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November 7, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: PA PUC v. Pittsburgh Water and Sewer Authority
Docket Nos. R-2018-3002645 and R-2018-3002647

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Pittsburgh Water and Sewer Authority's ("PWSA") Motion in Limine to Bar the Admission of Direct Testimony of Daniel G. Vitek on Behalf of Pittsburgh UNITED with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield

DC/jls
Enclosure

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

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Pittsburgh Water and Sewer Authority's Motion in Limine, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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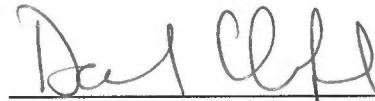
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A handwritten signature in dark ink, appearing to read "Daniel Clearfield", written over a horizontal line.

Daniel Clearfield, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

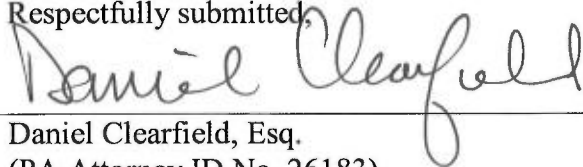
Pennsylvania Public Utility Commission, <i>et al.</i>	:	Docket No. R-2018-3002645, <i>et al.</i>
v.	:	
Pittsburgh Water and Sewer Authority - Water	:	
Pennsylvania Public Utility Commission, <i>et al.</i>	:	Docket No. R-2018-3002647, <i>et al.</i>
v.	:	
Pittsburgh Water and Sewer Authority -	:	
Wastewater	:	

NOTICE TO PLEAD

To: Pittsburgh UNITED

You are hereby notified to file a response to the enclosed Motion in Limine in the form and manner as directed by the Administrative Law Judges or a judgment may be entered against you.

Respectfully submitted,



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Dated: November 7, 2018

Counsel for
The Pittsburgh Water and Sewer Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	Docket No. R-2018-3002645, <i>et al.</i>
v.	:	
	:	
Pittsburgh Water and Sewer Authority - Water	:	
	:	
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	:	Docket No. R-2018-3002647, <i>et al.</i>
v.	:	
	:	
Pittsburgh Water and Sewer Authority -	:	
Wastewater	:	

**MOTION IN LIMINE
TO BAR THE ADMISSION OF DIRECT TESTIMONY OF
DANIEL G. VITEK ON BEHALF OF PITTSBURGH UNITED**

To Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Conrad A. Johnson:

Pursuant to 52 Pa. Code § 5.103, The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) respectfully submits and moves that the direct testimony of Daniel G. Vitek submitted on behalf of Pittsburgh UNITED should be barred from admission in its entirety¹ because it primarily consists of legal opinions and conclusions. In addition, his direct testimony is either (a) cumulative of other testimony submitted on behalf of Pittsburgh UNITED or (b) addresses matters that are irrelevant to PWSA’s 2018 Base Rate Case. In support hereof, PWSA states as follows:

1. On July 2, 2018, PWSA² filed Tariff Water – Pa. P.U.C. No. 1 and Tariff Wastewater – Pa. P.U.C. No. 1 to become effective August 31, 2018 with the Pennsylvania

¹ Vitek’s Direct Testimony, excluding attachments and exhibits, is provided in Attachment 1 to this Motion.

² PWSA’s water and wastewater operations became subject to regulation by the Pennsylvania Public Utility Commission on April 1, 2018, pursuant to Act 65 of 2017, 66 Pa.C.S. § 3201 *et seq.* (“Act 65” or “Chapter 32”).

Public Utility Commission (“Commission” or “PUC”) (collectively, the “2018 Base Rate Case”). Through the 2018 Base Rate Case, PWSA requests that the Commission approve its proposed rates³ and tariffs pursuant to Chapter 32.

2. The Petition to Intervene filed by Pittsburgh UNITED was granted.⁴ On September 25, 2018, Pittsburgh UNITED submitted the direct testimony of Daniel G. Vitek (Pittsburgh UNITED St. 3) and others. Mr. Vitek’s direct testimony is divided into three sections:⁵ The first section offers testimony on PWSA’s rules and procedures regarding low-income consumers, the second section offers testimony on PWSA’s collections and lien practices, and the third section summarizes his prior recommendations and conclusions.

3. On October 26, 2018, PWSA filed its rebuttal testimony. As a precautionary measure, PWSA provided rebuttal to the testimony of Mr. Vitek.⁶ However, as explained in greater detail herein, the entirety of Mr. Vitek’s direct testimony should be barred from admission and be disregarded in the disposition of PWSA’s 2018 Base Rate Case.

4. Section 5.403(a) of the Commission’s regulations authorizes presiding officers to control the receipt of evidence, including ruling on the admissibility of evidence, confining the evidence to the issues in the proceeding and limiting the scope of direct testimony and cross-examination.⁷

See Implementation of Chapter 32 of the Public Utility Code; RE: Pittsburgh Water And Sewer Authority, Docket Nos. M-2018-2640802 and M-2018-2640803, Final Implementation Order entered March 15, 2018 (“FIO”).

³ PWSA proposes increases to water and wastewater total annual operating revenues of approximately \$27.0 million per year or 17.1% on a total revenue basis over the amount of annual revenues at present rates.

⁴ Prehearing Order dated July 20, 2018, which is available at: <http://www.puc.pa.gov/pcdocs/1577805.doc>.

⁵ *See* Pittsburgh UNITED St. 3 at 3.

⁶ PWSA recognizes that if this Motion is granted, portions of PWSA’s rebuttal testimony will be moot. PWSA will be prepared at the hearing to submit appropriately revised rebuttal testimony.

⁷ 52 Pa. Code § 5.403(a). *See also* 52 Pa. Code § 5.483 (ALJs are empowered to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding). Pursuant to the

5. Upon the filing of a motions in limine, Administrative Law Judges (“ALJs”) have employed the authority granted by Section 5.403 to exclude evidence that is beyond the proper scope of Commission proceedings and focus the evidence on the matters properly at issue.⁸ In *Pa. Public Utility Commission v. PPL Electric Utilities Corporation*,⁹ the ALJ struck pre-served written testimony regarding proposals to undertake a cost-benefit analysis and other studies, noting that other Commission proceedings were available for addressing those issues and that challenges could also be effectively pursued in complaint proceedings. The ALJ expressly refused to permit the litigation of issues that are presently pending before the Commission in another proceeding.¹⁰

6. Mr. Vitek’s direct testimony should be barred from admission in its entirety because it is dedicated to presenting legal opinions and conclusions. Mr. Vitek is an attorney.¹¹ Rather than presenting factual evidence, each section of his direct testimony primarily consists of his legal opinions and conclusions.¹² Before the Commission, legal opinions and conclusions are

Commission’s regulations, “written testimony is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner.” 52 Pa.Code § 5.412(c). Essential legal principles must be observed when ruling on evidentiary issues. *See, e.g., Pittsburgh & L. E. R. Co. v. PUC*, 85 A.2d 646 (Pa. Super. 1952).

⁸ Section 5.403(b) of the Commission’s regulations requires presiding officers to “actively employ these powers to direct and focus the proceedings consistent with due process.” 52 Pa. Code § 5.403(b).

⁹ Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015).

¹⁰ *See also Pa. Public Utility Commission, et al. v. Pennsylvania American Water Co.*, Docket No. R-00932670 *et al*, 1994 Pa. PUC LEXIS 120 at *158 (Final Order entered July 26, 1994) (adopting the ALJ’s conclusion that the issues raised by OCA were outside the scope of the rate case and would be better addressed in a statewide rulemaking proceeding); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) (“The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.”).

¹¹ *See Pittsburgh UNITED St. 3* at 1-2, 4; Appendix B.

¹² *See Pittsburgh UNITED St. 3* at 4-9 (discussing laws); at 5, 14, 26, 34, 38 (discussing legality or illegality); at 10-14, 21-24, 26, 27, 33, 37-39 (discussing compliance or non-compliance).

not proper subject of evidentiary proceedings.¹³ Argument as to the ultimate legal conclusion should properly be presented in briefs, not in the form of testimony.¹⁴

7. That being said, the first part of Mr. Vitek's direct testimony (and any related recommendations and conclusions in the third section) should be barred from admission because it raises matters that are irrelevant to PWSA's 2018 Base Rate Case. This part of Mr. Vitek's testimony is focused on PWSA's (alleged) lack of compliance with the Utility Service Tenant's Rights Act, 68 P.S. § 399.1, *et seq.* ("USTRA")¹⁵ and Subchapter B of Chapter 15, 66 Pa.C.S. § 1521, *et seq.* (regarding Discontinuance of Service to Leased Premises). Base rate proceedings have a constrained timeframe and a narrow focus on the examination of proposed base rates in the Tariff. Within the context of a base rate proceeding, it is not possible or feasible for PWSA to sufficiently address all of the "compliance" issues or to adequately respond to proposals that necessitate significant, complex and expensive changes. The LTIIP¹⁶ and/or the Compliance Plan proceeding¹⁷ are intended to provide a sufficient opportunity to fully evaluate PWSA's compliance with applicable laws, including the steps and timeframes involved for compliance.

¹³ See, e.g., *PUC v. Pennsylvania Gas and Water Company - Water Division*, Docket No. R-850178, Opinion and Order issued February 4, 1986; 1986 Pa. PUC LEXIS 146 (upholding evidentiary rulings excluding testimony dedicated to setting forth a legal interpretation and a legal conclusion).

¹⁴ *Id.* See also UNITED Statement No. 1 (Miller) at p. 2 wherein Mr. Miller notes that he was "advised by counsel that the extensive legal conclusions" should be addressed "in briefing, where legal issues are appropriately addressed."

¹⁵ Utilities under the Commission's jurisdiction are not subject to USTRA but must comply with 66 Pa.C.S. §§ 1521 *et seq.* See *PUC v. PGW*, Docket No. R-00061931, Opinion and Order entered September 28, 2007.

¹⁶ On September 28, 2018, PWSA filed its Long-Term Infrastructure Improvement Plan ("LTIIP") at Docket No. P-2018-3005037. The procedures to investigate the issues in that proceeding are set forth in Chapter 121 of the Commission's Regulations, 52 Pa.Code § 121.1-121.8, and the Secretarial Letter published in the Pennsylvania Bulletin on October 13, 2018. <https://www.pabulletin.com/secure/data/vol48/48-41/1605.html>.

¹⁷ On September 28, 2018, PWSA filed its Compliance Plan at Docket Nos. M-2018-2640802 (water) and M-2018-2640803 (wastewater). Notice of that filing and the procedures to be used to investigate the issues in that proceeding were published in the *Pennsylvania Bulletin* on October 13, 2018. <https://www.pabulletin.com/secure/data/vol48/48-41/1605.html>.

