



April 20, 2020

VIA EFILE

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

Re: Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Docket Nos. M-2018-2640802, -2640803

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

Dear Secretary Chiavetta,

Please find the attached **Answer of Pittsburgh UNITED to the Petition of Pittsburgh Water and Sewer Authority for Reconsideration, Clarification, and/or Amendment** for filing in the above noted consolidated proceedings. Copies have been served consistent with the attached Certificate of Service.

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

Respectfully submitted,

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

Elizabeth R. Marx
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CC: Certificate of Service
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Enc.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I hereby certify that I have this day served copies of the **Answer of Pittsburgh UNITED to the Petition of Pittsburgh Water and Sewer Authority for Reconsideration, Clarification, and/or Amendment** in the above-captioned proceeding in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 and as modified by the Commission's Emergency Order regarding the Suspension of Regulatory and Statutory Deadlines and Modification to Filing and Service Requirements at Docket No. M-2020-3019262.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the	:	Docket No.	M-2018-2640802
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Petition of the Pittsburgh Water and Sewer	:	Docket No.	P-2018-3005037
Authority for Approval of Its Long-Term	:		P-2018-3005039
Infrastructure Improvement Plan	:		

**ANSWER OF PITTSBURGH UNITED TO THE PETITION OF THE PITTSBURGH
WATER AND SEWER AUTHORITY FOR RECONSIDERATION, CLARIFICATION,
AND/OR AMENDMENT**

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Pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§ 5.61 and 5.572, Pittsburgh UNITED, through its counsel at the Pennsylvania Utility Law Project and the Natural Resources Defense Council, hereby files the following Answer to the Petition of the Pittsburgh Water and Sewer Authority (PWSA) for Reconsideration, Clarification, and/or Amendment of the Commission's March 26, 2020 Opinion and Order (Order).

Pittsburgh UNITED shares PWSA's interest in preventing partial lead line replacements and service terminations, and it supports several of PWSA's requests to narrow the circumstances under which the utility must terminate service. Pittsburgh UNITED and PWSA agree that a customer's refusal to accept a private-side lead service line replacement should not result in a loss of service if termination is barred by an independent legal restriction, such as the winter moratorium, the Commission's COVID-19 moratorium, or a medical certificate documenting an occupant's serious illness.¹ Nor should PWSA terminate service when it replaces a public-side service line under emergency circumstances and cannot obtain the property owner's consent to replace the private-side lead service line.² Finally, Pittsburgh UNITED agrees that PWSA should not terminate service at homes with tangled titles or other technical property issues that prevent occupants from consenting to the replacement, provided that PWSA connects the occupants to legal services that might be able to help resolve the issue.³

¹ PWSA Petition for Reconsideration, at 25-26; see also Pittsburgh UNITED Petition for Reconsideration, at 5 & n.20, 8-11 (contending that lead-service-line-related terminations must be performed, if at all, pursuant to the Public Utility Code and Commission regulations).

² PWSA Petition for Reconsideration, at 25; Pittsburgh UNITED Petition for Reconsideration, at 11-12.

³ PWSA Petition for Reconsideration, at 24-25; Pittsburgh UNITED Petition for Reconsideration, at 7-8.

But Pittsburgh UNITED does not endorse all of PWSA's requested modifications to the Commission's Order.⁴ PWSA asks the Commission not to require termination of service at tenant-occupied properties when a landlord does not accept a free lead service line replacement. Pittsburgh UNITED, by contrast, believes it is a more prudent public health and safety approach to develop a robust outreach and notice process – including actual notice, specific and targeted outreach, education, and legal referrals for tenants – prior to proceeding with termination of service to rental properties, and well in advance of PWSA performing lead service line replacement work. While Pittsburgh UNITED shares PWSA's desire to avoid unnecessary water shut offs that harm and displace renters, those concerns must be balanced against the imperatives of maximizing pressure on landlords to authorize lead service line replacements and avoiding dangerous partial replacements that put tenants at risk. Thus, Pittsburgh UNITED disagrees with PWSA's request to exclude all tenant-occupied properties from the Commission's modification.

PWSA also asks that it not be required to terminate service in two additional circumstances: first, when a service line crosses two properties and the neighboring property owner refuses to consent to a replacement and, second, when a service line replacement would inflict costly property damage the homeowner cannot afford to repair. Pittsburgh UNITED supports PWSA's proposal to exclude these properties from the settlement modification, but with certain reservations. Namely, PWSA should be required to explore ways to remove lead service lines without the consent of uncooperative neighbors, and it should create a fund to defray post-replacement restoration costs for low income homeowners.

⁴ PWSA also continues to assert that the Commission lacks jurisdiction to order replacement of lead service lines. PWSA Petition for Reconsideration, at 21 n.56. The Commission has already rejected this argument. Order, at 139-41.

Finally, PWSA asks the Commission to reconsider its order that PWSA consult with the Community Lead Response Advisory Committee (CLRAC) before performing a partial replacement based on the utility's determination that removing the private-side lead service line is not operationally feasible. Pittsburgh UNITED supports that request but believes that additional outreach and reporting measures are necessary to address the Commission's concerns with these partial replacements.

