



November 1, 2018

VIA E-FILE

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: PA Public Utility Commission v. Pittsburgh Water and Sewer Authority
Docket Nos. M-2018-2640802, -2640803

Dear Secretary Chiavetta,

Enclosed for filing, please find the **Comments of Pittsburgh UNITED** in the above noted proceeding. Copies have been served in accordance with the attached Certificate of Service.

Respectfully submitted,

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

Elizabeth R. Marx
Counsel for Pittsburgh UNITED

CC: Certificate of Service

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	:		

COMMENTS OF PITTSBURGH UNITED

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for Pittsburgh UNITED

Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
Patrick M. Cicero, Esq.
Kadeem G. Morris, Esq.
118 Locust Street
Harrisburg, PA 17101

Tel.: 717-236-9486

Fax: 717-233-4088

Email: pulp@palegalaid.net

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I. INTRODUCTION

Pittsburgh UNITED, by and through its counsel at the Pennsylvania Utility Law Project (PULP), hereby files the following Comments to the Pittsburgh Water and Sewer Authority (PWSA) Compliance Plan, which was filed with the Pennsylvania Public Utility Commission (Commission) for approval on September 28, 2018, at the above captioned dockets, and was published in the Pennsylvania Bulletin on October 13, 2018.¹

Pittsburgh UNITED is a coalition of local organizations committed to advancing the vision of a Pittsburgh community and economy that works 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. The provision of safe, affordable, and publicly owned water and wastewater service is critically important to the long-term health, safety, welfare, and economic prosperity of all Pittsburgh residents, and is of paramount importance to Pittsburgh UNITED's members.

Pursuant to this mission, Pittsburgh UNITED has taken an active interest in PWSA's transition to Commission oversight pursuant to Act 65 of 2017, which is now codified in Chapter 32 of the Public Utility Code, to help advance PWSA's future success as a publicly owned and operated water and wastewater utility serving the City of Pittsburgh for decades to come.²

Pittsburgh UNITED is an active party in the ongoing litigation of PWSA's water and wastewater

¹ These Comments are being filed pursuant to the Commission's September 26, 2018 Secretarial Letter, which invited interested stakeholders to file comments to PWSA's Compliance Plan within 20 days of the Plan's publication in the October 13, 2018 Pennsylvania Bulletin. Sept. 26 Sec. Ltr. at 3. The September 26 Secretarial Letter also announced that, within 45 days after publication in the Pennsylvania Bulletin, PWSA's Compliance Plan will be referred to the Office of Administrative Law Judge (OALJ) "for the resolution of any factual matters that PWSA or interested parties may seek to develop." *Id.* On November 1, 2018, the same day that these Comments are being filed with the Commission, Pittsburgh UNITED separately filed a Petition to Intervene in the litigated portion of this proceeding, announcing its intent to fully participate in the exchange of discovery and the development of a record related to PWSA's Compliance Plan.

² See 66 Pa. C.S. §§ 3201-3209.

base rate and tariff proceedings, at docket numbers R-2018-3002645 and R-2018-3002647, and intends to be an active party in the planned litigation of PWSA's Compliance Plan.³ Pittsburgh UNITED also filed initial Comments in response to PWSA's Long Term Infrastructure Improvement Plan (LTIIP) on October 29, 2018, at docket numbers P-2018-3005037 and P-2018-3005039.

Importantly, and as discussed in further detail below, many of the issues we have identified in these comments with respect to PWSA's Compliance Plan may well be resolved in the context of the ongoing tariff and base rate proceeding. As a litigant in that proceeding, Pittsburgh UNITED has raised a number of critical issues which are entwined with the Commission's determination of whether PWSA's proposed rates, tariff, and terms of service are just and reasonable and in accordance with the law. In turn, many of the issues raised in Pittsburgh UNITED's LTIIP comments with respect to PWSA's lead remediation plans are integral to the Commission's assessment of PWSA's Compliance Plan. We believe that it is critical for each of these Chapter 32 proceedings to commence and proceed in a coordinated manner to ensure that all issues related to PWSA's compliance with applicable laws, regulations, policies, and guidelines are fully addressed and resolved in a fair and judicious manner.

In light of the pending litigation of PWSA's Compliance Plan, and the ongoing litigation of PWSA's proposed rates and tariff provisions, Pittsburgh UNITED will not attempt to identify

³ The Commission's September 26 Secretarial Letter announced that, within 45 days after publication in the Pennsylvania Bulletin, PWSA's Compliance Plan would be referred to the Office of Administrative Law Judge (OALJ) "for the resolution of any factual matters that PWSA or interested parties may seek to develop." (*Id.*) On November 1, 2018, the same day that these comments are being filed with the Commission, Pittsburgh UNITED filed a Petition to Intervene in the litigated portion of this proceeding, requesting active party status to fully participate in the development of a comprehensive record.

every Compliance related issue in these Comments.⁴ Rather, we seek to provide the Commission with an overview of what we believe to be the most pressing issues with PWSA's Compliance Plan to assist the Commission and its technical staff in developing an initial report and "directed questions or issue areas to be addressed by PWSA and interested parties."⁵ In particular, our substantive comments will identify issues to be explored and offer initial observations and recommendations with respect to three areas of PWSA's Compliance Plan: (1) residential customer billing, collections, and termination standards; (2) universal service programming; and (3) lead service line remediation programming. Finally, in the last section of these Comments, Pittsburgh UNITED offers procedural recommendations to help harmonize the resolution of each Chapter 32 proceeding.