8. In addition, the first section of Mr. Vitek's direct testimony (and any related recommendations and conclusions in the third section) should be barred from admission as cumulative of Mr. Miller's direct testimony on behalf of UNITED. Evidence may be excluded if it causes undue delay, a waste of time, or is cumulative.¹⁸ Here, Mr. Vitek's testimony regarding low-income consumers is repetitious or cumulative of the direct testimony of Mitchell Miller (Pittsburgh UNITED St. 2). Mr. Miller offers testimony on issues including recommended changes to PWSA's rules and attendant policies regarding low-income customers.¹⁹ Mr. Vitek's testimony covers the same areas.

9. The second part of Mr. Vitek's direct testimony (and any related recommendations and conclusions in the third section) should be barred from admission because it raises matters that are irrelevant to PWSA's 2018 Base Rate Case. Simply put, Mr. Vitek argues that certain collections and lien practices violate the Public Utility Code and the Commission's regulations.²⁰ However, it is well settled that such issues are beyond the Commission's jurisdiction. The Commission does not have jurisdiction over actions taken by utilities to collect a debt.²¹ Nor does the Commission have jurisdiction over issues related to municipal liens themselves; such as the imposition of the lien, the validity of the lien, and the

¹⁸ 52 Pa.Code § 5.401(b). "Waste of time may refer to the fact that the evidence has minimal probative value in light of the time that its presentation will take. Undue delay may refer to a party's failure to produce the evidence at the appropriate time at trial, despite its ability to do so at a later time. Cumulative refers to multiple sources of different evidence as well as multiple similar sources establishing the same fact." 1 Ohlbaum on the Pennsylvania Rules of Evidence § 403.11 (2018).

¹⁹ See Pittsburgh UNITED St. 2 at 6-8.

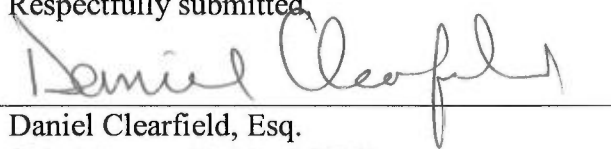
²⁰ See Pittsburgh UNITED St. 2 at 29-37.

²¹ See, e.g., *Gasparro v. PUC*, 814 A.2d 1282 (Pa.Cmwlt. 2003); *Donald Ashman v. National Fuel Gas Distribution Corporation*, Docket F-9031384, Opinion and Order issued January 21, 1993; 1993 Pa. PUC LEXIS 1 (PUC lacks jurisdiction to prohibit utility from pursuing its legal right to collect a debt).

enforcement or removal of the lien.²² To the extent that the Commission does have jurisdiction over these issues, they are “compliance” issues that are better suited for resolution in the LTIP and/or Compliance Plan proceeding (as compared to this base rate proceeding).

WHEREFORE, PWSA respectfully requests that ALJs Hoyer and Johnson bar from admission the testimony of Daniel G. Vitek (Pittsburgh United St. 3) in its entirety, and that said testimony be disregarded in the disposition of PWSA’s 2018 Base Rate Case.

Respectfully submitted,



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Dated: November 7, 2018

Counsel for
The Pittsburgh Water and Sewer Authority

²² The Pennsylvania Municipal Claim and Tax Lien Law, 53 P.S. §§ 7101, *et seq.* (“MCTLL”), provides the exclusive procedure that must be followed to challenge or collect on a lien once that lien has been docketed. *See, e.g., David Fasone v. Philadelphia Gas Works*, Docket No. C-2012-2322684, Final Order (Act 294) entered November 30, 2012 adopting Initial Decision dated October 12, 2012 (“[A]ny challenges to the validity of the lien and the enforcement of the lien are all within the jurisdiction of the Court of Common Pleas, pursuant to the [MCTLL]. No provision of the [MCTLL] grants the Commission jurisdiction over any aspect of a municipal lien proceeding. Municipal lien proceedings, pursuant to the [MCTLL], are exclusively within the jurisdiction of the Court of Common Pleas, not the Commission. The Commission simply lacks jurisdiction over any aspect of a municipal lien proceeding, pursuant to either the Public Utility Code or the [MCTLL]”).

PWSA

Motion in Limine

Attachment 1

**Direct Testimony of
Daniel G. Vitek
(Pittsburgh UNITED St. 3)**

Excludes Attachments and Exhibits

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Pittsburgh Water and Sewer Authority

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:
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:
:

Docket No. R-2018-3002645
R-2018-3002647

DIRECT TESTIMONY OF DANIEL G. VITEK, ESQ.

ON BEHALF OF

THE PITTSBURGH UNITED ("UNITED")

September 25, 2018

Topics Addressed:

Utility Service Tenant's Rights Act and Discontinuance of Service to Leased Premises Act

Collections and Lien Practices

1 **PREPARED DIRECT TESTIMONY OF DANIEL G. VITEK, ESQ.**

2 **Q:** Please state your name, occupation and business address.

3 **A:** Daniel G. Vitek. I'm a staff attorney with the Community Justice Project (CJP), a non-
4 profit law firm dedicated to addressing systemic issues of poverty and enforcement of civil rights
5 across Pennsylvania through advocacy and litigation. My office address is 100 Fifth Avenue,
6 Pittsburgh, PA, 15222.

7 **Q:** Briefly outline your education and professional background.

8 **A:** As my attached resume shows, I received a B.A. in Political Science from the University
9 of Rochester, where I graduated *cum laude* in 2003, and a J.D. from the University of Pittsburgh,
10 School of Law in 2008. I've been practicing law for the past ten years. I started my law career at
11 Neighborhood Legal Services Association ("NLSA") in Pittsburgh, where I worked as a staff
12 attorney representing low-income individuals in administrative and civil court proceedings. From
13 2012 to 2018, I served as the Senior Housing Attorney at NLSA, focusing on legal issues facing
14 low-income renters, including their access to utility services. As of July 1, 2018, I have been
15 employed as a staff attorney at CJP, where I continue to focus my practice in the area of tenant
16 and civil rights for low-income individuals and families.

17 As part of my work, I've been an active member of the Pennsylvania Legal Aid Network's
18 Housing and Utility Law Working Groups, where I've provided numerous trainings for both
19 lawyers and non-lawyers on tenant access to utility services and other topics. I also regularly serve
20 as a panelist at the Pennsylvania Bar Institute's seminar on representing residential landlords and
21 tenants.

1 I am a member of the Pennsylvania and Allegheny County Bar Associations. I serve on
2 the advisory committee for Landlord Tenant procedure for the Allegheny County Court of
3 Common Pleas, Civil Division. I am also an appointed member of the Pennsylvania Supreme
4 Court's Minor Court Rules Committee, which drafts and advises the Court on rules of procedure
5 for the Pennsylvania Magisterial District Court system.

6 My resume is attached as Appendix A.

7 **Q: What is your relevant experience on issues of utility termination to tenant**
8 **households?**

9 A: As the Senior Housing Attorney at NLSA, I exclusively represented low-income clients,
10 the vast majority of whom were renters. I handled numerous cases of renters facing the loss their
11 utility services by negotiating with both landlords and utility companies, and handled numerous
12 cases that involved helping to enforce my clients' rights relative to landlords and utility companies.
13 At the CJP, I continue to work with tenants across Pennsylvania regarding utility services and their
14 ability to access and maintain those services.

15 During my time at NLSA, I represented several low-income customers of the Pittsburgh
16 Water and Sewer Authority ("PWSA") who were facing termination of their water service or who
17 had already been shut-off by the time they reached NLSA. Most of these cases were renters who
18 were facing termination because of non-payment either by the tenant or the tenant's landlord. The
19 issues for which clients sought our assistance most often included bill unaffordability; terminations
20 without proper notice; and tenants who were disconnected because the landlord had stopped paying
21 the bill or requested to voluntarily terminate service. These cases had a wide range of outcomes,
22 and depending on the circumstances, I attempted to resolve them through negotiation, litigation,
23 or bankruptcy.

1 Q: Have you testified in any prior proceedings before the Pennsylvania PUC?

2 A: No.

3 Q: For whom are you testifying in this proceeding?

4 A: I am testifying on behalf Pittsburgh UNITED.

5 Q: What is the purpose of your testimony?

6 A: As outlined more fully in Pittsburgh UNITED Statement No. 1, the Direct Testimony of
7 Aly Shaw, Pittsburgh UNITED intervened in this proceeding to ensure that PWSA's proposed rate
8 increase and rate design, and the proposed terms and conditions which govern PWSA's water and
9 wastewater service, will not unduly or adversely affect the ability of low-income customers and
10 tenant occupants in PWSA's service territory to connect to, maintain, and afford water and
11 wastewater service. My testimony will focus on the effect that PWSA's policies and procedures
12 related to tenant's rights and lien practices have had on low-income households and the affect that
13 the proposed tariff language and attendant policies and procedures are likely to have moving
14 forward.

15 Q: How is your testimony organized?

16 A: My testimony is divided into three sections. In the first section, I discuss issues related to
17 tenants' rights. I will describe the issues that my clients have faced and how the rights of low-
18 income consumers will be affected by PWSA's proposed rules and procedures governing access
19 to water and wastewater services. In the second section, I will discuss PWSA's lien practices, its
20 contract with Jordan Tax Service, Inc. ("JTS") to engage in collections and perfect liens for past-
21 due debts, and the excessive fees that are assessed on consumers when they are referred to JTS for
22 further collections and/or lien activities. Finally, in the third section, I will summarize the
23 recommendations and proposals that are provided throughout my direct testimony.

1 **Q:** Please describe your experience representing tenants who face the loss of PWSA-
2 provided water service?

3 **A:** In my more than 9 years as a staff attorney at NLSA, I was often involved in representing
4 tenants in PWSA's service territory who either had their water service terminated or who were
5 threatened with termination of service. Frequently, the client was not the water service customer,
6 and the account was in the landlord's name. The owner of a property is usually the primary account
7 holder for PWSA water service because overdue accounts can lead to a lien on the property. Often
8 this means that a tenant never sees the water bill because the landlord either includes water service
9 in the lease or pays the water bill and separately seeks reimbursement from the tenant. In both of
10 these situations, the tenant does not have access to the bill nor to PWSA customer service for issues
11 related to the landlord's account. If the landlord stops paying the bill, the resulting situation is that
12 the tenant's water service can be disconnected without the tenant ever even knowing that the bill
13 was overdue, let alone having a chance to do something about it. The consequences are not trivial.
14 I have seen children removed from their parent's home, families forced into homelessness, and
15 housing condemned because the water was shut off. This is why the protections afforded to tenants
16 that are required by Pennsylvania law are so critical.

