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April 20, 2020

Via Electronic Filing

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

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

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

PWSA's Answer in Opposition to the Petition for Reconsideration

Dear Secretary Chiavetta:

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

Sincerely,

A handwritten signature in black ink that reads "Daniel Clearfield". The signature is written in a cursive style and is positioned above a horizontal line.

Daniel Clearfield

DC/lww
Enclosure

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

CERTIFICATE OF SERVICE

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

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Dated: April 20, 2020



Daniel Clearfield, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE PITTSBURGH WATER AND SEWER AUTHORITY'S
ANSWER TO THE PETITION FOR RECONSIDERATION
AND CLARIFICATION BY PITTSBURGH UNITED
OF THE COMMISSION'S MARCH 26, 2020 FINAL ORDER**

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I. INTRODUCTION

The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) submits this Answer (“Answer”) to the Petition for Reconsideration and Clarification (“Petition”) by Pittsburgh United (“UNITED”) of the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Opinion and Order entered March 26, 2020 (“Order”) that sets forth the Commission’s decisions regarding PWSA’s Compliance Plan¹ and its Long Term Infrastructure Improvement Plan (“LTIIIP”).²

To begin, PWSA notes that, on April 16, 2020, the Commission granted UNITED’s Petition³ as well as the separate Petition for Reconsideration by PWSA^{4,5} subject to pending further review of, and consideration on, the merits.

Regarding UNITED’s request for reconsideration and clarification on lead service line remediation issues, PWSA does not oppose either (1) UNITED’s recommendation that the Commission establish a “workshop” regarding the details of the future notice and outreach efforts that PWSA will need to employ to comply with the subsections added by the Commission⁶ or (2) UNITED’s requested clarification that PWSA make an assessment of the

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

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

³ <http://www.puc.state.pa.us/pcdocs/1660448.docx>.

⁴ On April 10, 2020, PWSA filed a Petition for Reconsideration, Clarification and/or Amendment of the Order. <http://www.puc.state.pa.us/pcdocs/1660094.pdf>.

⁵ On April 16, 2020, the Commission indicated that it was holding the separate Petition for Reconsideration and/or for Supersedeas filed by the City of Pittsburgh (“City”) on April 10, 2020, in abeyance pending the disposition of the Petition to Intervene filed by the City. <http://www.puc.state.pa.us/pcdocs/1660448.docx>.

⁶ See UNITED Petition at ¶ 17, 22.

income-based reimbursement program in PWSA’s March 2021 plan regardless of whether PWSA proposes “to continue [the] program without modification.”⁷

PWSA further agrees with UNITED that customers should not be terminated if PWSA performs a partial replacement under emergency circumstances” or where there is “tangled title.”⁸ PWSA disagrees, however, with UNITED’s proposed solution with respect to other situations, such as where the resident does not have the legal ability to consent to lead line replacement or where a replacement would place an unreasonable burden on the homeowner. PWSA submits that PWSA’s proposed solution set forth in its Petition – to forgo termination in those instances – is a better solution to this problem.⁹ Refraining from terminating water service to properties where the customer is not legally authorized to permit a private lead service line, or where replacement would impose unreasonably burdensome costs on the homeowner, is, in PWSA’s view, a better solution because it avoids the delay and additional expense of undertaking a termination proceeding in situations where termination would either be unreasonable or where the harm caused by the termination is more concerning than the potential harm created by not replacing the private lead service line.

PWSA **opposes** UNITED’s other requests seeking to have the Commission impose additional directives upon PWSA. The directives sought by UNITED for “robust outreach procedures”¹⁰ and termination procedures¹¹ are not appropriate and/or not supported by the record. PWSA intends to follow the Commissions’ regulations, especially concerning termination. The Petition presents no cost-benefit analysis of any of the proposed additional

⁷ UNITED Petition at § III.B.(i).

⁸ UNITED Petition at § III.A.(iii).

⁹ PWSA Petition at § V.

¹⁰ UNITED Petition at § III.A.(i).

