



February 7, 2018

VIA E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17120

**RE: Implementation of Chapter 32 of the Public Utility Code
Re Pittsburgh Water and Sewer Authority**

**Docket Nos. M-2018-2640802 (water)
M-2018-2640803 (wastewater)**

Dear Secretary Chiavetta,

Attached, please find the **Comments of Pittsburgh UNITED**, which are being filed in response to the Commission's January 18, 2018 Tentative Implementation Order in the above noted proceeding.

Please do not hesitate to contact me with any questions.

Respectfully Submitted,

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

Elizabeth R. Marx
emarxpulp@palegalaid.net
717-236-9486 x. 205

Counsel for Pittsburgh UNITED

CC: Shaun A. Sparks, Law Bureau – shsparks@pa.gov
Sean Donnelly, Technical Utility Services – sdonnelly@pa.gov
James Farley, Bureau of Consumer Services – jafarley@pa.gov

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the : Docket Nos. M-2018-2640802 (water)
Public Utility Code Re Pittsburgh Water : M-2018-2640803 (wastewater)
And Sewer Authority :

Comments of Pittsburgh UNITED

Pennsylvania Utility Law Project

Counsel for Pittsburgh UNITED

Patrick M. Cicero, Esq.

Elizabeth R. Marx, Esq.

Kadeem Morris, Esq.

118 Locust Street

Harrisburg, PA 17101

pulp@palegalaid.net

717-236-9486

February 7, 2018

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND	2
III.	CONSUMER PROTECTIONS	3
	A. Require Full Compliance with Chapters 14 and 56 as of April 1, 2018.....	4
	B. Clarify Consumer Complaint Handling Requirements.....	8
	i. Clarify the method and manner in which PWSA will be required to notify consumers of their dispute rights.	8
	ii. Require PWSA to transfer disputes pending before the Exoneration Hearing Board to the Bureau of Consumer Services as of April 1, 2018.....	12
	iii. Clarify that the Commission will apply Chapters 14 and 56 to disputes arising from events prior to April 1, 2018, but will not enforce associated penalties. ..	13
	iv. Clarify PWSA’s responsibility to assess whether a customer’s complaint has been satisfied, or must be escalated to a dispute.....	14
	C. Apply a Clean Slate Approach to Payment Arrangement Standards.....	15
	D. Enforce Other Critical Consumer Protections	17
	i. Security Deposit Requirements.....	18
	ii. Notice of Termination.....	20
	iii. Medical Protections from Termination.....	22
	iv. Protections for Victims of Domestic Violence	24
IV.	TARIFF FILING AND COMPLIANCE PLAN	25
	A. Timing for Tariff and Compliance Plan Filings	25
	B. Require PWSA to include provisions in its tariff filing to fully implement Chapter 14 and 56 and to establish appropriate terms and conditions for its Customer Assistance Program.....	27
	C. Require PWSA to model its tariff on the language in Chapters 14 and 56	28
	D. Require PWSA to comply with reporting requirements.	29
	E. Order the Bureau of Consumer Services to conduct an audit of Customer Service Operations and Consumer Complaint Handling Process.....	30
V.	CONCLUSION	31

I. INTRODUCTION

Pittsburgh UNITED, through its counsel at the Pennsylvania Utility Law Project, files these Comments in response to the Pennsylvania Public Utility Commission's (PUC or Commission) January 18, 2018 Tentative Implementation Order (TO), which invited interested parties to provide comments and recommendations regarding its proposed course of action to bring Pittsburgh Water and Sewer Authority under the jurisdiction and oversight of the PUC. (TO at 2).

Pittsburgh UNITED is a coalition of community, labor, faith, and environmental organizations committed to advancing the vision of a community and economy that work for all people. Its members work collectively to build a community whereby all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development. Pittsburgh UNITED therefore has a critical interest in ensuring, on behalf of its members, that PWSA's transition to Commission oversight is conducted in a timely and organized manner to protect the interests of Pittsburgh's residents, particularly low income Pittsburgh families who struggle most to connect and maintain water service.

In light of rapidly increasing water and sewer rates, Pittsburgh UNITED believes there is an urgent need to protect low income consumers through the adoption of an equitable rate structure as well as reasonable terms and conditions for service. At the same time, Pittsburgh UNITED recognizes that the increase in rates is driven largely by the legitimate need for significant infrastructure investments to protect and preserve the integrity and safety of Pittsburgh's water and sewer system over the long term. But the need to protect economically vulnerable consumers and the need for infrastructure development are not mutually exclusive. Indeed, the pending tariff and compliance plan proceedings must adequately address these issues

in tandem to ensure that an appropriate balance is struck. In the interim, and until a more equitable rate structure and terms of service are adopted, Pittsburgh UNITED asserts that it is critical for the Commission to take clear and decisive steps to ensure that all households can access affordable and reliable water service pursuant to reasonable terms and conditions throughout this transition period.

Pittsburgh UNITED respectfully submits the following comments and recommendations with respect to the Commission's planned transition and subsequent tariff and compliance plan filings, and urges the Commission to act quickly and decisively in accordance with these recommendations to shield Pittsburgh's low and moderate income families from harm during this transition period.

II. BACKGROUND

On December 21, 2017, Chapter 32 of the Public Utility Code (Water and Sewer Authorities in Cities of the Second Class) became effective, bringing PWSA under the direct authority and oversight of the Commission.¹ On January 18, 2018, the Commission issued its TO, which set forth its tentative plans to bring PWSA under its jurisdiction in a manner that complies with the language of Chapter 32. The TO allowed for a 20-day comment period, and invited interested stakeholders to submit comments and recommendations on the Commission's tentative plans for transition.

¹ 66 Pa. C.S. Chapter 32, Enactment ("Chapter 32 was added December 21, 2017, P.L. 1208, No. 65, effective immediately.").

III. CONSUMER PROTECTIONS

As a principal concern, Pittsburgh UNITED believes that the TO lacks clarity with respect to the application of critical consumer protections during PWSA's transition to Commission authority. In light of the brief 20-day period for public comment, Pittsburgh UNITED has not been able to identify all of the potential issues which are likely to arise throughout the course of the transition period. And, given the apparent lack of a responsive comment period, it is necessary for a dialogue to be facilitated between critical stakeholders to gain a deeper understanding of potential issues and challenges as they arise.

As an overarching recommendation, we therefore strongly urge the Commission to host a series of stakeholder meetings to help identify and address critical issues leading up to and after the April 1, 2018 transition date and the subsequent tariff filing and compliance plan. Stakeholder meetings should include interested community groups and service providers with experience working with and assisting consumers to address the denial or loss of utility service, including Pittsburgh UNITED and Neighborhood Legal Services Association, which regularly assists consumers who face significant consequences as a result of the loss of water service. Adopting an intentionally collaborative process, which includes representatives from Pittsburgh's community, will promote transparency, narrow the scope of litigation in the rate/tariff and compliance plan proceedings, and ensure that the concerns of Pittsburgh residents are appropriately integrated into the transition plan.