17 **I. TENANTS' RIGHTS**

18 **Q:** Please summarize the laws that protect tenant access to utility service.

19 **A:** There are two statutory Acts in Pennsylvania that address tenants' rights to continued utility
20 service where: (1) the utility terminates service to leased premises due to nonpayment by the
21 landlord ratepayer; or, (2) the landlord ratepayer seeks to voluntarily relinquish service despite the
22 fact that tenants are still residing in the premises. The first is the Utility Service Tenants' Rights

1 Act¹ (“USTRA”). This Act applies to municipal corporations, including municipal authorities,
 2 “owning or operating within its corporate boundaries equipment or facilities for: [. . .] [d]iverting,
 3 developing, pumping, impounding, distributing, or furnishing water to or for the public for
 4 compensation.”² USTRA provides tenants the right to seek redress from the Pennsylvania Attorney
 5 General or in the courts of common pleas.³ The second is the Discontinuance of Services to Leased
 6 Premises Act ⁴ (“DSLPA”), which applies to utilities that are subject to Commission regulation
 7 and provides tenants the right to seek redress through the Commission’s informal and formal
 8 complaint processes.

9 USTRA and DSLPA are similar in scope and function. In essence, these Acts seek to
 10 protect tenants from the loss of landlord-paid utility service. Both laws apply to situations where
 11 the landlord is the utility’s named customer for service at the leased premises and the proposed
 12 termination of service is due to nonpayment, or where the landlord seeks to voluntarily relinquish
 13 service despite a tenant still residing at the property. This latter scenario often occurs as a means
 14 of self-help eviction designed to force the tenant to move without the landlord having to go through
 15 the required eviction processes.⁵ The two laws provide similar relief to tenants, and both are
 16 designed to protect tenants from loss of landlord provided utility service without notice and an
 17 opportunity to continue service, and to ensure that tenants are not saddled with overdue account
 18 balances incurred by prior tenants or the landlord ratepayer.

¹ 68 P.S. §399.1 *et al.*

² 68 P.S. §399.2.

³ 68 P.S. §399.12; see also Sisco v. Luppert, 658 A.2d 886, 888 (Pa. Commw. Ct. 1995).

⁴ 66 Pa. C.S. Ch. 15 Subch. B.

⁵ Self-help eviction is illegal in Pennsylvania, but is nevertheless a common practice of landlord, particularly in low-income communities where tenants often lack knowledge of the law and/or the resources to defend themselves. See Kuriger v. Cramer, 49 A.2d 1331(Pa. 1985) (Landlord illegally terminated utility service to force tenant to vacate.).

Both Acts require notice be provided to landlord ratepayers and tenants prior to termination of service for non-payment. Specifically, no less than thirty-seven days prior to the termination of utility service to a landlord ratepayer, the utility is required to provide the landlord with written notice.⁶ No less than seven days after the landlord notice – and, thus, at least thirty days before service to the premises is terminated, the utility is required to provide notice to dwelling units that are “reasonably likely” to be tenant occupied.⁷ The notice to tenants must be mailed or hand-delivered to tenants and posted at the premises, “in those common areas of the building or mobile home park where it is reasonably likely to be seen by affected tenants.”⁸

Under both USTRA and DSLPA, the notice must inform tenants that they may, but cannot be required to, apply for service in their own name without being held responsible for the landlord’s debt.⁹ Both laws require that the 30-day notice provided to affected tenants inform them of their right to continue service by paying an amount equal to the bill for the thirty-day period preceding the notice or the billing month preceding the notice. Thereafter, tenants may continue to keep service on at their location if they pay for each 30-day period of service thereafter.¹⁰ The tenant may then deduct the amount of their payments from their rental payments,¹¹ and are protected from retribution by the landlord.¹² Under both laws, the utility must return any partial

⁶ See 68 P.S. § 399.3(a)(1); 66 Pa. C.S. § 1523(a)(1); see also 68 P.S. § 399.5 and 66 Pa. C.S. § 1525 (both prescribing the means and content of the required landlord notice.).

⁷ 68 P.S. § 399.3(a)(3); 66 Pa. C.S. § 1523(a)(3).

⁸ 68 P.S. § 399.6; see also 66 Pa. C.S. § 1526.

⁹ 68 P.S. § 399.7(a); 66 Pa. C.S. § 1527(a).

¹⁰ The language of each statute is slightly different regarding the period that must be paid to continue service. See 68 P.S. § 399.7(b) (USTRA requires the tenant to pay “an amount equal to the bill of the landlord ratepayer for the 30-day period preceding the notice to the tenants.”); compare 66 Pa. C.S. § 1527(b) (DSLPA requires that the tenant pay “an amount equal to the billing month preceding the notice to the tenants.”).

¹¹ 68 P.S. § 399.9; 66 Pa. C.S. § 1529.

¹² 68 P.S. § 399.11; 66 Pa. C.S. § 1531.

1 payments if service is subsequently terminated due to the tenant's inability to pay the full 30-day
2 bill.¹³

3 Both USTRA and DSLPA also provide protections to tenants if a landlord ratepayer elects
4 to voluntarily discontinue service.¹⁴ Before a utility may discontinue service at the request of a
5 landlord ratepayer, both laws require that: (1) the landlord submit a form bearing a notarized
6 signature and swearing under penalty of law that the unit is unoccupied;¹⁵ (2) the utility obtain
7 consent from all of the affected tenants;¹⁶ or (3) the utility obtain the names and addresses of the
8 affected tenants and provide notice to each dwelling unit.¹⁷ Under the third scenario, the utility
9 must provide any affected tenants with the same rights they would have if their service were being
10 terminated due to nonpayment by a landlord ratepayer as detailed above.¹⁸

11 Additionally, both laws allow affected tenants to pay the ongoing charges and deduct that
12 amount from their rent or other money owed to the landlord ratepayer.¹⁹ Both also contain anti-
13 retaliatory provisions meant to prevent the landlord ratepayer from taking action against the
14 affected tenants²⁰ and both expressly provide that waivers of tenants' rights are void and
15 unenforceable.²¹

¹³ 68 P.S. § 399.7(c); 66 Pa. C.S. § 1527(c).

¹⁴ 68 P.S. § 399.3(b); 66 Pa. C.S. § 1523(b).

¹⁵ 68 P.S. § 399.3(b)(1); 66 Pa. C.S. § 1523(b)(1).

¹⁶ 68 P.S. § 399.3(b)(2); 66 Pa. C.S. § 1523(b)(2).

¹⁷ 68 P.S. § 399.3(b)(3); 66 Pa. C.S. § 1523(b)(3).

¹⁸ 68 P.S. § 399.3(c); 66 Pa. C.S. § 1523(c).

¹⁹ 68 P.S. § 399.9; 66 Pa. C.S. § 1529.

²⁰ 68 P.S. § 399.11; 66 Pa. C.S. § 1531.

²¹ 68 P.S. § 399.10; 66 Pa. C.S. § 1530.

1 Q: What are the differences between USTRA and DSLPA?

2 A: Aside from the forum in which affected tenants may seek redress and a slight discrepancy
3 in the language describing the amount that must be paid to continue service,²² there is one major
4 distinction between the two laws. While the available relief is the same, the two laws define
5 “Tenant” slightly differently. Under DSLPA, the utility service must be an “included service”
6 under the rental agreement, whereas under USTRA, tenants are protected regardless whether the
7 service is included in the rent, so long as they meet the other requirements.²³

8 Q: Which of these Acts apply to PWSA?

9 A: The short answer is both. Before Act 65 of 2017 established Commission oversight over
10 PWSA, tenants’ rights relative to PWSA were exclusively governed by USTRA. As a municipal
11 corporation, PWSA remains subject to the requirements of USTRA, but now that it is under
12 Commission jurisdiction, DSLPA also applies. Thus, the implementation of Act 65 has created
13 concurrent jurisdiction over tenants’ rights in PWSA service territory between the PUC’s
14 jurisdiction over DSLPA and the common pleas courts’ jurisdiction over USTRA.²⁴ The
15 Commission has exclusive jurisdiction over determinations related to the reasonableness,
16 adequacy, and sufficiency of PWSA’s water and wastewater services; however, the Commission’s
17 exclusive jurisdiction only extends to matters in which it has the power to make a complainant

²² See 68 P.S. § 399.10 (USTRA: “the bill for the 30-day period preceding the notice”); compare 66 Pa. C.S. § 1530 (DSLPA: amount equal to “billing month preceding the notice”).

²³ See 66 Pa. C.S. § 1521 (“Tenant” . . . or water as an included service under the rental agreement); contra 68 P.S. § 399.2 (“Tenant”).

²⁴ 66 Pa. C.S. § 103(c) (“Remedies cumulative. - Except as otherwise provided in this part, nothing in this part shall abridge or alter the existing rights of action or remedies in equity or under common or statutory law of this Commonwealth, and the provisions of this part shall be cumulative and in addition to such rights of action and remedies.”)

1 whole.²⁵ Determinations about proper notice to tenants and a tenant's right to continued service
2 fall within the realm of the reasonableness, adequacy, and sufficiency of service, and are subject
3 to PUC jurisdiction. However, the DSLPA does not provide an adequate remedy for those tenant's
4 whose utility service is not an "included service" under the rental agreement, but who nonetheless
5 pay for utility service pursuant to a rental arrangement with their landlord.²⁶ Thus, those affected
6 tenants who lack an adequate remedy under the DSLPA, but who are entitled to protection under
7 USTRA, may seek remediation in the courts of common pleas.²⁷

8 **Q:** Does PWSA's tariff reference either Act?

9 **A:** Yes. PWSA's tariff references USTRA and retains a definition for "USTRA Tenant."²⁸
10 The tariff does not contain any references to DSLPA. PWSA has indicated that it is currently
11 adhering to the landlord/tenant regulations in Chapter 56 of the Public Utility Code (which
12 reference DSLPA), but it could not articulate any differences in policies or practices that it had
13 implemented since April 1, 2018, when it came under the jurisdiction of the Commission.²⁹ Since
14 the USTRA definition of "tenant" is more inclusive, I recommend that this definition remain the
15 definition used by PWSA.

²⁵ Pettko v. Pa. Am. Water Co., 39 A.3d 473, 484, (Pa. Commw. 2012) (citing Feingold v. Bell of Pennsylvania, 383 A.2d 791 (Pa. 1977) (doctrine of exhaustion of administrative remedies); see also Di Santo v. Dauphin Consol. Water Supply Co., 436 A.2d 197 (Pa. Super 1981).

