. Partial Settlement at ¶ III.QQ.2.a.

F. **Retroactive private-side replacements to be performed by PWSA for partial replacements of public-side lead service lines previously completed by PWSA between February 1, 2016 and December 31, 2018:** PWSA's 2016 exceedance of the lead action level under the Lead and Copper Rule (Rule) triggered PWSA's requirement under the Rule to replace seven percent of its public-side LSLs within one year. When PWSA first began its replacement

efforts, it replaced only the public-side of the lead service lines.<sup>63</sup> PWSA suspended partial LSL replacements in June 2017 after post-replacement testing revealed elevated lead levels at several homes.<sup>64</sup>

1. Customers who received a partial public LSL replacement after February 1, 2016 due to a PWSA action, such as, for example, a LSLR contract, PWSA operation replacement or water main replacement, “will be eligible” to have their private LSL replaced by PWSA, at no charge to the customer. July 2019 Policy at 1-2.
2. For customers who elected to replace their private LSL as a result of a PWSA public side LSL replacement between February 1, 2016 and December 31, 2018, PWSA will offer a direct reimbursement for costs incurred up to a maximum of \$5,500 (based on the average cost for PWSA to replace private lines). July 2019 Policy at 2.
3. For customers who elected to replace their private LSL on their own, meaning, the decision was unrelated to a public side LSL, PWSA will not offer reimbursement. July 2019 Policy at 2.

**G. Systematic program replacements performed by PWSA after January 1, 2019:**

1. PWSA will offer to replace a private-side LSL at no direct cost to the property owner:
  - a. At any residence where PWSA replaces a public-side service line connected to a private-side LSL; and
  - b. At any residence with a private-side only LSL located within a work order area of a neighborhood-based LSL replacement program where LSL replacements are performed after completion of the 2019 LSL Replacement program which is currently

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<sup>63</sup> As of August 2, 2019, PWSA performed 456 partial LSL replacements between February 1, 2016 and December 31, 2018, and PWSA has offered to replace the private LSL at all of those locations. Of the 456 locations, 245 property owners accepted PWSA’s offer and PWSA performed private LSL replaces at 215 of those locations. A total of 79 eligible property owners declined to have their line replaced, and the remainder 123 property owners were unresponsive. Twenty-five of the locations were determined to be non-lead after verification. PWSA St. No. C-1SD at 29.

<sup>64</sup> UNITED St. C-2 at 9-10 (citing PWSA to Temporarily Suspend Partial Lead Line Replacements (June 2, 2017), *available at* <http://lead.pgh2o.com/pwsa-to-temporarily-suspend-partial-lead-line-replacements/>).

scheduled to be completed by September 2020.  
Partial Settlement at ¶ III.VV.1.a.i-ii.

2. To complete the replacement of all LSLs by 2026, PWSA will perform the work in accordance with the following programs:
  - a. ***Small Diameter Water Main (SDWM) Accelerated Replacement Program:***
    - i. “Small-diameter water main replacement program” means PWSA’s program for replacing small-diameter water mains and associated lead service lines between 2019 and 2026, as described in the Long-Term Infrastructure Improvement Plan (LTIIIP) on page 18 and Tables 2-7 and 2-8 on pages 28-29 (*See* PWSA Hearing Exh. No. 3). Partial Settlement at ¶ III.OO.11.
    - ii. PWSA’s system has about 720 miles of SDWMs. LTIIIP at 18. PWSA estimates that, on average, each mile of SDWM has 40.9 private side LSLs connected to it. UNITED St. C-2 at 26-27.
    - iii. Between 2020 and 2026, PWSA is proposing to conduct most LSL replacements through its accelerated SDWM replacement program. LTIIIP at 28 (PWSA Hearing Exh. No. 3); PWSA St. C-1 at 56; UNITED St. C-2 at 12. PWSA is proposing to accelerate replacement of its SDWMs to reduce service disruptions from main breaks. LTIIIP at 18; UNITED St. C-2 at 12.
    - iv. For 2020, PWSA has identified SDWMs for replacement. UNITED St. C-2 at 12; PWSA St. C-1 at 63; Exhibit RAW/C-25. These mains are located in the same areas as those covered by the 2019 neighborhood-based LSL replacement program. UNITED St. C-2 at 12; PWSA St. C-1 at 63.
    - v. Starting January 1, 2021, PWSA will endeavor, to the maximum extent possible and consistent with balancing its other regulatory, infrastructure and consumer obligations and priorities, to replace at least ten (10)

miles per year of SDWM in Priority Lead Neighborhoods. Partial Settlement at ¶ III.VV.2.a.