In addition to adopting a transparent stakeholder process, we believe that the Commission must also clarify the manner and method in which PWSA will be required to comply with the requirements of the Public Utility Code, consistent with our recommendations below.

A. Require Full Compliance with Chapters 14 and 56 as of April 1, 2018

In its TO, the Commission sets forth a number of proposed directives regarding the applicability of consumer protections contained in Title 66, Chapter 14 of the Pennsylvania Consolidated Statutes and Title 52, Chapter 56 of the Public Utility Code. TO at 6-12; 66 Pa. C.S. Ch. 14; 52 Pa. Code Ch. 56. Pittsburgh UNITED respectfully asserts that these directives are incomplete, and fall short of the requirements set forth in Chapter 32.

With regard to the applicability of Chapters 14 and 56, the Commission initially noted that section 3202 provides that “PWSA will unquestionably be subject to the requirements of the Public Utility Code as of April 1, 2018.” TO at 7 (emphasis added). However, the Commission quickly qualified this statement with its reading of Section 3203, which provides that PWSA “shall continue to provide service to [its] customers in accordance with a prior tariff until the effective date of a commission’s order approving a new tariff.” TO at 7-8; 66 Pa. C.S. § 3203(a). Thus, the Commission concluded that PWSA’s prior tariff will “have the force and effect of law as of April 1, 2018,” until the Commission approves a new tariff. TO at 8. Despite the temporary effectiveness of PWSA’s prior tariff, the Commission explained that it “does not interpret [Section 3203(a)] as a statutory *carte blanche* to violate the Public Utility Code or Commission regulations.” TO at 8. The Commission explained that “those parts of the Prior Tariff that conflict with the Public Utility Code, or are silent as to a matter addressed by the Public Utility Code or Commission regulation, *shall not be subject to strict enforcement by the Commission after April 1, 2018.*” TO at 8 (emphasis added).² The TO mentioned a few specific provisions of the Code that it intends to enforce against PWSA, including payment arrangements and dispute handling provisions, but otherwise does not indicate whether the Commission intends to apply

² The TO notes that “cases arising under various applications of the Prior Tariff will be subject to the same reasonableness analysis applied to all utility tariffs under the Public Utility Code.” TO at 8.

other critical provisions contained in Chapters 14 and 56 to disputes arising under PWSA's prior tariff. TO at 9-10.

While Chapter 32 provides for the temporary effectiveness of PWSA's prior tariff until a new tariff is approved, it does not do so at the expense of critical consumer protections and applicable law. The Commission clearly recognizes this by explicitly acknowledging the continued applicability of specific consumer protections, including payment arrangements, dispute provisions, and specific termination requirements. TO at 9-10. When a tariff provision of any public utility is pitted against a statutory or regulatory provision, the law prevails. Section 56.223 enshrines and provides: "A tariff provision inconsistent with this chapter is deemed nonoperative and superseded by this chapter." 52 Pa. Code § 56.223.

The Commission's incomplete guidance with respect to the applicability of consumer protections throughout the transition period is likely to cause confusion for consumers, PWSA staff, and Commission staff charged with complaint handling. Consumers will not know which rights and protections apply and which do not, undermining their ability to access due process protections to shield them from the denial or loss of critical water service. As noted above, the TO makes explicit reference to the applicability of Chapter 56 payment arrangements and dispute handling processes, but does not identify how PWSA must comply with these specific sections³ or, more broadly, whether the Commission will enforce other critical protections contained in Chapters 14 and 56, including protections for medically vulnerable and disabled consumers, victims of domestic violence, and other economically vulnerable low income households.⁴ Without specific acknowledgment from the Commission regarding the

³ See section III.C, below, regarding the enforcement of payment arrangement standards.

⁴ See section III.D, below, regarding the enforcement of security deposit standards, notice requirements, medical protections, and protections for victims of domestic violence.

applicability of Chapters 14 and 56, consumers are unlikely to receive access to adequate relief from the Commission's Bureau of Consumer Services and, as a result, may suffer irreparable harm during the transition period.

Pittsburgh UNITED urges the Commission to clarify that, as of April 1, 2018, PWSA must comply with all provisions of Chapters 14 and 56. While PWSA's prior tariff will have the force and effect of law when applicable statutes and regulations are otherwise silent and application of the tariff does not conflict with applicable law, the prior tariff must nevertheless yield to the laws and regulations of the Commonwealth where such a conflict is present. Indeed, this is the case for disputes which arise under any public utility company tariff: where a tariff provision conflicts with applicable law, the law controls and the tariff provision is inoperable as a matter of law.⁵

Pittsburgh UNITED nevertheless recognizes the need for flexibility throughout the transition, and the Commission's desire to not subject PWSA to unfair penalty for noncompliance. It further recognizes that some of the technical requirements of Chapters 14 and 56 may require time for PWSA to fully implement. But rather than relax the applicability of critical consumer protections, thereby subjecting vulnerable Pittsburgh residents to a distinct risk of harm, Pittsburgh UNITED recommends that the Commission instead look to ease the transition for PWSA by relaxing fines and penalties against PWSA for technical noncompliance during the transition period. This approach comports with the Commission's desire to avoid strict enforcement without otherwise interfering with the rights of consumers.

⁵ 52 Pa. Code § 56.223.

There is still nearly two months before April 1, 2018. Pittsburgh UNITED believes that the Commission – through its staff at the Bureau of Consumer Services – should use this time to work with PWSA and stakeholders to (1) identify the most critical conflicts between PWSA’s prior tariff and Chapters 14 and 56, (2) develop an interim protocol – perhaps through the use of a Memorandum of Understanding (MOU) – to ensure that these protections are applied on April 1, 2018, and (3) train PWSA call center and customer service staff to minimize avoidable infractions. In turn, Pittsburgh UNITED recommends that PWSA be required to temporarily suspend terminations after April 1, 2018 if an adequate protocol is not developed before the transition date.

Throughout this recommended process, the Commission should require PWSA to identify sections of Chapters 14 and 56 with which it cannot reasonably comply as of April 1, 2018. And, on April 1, 2018, should require PWSA to file a request for temporary waiver pursuant to section 56.222, which allows the Commission to grant temporary exemptions from the requirements of Chapter 56 when compliance would cause “unreasonable hardship.” 52 Pa. Code § 56.222. Such an approach to enforcement of Chapters 14 and 56 is more legally sound than the Commission’s currently proposed piecemeal approach, and would ensure that consumers are not deprived of their legal rights without due process of the law throughout the impending transition.