²⁶ 66 Pa. C.S. § 1521 (Definition of "Tenant" requires that the utility service in question is an "included service").

²⁷ Although it is currently unclear whether the court may defer to the Commission for fact finding or the determination of matters within its area expertise.

²⁸ See JAQ-1 at 29, 31, 45; see also JAQ-3 at 29, 31, 43.

²⁹ Appendix B, OCA to PWSA II-22.

1 **Q: Do you have any concerns about PWSA's policies or practices regarding these laws?**

2 Yes. PWSA's policies and practices do not fully comply with USTRA or DSLPA, and
3 PWSA has not articulated any intent to change those policies or practices now that it is under the
4 Commission's jurisdiction.³⁰ In my experience, PWSA has always acknowledged that it must
5 comply with tenants' rights available under USTRA; however, in the past, PWSA's policies and
6 practices implementing USTRA have been out of compliance with the law. Given that PWSA
7 could not articulate how it will be handling things differently now that it is subject to Commission
8 oversight, I am concerned that they will continue to remain out of compliance. Throughout my
9 time at NLSA, I often represented tenants whose service was terminated without proper notice
10 and/or who were required to pay more money to maintain service than is required under the statute.
11 Having extensively reviewed PWSA's Tariff filing and subsequent discovery responses, I believe
12 there is a distinct potential for that pattern to continue under the proposed tariff if certain issues
13 are not fully addressed.

14 **Q: Please summarize your concerns about PWSA's current policies and practices related**
15 **to its compliance with USTRA and/or DSLPA?**

16 **A:** As detailed below, I am concerned that PWSA does not take adequate steps to identify
17 residential service addresses that are reasonably likely to be occupied by tenants and thus fails to
18 adequately notify affected tenants of the impending termination and their right to continued
19 service. Additionally, both PWSA's 37-day Landlord Notice and its 30-day Tenant Notice are

³⁰ Appendix B, OCA to PWSA II-22.

1 deficient, and neither complies with USTRA or DSLPA. PWSA's standard termination notice also
2 fails to include any language informing potential tenants of their USTRA/DSLPA rights.

3 I am further concerned that PWSA places significant burdens on those tenants who have
4 actually asserted their USTRA rights by requiring that they make ongoing payments in person and
5 requiring photo identification. Moreover, PWSA notifies tenants of the ongoing monthly charges
6 by resending the deficient 30-day termination notice each month, causing undue stress on the
7 recipient. Further, it has been my experience that PWSA does not consistently send these notices,
8 causing multiple months of charges to accrue in the interim.

9 Finally, PWSA does not obtain the documentation required by USTRA and DSLPA when
10 a landlord ratepayer requests that service be voluntarily terminated. And, despite being required
11 to do so, PWSA does not refund partial tenant payments when the tenant fails to make the full 30-
12 day payment and service is subsequently terminated. For all of these reasons, which I will describe
13 in turn below, I believe significant reforms of PWSA's policies and practices are necessary to
14 ensure that PWSA's service is being provided based on reasonable and just terms, and in full
15 compliance with the law.

16 **Q: What steps does PWSA take to identify tenant occupied dwelling units?**

17 A: PWSA has indicated that its practice is to consider that the property is tenant occupied if
18 the mailing address and the service address on the account are different, and neither owner nor
19 tenant has contacted PWSA.³¹ However in my experience, PWSA does not follow this alleged
20 practice. In my previous work at NLSA, I was frequently contacted by non-customer tenants who

³¹ Appendix B, UNITED to PWSA III-33.

1 had received termination notices that were in the landlord's name and listed a billing address
2 different from the service address. These notices failed to comply with the requirements of USTRA
3 and DSLPA regarding notice to non-customer tenants.

4 For the service addresses that PWSA has identified as a property likely to be tenant-
5 occupied, it sends the landlord a 37-day shut off notice, which requests that the landlord identify
6 the tenant names and addresses.³² PWSA's 37-day shut off notice notifies landlords about the
7 "penalties found under section 1532 of the Public Utility Code," including fines of \$500 to \$1,000
8 per day for each day the landlord fails to respond.³³ However, in practice, PWSA admits that it has
9 never taken further action if the landlord fails to respond to the request.³⁴

10 After sending the 37-day notice to the landlord ratepayer, PWSA then posts the property
11 with a 30-day shut off notice, but does not mail the notice or attempt hand-delivery to tenants.³⁵

12 **Q: Are PWSA's policies and practices sufficient to comply with USTRA and DSLPA?**

13 **A:** No. Under both USTRA and DSLPA, PWSA has an affirmative duty to determine what
14 service addresses are "reasonably likely" to be occupied by tenants, and the corresponding duty to
15 notify those tenants of their rights.³⁶ However, neither PWSA's prior tariff nor its proposed tariff
16 specify under what circumstances PWSA will issue the required notice to the customer-owner and
17 then the non-customer tenant in accordance with these laws.³⁷ While it is certainly reasonable for
18 PWSA to send USTRA/DSLPA notices when a bill is being sent to an address that is different

³² Appendix B, UNITED to PWSA V-4.

³³ Appendix B, OCA to PWSA VI-6, Attach. F.

³⁴ Appendix B, UNITED to PWSA V-4; see also Appendix B, UNITED to PWSA V-5.

³⁵ Appendix B, UNITED to PWSA V-10.

³⁶ 66 Pa. C.S. §§ 1523(a)(3), 1524(a); 68 P.S. §399.3(a)(3), 399.4(c).

³⁷ See generally JAQ-1; JAQ-3; JAQ-5.

1 than the service address, this does not constitute the entire universe of reasonable likelihood that a
2 unit is occupied by tenants. Also in my experience, PWSA's policy is often not followed in
3 practice.

4 Furthermore, PWSA's procedure of posting a premise is insufficient to comply with
5 USTRA and DSLPA. To be sure, posting is essential to compliance, but both statutes require that,
6 in addition to posting the 30-day notice at the property, the utility must either serve the notice by
7 first class mail or by hand delivery.³⁸

8 **Q: Do you have any recommendations about further steps PWSA can take to identify**
9 **tenant occupied dwelling units?**

10 A: Yes. To ensure consistent compliance with USTRA and DSLPA, I recommend that PWSA
11 actively seek to obtain the names and addresses of tenants of dwelling units that are at risk of
12 termination and to notify those tenants of any impending termination. PWSA must develop a
13 process within its billing system to identify rental units and track affected tenants. The Acts do
14 not require certainty that a dwelling is tenant-occupied, they require a reasonable likelihood. For
15 example, if there are multiple accounts listed in a person's name for multiple residences, I would
16 submit that it is reasonably likely that those residences are landlord accounts. Furthermore, if a
17 property is listed as residential within PWSA's billing system, but the owner and customer are a
18 corporate name, limited liability company, or other corporation, then it is reasonably likely that
19 the account is a landlord account. Similarly, where there are multiple metered units at a single
20 property in the name of a single account holder, it is reasonably likely that that property is used

³⁸ 66 Pa. C.S. §§ 1526(a)(1); 68 P.S. §399.6(a)(1).

1 for multifamily rental. In these situations, the service address and the address on the account may
2 be the same because landlords of multifamily properties often reside at the property and corporate
3 landlords often use the address of the property as their corporate address.

4 Both Acts require landlords to provide a list of affected tenants to PWSA.³⁹ Both also
5 impose a duty on PWSA to request this information and, if it is not provided, to pursue any
6 appropriate legal remedy it has to obtain the names of potentially affected tenants.⁴⁰ PWSA should
7 require all applicants for service to identify whether the property will be rented when they establish
8 service, or at any time that they elect to rent out a unit that was previously occupied exclusively
9 by the owner. This information should be subject to periodic verification and/or updates whenever
10 a change or inquiry is made regarding the account. In cases of uncertainty, PWSA should cross
11 check Pittsburgh's Bureau of Building Inspection records to verify if the unit has a housing rental
12 permit.⁴¹

13 In turn, when an account is in active termination status, and there is any indication on the
14 account that the premises may be reasonably likely to be occupied by tenants, PWSA should send
15 USTRA/DSLPA compliant notices to the service address at least thirty days in advance of the
16 termination - in addition to posting notice at the address - regardless of whether the landlord replies
17 to its 37-day notice. PWSA should also pursue legal action against landlords who do not comply

³⁹ 68 P.S. § 399.4; 66 Pa. C.S. § 1524.

⁴⁰ 68 P.S. § 399.4(c); 66 Pa. C.S. § 1524(c).

⁴¹ See City of Pittsburgh, Rules Governing Procedures of Residential Housing Rental Permits, at 5 (Housing rental permits must be obtained from the Bureau of Building Inspection.), available at: http://apps.pittsburghpa.gov/redtail/images/2113_PLI_Rental_Registration_Rules_Regulations.pdf.

1 with the 37-day notice requirements. Again, this is required by law and should not be viewed as
2 optional by PWSA.

3 I recognize that there are circumstances where PWSA may not send the proper notice
4 because, based on the information it has, it determined that it was not reasonably likely that the
5 premises was occupied by affected tenants. In those situations, if PWSA is made aware after
6 terminating service to the address that the premises was occupied by affected tenants, it is my view
7 that PWSA should immediately restore service and provide correct notices informing tenants of
8 their rights, even in the absence of payment. Tenants have a right to proper notice of termination,
9 and a tenant's right to continue service under both USTRA and DSLPA is not conditioned upon
10 PWSA making the correct judgment that the property was a landlord account.

11 Finally, I recommend that PWSA specify its procedures for identifying tenant occupied
12 units in its tariff and training materials. It is my experience that PWSA's policies regarding these
13 matters are often not followed in practice by the frontline staff. Clearly specifying what PWSA
14 staff is required to do in these situations – both in writing and through regular training – will
15 provide more guidance to PWSA staff to help ensure that its practice is more fully carried out.

16 **Q: Do you see problems with PWSA's training materials regarding tenant's rights?**

17 **A:** Yes. I believe that the training materials PWSA provides to its customer service
18 representatives are conflicting and confusing. The USTRA training materials provided to customer
19 service representatives contain conflicting instructions and contradict the USTRA statute. I believe
20 that these erroneous training materials have created a distinct disconnect between policy and
21 practice.

