



October 15, 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 **Response of Pittsburgh UNITED to the Pittsburgh Water and Sewer Authority's Compliance Proposal** for consideration in the above noted consolidated proceedings. Copies have been served on all parties of record 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 that reads "Elizabeth R. Marx".

Elizabeth R. Marx

*Co-Counsel for Pittsburgh UNITED*

CC: Certificate of Service  
Hon. Mark A. Hoyer, [mhoyer@pa.gov](mailto:mhoyer@pa.gov)  
Hon. Conrad Johnson, [cojohnson@pa.gov](mailto:cojohnson@pa.gov)

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 **Response of Pittsburgh UNITED to the Pittsburgh Water and Sewer Authority's Compliance Proposal** upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below, and consistent with the Commission's March 20, 2020 Emergency Order.

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Respectfully submitted,

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October 15, 2020

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**RESPONSE OF PITTSBURGH UNITED TO THE PITTSBURGH WATER AND  
SEWER AUTHORITY'S COMPLIANCE PROPOSAL**

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Pursuant to the Commission's Opinion and Order entered on June 18, 2020, Pittsburgh UNITED submits the following comments on the Pittsburgh Water and Sewer Authority's (PWSA) Compliance Proposal.<sup>1</sup>

Four years after PWSA reported elevated lead levels in customers' drinking water, the utility is entering a new stage in its lead remediation efforts to meet its commitment to remove all lead service lines from its system by 2026. PWSA is ending its neighborhood-based lead service line replacement program and will remove most lead service lines during water main replacements. PWSA must also implement the Commission's requirement to terminate water service whenever PWSA replaces a public-side lead service line but is unable to replace a corresponding private-side lead service line.

The stakes are high for both PWSA and its customers. To maintain public confidence and provide safe and reliable service, PWSA must efficiently remove lead pipes from its system while minimizing service terminations and ensuring that all residential consumers are able to reasonably maintain service to their homes.

Pittsburgh UNITED supports many aspects of PWSA's Compliance Proposal. In particular, Pittsburgh UNITED agrees that PWSA should allow customers to consent to a free private-side lead service line replacement up to five days after service termination, and that customers with tangled titles can receive free replacements.

PWSA's Compliance Proposal, however, falls short in a number of critical respects. It should be modified in the following ways to ensure that PWSA provides safe and reliable service:

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<sup>1</sup> Pittsburgh UNITED takes no position on those aspects of PWSA's Compliance Proposal not discussed in these comments.

- PWSA should provide customers with information on how to access legal and social services with each termination notice, not just the 30-day notice and the initial authorization packet.
- PWSA should specify the circumstances under which it will curtail in-person notice due to threats from occupants, record when it does so, and report to the Community Lead Response Advisory Committee (CLRAC) and Low Income Assistance Advisory Committee (LIAAC) on this issue.
- PWSA should clarify that property owners whose water service is terminated following a partial lead service line replacement are still eligible for PWSA's income-based reimbursement program, and provide those residents information on how to participate in the program.
- PWSA should mail the initial authorization packet to service addresses, as well as billing addresses. The packet should include information directed at tenants in both its cover letter and in a standalone insert. PWSA should consult with the CLRAC and LIAAC in developing this information for tenants.
- The Commission should reject PWSA's request to perform lead-related service terminations regardless of the applicability of independent legal restrictions on termination, such as the COVID-19 moratorium, winter moratorium, and prohibition on terminations for customers with medical certificates.
- Customers who have their water service terminated following an emergency public-side service line replacement should be able to accept PWSA's offer of a free lead service line replacement within 30 days of service termination.

- In the rare circumstances when PWSA's lead service line replacement causes property damage that impairs a low income customer's mobility, PWSA should fund the necessary repairs. PWSA should work with the CLRAC and LIAAC to develop eligibility criteria and program terms, and it should be required to submit a compliance filing at this docket which explains the eligibility criteria and program terms.
- The Commission should reject PWSA's proposal to truncate the consumer complaint process and to limit the grounds on which a consumer may file a complaint.
- PWSA should consult with the CLRAC and LIAAC regarding the matters addressed in PWSA's Compliance Proposal.