B. Clarify Consumer Complaint Handling Requirements

Chapter 32 explicitly provides that “the commission shall resolve all disputes or conflicts arising under a prior tariff.” 66 Pa. C.S. § 3203(b). Pursuant to this provision, the TO sets forth a number of directives regarding consumer complaint handling. Pittsburgh UNITED believes that the process identified in the TO is a step in the right direction, but must be further clarified to ensure that consumers are able to access appropriate relief from the Commission.

The applicability of Chapters 14 and 56 was addressed above, and those comments will not be revisited below. However, our comments with respect to consumer complaint procedures presume the Commission will clarify that PWSA’s consumers will be protected by the entirety of Chapters 14 and 56 as of April 1, 2018, and that the prior tariff will control only where PWSA’s tariff is consistent with existing laws and regulations or where the laws and regulations are otherwise silent.⁶ Indeed, the administrative complexity of enforcing partial compliance with existing laws and regulations through the informal and formal complaint process would create unnecessary confusion for the consumer, PWSA, and the Commission’s Bureau of Consumer Services and the Office of Administrative Law Judge, and would not comport with the requirements of due process. This and other issues with the transitional consumer complaint process described in the TO are addressed below.

i. Clarify the method and manner in which PWSA will be required to notify consumers of their dispute rights.

The Commission’s TO provides that, “[a]s to all customer complaints, beginning April 1, 2018, PWSA shall advise its customers of the right to seek review of any PWSA complaint

⁶ See Section A above; see also 52 Pa. Code § 56.223.

determination with the Commission's Bureau of Consumer Services or through the process of submitting a formal complaint to the Commission." (TO at 9).

Pittsburgh UNITED supports this requirement, but is concerned that the Commission's instruction lacks necessary clarity to ensure that PWSA customers are adequately apprised of their dispute rights. The Commission seems to require that notice of dispute rights only be given to those who launch a complaint with PWSA directly. However, this narrow provision of notice is insufficient. How will applicants attempting to connect to service or customers facing termination of service know of their rights to file a complaint if they are not adequately informed of that right before they are denied access to service or are terminated?

Pursuant to section 56.36, an applicant for service must be provided with written notice if their application is denied. 52 Pa. Code § 56.36. This notice must contain information about how to challenge a utility's adverse credit determination, and must advise consumers about their right to file a complaint with the Commission. 52 Pa. Code 56.36. Moreover, pursuant to section 56.91 of the Public Utility Code, explicit notice of dispute rights – including notice that a termination will be stayed if a dispute is filed – must be provided to consumers facing termination of service as part of a public utility's 10-day written notice of termination. 52 Pa. Code § 56.91(b)(4)(v), (7).⁷

Providing written notice of dispute rights to those who are denied service or are facing imminent loss of service is critical, as it provides a clear path for consumers to exercise their

⁷ All written notices of termination must contain the following statement: "If you have questions or need more information, contact us as soon as possible at (utility phone number). After you talk to us, if you are not satisfied, you may file a complaint with the Public Utility Commission. The Public Utility Commission may delay the shut off if you file the complaint before the shut off date. To contact them, call 1(800) 692-7380 or write to the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265." 52 Pa. Code § 56.91(7).

rights under Chapters 14 and 56, including payment arrangements, medical certificates, and special protections for victims of domestic violence. An explanation of these additional rights is also required to be included in a notice of credit denial and the notice of termination under Chapter 56, ensuring that consumers are not only advised of their right to dispute a termination, but also of the potential grounds for such a dispute. 52 Pa. Code §§ 56.36(b)(1), 56.91(b).

Contrary to the notice requirements in section 56.36, PWSA does not appear to provide any written notice to an applicant whose application for service is denied.⁸ And, contrary to section 56.91, PWSA's notice of termination is effective for up to 90 days, is not required to be written, and may be delivered by telephone or email. PWSA §§ 209.6.5, 210.1.9. Of course, PWSA's notice of termination also lacks critical information about consumer rights, which will become effective on April 1, 2018. PWSA's notices are valid for up to 90-days, which means potentially thousands of customers may have already received notice of termination which may occur on or after April 1, 2018. This is not theoretical: Just last week, PWSA reportedly issued thousands of sewer-related termination notices to consumers who, as a result of PWSA's billing error, had fallen behind in their sewer bill.⁹ These consumers will not receive notice that they have the right to file an informal or formal complaint with the Commission as of April 1, 2018. In fact, it is questionable whether consumers facing termination of service are currently receiving any notice of dispute rights at all. On January 29, 2018, in the midst of drafting these comments, counsel for Pittsburgh UNITED noticed that PWSA's publicly posted rules and regulations for

⁸ Section 205.2 does require a consumer to be notified of a rejected application, and requires the authority to explain the dispute process, but there is no requirement that this notice be in writing. See PWSA § 205.2.

⁹ WESA, Margaret J. Krauss, 25,000 PWSA Sewer-Only Customers At Risk of a Water Shutoff, (Jan. 30, 2018), <http://wesa.fm/post/2500-pwsa-sewer-only-customers-risk-water-shutoff#stream/0>.

service were inexplicably revised online to remove the entirety of Chapter 3, Subsection B (Abatement, Billing and Payment, Exoneration).¹⁰

Compounding these notice issues is the fact that PWSA has indicated that it will observe a voluntary winter moratorium, which protects low income customers from termination in the wintertime.¹¹ The last day of PWSA's winter moratorium is April 1, 2018, after which a large number of vulnerable, low income households who otherwise would have faced termination through the winter months are likely to face termination on or soon after April 2, 2018. None of these households will have received notice of their dispute rights with the Commission prior to their termination, which will commence after April 1, 2018. The result could be disastrous for both the individual household and the surrounding community, and may leave thousands of vulnerable households facing imminent loss of water service without appropriate notice of their due process rights.

Pittsburgh UNITED strongly recommends that the Commission require PWSA to temporarily suspend terminations on residential consumer accounts until PWSA (1) notifies all applicants and customers of their dispute rights on or before April 2, 2018; (2) revises its Notice of Termination and notice of denial of service consistent with the requirements of Chapter 56, and (3) trains its staff appropriately to assure all customer disputes are handled in compliance with chapter 56. Once a compliant notice of termination is developed, PWSA should reserve the

¹⁰ See PWSA Rules and Regulations, Chapter 3: Rates and Charges, Abatement, Billing and Collection, http://apps.pittsburghpa.gov/redtail/images/1581_2017_Revised_Rules_Regulations_Chapter3_Rates_Charges_Collection.pdf. PWSA's website notes that its rules and regulations were last revised and adopted by the Board of Directors on July 19, 2013, so it is unclear why a significant portion of the rules are regulations – including explanation of a customer's current dispute rights – is now missing from its public posting. <http://pgh2o.com/rules>.