1 The USTRA training materials provided to PWSA customer service representatives states
2 that if a Tenant does not have a written lease, "Then the PWSA will not acknowledge them as an
3 USTRA-Tenant and they will be treated like any other customer."⁴² This assertion is clearly
4 wrong and will cause PWSA customer service to violate the law, which requires that there be a
5 "rental arrangement" and makes no reference to the need for a written lease.⁴³ It also contradicts
6 PWSA's definition of USTRA tenant in its tariff, which makes no mention of the requirement for
7 a written lease.⁴⁴ Finally, it is in direct conflict with DSLPA, which clearly indicates that leases
8 can be written or oral.⁴⁵

9 Additionally the USTRA training materials state that, "PWSA cannot open a Tenant
10 Account in the Tenant's name without the Landlord's signature."⁴⁶ This is also erroneous
11 information that will lead to further violations of the Act, which states that any tenant who has
12 been notified of a proposed termination due to nonpayment of a landlord ratepayer, "*shall have*
13 *the right* to agree to subscribe for future service individually if this can be accomplished without
14 a major revision of distribution facilities or additional right-of-way acquisitions."⁴⁷ The statute
15 grants affected tenants the right to subscribe for service conditioned only on the utility's ability to
16 do so without major revisions of facilities or right of way acquisitions; thus, the right to subscribe
17 to continued service is not conditioned on the landlord's consent.

⁴² Appendix B, UNITED to PWSA V-18, Attach. A at 10.

⁴³ See 66 Pa. C.S. § 1521 ("Tenant" "... rental arrangement, including, but not limited to, an oral or written lease");
see also 68 P.S. § 399.2 ("Tenant").

⁴⁴ See JAQ-1 at 29 (stating: "*USTRA-Tenant: means a Residential Tenant, not a Customer, whose Dwelling Unit
had water/sewer service at the time of rental, and who would be adversely affected by a shut off of service. An
individual- is not a USTRA-Tenant if he or she is or has agreed under the rental- agreement to be a Customer or if
he or she took possession of the Dwelling Unit when it was without water/sewer service.*")

⁴⁵ 66 Pa. C.S. § 1521.

⁴⁶ Appendix B, UNITED to PWSA V-18, Attach. A at 16.

⁴⁷ 68 P.S. § 399.7(b).

1 The USTRA training materials state that a tenant who seeks to continue service must
2 produce (1) the written lease, (2) a reasonable form of identification, (3) utility or government
3 correspondence, (4) the completed Tenant Verification form, and (5) payment for the last 30 days
4 consumption.⁴⁸ However, the 48-page call handling reference guide only requires that the tenant
5 provide 2 utility bills and a photo ID.⁴⁹ Not only are these instructions inconsistent and likely
6 confusing to the frontline customer service staff, they directly contradict DSLPA, which merely
7 requires documentation of name and address, not photo identification.⁵⁰ As I explain more fully
8 below, I recommend that PWSA be more flexible as to the forms of identification that it requires
9 for tenant payments.

10 Additionally, the USTRA training materials state that if service is terminated after
11 originally giving the tenant the proper notice then the tenant cannot use USTRA rights to get water
12 restored.⁵¹ This is wrong. If the tenant comes up with the money within the first 30 days, then
13 service must be restored.⁵²

14 I recommend that PWSA revise its training materials to accurately reflect the law and to
15 include references to both USTRA and DSLPA. PWSA needs to ensure that the materials clearly
16 indicate that tenants who have oral leases qualify as USTRA/DSLPA tenants and that tenants are
17 not required to obtain landlord consent to continue service or subscribe to service in their own
18 name. PWSA also needs to ensure that the materials are consistent with each other so that they do

⁴⁸ Appendix B, UNITED to PWSA V-18, Attach. A at 6.

⁴⁹ Appendix B, OCA to PWSA VIII-4, Attach A at 10.

⁵⁰ 66 Pa. C.S. §1526(a)(5).

⁵¹ Appendix B, UNITED to PWSA V-18, Attach. A at 9.

⁵² 68 P.S. § 399.7(a) ("At any time *before or after* service within the utility's corporate limits is discontinued . . ."); see also 66 Pa. C.S. §1527(a) ("At any time *before or after* service is terminated. . .").

1 not confuse customer service staff and ensure that the materials are consistent with the statutes so
2 that they do not demand conduct which violates the law.

3 **Q: Have you reviewed the contents of the termination notices PWSA provides to tenants?**

4 **A: Yes.**

5 **Q: You mentioned above that you also have concerns about the contents of PWSA's**
6 **tenant notices of termination. Can you please elaborate on those concerns?**

7 **A:** PWSA's "Notice to Tenants"⁵³ states that to avoid disconnection of service, a tenant must
8 "pay the amount shown above and contact Jordan Tax Service at 412-835-5243 to arrange payment
9 for all outstanding delinquencies previously placed for collection."⁵⁴ The amount "shown above"
10 includes both the total delinquency and the "30 day payment amount."⁵⁵ The notice only later
11 specifies that the tenant may pay the bill "for the last thirty (30) days preceding this notice" – rather
12 than the full delinquency plus any outstanding debt to Jordan Tax Service (JTS).⁵⁶ As I explained
13 above, tenants protected by USTRA and DSLPA are only required to pay for the last thirty days
14 of service to avoid a pending termination of their landlord's account. Tenants protected by USTRA
15 and DSLPA should only be quoted the amount that is *actually due* to avoid termination of service.
16 Providing the full amount of debt owed to PWSA is irrelevant and confusing. This confusion
17 serves to dissuade the tenant from contacting the utility to exercise their rights to continued service
18 – particularly if they cannot afford to pay for the full delinquency. Furthermore, since the only

⁵³ Appendix B, OCA to PWSA VI-6 Attach. G.

⁵⁴ Appendix B, OCA to PWSA VI-6 Attach. G.

⁵⁵ Appendix B, OCA to PWSA VI-6 Attach. G.

⁵⁶ Appendix B, OCA to PWSA VI-6 Attach. G.

1 debts that have been placed with JTS are balances that are more than ninety days old,⁵⁷ there is no
2 reason for the 30-day Tenant Notice to mention or involve JTS at all.⁵⁸

3 The 30-day Tenant Notice is also misleading in that it states there will be added costs for
4 restoring service if the tenant does not take action before the date of disconnection.⁵⁹ USTRA and
5 DSLPA do not allow a utility to charge a non-customer tenant a fee for restoring service as long
6 at the tenant pays the past 30 day balance.⁶⁰

7 Thus, before PWSA's proposed tariff is approved, PWSA should be required to fix these
8 notice deficiencies. In doing so, PWSA should amend its USTRA/DSLPA termination notice to
9 only include the amount actually needed to continue service – the bill amount for the last thirty
10 days' usage – and should eliminate any reference to JTS or other restoration fees which do not
11 apply to tenants protected under the Acts.

12 **Q:** Do you see other deficiencies in PWSA's 30-day Tenant Notice?

13 **A:** Yes. PWSA's tenant notice lacks provisions required by DSLPA, and thus violates
14 Commission regulations. Specifically, the notice does not include a phone number where a tenant
15 may get further information – either from PWSA or from the Commission.⁶¹ The notice also fails

⁵⁷ See Appendix B, UNITED to PWSA III-15, Attach. A.

⁵⁸ While working with tenants seeking to assert their rights under USTRA before the PWSA, I repeatedly encountered tenants who thought they had to pay the full balance owed to keep on service. In fact, the notice was so confusing that often the customer service representative, after reviewing the account and the notice, would advise them that the full balance was due.

⁵⁹ Appendix B, OCA to PWSA VI-6 Attach. G.

⁶⁰ 66 Pa. C.S. §1527(b) (“... or shall promptly resume service previously terminated if it receives from the tenants an amount equal to the bill for the affected account of the landlord ratepayer for the billing month preceding the notice to the tenants.”).

⁶¹ See 66 Pa. C.S. §1526(a) “Additional Information” ¶ 3 (“Utility shall fill in a phone number and address where the tenant may get further information.”); see also 68 P.S. §399.6(7).

1 to state the date on which the notice was rendered.⁶² The notice also lacks the following language
2 required by DSLPA:⁶³

3 DO YOU HAVE ANY QUESTIONS?

4 If you have any questions about your utility service, please contact the utility
5 company at (telephone number and address). If, after talking about your problems
6 with the utility, you are not satisfied, then call the Pennsylvania Public Utility
7 Commission at its toll-free number, which is 1-800-692-7380, or write the
8 Residential Termination Unit, Bureau of Consumer Services, Pennsylvania Public
9 Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17120. YOU
10 SHOULD CALL OR WRITE BEFORE THE SHUTOFF. TO AVOID SHUTOFF,
11 YOUR LETTER MUST BE RECEIVED BEFORE THE SHUTOFF DATE.

12 The missing language is important because it provides tenants with information about how
13 to contact PWSA for an explanation of their rights as a tenant and/or what they must pay to
14 continue service. As I explained above, this information may not be readily apparent from the face
15 of the notice. Additionally and importantly, the missing language is vital to inform tenants of their
16 right to seek help from the Commission. Failing to include contact information for the
17 Commission's Bureau of Consumer Services deprives tenants of their right to seek redress through
18 the Commission's informal and formal complaint processes.

19 The notice also lacks required language describing the types of identification that tenants
20 must produce to exercise their right to continued service. The notice must state that reasonable
21 identification must be provided upon request by the utility and includes any document issued by
22 any public agency which contains the name and address of the tenant.⁶⁴ As I set forth more fully
23 below, I recommend that PWSA provide more flexibility as to the identification that it requires

⁶² See 66 Pa. C.S. §1526(a) (2)(1) ("The date on which the notice is rendered"); see also 68 P.S. §399.6(1).

⁶³ See 66 Pa. C.S. §1526(a).

⁶⁴ 66 Pa. C.S. §1526 (a)(5).

1 from tenants seeking to continue service and specify what identification it requires on the 30-day
2 notice.

3 Thus, I recommend that PWSA revise its Tenant Notice to fully comply with these critical
4 notice requirements before any increase in its rates are allowed to take effect.

5 **Q: Do you know whether PWSA's regular termination notice has any language on it**
6 **informing potentially affected tenants of their rights?**

7 **A:** The termination notice that PWSA uses for non-tenant accounts does not contain any
8 information about USTRA or DSLPA.⁶⁵ While the steps I outlined above will help identify tenant
9 occupied dwelling units, it is still possible that PWSA could miss a tenant-occupied dwelling unit.
10 Thus, I recommend that traditional termination notice sent for non-payment include some
11 reference to and/or explanation of USTRA and DSLPA rights. This could be as simple as a
12 statement indicating that if the person residing at the premises is a tenant, and service is in their
13 landlord's name, that they may have the right to continued service without payment of the full
14 amount due and that they should contact PWSA to find out more information.