Pittsburgh UNITED thanks the Commission for its thoughtful consideration of these comments, and looks forward to continuing its role as an active stakeholder in PWSA's transition to Commission oversight.

⁴ Given the ongoing litigation of many of these issues in the context of the rate and tariff proceedings, our Comments in response to PWSA's Compliance Plan are necessarily constrained. Until the evidentiary hearings in the rate and tariff proceeding is conducted, much of the information obtained about PWSA's policies and procedures to date is not yet a matter of public record, making it difficult to walk the fine line between sharing critical information learned in that proceeding and adhering to the paramount principles of due process. Nevertheless, we have sought through these Comments to achieve a prudent balance to provide the Commission with sufficient relevant information at this stage of the proceeding to inform the Commission's Initial Report – and the instructions it provides when referring the matter to the OALJ – while adhering to the procedural confines associated with ongoing litigation.

⁵ Sept. 26 Sec. Ltr. at 3.

II. COMMENTS

a. Residential Billing, Collections, and Termination Policies and Procedures

i. *Standards and Billing Practices for Residential Utility Service, 52 Pa. Code Chapter 56*

PWSA asserts that “it is currently in compliance with most of [the] 17 subchapters of Chapter 56, partially as a result of policy changes made in March 2018 to PWSA’s Rules and Regulations, as well as additional changes reflected in the July 2, 2018 Tariff Filing.”⁶ With the exception of residential bill information⁷ and Spanish language translation, PWSA believes it is fully compliant with every other provision of Chapter 56.⁸ Thus, while PWSA’s Compliance Plans spends several pages summarizing Chapter 56 requirements and stating that PWSA believes it is compliant, PWSA provides no details about its policies and procedures that ensure compliance, what processes it changed since the passage of Act 65 of 2017, or any other critical information necessary for the evaluation of PWSA’s policies. The entire scope of PWSA’s plan to achieve compliance with Chapter 56 addresses only those two issues: residential bill information and Spanish language translation.

PWSA’s plan to bring its residential bills into compliance with applicable regulations notes only that it plans to “complete[] a bill redesign project by the end of 2019” and that it “is currently waiting on a statement of work from its print and mail vendors.”⁹ PWSA does not identify the aspects of its current bill that it believes are deficient or describe the changes it intends to implement. It does not share samples of the current residential bill or identify the aspects of the new bill which will change. It does not even identify the anticipated month in which the bill

⁶ Compliance Plan at 37.

⁷ 52 Pa. Code §§ 56.15, 56.265.

⁸ 52 Pa. Code §§ 56.91(17), 56.202, 56.331(13); Compliance Plan at 38.

⁹ Compliance Plan at 39.

redesign will be complete – opting only to share that it anticipates developing a new bill “by the end of 2019.”

Additional details about PWSA’s planned bill redesign are fundamentally important to determine whether PWSA’s plan for compliance is both just and reasonable in light of the circumstances. This includes, but is not limited to, a list of information PWSA plans to include on the redesigned bill, the timeline for review of the redesigned bill, whether stakeholders will be involved in the redesign process, the anticipated cost of the bill redesign, and plans for customer education associated with the bill rollout. A copy of PWSA’s current residential bill is also important to allow for analysis and comparison.

PWSA’s plan to translate critical documents into Spanish is also vague, and does not allow for the Commission to determine whether its plan is compliant with federal and state rules or is just and reasonable in light of the circumstances. PWSA states only the following:

PWSA is investigating piggybacking on a translation services contract that the City of Pittsburgh 311 entered into recently. If this is impermissible due to procurement rules and a standard RFP process is necessary, the contract would take at least six months to award. Adding implementation time, PWSA should be in full compliance with Section 56.91 by March 2019.¹⁰

It is unclear what the likelihood is for PWSA to join the City’s translation services contract, what impediments may prevent this from happening, or when PWSA may cease efforts to “piggyback” with the City’s contract and instead issue an RFP. It is also unclear how PWSA could comply by March 2019 if it has not yet begun an estimated 6 month RFP. Even if PWSA were to release an RFP on November 1, 2018 – the date these comments are being filed – it would be *May* 2019 before PWSA awards a contract. It is also unclear why PWSA anticipates that it would take six

¹⁰ Compliance Plan at 41, 42, 46, 48.

months to award a contract to translate portions of its termination notice and residential bill into Spanish.

For each of these identified issues, PWSA's Compliance Plan falls short. Additional details and information about PWSA's planned reforms is necessary to properly assess whether PWSA's plan to redesign its residential bill and to translate critical notices and information into Spanish are adequate and in accordance with Commission policies and regulation.