¹¹ UNITED Petition at § III.A.(ii).

notice, timing or outreach requirements that UNITED seeks to have imposed upon PWSA and fails to consider the additional cost and delay to PWSA's LSL Replacement Program that could be caused by such special steps.

Similarly, the requested demand that PWSA be permitted to implement its income-based customer owned lead line reimbursement program only if PWSA pays contractors directly is not consistent with the Commission's acceptance of this Program and not supported by the record, since there is no evidence that PWSA can legally contract with and pay contractors directly. PWSA has represented that it is working with approved contractors to accept payments directly from PWSA so that the homeowner would not be required to initially pay the cost of the line replacement and await reimbursement by PWSA. That should be sufficient.

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

II. RESPONSE TO UNITED'S PETITION

A. THE PROVISIONS ADDED BY THE COMMISSION.

In the Order, the Commission among other things modified Paragraph III.VV.1.b of the Partial Settlement by including new subsections (v) and (vi).¹² PWSA is seeking clarification and/or amendment of new subsections (v) and (vi) added by the Commission to Paragraph III.VV.1.b of the Partial Settlement,¹³ since these subsections (a) will require PWSA to terminate water service to certain groups of customers, even when the ability to authorize or consent to the replacement of a private-side lead service line is out of their control or would be unreasonably burdensome and (b) would create unduly long delays in lead service line replacement projects.

¹² See PWSA Petition at § II-III.

¹³ PWSA Petition at § V.

UNITED agrees with PWSA that the subsections, as written, will be problematic. Specifically, UNITED agrees that customers should not be terminated if PWSA performs a partial replacement under emergency circumstances and when a resident doesn't have legal authority to consent to a line replacement because the property title is in some other person's name, usually a deceased relative.¹⁴ PWSA has proposed language to deal with that and other situations.¹⁵ However, UNITED made several other recommendations, at least one of which is very problematic.

PWSA does not oppose UNITED's recommendation that the Commission establish a "workshop" regarding the details of the future¹⁶ notice and outreach efforts that PWSA will need to employ to comply with the subsections added by the Commission.¹⁷ Since, as noted in PWSA's Petition,¹⁸ the Commission did not receive any criticism and/or advice regarding these subsections from the parties, since the first time that PWSA (or, presumably, any other Party), saw the language creating the new requirements was in the Order itself. Accordingly, a workshop to further discuss outreach efforts associated with future LSL replacement efforts is not unreasonable.

However, PWSA **does oppose** UNITED's requests to impose additional procedures and processes on PWSA when the initiation of termination procedures is justified. Specifically, PWSA opposes UNITED's request that, in other than emergency circumstances, PWSA be

¹⁴ UNITED Petition at § III.A.(iii).

¹⁵ PWSA Petition at § V.

¹⁶ The workshops should not delay construction in 2020, and should focus on the notice and outreach for projects in the future. PWSA is working on outreach and notices for construction planned for 2020. Work will start in late May 2020 (assuming the Governor lifts the current Covid-19 work restrictions). There is insufficient time to convene a workshop prior to the 2020 construction without creating long delay in 2020 construction.

¹⁷ See UNITED Petition at ¶¶ 17, 22.

¹⁸ See PWSA Petition at 46.

required to adhere to additional procedures beyond those required for the termination of service which are normally applicable for terminations due to non-payment.¹⁹ This requirement itself represents a significant increase in the effort necessary to implement this program by PWSA, in the efforts necessary for the notifications along with developing the databases and controls needed to ensure compliance with the current extensive requirements for termination. PWSA also opposes UNITED requests that the Commission direct PWSA to use additional and “robust outreach procedures” to secure property owner consent for lead service line replacements, including providing actual and verified notice to property owners ahead of service termination.²⁰

These requested additional procedures and processes are unreasonable and should be rejected for at least two reasons: First, PWSA intends to follow the Commissions’ regulations, especially concerning termination. In addition, it must be remembered, consistent with the Settlement, PWSA is already doing a tremendous amount of notice and outreach. UNITED’s requests would add more requirements and, therefore, more expense and delay to those efforts; but UNITED has not presented any cost-benefit analysis to justify any of the UNITED’s proposed requirements.²¹ Since there is no analysis of these requirements, nothing suggests that they are reasonable and should be imposed upon PWSA.