15 I also recommend that notice of tenants' rights under USTRA/DSLPA be posted in a
16 readily visible location at the customer service office where many confused tenants end up after
17 getting a termination notice. Posting of the notice in the office will further ensure that tenants are
18 made aware of their rights.

⁶⁵ Appendix B, OCA to PWSA VIII-9, Attachment A.

1 Q: Do you have any concerns about the 37-day termination notice sent to landlord
2 ratepayers?

3 A: Yes. The 37-day shut off notice provided to landlords does not comply with USTRA and
4 DSLPA, both of which require that the notice indicate the date on or after which the utility will
5 send notice to the tenants about their rights.⁶⁶ This is an important notice provision, and encourages
6 landlords to bring their tenant related accounts current before a tenant is notified of a pending
7 termination. This simple action may reduce a tenant's stress or confusion about their continued
8 water and wastewater service, and may reduce landlord/tenant disputes. I recommend that PWSA
9 be required to revise its notice to landlords to include this information.

10 Q: Do you have concerns about the requirements that PWSA sets out for tenants who
11 exercise their rights to continued service without switching the account into their name?

12 A: Yes. PWSA is overly restrictive about the forms of identification that it requires tenants to
13 produce to exercise their rights. DSLPA states:

14 Reasonable identification shall include, but not be limited to, a driver's license,
15 photo identification, medical assistance or food stamp identification *or any similar*
16 *document issued by any public agency which contains the name and address of the*
17 *tenant.*⁶⁷

18 Thus, I recommend that PWSA accept any document issued by a public agency which
19 contains the name and address of the tenant. I also believe that identification documents such as
20 social security cards, birth certificates, health insurance cards, school ID, work ID, or government

⁶⁶ See 66 Pa. C. S. § 1525(a)(3); 68 P.S. §399.5(a)(3).

⁶⁷ 66 Pa. C.S. §1527(b).

1 benefit cards that do not list an address should be acceptable if they are presented in combination
2 with a utility bill or lease.

3 Furthermore, PWSA requires that ongoing tenant payments be made in person at a walk-
4 in Customer Service Center each month.⁶⁸ I believe this is an unreasonable and unjustifiable
5 burden to place on all tenants. I am particularly concerned about elderly or disabled tenants who
6 may be homebound, tenants whose work schedules do not allow for payment to be made in person
7 during business hours, and tenants who have transportation challenges, be they because of inability
8 to afford transportation or the burdensome nature of getting to a PWSA Customer Service Center.
9 Once a tenant has informed PWSA of their intent to make tenant payments and provides the
10 necessary identification, PWSA should be required to accept ongoing payments from a tenant by
11 any means that PWSA would otherwise accept payment from a ratepayer.

12 **Q: Do you have concerns about the way PWSA notifies tenants about the amounts due**
13 **each month after they exercise their USTRA/DSLPA right to continued service?**

14 Yes. When a protected tenant elects to continue service without switching the account into
15 his or her name, USTRA/DSLPA requires that the utility notify the tenant of the total amount due
16 for the second and each succeeding period of 30 days.⁶⁹ PWSA alleges that it complies with this
17 requirement by notifying the tenant of the ongoing charges by sending out the *same* termination
18 notice that they send when they are notifying the tenant they will be disconnected for the landlord's
19 nonpayment.⁷⁰ In addition to the deficiencies that I explained above about the notices themselves,

⁶⁸ Appendix B, OCA to PWSA VI-6 Attach. G.

⁶⁹ 66 Pa. C. S. § 1527(a); 68 P.S. §399.7(a).

⁷⁰ See Appendix B, UNITED to PWSA V-16; refers to Appendix B, OCA to PWSA VI-6, Attach. A.

1 I am concerned that PWSA's stated practice is inconsistent with my experience. In every case in
2 which I represented a tenant asserting their rights under USTRA, PWSA failed to send a regular
3 monthly notice to my clients. In fact, PWSA failed to do this even while under court order to do
4 so during the pendency of a case.

5 ~~Even in situations~~ where PWSA does send the notice, it is nevertheless stressful for tenants,
6 and causes for additional confusion because there is no language on the notice that informs clients
7 that this is merely a notification of their ongoing monthly charges. PWSA's tenant notice still
8 references the landlord's full past due balance for which the tenant is not liable, and implies that
9 the tenant somehow remains subject to the threat to termination for non-payment of the landlord's
10 full outstanding account balance. This confusion will in turn lead to additional terminations and
11 uncollectible expenses as tenants who would otherwise dutifully pay the ongoing charges may
12 assume that they are no longer eligible for continued service.

13 I recommend that PWSA develop a new form that is used exclusively to inform USTRA
14 Tenants of the amount they owe each month. Pittsburgh UNITED witness Mitchell Miller has
15 recommended that PWSA establish a low-income program advisory committee.⁷¹ I recommend
16 that PWSA preview any such form with this committee prior to implementation so as to ensure
17 that the form is clear, understandable, and in plain language. I further recommend that PWSA
18 include in its tariff a requirement that it send this reoccurring notice. This will help ensure
19 compliance with USTRA/DSLPA.

⁷¹ Pittsburgh UNITED St. 2 at 66.

1 **Q: Do you have any further recommendations about the rights of tenants who seek**
2 **continued service under USTRA/DSLPA?**

3 A: Yes. I believe that the protections afforded to vulnerable subclasses of ratepayers under
4 Chapter 56 should be extended to tenants who exercise their right to continued service under
5 USTRA/DSLPA but who choose not to subscribe to service in their own name. The protections
6 include the ability to avoid termination by producing a medical certification,⁷² the added
7 protections for victims of domestic violence,⁷³ and the winter moratorium on terminations.⁷⁴ While
8 the Commission's winter moratorium only applies to water service used for heating purposes,
9 PWSA has indicated that it will institute its own winter moratorium. (PWSA St. 4 at 2-3.) These
10 protections are vital to protecting the most vulnerable people in PWSA's service territory. Low-
11 income tenants are just as, if not more likely to need these protections. Thus, I believe that the
12 protections should be extended to tenants who choose to exercise their right to continued service
13 under USTRA/DSLPA without subscribing to service in their own name.

14 **Q: Do you have concerns about PWSA's policies and procedures when a landlord**
15 **ratepayer requests that service to a dwelling unit be voluntarily discontinued?**

16 A: Yes. PWSA is not taking the required steps to verify whether a dwelling unit is tenant
17 occupied when a landlord ratepayer requests that service to the unit be voluntarily discontinued.
18 USTRA and DSLPA provide that a utility cannot discontinue service to a landlord ratepayer unless
19 the landlord ratepayer also submits a document bearing their notarized signature, swearing under

⁷² 52 Pa. Code § 56.113.

⁷³ 52 Pa. Code §56.191(c)(1).

⁷⁴ 52 Pa. Code § 56.100.

1 penalty of perjury that the unit is unoccupied.⁷⁵ In the absence of such a document, the utility may
2 discontinue service to a leased premises only if all of the tenants consent to the termination or if
3 the landlord provides the utility with the names and addresses of all of the tenants and the utility
4 sends notice to the affected tenants as well as the Department of Public Safety.⁷⁶ If the utility
5 proceeds with termination without the tenants' consent, the tenants have the same rights to
6 continued service that they would have if service were being terminated due to non-payment by
7 the landlord ratepayer.⁷⁷

8 PWSA does not comply with these provisions. PWSA only requires landlords seeking to
9 discontinue service to complete its Residential Water Service Shut-Off Request form, which only
10 requires a simple signature, without notarization.⁷⁸ I have represented many clients over the years
11 whose landlord has attempted to circumvent the eviction process by turning off utility services to
12 the premises. This is known as a constructive, or self-help, eviction and it is *illegal*.⁷⁹ If PWSA
13 allows a landlord ratepayer to discontinue service to a leased premises, without requiring the
14 appropriate documentation evidencing the tenant's consent to the discontinuance, it is abdicating
15 its responsibility under law and condoning constructive/self-help evictions in violation of the
16 tenants' due process rights. Therefore, PWSA must require the landlord to submit a notarized
17 document swearing under penalty of perjury that the unit is unoccupied, consistent with the
18 requirements of USTRA and DSLPA.

⁷⁵ 66 Pa. C.S. §1523(b)(1); 68 P.S. §399.3(b)(1).

⁷⁶ 66 Pa. C.S. §§ 1523(b)(2), 1523(b)(3); 68 P.S. §§ 399.3(b)(2), 399.3(b)(3).

⁷⁷ 66 Pa. C.S. §1523(c).

⁷⁸ UNITED to PWSA V-2.

⁷⁹ See Kuriger v. Cramer, 49 A.2d 1331(Pa. 1985).

1 Q: Do you have any concerns relating to PWSA's treatment of partial payments received
2 from USTRA tenants?

3 A: Yes. Both USTRA and DSLPA require the utility to refund partial payments that do not
4 total the amount needed to continue service.⁸⁰ PWSA has indicated that it does not refund
5 payments to USTRA tenants who make partial payments but are subsequently terminated because
6 they are unable to pay the full amount of the previous thirty-days charges.⁸¹ This is a violation of
7 both DSLPA and USTRA. If a tenant makes a partial payment toward the charges for the previous
8 thirty-day period, but is unable to come up with the rest of the money, PWSA must return the
9 partial payment to the tenant. The tenant is not the person liable for these charges, and PWSA has
10 no right to keep that money. These tenants are often the poorest of the poor and they need what
11 little money they do have to pay their other bills. PWSA's failure to refund partial payments to
12 USTRA and DSLPA tenants is a serious violation of the Public Utility Code and USTRA. Given
13 that PWSA has not been in compliance with these provisions, I recommend that the Commission
14 require PWSA to review its records for partial payments from USTRA/DSLPA Tenants since
15 December 21, 2017, which is the date Act 65 of 2017 was signed into law, and refund the amount
16 of any partial payments retained from tenants who were terminated because they could not come
17 up with the full amount due.

⁸⁰ 66 Pa. C.S. §1527(c) ("The utility shall refund any moneys received from a tenant to that tenant."); 68 P.S. §399.7 ("The utility shall refund to each tenant the amount paid by such tenant toward the bill which the tenants failed to pay, upon the request of the tenant or after holding the tenant's payment during 60 consecutive days of discontinued service, whichever occurs first.")

⁸¹ See UNITED to PWSA V-17.