In addition to PWSA's acknowledged deficiencies, and notwithstanding PWSA's insistence that it is fully compliant with the remainder of Chapter 56, Pittsburgh UNITED has identified several aspects of PWSA's policies and procedures which do not appear to be compliant and/or for which additional inquiry is critical to determine whether PWSA is compliant with Chapter 56 or related provisions in Chapter 14 of the Public Utility Code. As noted above, many of these areas are being explored in greater depth in the tariff and rate proceedings, as PWSA's adherence to credit, collections, and termination protections for residential consumers is intimately related to whether PWSA's tariff provisions, rates, and terms of service are just and reasonable and in accordance with the law. Nevertheless, the following chart provides a partial breakdown of the provisions which Pittsburgh UNITED has identified as potentially noncompliant with Commission regulations.¹¹

¹¹ This chart provides only an initial assessment of whether PWSA is compliant with Chapter 56, based on information which is already a matter of public record. Pittsburgh UNITED reserves the right to raise additional issues through the course of litigation of the Compliance Plan proceeding.

CHART 1: Areas of PWSA Potential Non-Compliance with Chapter 56

Ch. 56 Requirement	Pittsburgh UNITED Comments and Recommendations
<p>Billing Frequency / Electronic Billing</p> <p>§ 56.11</p>	<p>Section 56.11(b) requires that electronic bills “include the same information that is included with a paper bill issued by a public utility.”</p> <p>While PWSA explained in its Plan that it is working to update its print bills, it has not explained whether and to what extent it will modify its electronic bills to comply with section 56.11(b).</p> <p>PWSA should be required to file supplemental information explaining whether and to what extent it intends to modify its electronic bills consistent with its planned modification of its paper bills. PWSA should provide a copy of its current electronic bill format, and should explain how it intends to modify its current electronic bill to conform to the regulations.</p> <p><u>See</u> Compliance Plan at 38.</p>
<p>Billing Information</p> <p>§ 56.15</p>	<p>As discussed above, PWSA identifies that its current residential bills do not contain all of the information required by this section; however, it does not identify the information which it intends to include in its revisions.</p> <p>PWSA should be required to specifically identify the changes it intends to make, along with sample bills for various types of consumers, including average residential water and/or wastewater customers, those with a current payment arrangement, those enrolled in PWSA’s bill assistance program, and other variant bill types. This information is critical to assessing whether PWSA’s plan to redesign its bill is compliant with Commission regulations and adequate to meet the needs of its customers.</p> <p><u>See</u> Compliance Plan at 38-39.</p>
<p>Payments</p> <p>§ 56.21</p>	<p>Section 56.21 requires fees or charges assessed for utilizing a payment option to be included in the public utility’s tariff. PWSA’s tariffs do not disclose the fees charged for various payment options. It is also unclear whether the fees PWSA charges for various bill payment options inequitably impact low income consumers.</p> <p>PWSA should be required to provide supplemental information identifying the fees it charges for each payment option, and the manner in which consumers are advised of these charges.</p> <p><u>See</u> Compliance Plan at 39.</p>

<p>Accrual of Late Payment Fees</p> <p>§ 56.22</p>	<p>PWSA levies substantial fees on bills which are 90 days or more in arrears.¹² These fees are above and beyond the Commission’s 1.5% ceiling on late payment charges in § 56.22.</p> <p>Recent audits have shown that PWSA’s use of a third party collections agency, Jordan Tax Service (JTS), is ineffective as a debt collection tool and harmful to low and moderate income households.¹³ Debts collected through JTS go first to cover the excessive fees, and only then go toward the initial arrears.¹⁴ It is also unclear whether PWSA’s current practices with JTS violates other provisions of the Public Utility Code and Commission regulations with regard to payment arrangements to avoid termination of service or to restore service after an involuntary termination.¹⁵</p> <p>PWSA should be required to file supplemental information to describe its relationship to JTS, the fees levied on residential consumers for late payments, and data – including the number of affected residential consumers, the amount of debt recovered through JTS, and the amount of fees levied on residential accounts since the Commission took jurisdiction over PWSA. PWSA should also be directed to explain why it believes these fees are compliant with section 56.11 or, in the alternative, describe a plan to revise its agreement with JTS consistent Commission standards for credit and collections.</p> <p><u>See</u> Compliance Plan at 38-39.</p>
<p>Security and Cash Deposits</p> <p>§ 56.32</p>	<p>PWSA explains that it is compliant with security deposit requirements and related provisions because it does not currently require customers to pay security deposits. But PWSA’s pending water and wastewater tariffs set forth provisions allowing it to begin collecting security deposits. It is unclear whether PWSA intends to begin collecting security deposits if these provisions are approved and, if so, when and how those deposits will be assessed.</p> <p>This is particularly relevant to low income households, as Chapter 14 prohibits public utilities from charging security deposits for customer assistance program – eligible households.¹⁶</p>

¹² See PWSA’s proposed Water and Wastewater Tariffs at Pt. I, Sec. G & Pt. III, Sec. E.

¹³ Michael E. Lamb, Performance Audit Report: The Pittsburgh Water and Sewer Authority, Pittsburgh Office of City Controller, at 53-54 (Feb. 2017), http://apps.pittsburghpa.gov/co/Draft_Pittsburgh_Water_and_Sewer_Authority_February_2017.pdf (finding that 14% of the money collected by JTS went to JTS fees, penalties, interest, postage and expenses, and concluding that “[i]t is unethical to take advantage of people who are having a hard time paying their water bill in the first place” and that “[t]he strongest reason for an individual to pay their bill is [to] not have [water] shut off. That is controlled by PWSA.”).

¹⁴ Id.