¹¹ See PWSA Winter Moratorium Program - Frequently Asked Questions, http://apps.pittsburghpa.gov/redtail/images/1582_WinterMoratoriumProgram_FINAL.PDF; see also Pittsburgh Water and Sewer Authority Ends Water Shutoffs in Winter, Pittsburgh Tribune (Oct. 26, 2017), available at <http://triblive.com/local/allegheeny/12879689-74/pittsburgh-water-and-sewer-authority-adopts-moratorium-on-winter-water-shut-offs>.

notice on those facing termination. We anticipate that it will take at least 60 days from April 2, 2018, to ensure that all consumers facing the imminent loss of water service will receive proper notice of termination, including notice of their full dispute rights and possible grounds for such a dispute.

ii. Require PWSA to transfer disputes pending before the Exoneration Hearing Board to the Bureau of Consumer Services as of April 1, 2018.

The Commission explains in its TO that “[c]ases pending before the Exoneration Hearing Board on April 1, 2018, shall be decided by PWSA using PWSA Prior Tariff procedures.” TO at 9. However, the Commission also explains that April 2, 2018, “will mark the end of its current Exoneration Hearing Board as an adjudicative body.” TO at 9. These two directives appear to be inconsistent. Furthermore, as noted above, we are concerned that PWSA may have already taken steps to disband its Water Exoneration Hearing Board.

Rather than take a bifurcated approach, Pittsburgh UNITED recommends that the Commission transfer all pending disputes to the Bureau of Consumer Services as of April 1, 2018. In turn, PWSA should be strongly encouraged to stay all pending and future disputes launched before April 1, 2018, and to stay any pending termination on these accounts until after April 1, 2018. We believe this to be a necessary and prudent step, given the Commission’s acknowledgment that “the Exoneration Hearing Board procedures are incompatible with the due process rights afforded to utility consumers by the Public Utility Code.” TO at 9. No customer should be deprived of critical, life-sustaining water service without due process of the law.

iii. Clarify that the Commission will apply Chapters 14 and 56 to disputes arising from events prior to April 1, 2018, but will not enforce associated penalties.

In its TO, the Commission asks stakeholders to address how it should handle disputes which are filed before the Commission *based on events which happened prior to the transition* and/or the eventual approval of a new tariff. TO at 11.

Pittsburgh UNITED asserts that any disputes filed with the Commission after April 1, 2018 must be subject to the following authorities, in the following order: (1) statutory law, (2) regulation, (3) the approved tariff in effect at the time of the complaint.¹² This must include disputes filed after April 1, 2018 which arise from events which took place before April 1, 2018. Application of partial sections of the newly effective laws or regulations, or otherwise requiring the Commission to resolve disputes pursuant to PWSA's unfamiliar and outdated policies, would cause needless confusion for consumers, PWSA, and the Commission's staff at the Bureau of Consumer Services and Office of Administrative Law Judge, and would make it difficult for consumers to access due process of the law.

As suggested in section A above, to help ease the jurisdictional transition without unnecessary harm to consumers, we recommend that the Commission consider waiving fines and penalties where appropriate against PWSA for unintentional violations of Chapters 14 and 56, at least until new tariffs are implemented subject to the July 2018 tariff filing. Likewise, if a complaint filed after April 1, 2018 relates to events which took place prior to April 1, 2018, the Commission should not penalize the consumer or PWSA – but should continue to assess disputes in a manner that is consistent with the law and regulations. Where application of Chapters 14

¹² See section A above; see also 52 Pa. Code § 56.223.

and 56 would cause harm to either PWSA or the consumer based on events prior to April 1, 2018, care should be taken to enforce the law while avoiding penalty to PWSA or the consumer. This approach strikes an appropriate and legally sound¹³ balance between the application of vital consumer protections, the provision of adequate due process rights, and the desire to afford PWSA sufficient flexibility throughout the transition.

iv. Clarify PWSA’s responsibility to assess whether a customer’s complaint has been satisfied, or must be escalated to a dispute.

In its TO, the Commission explains that PWSA “must determine whether a customer dispute exists based on section 56.2, which provides that a customer contact is not considered a dispute if “the applicant, customer, or occupant indicates satisfaction with the resulting resolution or explanation of the subject of the grievance.” TO at 9.

Pittsburgh UNITED commends the Commission for underscoring this important requirement. However, it is concerned that this guidance is insufficient to enable PWSA to appropriately implement this nuanced requirement. Consumers should not be required to utter any magic words (such as “I dispute this resolution” or “I am unsatisfied with this resolution”) as a condition to unlocking dispute rights. Pittsburgh UNITED often works with low income families who accept what is initially offered to them because they are not adequately informed of their right to dispute the resolution. When denied service or otherwise faced with termination,

¹³ t Application of newly effective statutory and regulatory provisions to facts arising before the effective date of a regulation would not be an impermissible ex post facto application of the law if the Commission waives the potential for any punitive effect. . The law is clear that “if a legislature’s purpose was to enact a civil regulatory scheme, then the law can be ex post facto only if there is ‘the clearest proof’ of punitive effect.” Congressional Research Service, Library of Congress, The Constitution of the United States of America: Analysis and Interpretation, at 403 (2013), available at <https://law.justia.com/constitution/us/article-1/70-ex-post-facto-laws.html> (quoting Smith v. Doe, 538 U.S. 84 (2003)). Pittsburgh UNITED’s recommendation is to waive any punitive impact to the consumer or PWSA for noncompliance based on events or circumstances that arose before April 1, 2018. This approach would avoid any notion that application of the law to disputes in this manner would create a “punitive effect.”

economically vulnerable households are often desperate, and acquiesce to things that they might not actually agree with in order to prevent the loss of critical, life-sustaining water service.

Pittsburgh UNITED recommends that the Commission require PWSA to inform each customer at the end of a call that, if they are unhappy with the resolution, they have the right to file an informal or formal complaint with the Commission. This approach would ensure that proper notice reaches all consumers, including those who may be intimidated by the process or are otherwise hesitant or unable to vocalize their discontent with PWSA's resolution.

C. Apply a Clean Slate Approach to Payment Arrangement Standards

The Commission's TO directs that, "[b]eginning April 2, 2018, the Commission will entertain requests for payment arrangements and resolve those requests consistent with Chapter 14 of the Public Utility Code and Commission regulations." TO at 11. As noted above, this is one of the few provisions of Chapters 14 and 56 which the Commission explicitly acknowledged would be effective throughout the transition period.

Pittsburgh UNITED commends the Commission for recognizing the critical need for PWSA's immediate compliance with payment arrangement standards in Chapters 14 and 56. However, additional clarity around the application of payment arrangement standards is necessary.