1 **Q: Have you identified any other PWSA policies that are harmful to tenants?**

2 **A: Yes. The 48-page call handling guide states:**

3 What to watch for: Tenant occupied properties. Check the consumption before
4 granting a SPA [Special Payment Arrangements]. Sadly, there are some tenants
5 who are maliciously running water and plan to “fly by” night on the landlord. You
6 have the ability to catch this and prevent additional charges from accruing that will
7 be left behind for the landlord to pay. We have an obligation to the landlords as
8 well as the tenants.⁸²

9 This provision casts unreasonable aspersions on tenants with high usage, indicating that
10 they are unworthy of a payment agreement because of high usage. They also rely on the
11 assumptions of customer service staff about why usage is high. There are many reasons why a
12 tenant may have high usage, like leaking pipes or running toilets, which are the responsibility of
13 the landlord to fix. Moreover, landlords of low-income properties are often derelict in their duties
14 to maintain their properties. It is unreasonable and inconsistent with the public utility code to deny
15 a payment agreement to a tenant based on high usage. In the absence of actual evidence, tenants
16 should not be accused of “maliciously running water”. I recommend that this instruction be
17 removed from any and all training materials. Mr. Mitchell Miller proposes in his testimony that
18 PWSA begin a small conservation program, targeted at consumers with high usage who are
19 enrolled in PWSA’s assistance programs.⁸³ Rather than train call center employees to infer
20 malicious intent, call center employees should be instructed to make referrals to this program to
21 help identify and remediate high usage before it causes unaffordable bills to be incurred.

⁸² OCA VIII 4, Attach. A at 37.

⁸³ See Pittsburgh UNITED St. 2 at 71.

1 **II COLLECTIONS AND LIEN PRACTICES**

2 **Q:** Please provide a brief description of PWSA's collections and lien practices.

3 As discussed more thoroughly above and in the direct testimony of Mr. Miller, the most
4 powerful collection tool that PWSA has at its disposal is its ability to terminate service to a unit
5 for nonpayment.⁸⁴ However, in addition to termination of service for nonpayment, PWSA uses
6 several methods to attempt to collect unpaid debt, including filing liens against the property where
7 the delinquent charges were incurred.⁸⁵

8 PWSA contracts with JTS to collect all debts over ninety days past due and for lien
9 filings.⁸⁶ When an account is referred to JTS for collection, several fees are added to the account
10 and must be paid before the account is removed from JTS's rolls. ⁸⁷Once referred to JTS, the
11 customer must pay a collection fee equal to 15% of gross collections plus any actual costs to JTS
12 for collections efforts.⁸⁸ JTS offers consumers a single, short-term payment arrangement pursuant
13 to the contract between JTS and PWSA.⁸⁹

14 PWSA also requests JTS file liens when charges remain unpaid after service is
15 terminated.⁹⁰ Once a municipal lien is filed, the responsibility for paying the overdue charges
16 remains with the property where service was provided.⁹¹ The property subject to the lien cannot

⁸⁴ Pittsburgh UNITED St. 2 at 16-17.

⁸⁵ Appendix B, OCA to PWSA II-17, Attach. A.

⁸⁶ See Appendix B, UNITED to PWSA III-15, Attach. A.

⁸⁷ JAQ-1 at 13; JAQ-3 at 12, Part I, Sec. G.

⁸⁸ Id.

⁸⁹ Appendix B, UNITED to PWSA III-15, Attach. A at 8.

⁹⁰ Appendix B, OCA to PWSA VII-13; see also OCA II-17, Attach. A.

⁹¹ Appendix B, OCA II-17, Attach. A.

1 be sold or transferred unless the lien is satisfied.⁹² When JTS files a lien on the property, additional
2 fees are tacked onto the amount that the customer owes.⁹³ Lien costs are charges for the filing,
3 satisfaction, revival, amendment, and transfer of delinquent claims, and include filing fees and
4 attorney fees.⁹⁴ Enforcement and lien fees can add up to thousands of dollars, not to mention the
5 attorney fees that are added on top. This creates an even larger obstacle for low-income customers
6 who are struggling to raise the money to get service restored.

7 **Q: Do you have any concerns about PWSA's collections and lien practices?**

8 **A:** Yes. In my view, PWSA is referring cases to JTS for collection too quickly, and for
9 amounts that are too small. In turn, the fees charged by PWSA and JTS are excessive. I also have
10 concerns that PWSA's contract with JTS is inconsistent with the Public Utility Code and the
11 Commission's regulations.

12 PWSA's collections practices result in excessive and burdensome liens against a
13 consumer's property. The combination of these factors creates an undue burden on low-income
14 customers who fall behind on their bill more frequently and are consequently charged these fees
15 more often, though they are less able to afford to pay. This dynamic can lead to extended periods
16 without service and larger amounts of uncollectible expenses for the utility. It also negatively
17 impacts low-income homeownership, which leads to the deterioration of low-income communities
18 and the quality of life for many Pittsburgh residents.⁹⁵ Research has consistently shown the

⁹² 53 P.S. §§ 7101, 7281.

⁹³ Appendix B, UNITED to PWSA III-15, Attach. A at 14.

⁹⁴ See JAQ-1 at 13; See also Appendix B, UNITED to PWSA III-15, Attach. A at 17, 19.

⁹⁵ See Lawrence Yun, Ph.D. and Nadia Evangelou, Social Benefits of Homeownership and Stable Housing, National Association of Realtors (December 2016) available at: <https://realtor.ueu/wp-content/uploads/2014/06/Homeownership-Stable-Housing.pdf>;

1 importance of the home ownership on the economy and the long-term social and financial benefits
2 to individual homeowners, especially in low-income communities.⁹⁶ Creating further impediments
3 to home ownership for low-income families will continue to fuel the cycle of poverty in Pittsburgh.

4 Among the problems with PWSA's current lien practices is that they have no idea how
5 many liens have been filed on its behalf.⁹⁷ For these reasons and for the reasons more fully set
6 forth below, I recommend that PWSA cease perfecting liens for debts less than \$1,000 and only
7 pursue liens after a request is made for a final bill. Further, I recommend that PWSA's proposed
8 fee structure be disallowed and that it be ordered to discontinue its contract with JTS at the earliest
9 possible termination date.

10 **Q: Please explain why you believe PWSA's fee structure is excessive.**

11 A: In short, PWSA's fee structure exacerbates unaffordability and uncollectible expenses, and
12 is particularly detrimental to low-income consumers. In a February 2017 audit report released by
13 the Pittsburgh City Controller, the auditors questioned the ethics of JTS's collection process based
14 on their observation that 14% of the money collected by JTS went to JTS for fees, penalties,
15 interest, postage and expenses.⁹⁸ The report states, "It is unethical to take advantage of people who
16 are having a hard time paying their water bill in the first place."⁹⁹ The report cites to a 2014
17 Complaint of a PWSA customer who had a \$145.50 missed payment referred to JTS, which tacked

see also Donald R. Haurin, et al. The Impact of Homeownership on Child Outcomes, Joint Center for Housing Studies of Harvard University (October 2001) available at <http://www.jchs.harvard.edu/sites/default/files/liho01-14.pdf>.

⁹⁶ Id.

⁹⁷ Appendix B, OCA to PWSA VII-14.

⁹⁸ Michael E. Lamb, Performance Audit Report, The Pittsburgh Water and Sewer Authority, Pittsburgh Office of City Controller, at 53 (February 2017) (hereinafter "Controller's Report") http://apps.pittsburghpa.gov/co/Draft_Pittsburgh_Water_and_Sewer_Authority_February_2017.pdf.

⁹⁹ Id.

1 on an additional \$78.41 for fees, penalties, interest, postage, and expenses.¹⁰⁰ The City Controller
2 found that, “If a customer is unable to pay their bill, it seems counterproductive to increase their
3 bills by over 50%.”¹⁰¹ The Controller’s Report recommends that the contract with JTS be
4 terminated, stating, “The strongest reason for an individual to pay their bill is [to] not have [water]
5 shut off. That is controlled by PWSA.”¹⁰²

6 I agree with the Controller’s findings and its recommendation. In fact, based on my review
7 of the fee structure proposed in PWSA’s tariff, at least 15% in additional fees and charges is added
8 to every customer debt referred to JTS. PWSA will see little of this money due to the
9 reimbursement structure in the JTS contract and, as proposed, PWSA’s tariff would continue to
10 allow JTS to levy an automatic 15% fee on top of any existing debt.¹⁰³ Additional fees would also
11 accrue, particularly if the debt remains unpaid over a period of months or years. As I will discuss
12 further below, this fee structure greatly exceeds the 1.5% maximum late fee authorized by the
13 Commission.¹⁰⁴

14 This is no small matter. All told, well over 60,000 PWSA customers have had a delinquent
15 bill referred to JTS since 2016; of course, it is unclear how many of these accounts resulted in a
16 lien.¹⁰⁵ As Mr. Miller concludes, these additional fees do not go towards reducing PWSA’s bad
17 debt, they are only skimming off the top of the payments that low-income customers are able to
18 make.¹⁰⁶

¹⁰⁰ *Id.* at 53-54.

¹⁰¹ *Id.* at Recommendation 38.

¹⁰² *Id.* at Recommendation 39.

¹⁰³ JAQ-1 at 13.

¹⁰⁴ 52 Pa. Code §56.22(a).

¹⁰⁵ Appendix B, UNITED to PWSA III-12.

¹⁰⁶ Pittsburgh UNITED St. 2 at 34.

1 **Q:** Are PWSA's collection fees compliant with Chapter 56?

2 **A:** No. According to § 56.22, a utility may not charge more than 1.5% interest per month on
3 the overdue balance of the bill.¹⁰⁷ However, PWSA has indicated that after ninety days, it refers
4 customer accounts to JTS, who in turn assess a 15% fee on the outstanding balance. The situation
5 just gets worse from there because JTS then tacks on the aforementioned additional fees, further
6 exceeding the allowable late payment fee. These fees are more than **ten times** the allowable
7 amount and, thus, are unduly punitive to low-income customers who are already struggling to pay
8 the high cost of service. In order to comply with the Public Utility Code, PWSA must immediately
9 cease permitting the imposition of any fees that are more than the 1.5% interest that is permitted
10 by Commission regulation 52 Pa. Code § 56.22(a). This makes the continuation of its contract with
11 JTS unfeasible, as JTS's 15% collection fee clearly contradicts this code provision; thus, the
12 contract should be avoided at its earliest termination date.

13 **Q:** Do you have concerns about the length of time PWSA waits to refer an account to
14 JTS?