¹⁵ See id. at 49-56.

¹⁶ 66 Pa. C.S. § 1404(a.1).

	<p>The laws and regulations governing consumer credit checks are complex, and require clear policies and procedures to ensure that customer service staff are well-equipped to assess consumer credit and impose deposits in a fair and equitable manner, consistent with all applicable laws and policies. This is especially true in light of the fact that PWSA has not imposed security deposits or assessed consumer credit in the past.</p> <p>To assist the Commission in reviewing PWSA's credit and security deposit policies, practices, and procedures, PWSA should be required to provide supplemental information about its intent to begin assessing security deposits, and supportive documentation evidencing its policies and procedures for doing so.</p> <p><u>See</u> Compliance Plan at 39, 44.</p>
<p>Payment of Outstanding Balance</p> <p>§ 56.35</p>	<p>PWSA's rules regarding payment of an outstanding balance to establish service provide that the debt runs with the property, rather than the customer. As a condition to receiving service, a new tenant must accept liability for prior arrears accrued at the residence.</p> <p>Commission regulation prohibits a public utility from requiring an applicant for service to pay for debt accrued in another person's name unless the applicant resided at the property where service is being requested while the debt was accrued. In any event, public utilities may only condition service on the payment of debts which were accrued within the last four years.</p> <p>It appears that whether PWSA's policies and procedures requiring applicants for service to assume the debt of a prior tenant or of their landlord as a condition for receiving service in their name is inconsistent with Commission regulations. Irrespective of legal responsibility, it is unclear how PWSA accounts for the age of debts through its relationship with JTS, mentioned above.</p> <p>The Commission should require PWSA to submit supplemental information and supportive documentation which clearly explains how it collects prior debts, and under what circumstances it conditions service on the payment of those debts.</p> <p><u>See</u> Compliance Plan at 39.</p>

Again, this chart provides an initial list of the most pressing issues Pittsburgh UNITED has identified with respect to PWSA's compliance with Chapter 56 regulations. Further inquiry is necessary to determine whether there are other areas of PWSA's policies and practices which must

be reformed in order to conform to the Commission’s regulations – as well as the statutory confines of Chapter 14 and other applicable law and policy.

ii. Chapter 14 of the Public Utility Code

PWSA’s Plan makes no real mention of whether PWSA also complies with the provisions of Title 66, Chapter 14 of the Public Utility Code.¹⁷ Importantly, the General Assembly amended Chapter 14 in 2014 – after the Commission’s current Chapter 56 regulations were implemented.¹⁸ Since then, the Commission has issued substantial interim guidance to implement the Chapter 14 amendments, and a new Chapter 56 rulemaking remains ongoing to date.¹⁹

In addition to specific revisions to various consumer protections, the 2014 amendments to Chapter 14 brought wastewater companies under the purview of the legislation.²⁰ As a practical matter, this means that PWSA’s provision of wastewater service is subject to the requirements contained in subsections A through K of Chapter 56, not subchapters L through V – as these subchapters implemented the original provisions of Chapter 14.²¹ PWSA does not acknowledge

¹⁷ Pittsburgh UNITED was only able to find a single reference to Chapter 14 in relation to PWSA’s compliance with customer billing and collections standards: “As a water and wastewater utility, PWSA is subject to subchapters A-V, and is currently in compliance with the preliminary provisions for utility customers, under Chapter 14 of the Public Utility Code.” See Compliance Plan at 38.

¹⁸ Act 155 of 2014, 66 Pa. C.S. Ch. 14.

¹⁹ Act 155 of 2014 Implementation, December 10, 2014 Secretarial Letter, Docket No. M-2014-2448824 (Dec. 10, 2014); Act 155 of 2014 Impact and Implementation, December 10, 2014 Secretarial Letter to All Steam Heat, Wastewater, and Natural Gas Distribution Utilities, Docket No. M-2014-2448824 (Dec. 10, 2014); Chapter 14 Implementation, Docket No. M-2014-2448824, Tentative Order (Jan. 15, 2015); Chapter 14 Implementation, Docket No. M-2014-2448824, Final Order (order entered July 9, 2015).

²⁰ See 66 Pa. C.S. § 1403 (defining “public utility” as “any electric distribution utility, natural gas utility, small natural gas distribution utility, steam heat utility, wastewater utility or water distribution utility in this Commonwealth that is within the jurisdiction of the Pennsylvania Utility Commission.”).

²¹ Act 155 of 2014 Impact and Implementation, December 10, 2014 Secretarial Letter to All Steam Heat, Wastewater, and Natural Gas Distribution Utilities, Docket No. M-2014-2448824 (Dec. 10, 2014).

“Small natural gas distribution, steam heat and wastewater utilities should now refer to the same 52 Pa. Code Chapter 56 regulations as all other electric, water and large gas utilities. This means that, as of December 22, 2014, for those companies the applicable subchapters in Chapter 56 are no longer L through V – the applicable subchapters are now B through K (and the appendices).”

Id.

this important distinction, and instead explains how PWSA's wastewater services are fully compliant with subchapters L-V of Chapter 56.²² While subchapters L-V do remain valid and applicable law for victims of domestic violence with a Protection From Abuse Order or other court order which contains clear evidence of domestic violence,²³ these subchapters are otherwise not applicable to PWSA's provision of wastewater service. This is a significant oversight, and raises questions about PWSA's understanding of and purported compliance with Chapter 56.