While many aspects of payment arrangements are formulaic, the Commission nevertheless retains significant discretion over the availability of a payment arrangement.¹⁴ For victims of domestic violence, the payment arrangement standards are even more objective, and require the Commission to assess a number of factors to determine an appropriate payment

¹⁴ See 66 Pa. C.S. §§ 1405(d) & (e) (allowing the Commission to provide additional payment arrangements and/or extend an existing payment arrangement based on objective criteria).

arrangement standard. 52 Pa. Code § 56.285. Likewise, enrollment in a Customer Assistance Program (CAP) can disqualify a customer from receiving a payment arrangement.¹⁵ Indeed, a customer's past behavior can greatly impact the availability of a payment arrangement.

Pittsburgh UNITED strongly recommends that the Commission adopt a clean slate approach to assessing an appropriate payment arrangement for PWSA customers. A clean slate would ensure that PWSA customers are not unfairly penalized for actions taken *before* Chapters 14 and 56 were available to them to help address a dispute. For example, whether a consumer has a good faith payment history should not include a customer's failure to make payments on a non-compliant payment arrangement issued before April 1, 2018 or on bills rendered pursuant to the currently-effective rates, which have not yet been subject to Commission review.

As the Commission itself explained, the legislative intent of Chapter 32 is "remedial" and is "meant to achieve long-term viability and sustainability in accordance with the Public Utility Code." TO at 14 (emphasis added). The remedial nature of Chapter 32 was not only targeted at ensuring *PWSA's* long-term viability and sustainability, *it was also intended to protect the ability of all Pittsburgh residents to access and maintain affordable utility services*. A clean slate approach to the application of consumer protections is consistent with this intent, and ensures that problems stemming from PWSA's pre-Chapter 32 governance are not allowed to follow consumers into this new legal paradigm.

¹⁵ PWSA operates a Customer Assistance Program (CAP), which provides customers with income at or below 150% of the Federal Poverty Level a 50% discount on their fixed or monthly water charges for a period of one year. See <http://www.pgh2o.com/CAP>. This CAP is not currently operating in a manner consistent with the Commission's regulations and, as such, participants in PWSA's CAP prior to April 1, 2018 should not be prohibited from receiving a payment arrangement pursuant to section 1405(c). See 66 Pa. C.S. § 1405(c). The terms and conditions of PWSA's CAP should be addressed in PWSA's tariff filing. See Section IV.B, below.

D. Enforce Other Critical Consumer Protections

Again, there are a number of critical consumer protections contained in Chapters 14 and 56 that were not addressed in the Commission's TO. As explained throughout these comments, Pittsburgh UNITED strongly believes that all of the protections in Chapters 14 and 56 must be applied in disputes addressed by the Commission after April 1, 2018. The discussion of specific consumer protections in these comments should not be read to the exclusion of other important consumer protections; however, we highlight the most critical provisions here to underscore their importance, and the increased likelihood for harm that would occur if left unenforced throughout the transition. In addition to payment arrangement standards and dispute rights addressed in sections B and C above, the most critical provisions of Chapters 14 and 56 include security deposit requirements, notice of termination, medical protections, and protections for victims of domestic violence.

Below, we briefly address the reasons why immediate implementation of these provisions is critically important to protect Pittsburgh residents from harm, identify the ways in which PWSA's currently effective tariff will impermissibly conflict with these critical provisions of the law, and suggest recommendations for how to ease transition to full compliance without infringing on consumer protections.

As an overarching recommendation, we again urge the Commission to institute a stakeholder process to explore these issues more fully and develop a plan for interim compliance and/or assess whether a waiver may be appropriate if compliance would cause undue hardship. See section A. In turn, we urge the Commission to temporarily suspend terminations on April 1, 2018 until PWSA adopts sufficiently compliant interim policies and procedures and appropriately trains its employees to implement those policies and procedures.

i. Security Deposit Requirements

Security deposit requirements pose a significant and often insurmountable obstacle for households attempting to connect with and maintain utility service. Even for middle income households, a requirement to pay a large up-front fee before connecting to service or as a condition of reconnection can act as a significant barrier, causing significant financial hardship. For low income households – which account for nearly one-quarter (22.3%) of Pittsburgh’s residents¹⁶ – a security deposit can act as a complete barrier to connecting or reconnecting utility service. Indeed, the household income of a family living in poverty is already insufficient to pay for life’s basic necessities. The addition of a conditional up-front fee for essential services can cause severe hardship and temporary periods of homelessness.¹⁷

It is helpful to put this issue into actual dollars. A household of three (3) with income at 100% of the federal poverty level has a gross monthly income of approximately \$1,725.¹⁸ In Pittsburgh, the self-sufficiency standard (meaning the amount of income necessary to pay for food, housing/utilities, transportation, child care, medical expenses, and taxes) for a single parent with two children is between \$2,900 and \$3,300 each month – *nearly double the income of a household living in poverty*.¹⁹ With such an extreme lack of resources, even a small security deposit requirement for a household at or near the federal poverty guidelines can force a family to make difficult and risky choices between access to water, food, prescriptions, health care,

¹⁶ US Census Bureau, Quick Facts: Pittsburgh City, Pennsylvania, <https://www.census.gov/quickfacts/fact/table/pittsburghcitypennsylvania/PST045216>.

¹⁷ See Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania, Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report (April 2016), <https://projecthome.org/sites/default/files/HOMELESSNESS%20IN%20PENNSYLVANIA%20REPORT.pdf>.

¹⁸ US Dep’t of Health & Human Services, US Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs (2018), <https://aspe.hhs.gov/poverty-guidelines>.

¹⁹ See Pathways PA, Overlooked and Undercounted: How the Great Recession Impacted Household Self-Sufficiency in Pennsylvania (2012), <http://www.selfsufficiencystandard.org/Pennsylvania>. Allegheny County’s annual self-sufficiency wage ranges between \$35,000 - \$39,999. *Id.* at 7.

child care, electricity, heating fuel, or other essential services.²⁰ Many end up resorting to high risk and high cost payday lending, which only further perpetuates their financial hardship.²¹

Chapter 56 allows utilities to assess a security deposit on applicants and customers as a condition of service in certain circumstances. 52 Pa. Code § 56.32. However, in recognition of the extreme financial hardship caused by security deposit requirements, Chapter 14 prohibits utilities from imposing a security deposit on low income households eligible for a Customer Assistance Program. 66 Pa. C.S. § 1404(a.1). For all other residential applicants or customers, Chapter 56 requires utilities to divide security deposits over a period of time, with 50% due when service is connected, and 25% due each subsequent month. 52 Pa. Code §§ 56.38, 56.42(b)-(c). Utilities, in turn, have a duty to inform applicants and customers of the right to divide the security deposit payments over time. 52 Pa. Code §§ 56.38, 56.42(b)-(c).