- A. No later than July 1, 2020, PWSA, in consultation with the CLRAC, will designate the census tracts or other appropriate geographic units in its service area that constitute Priority Lead Neighborhoods. Partial Settlement at ¶ III.VV.2.a.1.
  - B. The designation of Priority Lead Neighborhoods will consider children’s blood lead levels, the prevalence of children under six years of age and women of child-bearing age, income, lead service line density, or any combination of lead-related or public health-related factors recommended by the CLRAC. Partial Settlement at ¶ III.VV.2.a.ii.
- vi. By September 30, 2019, and each year thereafter until September 30, 2026, PWSA will create (and present to the CLRAC, for review and advisory input) a plan describing the areas where the SDWM replacements will occur in 2021 and each year thereafter. Partial Settlement at ¶ III.QQ.3.
- A. The plan will include an inventory update detailing the number and location of lead service lines replaced the preceding year, the mileage of SDWMs (and number of associated lead service line replacements) occurring in Priority Lead Neighborhoods (infra ¶ III.VV.2.a), the total mileage of small diameter water mains and number of lead service lines anticipated to be removed in the existing and following year, and the number and location of lead service lines remaining. Partial Settlement at ¶ III.QQ.3.a.
  - B. For the September 2022 update and each year thereafter until the September 2026 update if PWSA did not replace 10 miles of small diameter water main in Priority Lead Neighborhoods in the preceding year, *see*

¶ III.VV.2.a, the inventory update will explain the factors that prevented PWSA from doing so. Partial Settlement at ¶ III.QQ.3.b.

C. The inventory update will also explain how PWSA plans to address those factors and endeavor to the maximum extent possible to replace at least ten (10) miles of small diameter water main in Priority Lead Neighborhoods in the existing and following year. Partial Settlement at ¶ III.QQ.3.c.

vii. PWSA will complete a two-year project to add information about its SDWMs to its Geographic Information System (GIS) database. PWSA St. C-1 at 63; UNITED St. C-2 at 13 (citing UNITED St. C-2 Appendix B, 6, UNITED I-8).

b. ***LSL Neighborhood-Based Replacement Program:***

i. “Neighborhood-based lead service line replacement program” means the program, described in part on pages 27-28 of the LTIIP (PWSA Hearing Exh. No. 3), in which PWSA replaces all public-side lead service lines and eligible private-side lead service lines in work order areas. Partial Settlement at ¶ III.OO.12.

ii. *Discontinuance of Existing 2019 LSL Replacement Program in September 2020:* During 2019 and 2020 LSL replacements under this program, which replaces lines on a neighborhood basis, overall work orders will be prioritized based on the prevalence of children under six years of age and women of child bearing age, and incidences of high blood levels in PWSA’s drinking water service territory. July 2019 Policy at 2; PWSA St. No. C-1SD at 27; PWSA St. C-1RJ at 16. PWSA is proposing to discontinue its neighborhood-based replacement program after completing replacements funded by PennVEST in September 2020. PWSA St. C-1 at 56-58; PWSA St. C-1R at 51-52; PWSA St. C-1SD at 27; UNITED St. C-2 at 12 (citing UNITED St. C-2 Appendix B, 24, I&E PS-30).

- iii. *For any future neighborhood-based LSL replacement program:* PWSA will prioritize neighborhood-based LSL replacement program work orders according to factors identified in consultation with the CLRAC, including but not necessarily limited to, children’s blood lead levels, the prevalence of children under six years of age and women of child bearing age, income, and LSL density. Partial Settlement at ¶ III.VVV.3.a.i. PWSA will try to obtain a property owner’s consent for a private-side LSL replacement by making at least one attempt to contact the property owner by mail, one attempt by telephone, and one attempt by visiting the residence in person. Partial Settlement at ¶ III.VV.3.a.ii.
  