Before this matter is referred to the Office of Administrative Law Judge, PWSA should be required to modify its plan or submit supplemental information identifying whether – and *how* – its water and wastewater service is compliant with the provisions of Chapter 14, as revised in 2014, the Commission's subsequent Orders regarding implementation of the revised Chapter 14, and the appropriate provisions of Chapter 56.

iii. Discontinuance of Service to Leased Premises Act and the Utility Service Tenant's Rights Act, 66 Pa. C.S. Ch. 15, Subchapter B; 68 P.S. §§ 399.1-399.18

The Discontinuance of Service to Leased Premises Act (DSLPA)²⁴ and the Utility Service Tenant's Rights Act (USTRA)²⁵ contain a number of statutory provisions which impose specific and detailed obligations on public utilities to protect tenants' access to utility service when their landlord stops paying the bill or requests a voluntary discontinuance of service without the tenant's knowledge and consent.²⁶ DSLPA applies to regulated utilities and is subject to enforcement by the PUC, and USTRA applies to municipal utilities and is subject to enforcement by the Court of Common Pleas.²⁷ PWSA's Compliance Plan fails to mention whether and the extent to which it

²² See Compliance Plan at 38.

²³ 66 Pa. C.S. § 1417.

²⁴ 66 Pa. C.S. §§ 1521 - 1533 (Chapter 15, Subchapter B).

²⁵ 68 P.S. §§ 399.1 - 399.18.

²⁶ 66 Pa. C.S. § 1522; 68 P.S. § 399.2.

²⁷ See *id.* Whether PWSA must comply with DSLPA, USTRA, or both raises an interesting question of law, which has not been previously explored by the Commission.

currently complies with these statutory protections, or explain its policies and procedures in compliance therewith.

Whether PWSA's policies and practices are fully compliant with DSLPA/USTRA is an issue that is pending resolution in PWSA's ongoing tariff and rate proceedings, where the Commission must determine whether PWSA's terms and conditions of service are just and reasonable. In short, and without discussing the non-record facts at issue in those proceedings, Pittsburgh UNITED asserts that PWSA's policies and practices implementing DSLPA/USTRA are inadequate, and do not protect tenants in accordance with the laws, regulation, and sound public policy. To the extent those issues are not fully addressed and resolved in the ongoing tariff and rate proceedings, PWSA's DSLPA/USTRA compliance must be explored in this proceeding to ensure that PWSA is providing just and reasonable service to tenants in compliance with the law.

Pittsburgh UNITED recommends that the Commission require PWSA to provide supplemental information and supportive documentation which describes its DSLPA/USTRA policies and procedures to allow for a thorough investigation and assessment of whether PWSA is compliant with these laws.

b. Universal Service Programming

PWSA's Compliance Plan asserts that it is not subject to the Commission's policy statement governing electric and natural gas Customer Assistance Programs (CAPs)²⁸, but that it nevertheless has implemented a Customer Assistance Program "modeled after the program implemented by Pennsylvania American Water Co. [(PAW)]."²⁹ PWSA briefly identifies four components of its CAP: (1) a Winter Shut Off Moratorium, which prevents termination of customers with income at or below 250% of the Federal Poverty Level (FPL) from December 1

²⁸ 52 Pa. Code §§ 69.261-.267 (Policy Statement on Customer Assistance Programs).

²⁹ Compliance Plan at 76.

through March 31; (2) a Bill Discount Program, which provides a 50% discount on the minimum water and wastewater charge for customers with income at or below 150% FPL; (3) a Hardship Fund Program, which provides grants up to \$300 for customers with income at or below 150% FPL; and (4) a Private Lead Line Replacement Community Environmental Project, which will replace the private lead service line for 200 customers with income at or below 250% FPL.³⁰

PWSA does not provide any further information or details about its universal service programming to determine whether the programs are adequate to meet the needs of economically vulnerable consumers within PWSA's service territory, and to ensure that PWSA's services are universally available to all consumers based on reasonable terms and conditions. In turn, PWSA does not specify how or in what manner PWSA's programs are modeled on PAW's programs – or why PAW's programs offer an appropriate model for PWSA.

While PWSA is correct that the Commission's CAP Policy Statement applies to electric and natural gas Customer Assistance Programs, it is incorrect for PWSA to assume that it does not have an obligation to provide assistance to consumers who cannot afford to pay for water or wastewater service. The Commission's oversight authority to provide universal service programming is not limited to a single policy statement. Indeed, natural gas and electric Customer Assistance Programs (CAPs) date back to 1990, when the Commission ordered the first mandatory customer assistance program in the state, explaining:

[F]or the poorest households with income considerably below the poverty line, existing initiatives do not enable these customers to pay their bills in full and to keep their service ... Consequently, to address realistically these customers' problems and to stop a wasteful cycle of consecutive, unrealistic payment agreements that cannot be kept, despite the best of intentions, followed by service termination, then restoration, and then more unrealistic agreements, we believe that new approaches

³⁰ Id.