Second, imposing these additional procedures would be unnecessary if PWSA’s suggested solution – to exempt from the termination directive locations where the homeowner or

¹⁹ UNITED Petition at § III.A.(ii).

²⁰ UNITED Petition at § III.A.(i).

²¹ For example, Paragraph 13 of UNITED’s Petition suggests that if there has been no response to PWSA’s initial notice and outreach efforts, that PWSA must send a notice by certified mail, requiring the signature of the recipient. UNITED does not, however, present any evidence that a property owner who did not respond to initial efforts would later sign for a second notice sent by certified mail. People may be intimidated when a postal employee asks them to accept and sign for certified or registered mail, or other form of acknowledged delivery. They mistakenly believe that they will avoid negative legal consequences by refusing the mail. That being said, before **requiring** the use of certified mail by PWSA, there should be a cost-benefit analysis to establish that the extra cost and effort is likely to produce more responses.

customer is not legally capable of authorizing the replacement or where replacement would impose an unreasonable burden on the homeowner or customer – is a better approach than creating additional burdensome requirements to termination, but still require PWSA to move forward with termination. In many instances in which the property owner refuses, either affirmatively or by not responding, there is a justifiable reason for the refusal.²² For example, as discussed in Section V of PWSA’s Petition, (1) there may be ownership issues, such as a lack of clear legal ownership and/or lines that are located on property owned by others; and (2) replacement may impose unaffordable costs on the property owner. In fact, work that creates unaffordable costs is an issues PWSA commonly hears about at community meetings.²³ PWSA does not have the .resources to both replace a lead service line and pay for all restorative work, including landscaping, hardscaping etc., especially when the necessary restoration work is extensive.²⁴ Accordingly, PWSA’s proposed solution²⁵ to exempt these instances from the termination requirement – is a better and more efficient approach than creating still more outreach and termination procedures. Particularly in light of the successful Corrosion Control Treatment implemented by the PWSA.

It is important to note that PWSA has already committed to work with the Community Lead Response Advisory Committee (“CLRAC”)²⁶ to minimize these types of situations. As a part of the Settlement, PWSA committed, among other things, to consult with the CLRAC regarding lead remediation efforts on a quarterly basis on various topics including: information

²² See PWSA Reply Exceptions at 22.

²³ PWSA Petition at ¶ 51.c.

²⁴ *Id.*

²⁵ PWSA Petition at § V.

²⁶ 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.

on instances when the PWSA has been unable to replace private-side lead service lines because of conditions such as technical infeasibility or refusal of the property owner to give consent, as well as information about improving outreach efforts and exploring other methods for obtaining customer consent for private-side lead service line replacements.²⁷

Accordingly, PWSA submits that UNITED's requested additional procedures be rejected in favor of PWSA's more practical and reasonable approach, which will better enable the Authority to continue to meet its overall lead service line removal program goals. Alternatively, PWSA submits that the two approaches be considered in a workshop setting, coordinated by PUC staff, in which all interested parties could participate, to discuss the details of future notices, outreach and implementation.

B. INCOME-BASED REIMBURSEMENT PROGRAM

PWSA has committed to remove 100% of the residential public and private side lead service lines via PWSA's current neighborhood-based lead service line replacement program and its soon to be implemented Small Diameter Water Main Replacement Program (SDWMR).²⁸ The goal of PWSA's income-based reimbursement policy is to fill a gap in PWSA's replacement efforts.²⁹ Specifically, the goal of the income-based reimbursement policy is to offer financial assistance to customers that do not want to wait for a replacement via the SDWMR program and give them an opportunity to replace them sooner with some (or all) financial assistance from

²⁷ See Order at 109-110.

²⁸ See Settlement at § QQ.2, QQ.3, WW.4.i.