These comments are premised on Pittsburgh UNITED's understanding that PWSA plans to continue to conduct significant additional customer outreach not described in the Compliance Proposal and that PWSA will continue to consult with the CLRAC regarding how to enhance that outreach. Standing alone, the pre-termination notice procedures set out in PWSA's proposal will not ensure that customers receive, understand, and have a chance to accept PWSA's offer of a free lead service line replacement. Effective, multi-pronged, and sustained outreach is thus an essential component of PWSA's lead remediation program. PWSA has informed the parties to this proceeding that it communicates with customers about lead line replacements through a variety of methods, including canvassing, at community meetings, and over the phone. The Partial Settlement obligates PWSA to consult with the CLRAC regarding such outreach.<sup>2</sup> The CLRAC and LIAAC have helped PWSA improve its consumer outreach, and should continue to do so as PWSA works out the most effective strategies for securing customer consent for lead pipe removal during PWSA's multi-year water main replacement program. Pittsburgh

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<sup>2</sup> Partial Settlement ¶ III.WW.4.

UNITED's support for any aspect of PWSA's Compliance Proposal is contingent on PWSA continuing to refine its outreach, in coordination with the CLRAC and LIAAC.

## **I. Pre-termination notice requirements**

PWSA's pre-termination notice procedures should be modified or clarified in the following four ways.

**First**, PWSA should ensure that all customers who might benefit from referrals to legal or social services receive information about how to access those services. Connecting customers with legal and social services providers can prevent unnecessary service terminations. For instance, when an absentee landlord refuses to authorize a lead service line replacement, legal advocates may be able either to persuade the landlord to accept or, if that fails, to seek an injunction or other appropriate court order against the landlord to protect the tenant's right to safe, habitable housing. Legal or social services providers may also aid residents with tangled titles, homeowners in need of financial assistance to fix structural or sanitary issues preventing replacement of their home's lead service line, and residents who have questions about PWSA's replacement offer. But many customers do not know that such services are available, or how to connect with these services. Consequently, broad and repeated dissemination of referral information is a critical step in avoiding service terminations.

PWSA's proposal, however, identifies only two occasions on which it will provide referral information: the initial authorization packet and the door hanger announcing the 30-day termination notice.<sup>3</sup> These measures are necessary, but not alone sufficient to connect consumers to critical services. The initial authorization packet is nearly 20 pages long. Some customers will ignore the referral information. Some will find it intimidating or confusing. Some will review it

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<sup>3</sup> PWSA Compliance Proposal at 6-7.



but miss the legal and social services referral information in the flood of other information. The 30-day door hanger will not reach all of the customers who missed the referral information in the authorization packet, since the door hanger goes out only to those service addresses that differ from billing addresses.<sup>4</sup> For example, rental properties where the landlord occupies one of the units will not receive this termination notice. Nor will the door hanger go to any non-tenant customers who might need to consult with legal and social services providers. In addition, PWSA delivers the 30-day termination notice before it has verified whether a residence has a private-side lead service line.<sup>5</sup> Residents may not be motivated to seek help until the presence of a lead service line is verified and the threat of service termination is no longer hypothetical.

PWSA should be required to provide legal and social services referrals in each termination notice, including the 37-day, 10-day, 3-day, and same-day notices. PWSA should also provide referral information as part of other communications with customers, including during canvassing and community meetings. When possible, PWSA should invite representatives from local legal and social services providers to attend community meetings with PWSA to help ensure that community leaders are aware of and connected to these resources.

**Second**, Pittsburgh UNITED supports PWSA's proposal to provide the 3-day notice of termination in person, but recommends that the Commission require PWSA to attempt to contact the customer through alternative means (such as a phone call) if personal contact at the property is unsuccessful.<sup>6</sup> PWSA should also clarify its proposal for curtailing in-person notice at the residence immediately prior to termination when PWSA employees have been threatened.<sup>7</sup> A face-to-face discussion with a resident who is on the verge of having their water shut off is an

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<sup>4</sup> Id. at 6.