Pittsburgh UNITED, therefore, respectfully requests that the Commission grant in part and deny in part PWSA's Petition.

I. ARGUMENT

A. PWSA's proposed changes to Partial Settlement Paragraph III.VV.1.b.vi

PWSA asks the Commission to modify its Order so that PWSA need not terminate service when a "customer and/or occupant does not have the legal authority to authorize or consent to the replacement of the private-side lead service line,"⁵ or when "property owner costs associated with replacing the private-side lead service line would be excessive, unduly burdensome and unreasonable to the owner."⁶ These proposed changes are either unwise or incomplete as applied to tenant-occupied properties, homes with a service line that crosses a neighboring property, and homes where lead service line replacement would cause significant property damage.

⁵ PWSA Petition for Reconsideration, at 23. The text of PWSA's proposed modification to subsection vi sweeps more broadly than the utility seems to intend it to: nearly every home has at least one "occupant [who] does not have the legal authority to authorize" a private-side lead line replacement. Presumably, PWSA means to exclude from the termination requirement only those homes where none of the occupants possess that authority.

⁶ Id. PWSA identifies a third situation for which it wants the Commission to eliminate the termination requirement: partial replacements performed under emergency circumstances. Id. As noted above, Pittsburgh UNITED supports this change to the Commission's Order.

i. Tenant-occupied properties

PWSA proposes to refrain from terminating service at rental properties whose owners block lead service line replacements,⁷ but that approach will result in an unacceptable number of dangerous partial replacements. Without the threat of service termination, landlords have an easy out: they can ignore or refuse PWSA's offer and avoid both the hassle of coordinating a replacement and potential restoration costs, at no health risk to themselves. As a result of partial replacements, lead levels in tenants' water may spike.⁸ The community will bear the burden of increased lead exposure.⁹ But there is no penalty for the property owner.

The Commission should not let deadbeat landlords off the hook. The best strategy for protecting tenants' access to safe drinking water and preventing an unfair loss of service is to give landlords actual and verified notice of PWSA's offer of a replacement; require PWSA to undertake aggressive outreach and education to persuade landlords to accept; match tenants with legal and social services to ensure that they can vigorously defend their right to a habitable home; and retain service termination as the consequence for recalcitrance.¹⁰ The threat of termination will demand the attention of landlords who do not care about the safety of their tenants' water and might otherwise ignore PWSA's offer. Termination risks cutting off the landlord's rental revenue and substantially reducing the property's value. Landlords are unlikely to accept these significant costs just to escape the inconvenience of a lead service line replacement.

Of course, for the threat of termination to be an effective deterrent, landlords must be aware of it, and have enough time to agree to the replacement before it is scheduled to be

⁷ Id. at 25.

⁸ Order, at 116-17.

⁹ See Pittsburgh UNITED St. C-3, at 8-11, 21.

¹⁰ See Pittsburgh UNITED Petition for Reconsideration, at 6-8.

conducted.¹¹ This is why Pittsburgh UNITED asks the Commission to direct PWSA to consult with the interested parties to this proceeding regarding additional notice and outreach procedures that PWSA will employ for tenant-occupied properties.¹² And for those landlords who remain unconvinced after reading PWSA's offer on paper, hearing it over the phone, and speaking to someone in person, PWSA should shut off water at the rental property well in advance of the partial replacement, so that the landlord has a final opportunity to opt back into the service line replacement program before PWSA has completed replacements on that block.¹³

ii. Properties with high restoration costs

PWSA next requests that the Commission eliminate the requirement to terminate service at homes where an owner refuses a lead service line replacement because the costs to restore their property to its pre-replacement condition would be "excessive, unduly burdensome and unreasonable to the owner."¹⁴ Although the parties often refer to PWSA's offer as a "free" lead service line replacement, removing a lead line can damage customers' retaining walls, walkways, driveways, and landscaping.¹⁵ Repair costs can be substantial, and they fall on the homeowner: PWSA's post-replacement restoration is limited to filling in ditches and patching the wall where the service line enters the home.¹⁶ The remaining damage can be more than just an eyesore. If a work crew tears up a walkway or steps to the property, mobility-impaired residents may have difficulty leaving and entering their homes.¹⁷ Pittsburgh UNITED, therefore, shares PWSA's

¹¹ In the event that PWSA is not able to provide actual and verified notice to the landlord, PWSA should not terminate service. *Id.* at 7-8. Pittsburgh UNITED expects that such circumstances will be rare. If tenants know where to send their rent, then PWSA can likely find where to send notice.

¹² *Id.* at 8, 14-15.

¹³ *Id.* at 10-11.

¹⁴ *See* PWSA Petition for Reconsideration, at 23.

¹⁵ *See id.* at 25.

¹⁶ *Id.*; Pittsburgh UNITED St. 4, at 23-24 (rate case testimony of Gregory Welter incorporated by reference at Pittsburgh UNITED St. C-2, at 2-3).