like PECO's CAP program and the OCA's proposed EAP program should be tried.³¹

These programs were not only tried, they were successful at achieving the Commission's stated goals and ultimately led the Commission to adopt its CAP Policy Statement in 1992 to establish consistent policies, best practices, and appropriate cost-control measures for universal service programming.³² Until recently, water and wastewater services did not face the same chronic unaffordability challenges that led the Commission to require the creation of comprehensive universal service programming for electric and natural gas companies in the 1990s. But today, we face incredible water and wastewater infrastructure investment challenges across the state and the nation, which are causing water rates to skyrocket.³³ In short, low income households cannot afford to pay the rapidly increasing cost of water and wastewater service, creating an affordability crisis for those without the financial means to shoulder exponentially increased costs.³⁴ This problem is particularly pronounced in Pittsburgh, where PWSA faces substantial infrastructure challenges and correspondingly substantial rate increases. PWSA's residential service rates have climbed precipitously since 2016, and are expected to continue to climb substantially over the next several years as PWSA plans to invest hundreds of millions of dollars into critical infrastructure repairs and upgrades.³⁵ While Pittsburgh UNITED supports

³¹ Pa. PUC v. Columbia Gas of Pa., Docket No. R-891468, Columbia Gas EAP Order, at 159 (Sept. 19, 1990); see also Pa. PUC v. Equitable Gas Co., Docket No. R-901595, Final Order, at 63-74 (Nov. 21, 1990).

³² 52 Pa. Code §§ 69.261-.267. The CAP Policy Statement was adopted in 1992, and revised in 1999.

³³ See, e.g., Joseph Kane, The Brookings Inst., Water Affordability Is Not Just a Local Challenge, But a Federal One Too (Jan. 25, 2018), <https://www.brookings.edu/blog/the-avenue/2018/01/25/water-affordability-is-not-just-a-local-challenge-but-a-federal-one-too/>; Elizabeth A. Mack, A Burgeoning Crisis? A Nationwide Assessment of the Geography of Water Affordability in the United States, PLOS (Jan. 11, 2017), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0169488>; Food and Water Watch, America's Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Affecting Millions (Oct. 22, 2018), <https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis>.

³⁴ See id.

³⁵ See PWSA, Notice of Rate Change: PWSA will Invest \$70 Million for Infrastructure Improvements in 2016, http://apps.pittsburghpa.gov/pwsa/Rate_Brochure-2016.pdf; see also PWSA 2018 Rates, <http://www.pgh2o.com/rates> (explaining the proposed rate increase, and identifying plans to raise rates an additional 10% in 2019 and 11% in 2020).

robust investments to provide safe drinking water to all Pittsburgh residents, it asserts that the poorest members of our community cannot and should not be expected to shoulder that burden without adequate assistance. Indeed, allowing rates to dramatically increase, without offering robust and well-designed universal service programming, is harmful to the vibrancy of Pittsburgh's communities, will create unnecessary risks to health and safety of our most vulnerable citizens, and will ultimately add PWSA's uncollectible debts.

The fact that PWSA is not explicitly subject to the Commission's policy statement regarding Customer Assistance Programs for electric and natural gas distribution companies does not alleviate PWSA of its duty to show that its programs are cost effective, prudently designed, and adequately available to serve the needs of the community PWSA serves. While PWSA may not be explicitly subject to the Commission's CAP policy statement, the guidelines contained therein nevertheless provide a natural and appropriate proxy with which to assess the adequacy and effectiveness of PWSA's universal service programming. Thus, we recommend that PWSA be required to amend its Compliance Plan to identify how, and to what extent, its CAP complies with the Commission's CAP policy statement. Specifically, we recommend that PWSA be required to file supplemental information about each of its CAPs, including detailed eligibility guidelines, application requirements, benefit levels, enrollment projections, needs assessment, and funding requirements. Additional details about PWSA's universal service programming are necessary to facilitate proper assessment of whether PWSA's services are universally accessible to all residents, and based on just and reasonable terms and conditions.

c. Lead Service Line Remediation

In its Compliance Plan, PWSA briefly describes its lead remediation plans and its progress to date in removing some lead service lines from its system.³⁶ PWSA then sets a “goal of eliminating all lead service lines from the system by 2026.”³⁷ PWSA’s lead remediation plans are further discussed in its separately filed LTIP, which PWSA attached and incorporated into its Compliance Plan.³⁸

Pittsburgh UNITED filed comments on the LTIP’s discussion of PWSA’s lead remediation plans on October 29, 2018, and incorporates those comments herein by reference.³⁹ Pittsburgh UNITED’s LTIP comments identify a number of critical issues of material fact regarding the adequacy and effectiveness of PWSA’s plans to mitigate high lead levels in drinking water through service line replacement. The deficiencies in the LTIP raise substantial health and safety concerns, as well as questions about whether PWSA’s plans are efficient and cost effective. Accordingly, in its comments, Pittsburgh UNITED recommended a number of changes to PWSA’s lead remediation plans.⁴⁰

³⁶ A “service line” refers to the pipe or pipes, including the gooseneck, connecting the interior plumbing of a building to the main water distribution pipe in the street. PWSA divides service lines into two groups. The first, a “public-side lead service line” refers to the portion of the service line on the street side of the curb box, lying primarily beneath public property. The second, a “private-side lead service line,” refers to the portion of the service line on the residence side of the curb box, lying primarily beneath private property. See Attach. 1, PWSA, Your Water Service Line, <http://lead.pgh2o.com/your-water-service-line/>.