<sup>5</sup> See id. at 6-7.

<sup>6</sup> See 52 Pa. Code § 56.93(a); 66 Pa. C.S. § 1406(b)(1)(ii).

<sup>7</sup> PWSA Compliance Proposal at 7; see 66 Pa. C.S. § 1406(b)(1)(iv); 52 Pa. Code § 56.94.

important opportunity for PWSA to explain its offer of a free lead service line replacement. PWSA should abandon in-person notice only when absolutely necessary. To that end, PWSA should clarify that it will forego in-person notice at the residence immediately prior to termination only when a resident has communicated a threat to the physical safety of one of its employees. For instance, brandishing a weapon at a PWSA employee should qualify as a threat, but slamming the door shut or raising their voice on a customer service call should not. If PWSA decides to shift from in-person to written notice because of a threat, PWSA should record that decision and the reasons for it. PWSA should provide that information to the CLRAC and LIAAC, removing details as necessary to protect customer privacy. Those committees may have feedback based on the frequency of and justifications for curtailing in-person notice. PWSA should also work with the CLRAC and LIAAC to delineate standards for when in-person notice will be forgone.

Notably, the issue of providing in-person notice at the residence immediately prior to termination (often known as the “last knock” rule) has been deferred for litigation to the Stage 2 Compliance Plan proceeding.<sup>8</sup> There are a number of factual and legal issues associated with resolution of this issue that are not appropriately raised and resolved through this brief comment period. The Commission should make it clear that any approval of PWSA’s policies and procedures here should in no way interfere with the full review of PWSA’s compliance with Chapters 14 and 56 in the context of its Stage 2 Compliance Plan proceeding.

**Third,** PWSA should clarify that service termination does not affect customers’ eligibility for PWSA’s lead service line replacement reimbursement program. Once a customer’s service is terminated, the only way for them to restore service is by replacing their private-side

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<sup>8</sup> Partial Settlement ¶ III.MM.1.d; see also 66 Pa. C.S. § 1406(b)(1)(v).

lead service line.<sup>9</sup> Property owners whose service has been terminated because they were not able to timely accept PWSA's offer of a free lead service line replacement should be able to participate in PWSA's income-based reimbursement program, which subsidizes customer-initiated replacements.<sup>10</sup> Allowing as many customers as possible to participate in the reimbursement program will promote PWSA's commitment to replacing all lead service lines in its system by 2026. PWSA should inform customers verbally and in writing of their eligibility for the reimbursement program when it terminates their service.

**Fourth,** PWSA should be required to mail the Lead Service Line Replacement packet to both the mailing address and the service address to ensure that tenants and other occupants are aware of the pending lead service line replacement and are equipped with the information necessary to protect their rights. PWSA should consult with the CLRAC and LIAAC to develop tenant-focused information for inclusion in the Lead Service Line Replacement packet. Information directed to tenants should be included in the initial cover letter for the packet, and the packet should include a stand-alone information sheet that explains the tenants' options, urges tenants to contact their landlord to help facilitate agreement, and provides referrals to available legal and social services if their landlord refuses to comply. It is critically important to ensure that tenants receive direct notice and information about the line replacement as early as possible in the process—both to ensure that they are aware of the risk of lead in the water they

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<sup>9</sup> March 26, 2020 Order at 122.

<sup>10</sup> See PWSA Amended Long-Term Infrastructure Improvement Plan, App. C ¶ I (Apr. 27, 2020) (hereinafter "LTIIIP").

are drinking and to provide additional time to communicate with their landlord and to seek assistance from the courts if their landlord refuses to comply.