PWSA's rules are not consistent with Chapters 14 and 56. PWSA does not allow an applicant or customer to divide an assessed security deposit over time, nor does it exempt low income customers from security deposit requirements. PWSA § 206.1-.6.²²

Pittsburgh UNITED urges the Commission to require PWSA to comply with the security deposit requirements in Chapters 14 and 56 by April 1, 2018. Consistent with sections 56.38 and

²⁰ NEADA, 2011 National Energy Assistance Survey (Nov. 2011), <http://www.neada.org/news/nov012011.html>.

²¹ See Ariel Dreobl & Lauren Ross, ACEEE, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, at 13 (April 2016), <http://aceee.org/research-report/u1602>

The troubling reality is that many households resort to high-cost payday lending in order to pay their utility bills, which can further exacerbate the cycle of poverty. A 2012 study found that **paying utility bills was the most common reason why individuals took out a payday loan**. These loans are small, short-term loans with high interests rates that can make repayment difficult and costly.

Id. (emphasis added).

²² PWSA's CAP is not currently compliant with the Commission's regulations. As noted below in Section IV.B, the terms and conditions of PWSA's Customer Assistance Program should be addressed in PWSA's tariff filing. Until those terms and conditions are reviewed, PWSA should be prohibited from imposing a security deposit on all customers with income at or below 150% of the federal poverty level.

56.42, PWSA should be required to explicitly notify customers at the time a security deposit is assessed that they may elect to pay the deposit over a period of three months (50%, 25%, and 25%). Likewise, PWSA should be required to inform applicants and customers that they are exempt from the deposit requirement if they are low income, consistent with 66 Pa. C.S. § 1404(a.1).

ii. Notice of Termination

The inadequacy of PWSA's notice of termination was, in part, addressed above in Section III.B.i regarding PWSA's notice of dispute rights. But the insufficiencies of PWSA's termination notice go beyond lack of adequate notice of dispute rights. PWSA's notice of termination also lacks critical information about the consumer's rights when facing the loss of critical water services. Compare PWSA § 210.1; 52 Pa. Code § 56.91.

First, in addition to lacking critical information about the applicable dispute process, PWSA's notice does not contain any information about protections from termination for medically vulnerable customers or victims of domestic violence, as required by Chapter 56. 52 Pa. Code § 56.91(b)(8), (11). It also fails to notify customers of the availability of assistance programs, which is a requirement of both Chapter 14 and 56. PWSA does not provide any provision for Spanish translation,²³ nor does PWSA provide information about the availability of

²³ As a governmental body, PWSA not only has a regulatory obligation to provide interpreter and translation services, it likely also has a duty to provide translated notice of termination under Title VI of the federal Civil Rights Act. See 42 U.S.C. § 2000d. Title VI protects against discrimination based on national origin, and applies when an individual is unable or has a limited ability to speak, read, or understand English; in other words, it applies when a person is limited English proficient (LEP). Lau v. Nichols, 414 U.S. 563, 569 (1974); Sandoval v. Hagan, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), rev'd on other grounds, 532 U.S. 275 (2001); Almendares v. Palmer, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI). To comply with the requirements of Title VI, a governmental body (including subcontractors and federal funding recipients) must "take reasonable steps to ensure meaningful access" to its services. Dep't Health & Human Services (HHS), Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english->

assistance for customers with disabilities. 52 Pa. Code § 56.91(b)(17)-(18). Finally, while PWSA imposes significant charges to a customer's account when it initiates collection or termination proceedings, its notice of termination does not inform consumers that additional costs may be required to be paid to prevent termination of service. See PWSA § 209.9; 52 Pa. Code § 56.91(15). The additional consequences of termination for PWSA's customers go beyond penalty fees, **and include the loss of real property** – yet its notice of termination does not include specific notice of these significant consequences. PWSA §§ 209.9, 304.1, 326.1-.4.

At its core, due process requires meaningful notice and an opportunity to be heard.²⁴ Without the additional notice provisions contained in Chapters 14 and 56, customers are not provided adequate or meaningful notice of their rights, including their right to dispute a pending termination and the possible grounds for which a dispute could be raised.

Pittsburgh UNITED urges the Commission, consistent with its recommendation above, to require that PWSA temporarily suspend terminations on residential consumer accounts until PWSA revises its Notice of Termination consistent with the requirements of Chapter 56 and trains its staff to appropriately implement the protections contained therein. This will ensure that PWSA's residential consumers are protected throughout the transition consistent with the requirements of Chapter 32.

[proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html](#). The steps that are “reasonable” for a covered entity vary; however, critical to the determination is an assessment of the consequences of not providing adequate language access services. Id. In this context, the loss of water service can have a severe and long-term impact on an individual's health and wellbeing, so the requirements of Title VI are great. Id.

²⁴ See Smith v. Pa. PUC, 162 A.2d 80, 83-84 (Pa. Super. 1960) (“The Pennsylvania Public Utility Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness. Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. ... Due process also requires the opportunity to argue the case before the deciding tribunal.”).

iii. Medical Protections from Termination

Given the significant consequences for medical care, including wound cleansing, personal hygiene, cooking, home heating, and waste disposal, the loss of water and sewer service in a home can have a devastating impact on the health, welfare, and safety of all individuals, particularly children, elderly, and disabled populations.²⁵ This is why cities and municipalities may condemn homes and Children and Youth Services sometimes removes children from homes without water service. But for individuals with acute health conditions, the loss of water service can mean the difference between life and death. Indeed, individuals with feeding tubes or other medical equipment, those recovering from a surgical procedure, and those healing from wounds require access to water for sanitization and proper sterilization, the lack of which could lead to infections, hospitalization, or worse.

PWSA's current medical protections are not compliant with Chapters 14 and 56, and likely conflict with other critical consumer health privacy protections, given PWSA's requirement that the treating physician or nurse practitioner disclose the nature of the individual's illness.²⁶ PWSA's current policies provide:

If, when notice of termination is received, an occupant of the Residential Property is seriously ill, the Authority will defer termination for a maximum of 30 days if a licensed physician or nurse practitioner contacts the Authority by facsimile or mail to explain how the termination of service will aggravate the medical condition. The physician's statement should include the name and address of the afflicted individual and his or her relationship to the Customer. A medical deferral may be renewed once, by the submission of another statement from the treating physician, for a maximum of 30 days. The Customer remains responsible for the outstanding balance during the postponement and may avoid termination by making a reasonable payment arrangement.

PWSA § 209.7.

²⁵ See, e.g., CDC, Community Health Impact of Extended Loss of Water Service: Alabama (Jan. 20, 2010), <https://www.ncbi.nlm.nih.gov/pubmed/21330964> (finding that the loss of water service caused "a significantly higher prevalence of acute gastrointestinal illness").

²⁶ See Chapter 14 Implementation, Final Order, Docket No. M-2014-2448824, at 12-13 (June 11, 2015).