³⁷ Compliance Plan at 120. Importantly, PWSA does not specify whether its goal is to remove all public and private lead service lines – or whether this goal is limited to public lead service lines. If it is the latter, then PWSA is planning to leave a significant amount of lead pipe in its system. In addition, if PWSA is not planning on replacing all private-side lead service lines, it may also be intending to complete partial lead service line replacements when a residential customer cannot afford to replace their private-side line when PWSA replaces the public-side line. A partial lead service line replacement occurs when PWSA replaces a public-side lead service line without simultaneously replacing the corresponding private-side lead service line. As explained in Pittsburgh UNITED’s LTIP Comments, partial line replacements exacerbate lead levels in the water, and result in worse health outcomes. Pittsburgh UNITED LTIP Comments, at 7.

³⁸ Compliance Plan at 119-121 & Appendix C, Tables 2-7 and 2-8.

³⁹ Pittsburgh UNITED LTIP Comments, at 1-12.

⁴⁰ Pittsburgh UNITED LTIP Comments, at 6-12.

For the sake of brevity, we will not reiterate those detailed substantive recommendations. However, Pittsburgh UNITED nevertheless notes here its procedural recommendation that PWSA's LTIP be referred to the Office of Administrative Law Judge and consolidated into this proceeding, consistent with 52 Pa. Code § 5.81.⁴¹ Consolidation of the Compliance Plan and LTIP proceedings would not only conserve substantial resources, it would also ensure that the Commission's decisions with respect to each are consistent, as they involve "common question[s] of law or fact." 52 Pa. Code § 5.81. Indeed, the Commission will consider the same critical question in both proceedings: whether PWSA's lead remediation plans are adequate to ensure the delivery safe drinking water and, if not, how PWSA must revise its submissions.⁴² Accordingly, we request that PWSA's Plans be evaluated together.

d. Procedural Issues

As underscored by the discussion above regarding PWSA's lead service line remediation, the relationship between the ongoing rate and tariff proceedings, the LTIP proceeding, and the Compliance Plan proceeding is an important aspect for the Commission to consider in referring the Compliance Plan proceeding to the Office of Administrative Law Judge for the development of record evidence. The Commission's Final Implementation Order set forth broad parameters for those proceedings, choosing to allow interested parties to identify and pursue issues raised throughout the course of each proceeding.⁴³ At this stage in PWSA's transition, we believe it

⁴¹ Pittsburgh UNITED LTIP Comments, at 4, n.12.

⁴² See 66 Pa. C.S. § 3204(b); 52 Pa. Code § 121.4(d).

⁴³ With regard to the tariff and base rate proceedings, the Commission chose not to "dictate" which issues would be raised in the ongoing tariff and rate proceeding, noting instead that "the full gamut of PWSA operations will be subject to review." (FIO at 25). The Commission instead determined that it would "consider all issues raised by parties to those proceedings and will subject those issues to the same standards and scrutiny as in any other ratemaking proceeding." Id.

Similarly, in considering whether to prescribe the issues to be examined in PWSA's Compliance Plan proceeding, the Commission explained that "it is not yet known which issues parties to the July 2018 proceedings will raise and

would be prudent for the Commission to revisit and refine those directives, and to adjust its plan for review and assessment accordingly.

In the current tariff and rate proceedings, consistent with the Commission's guidance in its Final Implementation Order, Pittsburgh UNITED has sought to resolve the issues which it believes are integral to the determination of whether PWSA's rates and tariff are just and reasonable, and in accordance with the law and prevailing public policy. This includes many aspects of PWSA's customer service, billing, collections, and termination policies and procedures, as well as its low income assistance programs and certain aspects of its lead service line remediation programming (namely, PWSA's 2018 and 2019 programming, which will be nearly complete before a decision is reached in this proceeding). Each of these aspects to PWSA's water and wastewater service has a direct and substantial bearing on whether PWSA's rates are just and reasonable, and whether its terms, conditions, and quality of service are equally just and in compliance with all aspects of the law. At the same time, resolution of those issues is likely to have a direct bearing on the Commission's review and approval of PWSA's Compliance Plan.

Pittsburgh UNITED recommends that, as part of the Commission's initial report, it should explain how decisions from the ongoing tariff and rate proceeding will inform the Compliance Plan proceeding, and how the Compliance Plan and LTIP will be coordinated to ensure consistent

resolve in those proceedings and which will be deferred for development in the compliance plans." (FIO at 25, 32). In response to recommendations from stakeholders to designate specific issues for the Compliance Plan proceeding, the Commission explained: "Some aspects of these issues fall naturally to rate-based cost recovery and others to long-term planning." (FIO at 32).

For some issues, the relationship between the tariff and rate proceedings, the Compliance Plan proceeding, and the LTIP proceeding has unfortunately not been so clear, and has caused significant disagreement between the parties. For example, PWSA's requested rate increase will cause significant unaffordability for low income consumers, which has placed the terms and conditions of PWSA's low income programming at issue in that proceeding. In turn, PWSA spent \$44 million in 2018 and plans to spend \$50 million in 2019 on lead service line replacement. Given the timing of the Commission's review of the Compliance Plan, a determination of whether PWSA's 2018 and 2019 lead remediation program is just and reasonable is squarely at issue in determining whether PWSA's proposed rates are, likewise, just and reasonable.

directives. In particular, Pittsburgh UNITED requests that the Commission direct PWSA to provide, as part of or prior to its direct testimony, supplemental information and supportive documentation to facilitate review of PWSA's policies and procedures, consistent with Pittsburgh UNITED's above recommendations.