On the issue of the applicability of the Discontinuance of Service to Leased Premises Act (DSLPA)—and in light of PWSA’s proposal to incorporate 37- and 30-day notices into its termination process for lead service line refusals—Pittsburgh UNITED agrees with PWSA that issues surrounding PWSA’s compliance with DSLPA should be addressed in the context of the Stage 2 Compliance Plan proceeding.<sup>11</sup> The issues surrounding PWSA’s compliance with DSLPA go far beyond the replacement of lead service lines, and are best handled in a holistic manner while examining the totality of PWSA’s termination procedures in the context of the Stage 2 proceeding.

Nevertheless, Pittsburgh UNITED disagrees with PWSA’s assertion that DSLPA does not apply here, where termination of service is based on a landlord’s refusal to replace the lead service line.<sup>12</sup> PWSA claims that DSLPA only applies to payment-related termination, but this is inaccurate. DSLPA explicitly extends to termination of service for nonpayment or nonaccess,<sup>13</sup> as well as the voluntary discontinuance of service by a landlord,<sup>14</sup> and requires public utilities to provide additional notice and extend certain rights to tenants to ensure that a landlord’s negligent or malicious acts will not harm the tenant.<sup>15</sup> The Commission’s regulations governing

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<sup>11</sup> PWSA Compliance Proposal at 10-11.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> 66 Pa. C.S. § 1523(a) (“Except when required to prevent or alleviate an emergency as defined by the commission or except in the case of danger to life or property, **before any termination of service to a landlord ratepayer for nonaccess as defined by the commission in its rules and regulations or nonpayment of charges**, a public utility shall: [provide notice to landlords and tenants consistent with the section].” (emphasis added)).

<sup>14</sup> *Id.* § 1523(b).

<sup>15</sup> 66 Pa. C.S. § 1521 (“Termination” is defined as “[t]he cessation of service, whether temporary or permanent, without the consent of the ratepayer. For the purposes of this subchapter, **this term shall include cessation of service at the request of the landlord ratepayer when a tenant does not agree to the cessation of service.**” (emphasis added)); *see also* 66 Pa. C.S. § 1523(a)-(c).

termination of service are likewise applicable beyond involuntary termination for nonpayment.<sup>16</sup> By refusing a free lead service line replacement, a landlord is—on their own volition—forcing termination of service by refusing access to the property, placing the tenants of that property at risk of displacement and threatening their immediate health and safety.

Inherent in PWSA’s conclusion that DSLPA does not apply is the implication that lead-related terminations constitute an “emergency” or a “danger to life or property.”<sup>17</sup> But characterizing scheduled lead service line replacements as an “emergency” or a “danger to life or property” in this context would create a dangerous precedent. While urgent and critically important, lead service line replacement does not present an “emergency” as that term is defined in the Commission’s regulations.<sup>18</sup> PWSA’s replacement of lead service lines is a carefully planned activity, and calls for the provision of robust notice and ample assistance to tenants who—based on their landlord’s action or inaction—are profoundly impacted both by the presence of lead in their water and by the loss of water and wastewater service to their home. Either result is wholly unacceptable, particularly during the current coronavirus pandemic. PWSA must make every effort to avoid placing tenants in this quandary by providing ample notice and assistance to tenants that—at a minimum—is consistent with DSLPA. Nevertheless, and to the extent necessary, the Commission should allow the parties to address legal issues related to the applicability of DSLPA, and PWSA’s compliance therewith, in the Stage 2

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<sup>16</sup> 52 Pa. Code § 56.81 (permitting termination for “[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading”)

<sup>17</sup> See PWSA Compliance Proposal at 10.

<sup>18</sup> 52 Pa. Code § 56.2 (“Emergency – An unforeseen combination of circumstances requiring temporary discontinuance of service to effect repairs or maintenance or to eliminate an imminent threat to life, health, safety, or property.”).

proceedings consistent with the settlement terms in this proceeding and in PWSA's 2018 Base Rate proceeding.