- c. ***Community Environmental Project (CEP):*** As required under the DEP COA, by November 2020, PWSA will offer to replace the private-side LSLs of about 200 low-income customers (defined as households with income levels below 250 percent of the federal poverty level (FPL), as adjusted annually) at a program budget of \$1.8 million. July 2019 Policy at 3; 2017 DEP COA ¶ 4(c); UNITED St. C-2 at 11. Replacements performed under the CEP will be identified by customer-requests and vetted through a third-party administrator. July 2019 Policy at 3. The Dollar Energy Fund, Inc. is the current administrator. PWSA St. C-1SD at 32.<sup>65</sup>
  
- d. ***Ongoing Maintenance of Line Breaks/Leaks:*** PWSA will replace a private-side LSL when PWSA’s operations crew replaces a public-side service line, regardless of material, as a result of line breaks or leaks, including unplanned emergency replacements. July 2019 Policy at 3.

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<sup>65</sup> As of July 29, 2019, a total of 269 customers have qualified under the CEP program and returned the customer consent agreement. The PWSA verified the service line matter of 185 CEP households. Of these households, the PWSA found non-lead lines on both sides of the curb stop at 79 locations. The PWSA replaced the private side LSL at 74 locations and the public side LSL at 66 locations, as some of the locations did not require a full LSL replacement. Work on the remaining locations is pending. PWSA St. C-1SD at 32. As of June 30, 2019, the PWSA expended a total of \$233,897.50 of CEP locations funded from the \$1.8 million budget established in the PA DEP COA. The PWSA also spent \$382,217 on the public side and other CEP-location related work that is not eligible to be funded from the \$1.8 million budget. PWSA St. C-1SD at 33.

- e. ***Additional Plan to be filed by March 31, 2021:***
- i. By March 31, 2021, PWSA will formulate a plan and timeline for removing the known public-side and private-side LSLs connected to a residential structure that will not be replaced by PWSA's other LSL replacement efforts, including the SDWM replacement program described above. The plan will describe how PWSA will locate and replace the remaining known LSLs in its system, identify a target date for replacing all LSLs, and establish milestones for measuring progress towards replacement of all LSLs by the target date. Partial Settlement at ¶ III.QQ.2.b.
  - ii. If PWSA determines that it is not feasible to replace all LSLs by December 31, 2026, the plan will identify a new target date and include an explanation as to why that new target date represents the earliest feasible date for replacing all LSLs. The plan will be presented to the CLRAC for its review and advisory input. PWSA may revise the plan, including milestones and the target date for replacing all LSLs, as needed as new information becomes available. Any such revisions will be presented and explained to the CLRAC for its review and advisory input. In evaluating the feasibility of its plan, PWSA will consider factors such as financial considerations, operational constraints, federal and state regulatory requirements and the results of its inventory. Partial Settlement at III.QQ.2.c.
- f. ***Identification of Additional Funding Sources for LSL Replacements:*** PWSA will make a good faith effort to identify additional funding sources other than rates for lead service line replacements, including but not limited to low or no cost funding opportunities, such as loans and grants. PWSA will request funding from these sources if appropriate and reasonable. This commitment will continue for the duration of the replacement program for lead service lines. Partial Settlement at ¶ III.VV.1.c.

## **H. Terms and Conditions of Private Side Replacements Performed by PWSA:**

The following terms and conditions of PWSA performing replacements of the private-side LSLs will apply:

1. Prior to conducting a private-side lead service line replacement, PWSA will provide the property owner with information about the property damage that might occur during the replacement and will describe the restoration that PWSA will perform. Partial Settlement at ¶ III.VV.1.d.
2. Property owners will be contacted in advance and asked to enter into an agreement to allow PWSA employees and contractors to gain access to their private property in order to replace their private LSLs. The agreement will include provisions that require the property owner(s) to release and hold harmless the PWSA from any and all claims, causes of action, damages or losses, of any nature, whatsoever with respect to the work performed by PWSA or its contractors.<sup>66</sup> July 2019 Policy at 3.
3. Homeowners will then be asked to cooperate with PWSA's timeline for replacement and allow workers access to the service line. July 2019 Policy at 3.
4. PWSA will restore roadways and public sidewalks, backfill any trenches excavated as part of the replacement process and will fill and seal any wall or