¹⁷ Pittsburgh UNITED St. C-1, at 50.

concerns that projected restoration costs might dissuade some homeowners, particularly low income customers, from allowing PWSA to replace their private-side lead service line.¹⁸

Although Pittsburgh UNITED agrees that the Commission should modify its order to avoid service termination at homes with unduly burdensome restoration costs, that modification alone is insufficient to address this problem. Low income homeowners should not have to choose between unsafe water from a partial replacement and significant damage to their homes that they cannot afford to repair. PWSA, accordingly, should create a fund that low income homeowners can draw on to pay for repairs to stairs, walkways, driveways, and retaining walls.¹⁹ It should also explore other sources of funding to assist low income homeowners with restoration costs, such as the Urban Redevelopment Authority of Pittsburgh's Housing Opportunity Fund.²⁰ The Commission should direct PWSA to confer with the interested parties to this proceeding to develop a proposal for creating the fund for low income homeowners to make post-replacement repairs, as well as to explore other sources of funding.

iii. Service lines that cross multiple properties

PWSA also asks that the Commission not require service termination when a lead service line crosses two properties and the neighboring property owner refuses to consent to the replacement.²¹ In those circumstances, Pittsburgh UNITED agrees with PWSA that a customer should not have service terminated because their neighbor is uncooperative. But an uncooperative neighbor should also not be able to block PWSA from removing a lead service

¹⁸ PWSA Petition for Reconsideration, at 25; Pittsburgh UNITED St. C-1, at 49-50. Before conducting a lead service line replacement, PWSA must provide customers with information about the property damage that might occur. Partial Settlement ¶ III.VV.1.d.

¹⁹ Pittsburgh UNITED St. C-1, at 50; Pittsburgh UNITED St. C-1SR, at 16-18.

²⁰ Urban Redevelopment Authority of Pittsburgh, Housing Opportunity Fund, <https://www.ura.org/pages/housing-opportunity-fund-programs> (last visited Apr. 20, 2020) (describing assistance for home repairs available through the Homeowner Assistance Program and Homeowner Assistance Program PLUS).

²¹ PWSA Petition for Reconsideration, at 23-25.

line and force their neighbor to receive a partial replacement. PWSA should therefore ensure that neighboring property owners receive adequate notice and outreach.²² The Commission should also direct PWSA, in consultation with the interested parties to this proceeding, to explore its legal authority to replace a lead service line without the neighboring property owner's consent.

B. PWSA's proposed changes to Partial Settlement Paragraph III.VV.1.b.v

Pittsburgh UNITED supports the Commission's efforts to bolster consultation with the CLRAC regarding partial replacements that PWSA plans to perform based on its determination that replacing a private-side lead service line is not operationally feasible.²³ Pittsburgh UNITED agrees with PWSA, however, that the pre-replacement consultation requirement should be amended,²⁴ as it may not be the most effective way to draw on the CLRAC's expertise or to minimize the number of partial replacements.

Instead, the Commission should direct PWSA, when it determines that it is not operationally feasible to replace a private-side lead service line, to make best efforts to connect the property owner to resources for rectifying the issue. PWSA should then follow up with the homeowner within a reasonable time to determine whether the issue has been addressed so that the partial replacement can be avoided. In addition, the Commission should bolster the consultation provision in the settlement, which mandates that PWSA report only the number of partial replacements every six months.²⁵ Reporting should occur at least quarterly, and PWSA should inform the CLRAC of the facts underlying PWSA's determination that it is not operationally feasible to replace a private-side lead line, the efforts PWSA took to connect the

²² See Pittsburgh UNITED Petition for Reconsideration, at 6-8 (describing necessary notice and outreach measures).

²³ Order at 123-24.

²⁴ See PWSA Petition for Reconsideration, at 28-29.

²⁵ Partial Settlement ¶ III.WW.4.b.

property owner to resources for rectifying the issue, and the outcome of those efforts.²⁶ PWSA should also consult with the CLRAC about its procedures for referring customers to resources that can help them repair conditions in their home that prevent them from receiving a full lead service line replacement. Finally, PWSA should discuss with the CLRAC how, if a customer addresses the issue that had rendered a lead service line replacement unsafe, the customer could still receive a free replacement in the future – for instance, through the income-based reimbursement program.

II. CONCLUSION

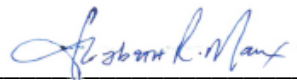
For these reasons, Pittsburgh UNITED requests that the Commission grant PWSA's Petition for Reconsideration, Clarification, and/or Amendment in part and deny it in part.

Respectfully submitted,

Counsel for Pittsburgh UNITED



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²⁶ PWSA already voluntarily exceeds the reporting requirement in the settlement by providing the CLRAC with the reasons for partial replacements and whether the properties receiving them are owned by the City of Pittsburgh or private individuals.

Verification

I, **Jennifer Rafanan Kennedy**, Executive Director of Pittsburgh UNITED, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Date: April 20, 2020

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