With these modifications and caveats, Pittsburgh UNITED does not object to other aspects of PWSA's pre-termination notice procedures. In particular, Pittsburgh UNITED supports PWSA's proposal to allow property owners to consent to private-side lead service line replacements up to five days after termination.<sup>19</sup> This provision is consistent with the Commission's June 18, 2020 Opinion and Order.<sup>20</sup> Some property owners may not appreciate the consequences of refusing PWSA's offer of a free lead line replacement until their water is shut off. Giving those property owners the opportunity to change their minds after termination will help maximize the number of lead lines removed and avoid the disruption and displacement that can result from long-term loss of water service.

## **II. Tangled titles and other technical property issues**

Pittsburgh UNITED supports PWSA's proposal to allow customers residing at homes with tangled titles to accept PWSA's offer of a free lead service line replacement.<sup>21</sup> Pittsburgh UNITED also agrees with PWSA's plan to terminate service to a property if its owner refuses to consent to the replacement of a lead service line that runs across it to a neighboring property.<sup>22</sup>

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<sup>19</sup> PWSA Compliance Proposal at 7. PWSA's Compliance Proposal might be read to suggest that customers must "indicate" their acceptance of PWSA's offer of a free private-side lead service replacement within an unspecified period of time after termination, opening a five-day window to return a signed authorization form. However, it is UNITED's understanding that PWSA is proposing to allow customers to accept a free lead service line replacement by returning a signed authorization to PWSA within five days of termination, regardless of when they indicate their acceptance.

<sup>20</sup> June 18, 2020 Order at 118.

<sup>21</sup> PWSA Compliance Proposal at 14.

<sup>22</sup> Id. at 13-14.

The potential for termination creates significant but appropriate consequences for property owners who would stand in the way of their neighbors receiving safe service.

### **III. Independent Legal Restrictions**

Where independent legal restrictions would prevent termination of service to a residential property, such as the winter or COVID-19 moratorium on terminations or medical certificate protections, PWSA proposes to move forward with replacing a public-side lead service line and refusing reconnection to the residence.<sup>23</sup> Pittsburgh UNITED opposes this proposal, as it would circumvent critical laws and rules designed to protect vulnerable consumers from the loss of water and wastewater service to their home, and the resulting unsanitary and unsafe living conditions caused by the cessation of service to a residential property. The statutory and regulatory protections for consumers faced with the involuntary termination of service to their home—including both termination moratoria and medical protections—apply to circumstances beyond the nonpayment of service. These protections explicitly apply to all “authorized” non-emergency terminations, *including termination for nonaccess to “service connections” for the purpose of replacement, maintenance, or repair.*<sup>24</sup>

As explained in further detail above, Pittsburgh UNITED does not believe that the involuntary termination of service based on refusal to accept a free private side lead service line replacement constitutes an “emergency” as that term is defined and commonly understood in the

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<sup>23</sup> *Id.* at 16. PWSA asserts that, “[a]s the Commission aptly identified, the situations where PWSA does not terminate water service, including the winter moratorium, medical cases and the Commission’s COVID-19 moratorium, are directly tied to consumer protections to prevent termination of utility service despite a customer’s payment delinquency.” *Id.* Pittsburgh UNITED recognizes that PWSA’s conclusion here is drawn from language in the Commission’s Order. However, we respectfully urge the Commission to review the applicable statutory and regulatory provisions governing the termination of service to residential properties more closely, as those provisions are not limited to payment-related terminations. 66 Pa. C.S. § 1406(a), (e), (f); 52 Pa. Code §§ 56.81, 56.91-.100, 56.111-.118.

<sup>24</sup> 66 Pa. C.S. § 1406(a), (e), (f); 52 Pa. Code §§ 56.2, 56.81, 56.91-.100, 56.111-.118.

context of the Public Utility Code.<sup>25</sup> Removal of all lead from PWSA's system is critically important, and must happen in a timely and efficient manner. But Pittsburgh UNITED is concerned about the precedent it would set to define termination of service for this reason as an emergency within the meaning of the Code.