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<sup>66</sup> A limitation of liability provision in connection with the PWSA's tort liability for any work it performs to replace the customer-owned service line in accordance with the PWSA's plan must be filed for the Commission's approval in the PWSA's tariff. *See* 52 Pa. Code § 69.87 (state case law permits tariff provisions to limit the liability of utilities to specified dollar amounts for injury or damages as a result of negligence or intentional torts); *see also In re: Tariff Provisions That Limit the Liability of Utilities for Injury or Damage as a Result of Negligence or Intentional Torts, Pa. PUC v. PECO Energy Company*, M-00960882, R-00943065, Pa. PUC LEXIS 111 (Declaratory Order entered March 17, 1997); *see also DeFrancesco v. Western Pennsylvania Water Co.*, 478 A.2d 1295, 1307 (Pa. Super. 1984) (holding a tariff provision limiting the company's liability was exculpatory and void as against public policy because it completely negated the water company's liability for its acts of negligence or intentional tort); *see also State Farm Fire and Casualty Co. v. PECO Energy Company*, 54 A.2d 921, 926-927 (Pa. Super. 2012) (holding that the tariff provision limiting liability to \$500 was valid and enforceable because the Commission had determined the reasonableness of the tariff and because the provision limited liability rather than negating liability altogether). As clarification, any approved limitation of liability provision for tort liability would not extend to any separate service claim raised in a complaint filed with the Commission against the PWSA under 66 Pa. C.S. § 701.

floor penetrations in the private home. No other restoration will be conducted for the private side replacement. PWSA will not replace any landscaping, interior finishes, paving, seeding, or walkways. All restoration costs shall be borne by the homeowner. July 2019 Policy at 4.

**I. Ad hoc replacements initiated by property owners after January 1, 2019:** “Ad hoc replacements” refer to when a property owner elects on their own initiative to arrange for the replacement of a private side LSL when PWSA is not then-currently replacing the public side of the line. PWSA developed this program in the context of PWSA’s implementation in April 2019 of its new orthophosphate water treatment plan in accordance with DEP requirements, which PWSA “expects” to reduce results in the DEP-required testing: results in 90<sup>th</sup> percentile from two consecutive six month periods must fall below the action level. PWSA M.B. at 61; PWSA St. C-1RJ at 3, 17-18, 22-23, 60.

1. If the private LSL is connected to a public LSL, PWSA proposes to replace the public side portion of the LSL when a customer elects to replace the private side. This proposal eliminates a partial line replacement.
2. PWSA proposes to reimburse the customer for all or a portion of the cost of the private side replacement based on the customer’s income. The proposed income-based reimbursement of the cost to replace private LSL is tiered as follows:<sup>67</sup>
  - a. Full cost reimbursement for households with income levels below 300 percent of the federal poverty level (FPL),<sup>68</sup> as adjusted annually;
  - b. 75 percent of the cost reimbursement for households with income levels between 301 and 400 percent of the federal poverty level, as adjusted annually;
  - c. 50 percent of the cost reimbursement for households with income level between 401 and 500 percent of FPL, as adjusted annually;

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<sup>67</sup> The PWSA estimates that approximately 53.3% of households will qualify for full reimbursement, 12.1% will qualify for 75% reimbursement, 9% will qualify for a 50% reimbursement. PWSA St. C-1SD at 31.

<sup>68</sup> The FPL is a sliding scale that is updated each year by the U.S. Department of Health and Human Services. The scale is based on the number of people living in the household. Each additional person in the household increases the FPL by \$4,420. OCA St. 2R-Supp at 4.

- d. For all other households, a \$1,000 stipend towards the replacement cost of private side LSL replacement. July 2019 Policy at 4.
3. PWSA is not taking responsibility for replacement of private LSLs when it is not replacing the public side of the service line. A customer would be responsible to determine if they have a private side LSL at their home. UNITED St. C-2SUPP-R at 3. In these circumstances, the customer is required to hire a private contractor, and PWSA will reimburse the customer for the lead line replacement expenses based on the customer's income level. PWSA St. C-1RJ at 9.
4. PWSA is willing to directly pay the contractor rather than to require the customer to first fund it and wait for reimbursement from PWSA. PWSA St. C-1RJ at 11 (articulating PWSA's desire to do this and that it was exploring the option at the time of submitting rejoinder testimony); *see also* PWSA M.B. at 63.
5. PWSA estimates that it would incur administrative costs of \$1,000 for each ad hoc replacement. OCA St. 2R-Supp at 5 (citing UNITED-XII-15 Attach. A, note 3). PWSA estimates that the average cost of direct construction work to replace a private side LSL by a customer's private contractor is \$5,500. July 2019 Policy at 2. PWSA is budgeting for 8,000 to 20,000 replacements through this program. UNITED St. C-1SUPP-R, Appendix A, 1, UNITED XII-15 Attach. A.