In turn, and as discussed in further detail above, Pittsburgh UNITED recommends that the Commission consolidate the Compliance Plan and LTIP proceedings to ensure consistency and certainty in the outcome of each, and to conserve the resources of the Commission, PWSA, and interested stakeholders.

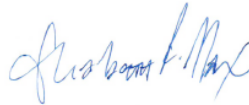
Pittsburgh UNITED asserts that these recommendations – to direct PWSA to supplement its Compliance Plan and LTIP and consolidate the Compliance Plan and LTIP proceedings into a single litigated proceeding – will improve the ability for the parties and the Commission to conduct a thorough and detailed review of PWSA's respective plans while conserving the resources of all those involved. Pittsburgh UNITED is concerned that, without this additional information, the ability of the parties and the Commission to meaningfully review PWSA's Compliance Plan will be unnecessarily constrained.

III. CONCLUSION

Pittsburgh UNITED respectfully asserts that the above recommendations will assist the Commission and interested stakeholders to perform a more thoughtful, well informed, and complete assessment of PWSA's applicable policies and practices, and urges the Commission to act accordingly. We look forward to continuing as an active and engaged participant in PWSA's successful transition to Commission jurisdiction.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
On Behalf of Pittsburgh UNITED



Elizabeth R. Marx, Esq., PA ID: 309014
John W. Sweet, Esq., PA ID: 320182
Patrick M. Cicero, Esq., PA ID: 89039
Kadeem G. Morris, Esq., PA ID: 324702
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

Date: November 1, 2018

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	:		

Certificate of Service

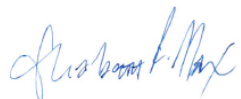
I hereby certify that I have this day served copies of the **Comments of Pittsburgh UNITED** upon the parties and interested stakeholders in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA FIRST CLASS MAIL AND EMAIL

Daniel Clearfield, Esq. Deanne M. O'Dell, Esq. Karen O. Moury, Esq. Carl R. Schultz, Esq. Kristine Marsilio, Esq. Sarah Stoner, Esq. 213 Market Street, 8 th Floor Harrisburg, PA 17101 dclearfield@eckertseamans.com dodell@eckertseamans.com kmoury@eckertseamans.com cshultz@eckertseamans.com kmarsilio@eckertseamans.com sstoner@eckertseamans.com	Debbie Marie Lestitian, Esq. Pittsburgh Water and Sewer Authority Penn Liberty Plaza 1 1200 Penn Avenue Pittsburgh, PA 15222 dlestitian@pgh2o.com
Gina L. Miller, Esq. John M. Coogan, Esq. Bureau of Investigation and Enforcement 400 North Street 2nd Floor West Harrisburg, PA 17120 ginmiller@pa.gov jcoogan@pa.gov	Christine M. Hoover, Esq. Erin L. Gannon, Esq. Lauren M. Burge, Esq. Office of Consumer Advocate 555 Walnut Street 5th Floor, Forum Place Harrisburg, PA 17101 OCAPWSA2018@paoca.org
Susan Simms Marsh, Esquire Pennsylvania-American Water Company 800 West Hersheypark Drive Hershey, PA 17033 susan.marsh@amwater.com	Michael A. Gruin, Esquire Stevens & Lee 17 North Second Street, 16th Floor Harrisburg, PA 17101 mag@stevenslee.com

Elizabeth Rose Triscari, Esq. Sharon Webb, Esq. Office of Small Business Advocate 300 North Second Street, Suite 202 Harrisburg, PA 17101 etriscari@pa.gov swebb@pa.gov	Sen. James Ferlo 1118 N. St. Clair St. Pittsburgh, PA 15206 senatorferlo@gmail.com
David P. Zambito, Esq. Jonathan P. Nase, Esq. Cozen O'Conner 17 North Second Street Suite 1410 Harrisburg, PA 17101 dzambito@cozen.com jnase@cozen.com	William H. Roberts II, Esq. PNG Companies LLC 375 North Shore Drive Pittsburgh, PA 15212 William.h.robertsii@peoples-gas.com
Tishekia Williams, Esq. Michael Zimmerman, Esq. Emily M. Farah, Esq. Duquesne Light Company 411 Seventh Ave., 15 th Floor Pittsburgh, PA 15219 Twilliams@duqlight.com mzimmerman@duqlight.com efarah@duqlight.com	Pamela C. Polacek, Esq. Adeolu A. Bakare, Esq. Alessandra L. Hylander, Esq. McNees, Wallace & Nurick, LLC 100 Pine Street PO Box 116 Harrisburg, PA 17108 ppolacek@mcneeslaw.com abakare@mcneeslaw.com ahylander@mcneeslaw.com
EMAIL ONLY: Brian Kalcic, excel.consulting@sbcglobal.net	

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for Pittsburgh UNITED



Elizabeth R. Marx, PA ID 309014
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

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