Ultimately, if PWSA seeks to waive various termination-related provisions of the Commission's regulations, and to the extent those provisions are not statutory requirements, it must do so through a separate Application to the Commission consistent with the Commission's regulations.<sup>26</sup> This brief comment period does not provide adequate time during which to fully assess the factual and legal consequences of waiver of the Commission's regulations governing the termination of service to residential consumers. As such, the Commission must deny PWSA's proposal to proceed with replacement of a public-side service line and refuse reconnection during an emergency or winter moratorium or where a medical certificate is in place.

#### **IV. Emergency repairs**

When PWSA must replace a public-side service line while performing an emergency repair, it has little time to secure the property owner's consent to replace their private-side lead service line. Consistent with the Partial Settlement,<sup>27</sup> PWSA's Compliance Proposal indicates that it will try to contact the property owner by calling and visiting the home.<sup>28</sup> If those efforts are unsuccessful, PWSA will replace the public-side line and then, if possible, establish temporary water service.<sup>29</sup> Temporary service gives PWSA more time to secure customer

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<sup>25</sup> See supra, at 9; 52 Pa. Code § 56.2 ("Emergency – An unforeseen combination of circumstances requiring temporary discontinuance of service to effect repairs or maintenance or to eliminate an imminent threat to life, health, safety, or property.").

<sup>26</sup> 52 Pa. Code § 56.222.

<sup>27</sup> Partial Settlement ¶ III.VV.1.b.iv; see also LTIP, App. C ¶ J.2.iv.

<sup>28</sup> PWSA Compliance Proposal at 18.

<sup>29</sup> Id.



consent for a private-side lead service line replacement and, thus, more time to avoid terminating service. At some homes, however, temporary service cannot be established. PWSA proposes to terminate service to those residences immediately upon replacing the public-side service line.<sup>30</sup>

PWSA's proposal is incomplete. PWSA should give customers whose service is terminated under emergency circumstances an opportunity to accept PWSA's offer of a free lead service line replacement after termination. PWSA proposes to extend such an opportunity to customers whose service is terminated during a scheduled small-diameter water main replacement.<sup>31</sup> Those customers receive several notices weeks, if not months, in advance of having their service terminated. Still, following termination, they have another five days to change their minds. By contrast, notice of an emergency replacement may come 24 hours or less before a home's water is shut off.<sup>32</sup> Customers who have their water service terminated following an emergency replacement—including when termination was preceded by a 10- or 3-day notice—must be given a reasonable amount of time to consent to the free private-side lead service line replacement. Pittsburgh UNITED recommends that these customers get at least 30 days after termination to consent to a free private-side lead service line replacement. In addition, they should be eligible for PWSA's income-based reimbursement program if they later decide to replace their lead service line.<sup>33</sup>

## **V. Properties with high restoration costs**

Rarely, customers refuse PWSA's offer of a free lead service line replacement because they cannot afford to repair the damage to their property that a replacement will cause.<sup>34</sup> Of that

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<sup>30</sup> Id.

<sup>31</sup> See supra, at 10.

<sup>32</sup> See PWSA Compliance Proposal at 18.

<sup>33</sup> See supra, at 6-7.

<sup>34</sup> PWSA Compliance Proposal at 19 (stating that only 25 of the 339 customers to reject PWSA's offer of a free private-side lead service line replacement during its 2019 replacement program did so because of high restoration costs).

small group of customers, some may be acting out of aesthetic concerns, such as a desire to preserve their landscaping. But a handful of customers face more consequential damage that would impede their mobility (such as damage to steps, walkways, and driveways) or even the habitability of their home.<sup>35</sup> Such damage can be particularly harmful to disabled and elderly occupants. When customers cannot afford to repair mobility-impeding damage, they should not be forced to trade access to their homes for safe water service. Neither termination nor a partial lead service line replacement is appropriate under these circumstances. Instead, PWSA should be required to pay for the restoration necessary to remove impediments to customers' mobility. PWSA should work with the CLRAC to establish eligibility criteria and program terms. Because of the very small number of customers who would even be eligible for this assistance, the expense would be modest.