PWSA's medical termination policy differs in critical ways from the requirements contained in Chapters 14 and 56. First, Chapter 14 allows for medical certificates to be issued by a physician's assistant in addition to physicians and nurse practitioners. 66 Pa. Code § 1402 (definitions, medical certificate). Moreover, in addition to being available to those with a serious illness, Chapter 14 extends medical protections to individuals who have been "diagnosed with a medical condition which requires the continuation of service to treat the medical condition." Id. Chapter 56 also requires utilities to postpone termination for three days when a customer notifies the utility that they are seeking a medical certificate to provide them with sufficient time to seek certification from a busy medical provider. 52 Pa. Code § 56.113.

With regard to the length of medical certification, Chapter 56 allows for continued medical protections so long as the customer continues to pay their current charges as they come due. 52 Pa. Code § 56.116²⁷. Even if a medically vulnerable household is unable to keep up with their current charges, medical protections are nevertheless available for up to 90 days – a full month longer than the protections currently provided by PWSA. Id.

For the health and safety of Pittsburgh's residents, Pittsburgh UNITED urges the Commission to require that PWSA temporarily suspend water and sewer terminations until it adopts a fully compliant process for medical certification and, in turn, trains its employees to comply.

²⁷ See Chapter 14 Implementation, Final Order, Docket No. M-2014-2448824, at 14 (June 11, 2015).

iv. Protections for Victims of Domestic Violence

For an individual fleeing domestic violence in the home, their future safety often relies, in part, on their ability to connect and maintain utility services.²⁸ When leaving an abusive household and attempting to set up a new home, security deposit requirements and prior arrears – often accrued by an abusive ex-partner – can stand in the way of a survivor’s ability to establish a new home free from violence.²⁹

In recognition of the difficult and unique barriers for victims of domestic violence, Chapter 14 does not apply to victims of domestic violence with a Protection from Abuse Order (PFA) or other court order with clear evidence of domestic violence. 66 Pa. C.S. § 1417. Rather, victims of domestic violence with a qualifying court order fall under subchapters L-V of Chapter 56, which set forth more lenient billing, collection, and termination standards. This includes section 56.285, which provides that a victim of domestic violence with a qualifying order cannot be denied service or obligated to pay for arrears accrued in someone else’s name – even if they lived at the residence when the arrears were accrued. 52 Pa. Code § 56.285. In turn, victims with a qualifying order must be given access to more lenient payment arrangement terms which appropriately account for the unique facts and circumstances of the customer. Id.

PWSA’s current rules do not extend any protections for victims of domestic violence.

²⁸ See LIHEAP Clearinghouse, Domestic Issues Creating Hardships for Low-Income Utility Customers (Nov. 2017), <https://liheapch.acf.hhs.gov/sites/default/files/webfiles/docs/DomesticIssues.pdf>.

Domestic abuse can take many forms, but two significant types of abuse impacting utility customers are financial and economic abuse. Financial and economic abuse results when an abuser, often a romantic partner or family member, intentionally causes problems related to utility service which can result in disconnection of service.

The protocol for case management by a utility provider can often be the deciding factor between contributing to the economic stress of a customer, or enabling them in their ability to establish or re-establish themselves as a customer.

Id.

²⁹ See id.

Pittsburgh UNITED again recommends that PWSA be required to suspend termination until it properly notifies consumers about the protections available for victims of domestic violence pursuant to 66 Pa. C.S. § 1417 and 52 Pa. Code subchapters L-V, and adopts a process and procedure for compliance. As recommended above, PWSA should be required to appropriately train its employees on its new process and procedure before terminations are allowed to commence.

IV. TARIFF FILING AND COMPLIANCE PLAN

A. Timing for Tariff and Compliance Plan Filings

The Commission's TO asserts that Chapter 32 is "ambiguous as to exactly when the required tariff and compliance plan filings are to occur." TO at 12. Respectfully, Pittsburgh UNITED disagrees. That said, there is significant merit to the Commission's ultimate conclusion that additional time is prudent to allow PWSA sufficient time to develop compliant filings and to ensure that the statutory advocates are able to fully participate in the proceedings. That is, provided consumer protections and other safeguards are properly in place to protect consumers throughout the more lengthy process outlined in the Commission's TO.

The plain language of the Section 3204(a) and (b) provide that PWSA's new tariff be filed within 90 days and its compliance plan be filed within 180 days "of the *effective date of this section.*" 66 Pa. C.S. § 3204(a), (b). The effective date of section 3204 was, without question, December 21, 2017. 66 Pa. C.S. Ch. 32, Enactment ("Chapter 32 was added December 21, 2017, P.L. 1208, No. 65, *effective immediately.*" (emphasis added)). Thus, as a matter of law, the statutorily imposed deadline for PWSA to submit its tariff filing is Wednesday, March 21, 2018,

and the statutorily imposed deadline for PWSA to submit its compliance plan filing is Tuesday, June 19, 2018.

The Commission argues in its TO that the language of section 3204 which references “the effective date of this section” actually refers to the section delineation in Act 65. Act 65 was broken down into four sections: Section 1 amended section 1301 of title 66; Section 2 added the entirety of Chapter 32 to title 66; Section 3 repealed inconsistent provisions; and Section 4 declared that the Act “shall take effect immediately.” Act 65 of 2017. But none of the Sections of Act 65 contain any specific effective dates which would otherwise modify the effective date of the Act contained in Section 4. Indeed, Section 4, requiring that the entirety of the Act take immediate effect, controls. Nevertheless, the Commission argues that “[l]egally, the specific date of Section 2 (April 1, 2018) controls the general date of Section 4 (December 21, 2017).” TO at 13. Respectfully, Pittsburgh UNITED disagrees and believes this interpretation lends to credible legal challenges from consumers who, as a result of any delay beyond the statutory period, may experience financial harm. Indeed, there is no specific effective date of Section 2 of Act 65: The effective date of Chapter 32 as a whole is, unambiguously, December 21, 2017. Section 3202 within the newly enacted Chapter 32 references April 1, 2018, but there is no legal basis for the Commission to bootstrap the date referenced in section 3202 to control the language in section 3204.

That said, Pittsburgh UNITED recognizes that the deadlines established in section 3204 (March 21, 2018 and June 19, 2018) are not ideal, and agrees with the Commission that use of the April 1, 2018 date to begin the timeline for PWSA’s filings may be more practically prudent. However, rather than rest its decision on questionable legal footing, Pittsburgh UNITED recommends that the Commission require PWSA to file a request for an extension of the

deadlines for filing its tariff and compliance plan on or before the respective statutory deadlines (March 21, 2018 and June 19, 2018). This would place the decision within the Commission's discretion to grant without being based upon a legal interpretation of section 3204 which could raise significant legal issues in the future.