**J. Partial replacements performed by PWSA after January 1, 2019:**

1. "Partial lead service line replacement" means the replacement of a public-side service line made of any material without the simultaneous replacement of a connected private-side LSL. Partial Settlement at ¶ III.OO.6.
2. PWSA will complete the replacement of a public-side LSL without simultaneously completing the replacement of the private-side LSL in the following circumstances:
  - i. If PWSA determines, in its sole discretion, that replacement of the portion of the LSL owned by the property owner at a particular residence or related interior plumbing modification is not technically feasible, the residence is unsafe from a structural or sanitary condition, or will result in excess expense, due to conditions, such as length, terrain, obstructions, structures, pavements, trees, or other utilities, PWSA may exclude such residence and not replace private

side of the LSL; (Partial Settlement at ¶ III.VV.1.b.i; July 2019 Policy at 2, ¶ 3.3)

- ii. PWSA is replacing a public-side service line through the small-diameter water main replacement program or is moving a residential service line from an abandoned water main to a different water main, and PWSA is unable to obtain consent to replace the private-side LSL from the property owner after making at least one attempt to contact the property owner by mail, one attempt by telephone, and one attempt by visiting the residence in person; (Partial Settlement at ¶ III.VV.1.b.ii)
- iii. A property owner who also resides at the property signs a formal agreement stating that they do not consent to a free private-side LSL replacement and that they understand the risks of a partial replacement; or (Partial Settlement at ¶ III.VV.1.b.iii)
- iv. PWSA is replacing a public-side service line as a result of an emergency circumstance (e.g., water main leak, broken curb stop, or damage to other infrastructure requiring a public-side service line replacement), and PWSA is unable to obtain consent to replace the private-side LSL from the property owner after making at least one attempt to contact the property owner by telephone and one attempt by visiting the residence in person. (Partial Settlement at ¶ III.VV.1.b.iv.)
- 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 THE PARTIAL SETTLEMENT AT ¶ III.VV.1.b.i., PWSA WILL TEMPORARILY NOT REPLACE THE PUBLIC-SIDE SERVICE LINE UNTIL IT HAS REPORTED THE FACTUAL CIRCUMSTANCES TO THE CLRAC IN ACCORDANCE PARTIAL SETTLEMENT AT ¶ III.WW.4.b. AFTER CONSULTING WITH THE CLRAC, PWSA SHOULD MAKE A DETERMINATION AS TO THE APPROPRIATE NEXT STEPS, INCLUDING, BUT NOT LIMITED TO, POTENTIALLY NOT REPLACING THE PUBLIC SIDE OF THE LINE WHILE CORROSION CONTROL TREATMENTS AND DISTRIBUTION OF WATER FILTERS REMAIN IN PLACE 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 ACCOMODATION AND SAFETY OF PATRONS WITH 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.

- 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 THE PARTIAL SETTLEMENT AT ¶ 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. PWSA WILL BEGIN THE PROCESS TO TERMINATE SERVICE TO THE RESIDENCE WITH PRIOR NOTICE IN ACCORDANCE WITH PWSA'S TARIFF AT SECTION C, RULE 3.J. RECONNECTION OF SERVICE SHALL NOT BE PERMITTED UNTIL THE CUSTOMER CERTIFIES THE REMOVAL OF THE PRIVATE-SIDE LEAD SERVICE LINE IN ACCORDANCE WITH PWSA'S TARIFF AT SECTION B, RULE 4.
3. PWSA will provide residents who receive partial LSL replacements with information regarding the risks of lead exposure from partial LSL replacements. Partial Settlement at ¶ III.TT.3.a.