²⁹ PWSA R.B. at 27.

PWSA.³⁰ The issue is therefore not whether these lines will be replaced but when the lines will be replaced.

UNITED opposed the income-based reimbursement policy, in its entirety.³¹ Now, in its Petition, notwithstanding the fact that the PUC has approved this policy, UNITED argues that two additional requirements should be imposed on that policy.

First, UNITED requests that PWSA make an assessment of the income-based reimbursement program in PWSA's March 2021 plan regardless of whether PWSA proposes "to continue [the] program without modification."³² This clarification is not opposed by PWSA.

Second, UNITED requests that the Commission direct PWSA to only implement the income-based reimbursement program if PWSA pays contractors directly.³³ This request **is opposed** by PWSA. First, this demand is not appropriately raised in a petition for reconsideration, as the policy was approved by the Commission as presented in PWSA's testimony and its Brief. There PWSA explained that it was working toward a process that would effectively eliminate the need for customers eligible for reimbursement to avoid having to pay the reimbursement amount to the plumber or contractor up front and await reimbursement. UNITED raised in testimony that if the Commission approves PWSA's income-based reimbursement program that the Commission should require PWSA to "pay its share of replacement costs directly to the contractors performing replacements."³⁴ UNITED is not raising any new facts or issues with respect to the policy – it is just, once again, presenting its position

³⁰ *Id.* PWSA M.B. at 64-65.

³¹ *See* Order at 143-146.

³² UNITED Petition at § III.B.(i).

³³ UNITED Petition at § III.B.(i).

³⁴ UNITED St. C-1SUPP-R at 3, see also UNITED Main Brief at 28-30.

that it disagrees with PWSA and the Commission and the Policy should not be approved as presented.

UNITED's claims should also be rejected because UNITED has not demonstrated that the requested directive (that PWSA hire and pay contractors directly) can and should be mandated/directed by the Commission. Simply put, to the extent the Commission has the power to impose conditions, those conditions must be reasonable. It would not be reasonable for the Commission to impose a condition that cannot be done by PWSA.

While PWSA continues to have questions about whether it can legally hire contractors to replace private service lines,³⁵ it is continuing to explore its legal options in this regard. In the meantime, it has found a reasonable workaround. PWSA's income-based reimbursement policy 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 customer-side work.³⁶ Significantly, PWSA has found that a homeowner can replace a private-side lead service line at about 75% of the direct construction cost that PWSA averages.³⁷ UNITED's Petition explicitly acknowledges³⁸ that PWSA made it clear that PWSA will "work with third parties so that PWSA would pay the customer's contractor (usually a plumber) directly."³⁹ That being said, PWSA also explicitly (and UNITED's Petition acknowledges) noted that PWSA still faces "certain legal and operational hurdles" to implementing a change so that PWSA would contract with and pay the contractors directly. Nonetheless, UNITED seeks to make the entire income-based reimbursement policy conditional upon that change being implemented. That request is

³⁵ PWSA St. No. C-1RJ, at 11.

³⁶ PWSA St. C-1RJ (Weimar) at 11-12.

³⁷ PWSA St. C-1RJ (Weimar) at 9-10.

³⁸ UNITED Petition at ¶ 28.

³⁹ *See* PWSA M.B. at 63.

unreasonable, since nothing demonstrates that the above-mentioned (and acknowledged) legal and operational hurdles can be (or have been) overcome. PWSA has represented, as noted, that it is working with contractors to accept payments directly from PWSA so that the homeowner would not be required to initially pay the cost of the line replacement and await reimbursement by PWSA. That should be sufficient.

III. CONCLUSION

Since the Commission has granted UNITED's Petition subject to pending further review of, and consideration on, the merits, PWSA respectfully requests that the Commission (1) reconsider, clarify and/or amend its Order in the above captioned matter consistent with the discussion herein and the discussion in PWSA's Petition; and, (2) grant any other relief in favor of PWSA as may be just and proper under the circumstances.

Respectfully submitted,



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