B. Require PWSA to include provisions in its tariff filing to fully implement Chapter 14 and 56 and to establish appropriate terms and conditions for its Customer Assistance Program.

The critical nature of the protections available to consumers through Chapters 14 and 56 cannot be overstated, especially as it pertains to water service. In turn, the availability of appropriate universal service programming is likewise of critical importance.

Without running water, children may be removed from the care of their parents, a household may be condemned, or – in the case of PWSA – a municipal lien may force a foreclosure on a family's home. As such, it is critically important that PWSA be fully compliant with Chapters 14 and 56 as soon as practicable after April 1, 2018. As noted above, Pittsburgh UNITED believes the mandates in Chapters 14 and 56 must be applied by the Bureau of Consumer Services and Administrative Law Judges to all disputes filed after April 1, 2018. That said, we recognize that there may be some provisions which will require technical changes to PWSA's billing and information systems. As suggested above, Pittsburgh UNITED recommends that PWSA be required to seek temporary waiver of any regulations with which it cannot reasonably comply; however, any temporary waivers granted to PWSA must be short-lived, and replaced quickly with a fully compliant tariff.

Allowing PWSA to wait to include its plan for Chapter 14 and 56 compliance in a subsequently filed compliance plan to be filed in late September 2018 would not enable a sufficiently detailed analysis of whether the previously-filed and litigated tariff provisions are

compliant with the requirements of Chapters 14 and 56. The same is true for PWSA's Customer Assistance Program, the terms and conditions of which must be addressed in the context of a fully litigated tariff proceeding to ensure that the program is adequately funded and appropriately designed to ensure that the rates and conditions of service are just and reasonable for all consumers. In turn, the parties to the tariff proceeding, to be filed in July 2018, will be unable to adequately account for and assess the prudence of associated costs which may be necessary to ensure full compliance.

Whether a public utility's terms and conditions for service are just and reasonable requires an analysis of whether those terms and conditions fully comply with existing laws and, in turn, whether they are reasonably accessible to all residents regardless of economic status. As such, PWSA should be required to file a tariff no later than the July 2, 2018 deadline, which is fully compliant with Chapters 14 and 56 and sets forth the terms and conditions of its Customer Assistance Program. PWSA should, in turn, be required to outline any issues it anticipates – along with associated costs – in its supportive testimony to allow these issues to be fully developed in that proceeding.

C. Require PWSA to model its tariff on the language in Chapters 14 and 56

With regard to the substance of PWSA's required tariff filing, the Commission encouraged PWSA to refer to the model water and wastewater tariffs:

As to the substance of the proposed tariff, the Commission notes that the model water and wastewater tariff provided on the Commission website contain standard language that PWSA should consider adopting in its proposed tariffs. For example, the Commission regulations govern bill collection and late payment fees and the model tariffs reflect these regulations.

TO at 15.

It is unclear when the Commission's model water and wastewater tariffs were last updated, or whether the models reflect the most recent changes to Chapters 14 and 56. A brief review of the model tariff proves that this concern is warranted. For example, the model tariff outlines the requirements for residential consumer deposit standards; however, the language does not contain the Chapter 14 prohibition on security deposit requirements for low income customers. Model Tariff Water at 15; 66 Pa. C.S. § 1404 (a.1). Thus, reliance on the model tariffs alone is not a sound approach.

While the Model Tariffs may still be a valuable resource to assist PWSA with the formation of its tariffs, Pittsburgh UNITED recommends that the Commission advise PWSA that its tariff filing and compliance plans must reflect *all of the currently applicable provisions contained in Chapters 14 and 56*. PWSA should be encouraged to review the explicit language contained in Chapters 14 and 56, and should build that language directly into its tariffs.

D. Require PWSA to comply with reporting requirements.

The Commission's TO asked parties to comment on whether PWSA should comply with the reporting requirements contained in title 52, section 56.231 of the Pennsylvania Code, and requested comments on "the development of an appropriate compliance schedule" and "whether such a schedule should be compatible to what is already applicable for other regulated public utilities." TIO at 27. Section 56.231 requires public utilities to report a list of standard data "[w]ithin 15 days after the end of each month." 52 Pa. Code § 56.231.

Pittsburgh UNITED asserts that the Commission should require PWSA to begin reporting data immediately after the Commission's jurisdiction begins on April 1, 2018, with its first report due within 15 days after the end of April, 2018. Leading up to the April 1, 2018 compliance date, PWSA should be required to identify any data points with which it may be unable to

immediately comply, along with a description of the reason why it cannot comply and a plan for when and how it will comply in the future. Establishing immediate reporting requirements is critical to ensure that the Commission's Bureau of Consumer Services is properly equipped to identify issues as they arise, consistent with its duty to investigate and adjudicate PWSA's consumer complaints as of April 1, 2018.

E. Order the Bureau of Consumer Services to conduct an audit of Customer Service Operations and Consumer Complaint Handling Process

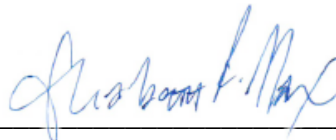
In its TO, the Commission requests comments "on whether the Bureau of Consumer Services should conduct an audit of PWSA customer service operations and consumer complaint handling process." TO at 28.

Establishing a benchmark for PWSA's customer service operations and consumer complaint handling process is critical to enable a proper assessment of PWSA's compliance with Chapters 14 and 56 and other important standards for customer service. This review should be initiated as soon as possible, and early results should be made available to help inform the Commission's oversight as of April 1, 2018, as well as the subsequent tariff and compliance plan proceedings. In conjunction with this audit process, the Bureau of Consumer Services should continue to actively audit, monitor, and oversee PWSA's consumer service operations and complaint handling process until PWSA's subsequent compliance plan is fully executed. As earlier recommended, BCS should continue to hold regularly scheduled meetings with stakeholders, including Pittsburgh UNITED, to facilitate the resolution of any issues which may be identified throughout the audit and oversight period.

V. CONCLUSION

Pittsburgh UNITED urges the Commission to adopt the recommendations outlined above to fulfill the requirements of Chapter 32, comply with the requirements of Chapters 14 and 56, and ensure that consumers are protected from financial and physical harm throughout PWSA's transition to Commission oversight. We thank the Commission for the opportunity to submit these Comments, and look forward to working closely with the Commission, PWSA, and other stakeholders throughout the transition to ensure that an appropriate balance is struck to both preserve the safety and reliability of Pittsburgh's water and sewer infrastructure and ensure that economically vulnerable consumers can access to affordable water services.

Respectfully Submitted,
Pennsylvania Utility Law Project
On Behalf of Pittsburgh UNITED



Elizabeth R. Marx, Esq., PA ID 309014
Patrick M. Cicero, Esq., PA ID 89039
Kadeem Morris, Esq., PA ID 324702
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

February 7, 2018