If, however, the Commission does not require PWSA to make this assistance available, Pittsburgh UNITED supports PWSA's proposal to attempt to avoid the high restoration costs through engineering solutions, to connect customers with services that may help defray any unavoidable restoration costs, and then, if the customer is unable to obtain such assistance, to perform a partial lead service line replacement rather than terminating service.<sup>36</sup> If the Commission grants this relief, PWSA should work with the CLRAC to identify appropriate criteria for determining whether a customer's restoration costs would be unreasonably

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<sup>35</sup> See June 18, 2020 Order at 128-29 (discussing Pittsburgh UNITED testimony).

<sup>36</sup> PWSA Compliance Proposal at 20-21.

burdensome, such that they should receive a partial lead service line replacement rather than have their service terminated.

## **VI. Partial replacements when PWSA cannot safely replace lead service lines**

Pittsburgh UNITED supports PWSA's proposal not to terminate service at occupied residences where PWSA cannot safely replace a private-side lead service line.<sup>37</sup> Most often, the unsafe structural and sanitary conditions preventing lead line replacements exist because customers lack the financial resources to repair them. PWSA should work with the CLRAC to continue to improve its methods for connecting customers to government agencies and service organizations that might have funding or resources available to help defray repair costs, such as United Way, Habitat for Humanity, Rebuilding Together Pittsburgh, and the Urban Redevelopment Authority.<sup>38</sup> But mobilizing thousands of dollars in aid and completing a significant home repair takes time. In many cases, it will be impossible for a customer to secure these repairs in the few short weeks between PWSA informing them that it cannot safely replace their private-side lead service line, and PWSA's replacement of the public-side line along with subsequent termination of their service. Under these circumstances, a partial replacement, coupled with the provision of filters, filter cartridges, flushing instructions (and assistance, if necessary), and testing,<sup>39</sup> is preferable to leaving some of the city's most vulnerable residents without water. If, in the future, the private-side lead service line can be safely removed, the

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<sup>37</sup> *Id.* at 23-24.

<sup>38</sup> *See id.* at 19-20.

<sup>39</sup> Partial Settlement ¶¶ TT-UU; LTIP, App. C ¶ K.

property owner should be eligible to participate in PWSA's income-based reimbursement program.<sup>40</sup>

## **VII. Consumer Complaint Process**

The Commission must reject PWSA's proposal to eliminate or shorten key regulatory complaint timeframes and to limit the grounds upon which a complaint may be raised, as that proposal would require a regulatory waiver of critical due process dispute rights.<sup>41</sup>

Pittsburgh UNITED recognizes the inconvenience and potential costs associated with delays in construction that may arise if a consumer complaint were to halt the termination process for a long period of time. But on the other side, the risk to residential consumers posed by the potential loss of utility service to the home is more than an inconvenience—it has the potential to profoundly impact the household's ability to remain safely and stably housed, and poses far-ranging risks to the health and safety of the entire household. Pittsburgh UNITED asserts that it is unlikely a consumer would go to the trouble to file a complaint to preserve their right to reject a free lead service line replacement without good reason. And in the unlikely event that were the case, there are ample legal ways to address abuse of process issues without also stripping back due process protections for those who may well have a justified complaint.

Importantly, and as discussed further above, PWSA's assertion that the consumer protections from involuntary termination are limited to payment-related issues is incorrect.<sup>42</sup> Chapters 14 and 15 of the Public Utility Code, as well as Chapter 56 of the Commission's

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<sup>40</sup> See *supra*, at 6-7.

<sup>41</sup> PWSA Compliance Proposal at 7-10; see 52 Pa. Code §§ 56.140 - 56.181 (Subchapter F, Disputes; Termination Disputes; Informal and Formal Complaints). PWSA is not only proposing to limit the timeframe for complaints to be filed – it is also proposing to limit the scope of complaints to notice-related issues. PWSA Compliance Proposal at 7.