**K. Post-Replacement Measures:**

1. ***Post-replacement notices and instructions:*** Following a LSL replacement, full or partial, PWSA does the following steps:
  - a. Leaves an informational door hanger at the residence. The door hanger informs the resident of the work done, instructs them how to flush their pipes and taps, and directs them to collect a post-replacement water sample after allowing the water to sit unused for 6 to 8 hours.
  - b. Provides the household with a tap water sample kit.
  - c. If a partial LSL was performed, and the resident fails to return the sample, PWSA will provide another door hanger reminder about one month after the date of replacement.
  - d. PWSA provides an additional free test to a customer when their previous post-replacement tap water sample reveals lead levels above 15 ppb.
  - e. If a post-replacement sample shows water lead levels above 50 ppb, PWSA will deliver to the residence at least one case of bottled water per day until PWSA completes a meter drop and flush at the

residence. Residents who receive a meter drop and flush will remain eligible for additional filter cartridges and other assistance as described above in ¶¶ III.TT.1 and III.TT.3. Partial Settlement at ¶ III.UU.1.

2. ***Post-replacement water filter distribution program:***

- a. PWSA presently offers an NSF-certified pitcher (not tap) filter and three replacement cartridges to customers free of charge after a partial or full LSL replacement. PWSA St. C-1 at 62-63.
- b. PWSA will continue to provide, at no charge, a tap water lead testing kit, water filter NSF-certified to remove lead, and six months of filter cartridges to a residence whenever PWSA performs a LSL replacement. Partial Settlement at ¶ III.TT.3.
  - i. PWSA will provide residents who receive partial lead service line replacements with information regarding the risks of lead exposure from partial lead service line replacements. Partial Settlement at ¶ III.TT.3.a.
  - ii. If a resident's post-replacement tap water lead test reveals lead levels above ten (10) parts per billion, PWSA will provide to the resident an additional testing kit, at no charge, and instructions to return a follow-up test result three months after the initial test. Partial Settlement at ¶ III.TT.3.b.
  - iii. If the three-month follow-up test result shows lead levels above ten (10) parts per billion, PWSA will assist the resident in determining why lead levels remain elevated. Partial Settlement at ¶ III.TT.3.c.

**L. Interior Plumbing Inspections:**

1. Whenever PWSA replaces a residential water meter, PWSA will inspect the interior plumbing adjacent to the water meter and inform residents in writing of the materials observed. If the interior plumbing is composed of galvanized steel or iron, PWSA will inform customers of the risks of lead release from such plumbing. Partial Settlement at ¶ III.RR.1.
2. Whenever PWSA performs a private-side lead service line replacement without a simultaneous meter replacement, PWSA will make good faith efforts to document the material making up the interior plumbing adjacent to the private-side lead service line and inform residents in writing of the

materials observed. If the interior plumbing is composed of galvanized steel or iron, PWSA will inform customers of the risks of lead release from such plumbing. Partial Settlement at ¶ III.RR.2.

**M. Meter Replacements and Processes Related to Potential LSLs:**

1. Starting September 1, 2019 and ending three months thereafter, PWSA will provide, at no charge, a tap water lead testing kit, whenever PWSA replaces a water meter at a residence that has a private-side lead or galvanized service line or lead-bearing or galvanized interior plumbing adjacent to the water meter. Partial Settlement at ¶¶ III.SS.1 and III.TT.1.
2. Starting September 1, 2019, PWSA will conduct a three-month study to determine the potential impact of replacing a water meter at locations with a lead service line or adjacent lead-bearing or galvanized interior plumbing. Partial Settlement at ¶ III.SS.2.
3. By January 31, 2020, PWSA will present CLRAC with the results of the samples received pursuant to Section III.SS.1 to demonstrate potential impacts, for CLRAC’s information and to solicit feedback. Partial Settlement at ¶ III.SS.3.
  - a. If more than ten percent of the results received exceed ten parts per billion of lead, PWSA will provide a water filter NSF-certified to remove lead, six months of filter cartridges, and written information on how to request a free tap water lead testing kit whenever PWSA replaces a water meter at a residence that has a private-side lead or galvanized service line or lead-bearing or galvanized interior plumbing adjacent to the water meter. Partial Settlement at ¶ III.SS.3.a.
  - b. PWSA will start providing the water filters NSF-certified to remove lead and the filter cartridges as soon as PWSA has evaluated the results of the study and determined that more than ten percent of the results received exceed ten parts per billion of lead. Partial Settlement at ¶ III.SS.3.b.
4. PWSA will ensure that a new meter installed at any residence is “lead free,” as defined at 42 U.S.C. § 300g-6(d). Partial Settlement at ¶ III.SS.4.