<sup>42</sup> See *supra*, at 8-9.

regulations, cover terminations under a range of circumstances, and the associated rights and remedies of consumers to prevent termination in those circumstances.<sup>43</sup>

As a legal matter, the Commission cannot approve PWSA's proposal to shorten the timeframe and narrow the scope of consumer complaint rights in the context of this comment process. If PWSA wishes to pursue this aspect of its proposal, it must do so by filing a formal Application or Petition with the Commission—with appropriate notice to “persons who may be affected by the modification or temporary exemption.”<sup>44</sup> The short timeframe in which to respond to PWSA's proposals through this brief comment period does not yield adequate time with which to fully vet the far-ranging legal and policy ramifications associated with broad waiver of a consumer's due process rights.

### **VIII. Role of the CLRAC and LIAAC**

Finally, PWSA should consult the CLRAC and the LIAAC regarding all aspects of lead-related terminations. This consultation should include seeking the CLRAC and LIAAC's feedback on how PWSA communicates the potential for termination to customers (tenants in particular), the details of PWSA's legal and social services referrals, and the design and implementation of other termination procedures. PWSA should provide the CLRAC and LIAAC with data regarding the number of and circumstances leading to lead-related terminations, as well as the number of and circumstances leading to instances in which PWSA curtails in-person notice because of threats. Engaging with the CLRAC and LIAAC on these matters will improve the efficacy of PWSA's efforts to avoid terminations and maximize the number of lead service

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<sup>43</sup> See 66 Pa. C.S. § 1406(a), (e), (f); 52 Pa. Code §§ 56.81, 56.91-100, 56.111-118.

<sup>44</sup> 52 Pa. Code § 56.222 (Application for modification or exception).

lines removed. It will also help ensure that PWSA remains accountable to its customers, which in turn will bolster public confidence in the utility.

PWSA should further be required to report to its LIAAC on the progress of lead-related service terminations. Pittsburgh UNITED also recommends that PWSA consult with its LIAAC about the coordination of outreach efforts so that customers can be informed of their ability to obtain free lead service line replacements.

### **CONCLUSION**

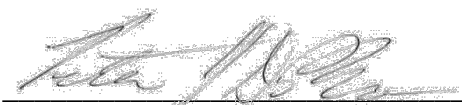
Pittsburgh UNITED respectfully requests that the Commission issue an order approving PWSA's Compliance Proposal pursuant to the following modifications:

1. PWSA will provide referrals to legal and social services providers with each termination notice.
2. PWSA will specify the circumstances under which it will curtail in-person notice of termination due to threats from occupants, record instances in which it does so, and report to the CLRAC and LIAAC on this issue.
3. Property owners whose water service is terminated following a partial lead service line replacement are eligible for PWSA's income-based reimbursement program. PWSA will inform property owners of their eligibility for the reimbursement program when it terminates their service.
4. PWSA will mail the initial authorization packet to service addresses, as well as billing addresses. The packet must include information directed at tenants in both its cover letter and in a standalone insert. PWSA will consult with the CLRAC and LIAAC in developing this information for tenants.

5. PWSA's proposal to perform lead-related service terminations despite independent legal restrictions on such terminations is denied.
6. Customers who have their water service terminated following an emergency public-side service line replacement may accept PWSA's offer of a free lead service line replacement within 30 days of service termination.
7. When PWSA's lead service line replacement causes property damage that impairs a low income customer's mobility, PWSA will fund the necessary repairs, subject to criteria established in conjunction with the CLRAC and the LIAAC and submitted to the Commission through a compliance filing.
8. PWSA's request to shorten the timeframe and narrow the scope for consumer complaints regarding lead-related service terminations is denied.
9. PWSA will consult with the CLRAC and LIAAC regarding the matters described in its Compliance Proposal. This consultation will include providing the CLRAC and LIAAC with the number of lead-related terminations and circumstances under which they occurred, and the number of times PWSA has curtailed in-person notice because of customer threats and the circumstances justifying such curtailment.

Respectfully submitted,

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