**N. Tap Water Testing, Filter Distribution and Bottled Water (not in connection with PWSA’s completion of a LSL replacement):**

1. PWSA will provide, at no charge, a tap water lead testing kit to any resident within its service area who requests one. Partial Settlement at III.TT.1. PWSA will also provide, at no charge, a tap water lead testing kit to any resident within its service area who receives a meter replacement. Partial Settlement at ¶ III.TT.1.
  - a. If such testing reveals lead levels above ten (10) parts per billion, PWSA will provide to the resident, at no charge, a water filter NSF-certified to remove lead, six months of filter cartridges, and an additional tap water lead testing kit with instructions to return a follow-up test result three months after the initial test.
  - b. So long as the resident continues to return testing kits, PWSA will continue to provide additional testing kits at three-month intervals and additional filter cartridges at six-month intervals until the resident's lead levels fall below ten parts per billion.
  - c. PWSA will include information on this filter distribution policy in all materials publicizing the availability of tap water lead testing kits.
2. PWSA will offer, at no charge, a NSF-certified water filter to remove lead and six months of filter cartridges to any customer enrolled for PWSA's Customer Assistance Programs and any tenant that would be eligible for PWSA's Customer Assistance Programs if they were a customer, when PWSA's records (including predictions from the machine-learning model described above in Inventory) indicate that the customer's or tenant's residence has a public-side or private-side service line made of lead or unknown material. This term will remain in effect until PWSA's Lead and Copper Rule sampling results fall below the lead action level during two consecutive six-month monitoring periods. Partial Settlement at ¶ III.TT.2.

“Customer Assistance Programs” means PWSA's Bill Discount Program, Hardship Fund program, Winter Shut Off Moratorium, Community Environmental Project, and any future programs created by PWSA to assist customers in paying for water service or securing access to safe drinking water. Partial Settlement at ¶ III.OO.9.
3. If a residence's tap water lead test reveals lead concentrations above 50 parts per billion, PWSA will deliver to the residence at least one case of bottled water per day until PWSA completes a meter drop and flush at the residence. Residents who receive a meter drop and flush will remain eligible for additional filter cartridges and other assistance as described above in Sections ¶¶ III.TT.1 and III.TT.3. Partial Settlement at ¶ III.UU.1.

**O. Community Lead Response Advisory Committee (CLRAC):**

1. “CLRAC” means the Community Lead Response Advisory Committee established pursuant to pages 9-13 of PWSA’s Joint Petition for Partial Settlement, and as approved by Final Order of the Commission entered on February 7, 2019 in PWSA’s first jurisdictional base rate case docketed at R-2018-3002645 *et al.* Partial Settlement at ¶ III.OO.13.
2. The term of the CLRAC is extended through December 31, 2026, unless active CLRAC members vote unanimously to terminate the CLRAC at an earlier date. Partial Settlement at ¶ III.WW.1.
3. Notwithstanding ¶ III.WW.1, PWSA may terminate the CLRAC after January 1, 2022, if there are just and reasonable circumstances for its termination, including insufficient participation and/or engagement in the CLRAC. Termination of the CLRAC will be effective 120 days after notice is provided by PWSA to CLRAC members. Partial Settlement at ¶ III.WW.2.
4. If a CLRAC member is no longer willing or able to continue to participate in the CLRAC, another representative of the departing member’s organization may fill the departing member’s position on the CLRAC. If no other representative of the departing member’s organization is willing or able to fill the departing member’s position, PWSA or any member of the CLRAC, including the departing member, can nominate a candidate to fill the departing member’s position. At least one active committee member must be a public health expert. Candidates must be approved by two-thirds of current CLRAC members. Partial Settlement at ¶ III.WW.3
5. PWSA will consult with the CLRAC regarding its lead remediation efforts on at least a quarterly basis. PWSA’s consultation will include, but not be limited to:
  - a. Prioritization of residences for lead service line replacements based on children’s blood lead levels, the prevalence of children under six years of age and women of child-bearing age, income, lead service line density, or any combination of factors recommended by the CLRAC, as part of:
    - i. Small-diameter water main replacements performed after January 1, 2021, including designation of Priority Lead Neighborhoods, as described above at ¶ III.VV.2.a; and

- ii. The neighborhood-based lead service line replacement program, as described above at ¶ III.VV.3. (Partial Settlement at ¶ III.WW.4.a.i-ii)
- b. An update every six months on the number of instances in which PWSA has been unable to replace a private-side lead service line because of the conditions set forth in ¶ III.VV.1.b. (Partial Settlement at ¶ III.WW.4.b)
- c. An analysis of the costs incurred by customers seeking reimbursements for private-side lead service line replacements under Paragraph 3.2 of PWSA Exh. RAW/C-46 (PWSA Lead Service Line Replacement Policy Approved July 26, 2019), for CLRAC's information and to solicit feedback; (Partial Settlement at ¶ III.WW.4.c)
- d. A quarterly update on PWSA's efforts to secure additional funding for lead service line replacements as described above at Section III.VV.1.c.; (Partial Settlement at ¶ III.WW.4.d)
- e. Implementation of PWSA's water filter policies, including methods for reducing residents' burdens to obtain filters under the filter programs described above at ¶¶ III.SS and III.TT; (Partial Settlement at ¶ III.WW.4.e)
- f. Improving outreach efforts and exploring other methods for obtaining customer consent for private-side lead service line replacements conducted as part of the small-diameter water main replacement program, neighborhood-based lead service line replacement program, in response to a main or service line leak or break, or through the Community Environmental Project. PWSA will continue to report quarterly to the CLRAC, for its information and to solicit feedback, on the number of property owners who refuse to consent to private-side lead service line replacements, the reasons for their refusal, and PWSA's follow-up efforts to obtain consent; (Partial Settlement at ¶ III.WW.4.f)
- g. PWSA's efforts to increase customer participation in its pre- and post-lead service line replacement and post-meter replacement tap water lead testing programs; (Partial Settlement at ¶ III.WW.4.g)
- h. Public display of the machine-learning model's predictions of the locations of private- and public-side lead service lines and PWSA's

plans for completing its inventory, as described above at Section III.QQ.1; (Partial Settlement at ¶ III.WW.4.h)

- i. PWSA's plan for replacing all known remaining lead service lines, as described above at ¶ III.QQ.2; (Partial Settlement at ¶ III.WW.4.i)
- j. PWSA's estimate of the number of private-side lead service lines located in its service area, as described above at ¶ III.QQ.2; and (Partial Settlement at ¶ III.WW.4.j)
- k. The results of the information determined in ¶¶ III.QQ.2 and III.QQ.3 above. (Partial Settlement at ¶ III.WW.4.k)

**P. Corrosion Control:**

1. PWSA will provide the Commission, the Parties, and the CLRAC with quarterly updates regarding the progress of PWSA's orthophosphate program, when PWSA started testing for lead levels, and the results of the lead level testing. Partial Settlement at ¶ III.XX.1.
2. PWSA's obligation to provide the quarterly updates set forth in this paragraph will cease when it is no longer required to provide quarterly updates on its orthophosphate program to the Pennsylvania Department of Environmental Protection. Partial Settlement at ¶ III.XX.2.

**Q. Cost Tracking Relating to LSL Replacement Costs**

1. PWSA will separately identify all projected lead service line replacement costs and details on its cost projections in its rate filings. Partial Settlement at ¶ III.YY.1.
2. PWSA will continue to provide information regarding actual replacement costs as part of its quarterly report provided to the parties pursuant to the Rate Case Partial Settlement Par. A.2.c. (Docket Number R-2018-3002645) that includes quarterly and cumulative year-to-date data. This reporting requirement will continue through the term of the lead service line replacement program. Partial Settlement at ¶ III.YY.2.

Actual replacement costs will be evaluated in future base rate proceedings and shared with the CLRAC. Partial Settlement at ¶ III.YY.2.

3. When PWSA adopts the Uniform System of Accounts, it will show projected and actual lead service line replacement costs as a sub account; PWSA will

determine whether it would be appropriate to include in a sub account of Account 333. Partial Settlement at ¶ III.YY.3.