15 **A:** It is not entirely clear how long a debt must be past due before it is referred to JTS, and I
16 am concerned that PWSA may be prematurely referring debts to JTS. PWSA's standard monthly
17 bill states that customers have ninety days to dispute the charges and that it will refer the unpaid
18 charges to JTS after the charges are ninety-days overdue.¹⁰⁸ However, PWSA has provided
19 examples of its timeline for collections, and based on this timeline, it appears that charges are

¹⁰⁷ 52 Pa. Code § 56.22(a).

¹⁰⁸ See Appendix B, OCA to PWSA II-2, Attach. A.

1 being referred to JTS after only fifty-five days from the generation of the bill.¹⁰⁹ The example that
2 PWSA provides is an unpaid bill that was generated on January 1, 2016, which would be placed
3 with JTS on February 24, 2016.¹¹⁰ This is only fifty-five days after the bill was generated and the
4 bill would only be twenty-five days past due. This is troublesome because of the amount of fees
5 that are tacked on to the customer's bill once the account is referred to JTS. If a customer thinks
6 that they have ninety days to pay their bill before it is sent to collections, and that bill is sent to
7 collections before those ninety days, the customer will be subject to the collection fees without
8 proper notice. Further, if PWSA is referring cases to JTS prematurely, it is creating an unnecessary
9 burden on low-income households, which are more likely to fall behind on their bill, thus making
10 it harder for low-income families to maintain service. I recommend that PWSA take a closer look
11 at its process for referring overdue charges to collections to ensure that charges are not being
12 referred out prematurely.

13 **Q: Above, you noted that you believe PWSA's contract with JTS is inconsistent with the**
14 **Public Utility Code and the Commission's regulations. Please explain.**

15 **A:** I believe that Act 65 has rendered certain material terms of the contract between PWSA
16 and JTS illegal due to the imposition of Commission regulations. First, the "Miscellaneous
17 Provisions" of the contract state that PWSA "shall not enter into an installment payment
18 agreement" with any delinquent customer.¹¹¹ This provision directly contradicts Chapter 56 of the

¹⁰⁹ Appendix B, OCA to PWSA II-15; see also Appendix B, OCA to PWSA XIII-18 (referencing Appendix B, OCA to PWSA VI-7).

¹¹⁰ Appendix B, OCA to PWSA II-15; see also Appendix B, OCA to PWSA XIII-18.

¹¹¹ Appendix B, UNITED to PWSA III-15, Attach. A at 16.

1 Commission's regulations, which requires that PWSA exercise good faith and fair judgment in
2 attempting to enter a reasonable payment agreement.¹¹²

3 Regarding payment plans issued by JTS, the contract also requires that the term of any
4 negotiated installment plan for owner occupied residential properties be twenty-four months or
5 less and that an installment plan for tenant occupied residential properties be eighteen months or
6 less.¹¹³ The contract also requires that installment plans be denied to any customers who have prior
7 uncured payment plans and anyone who has unresolved municipal assessments.¹¹⁴ In other words,
8 JTS – through its contract with PWSA – limits delinquent customers to one payment arrangement,
9 which depends on the customer's status as a renter or owner – not their relative household income.
10 It also states that all payment plans are subject to the approval of JTS counsel.¹¹⁵ The Commission
11 now has jurisdiction over PWSA payment plans and it has strict guidelines as to the terms of
12 payment plans offered to low-income and otherwise vulnerable ratepayers.¹¹⁶ For instance,
13 households with income less than 150% of the federal poverty guidelines are entitled to a payment
14 agreement of 60 months. While these timeframes are the required timeframes for Commission
15 payment agreements only, it is my view that the utility – in the exercise of its responsibilities under
16 Commission regulations to “exercise good faith and fair judgment in attempting to enter a
17 reasonable payment agreement”¹¹⁷ – cannot reasonably enter into a payment agreement that is for
18 less than this time frame without making an individualized, good faith determination.

¹¹² See 52 Pa. Code §56.97; see also 52 Pa. Code §56.151(3).

¹¹³ Appendix B, UNITED to PWSA III-15, Attach. A at 8.

¹¹⁴ Appendix B, UNITED to PWSA III-15, Attach. A at 7.

¹¹⁵ Appendix B, UNITED to PWSA III-15, Attach. A at 7.

¹¹⁶ See 66 Pa. C.S. § 1405.

¹¹⁷ 52 Pa. Code § 56.97(b).

1 Again, under the Commission regulations, the length of time that a ratepayer is provided
2 to make installment payments on a set of arrearages is dependent on the ratepayer's income level
3 and their ability to pay.¹¹⁸ Additionally, the Commission requires alternate, equitably
4 individualized, and often more relaxed standards for victims of domestic violence and ratepayers
5 suffering from a serious illness.¹¹⁹ Finally, the aforementioned contract provisions may well
6 interfere with the Commission's ability to issue payment plans pursuant to sections 1405 and 1407
7 of Chapter 14.¹²⁰

8 As I mentioned above, in addition to payment arrangement concerns, PWSA's contract
9 with JTS imposes fees that clearly exceed the late fees authorized by Chapter 56.¹²¹ Those fees are
10 well in excess of the 1.5% late fee allowed by the Commission.¹²² These fees inflate the amount
11 that low-income ratepayers must pay to maintain service, and since JTS collects its fees out of any
12 partial payment before PWSA sees a penny, the cost to low-income ratepayers is not supported by
13 any benefit to PWSA. As such, these excessive fees must be stricken from the tariff before any
14 rate increase is approved by the Commission.

15 I recommend that PWSA be ordered to discontinue its contract with JTS. This contract auto
16 renews every 180 days and is next set to expire on February 15, 2019.¹²³ In order to terminate on
17 this date PWSA needs to provide notice ninety days in advance.¹²⁴ Thus, PWSA should provide
18 written notice of non-renewal to JTS by November 17, 2018. If PWSA fails to notify JTS of its

¹¹⁸ Id.

¹¹⁹ 52 Pa. Code §§ 56.191(c)(1), 56.113.

¹²⁰ 52 Pa. Code §§ 1405, 1407.

¹²¹ See JAQ-1 at 13; contra 52 Pa. Code § 56.22(a).

¹²² 52 Pa. Code § 56.22(a).

¹²³ Appendix B, UNITED to PWSA III-15, Attach. A at 26.

¹²⁴ Appendix B, UNITED to PWSA III-15, Attach. A at 27.

1 intent to discontinue the contract by November 17, 2018, it will need to notify JTS by May 16,
2 2019 that it intends to terminate the contract as of August 14, 2019.

3 **III. SUMMARY OF RECOMMENDATIONS**

4 **Q: Please summarize your conclusions and recommendations.**

5 I have made a number of recommendations throughout my testimony, each with the goal of
6 protecting the rights of low-income customers and tenant occupants in PWSA's service territory.
7 As I have concluded throughout, it is important to ensure that vulnerable populations are not left
8 behind throughout PWSA's transition to Commission oversight and its accompanying rate
9 increase.

10 **PRACTICES AND PROCEDURES RELATED TO TENANT'S RIGHTS**

11 To ensure that tenants' rights are properly protected, I recommend that PWSA be required
12 to comply with the Discontinuance of Services to Leased Premises Act and Utility Services
13 Tenants' Rights Act by taking steps including but not limited to the following:

- 14 • Retain the definition of "USTRA Tenant" in PWSA's proposed tariff to ensure
15 compliance with both USTRA and DSLPA tenants.
- 16 • Actively seek to obtain the names and addresses of tenants dwelling units that are at risk
17 of termination and to notify those tenants of any impending termination.
- 18 • Develop a process within PWSA's billing system to identify rental units and track
19 affected tenants. In addition to properties where the service address is different from the
20 billing address, this system should also flag the following as situations where the service
21 address is reasonably likely to be tenant occupied

- 1 - Where there are multiple accounts listed in a person's name for multiple
2 residences.
- 3 - Where a property is listed as residential within PWSA's billing system, but the
4 owner and customer are a corporate name, limited liability company, or other
5 corporation.
- 6 - Where there are multiple metered units at a single property in the name of a
7 single account holder.
- 8 • Require all applicants for service to identify whether the property will be rented when
9 they establish service, or at any time that they elect to rent out a unit that was previously
10 occupied exclusively by the owner. This information should be subject to periodic
11 verification and/or updates whenever a change or inquiry is made regarding the account.
- 12 • In cases of uncertainty, cross check Pittsburgh's Bureau of Building Inspection records
13 to verify if the unit has a housing rental permit.
- 14 • When an account is in active termination status, and there is any indication on the
15 account that the premises may be reasonably likely to be occupied by tenants, send
16 USTRA/DSLPA compliant notices to the service address at least thirty days in advance
17 of the termination - in addition to posting - regardless of whether the landlord replies to
18 its 37-day notice.
- 19 • Pursue legal action against landlords who do not comply with the 37-day notice
20 requirements.

- 1 • If, post termination of service, PWSA is made aware that a premises was occupied by
2 affected tenants, immediately restore service and provide correct notices telling tenants
3 of their rights, even in the absence of payment.
- 4 • Specify procedures for identifying tenant occupied units in tariff and training materials,
5 and provide more guidance to staff to help ensure that its practice is more fully carried
6 out.
- 7 • Revise training materials to accurately reflect the law and to include references to both
8 USTRA and DSLPA, including:
 - 9 - Inform customer service representatives that tenants who have oral leases
10 qualify as USTRA/DSLPA tenants.
 - 11 - Inform customer service representatives that tenants are not required to obtain
12 landlord consent to continue service or subscribe to service in their own name.
- 13 • Ensure that training materials are internally consistent so that employees are provided
14 with consistent instructions and held to appropriate standards.
- 15 • Revise training materials to ensure that the materials are consistent with the Acts so that
16 they do not demand conduct which violates the law.
- 17 • Amend 30-day tenant termination notice to:
 - 18 - only include the amount for the last thirty days' usage, and eliminate any
19 reference to restoration fees;
 - 20 - fully comply with critical notice requirements including the information about
21 how to contact PWSA for an explanation of their rights as a tenant and/or what

1 they must pay to continue service and the tenants' right to seek help from the
2 Commission;

3 - state that reasonable identification must be provided upon request by the utility
4 and includes any document issued by any public agency which contains the
5 name and address of the tenant.

6 • PWSA's traditional termination notice sent for non-payment should include some
7 reference to and/or explanation of USTRA and DSLPA rights.

8 • Post notice of tenants' rights under USTRA/DSLPA in a readily visible location at the
9 customer service office.

10 • Revise the 37-day shut off notice provided to landlords to indicate the date on or after
11 which the utility will send notice to the tenants about their rights...

12 • When a tenants exercise their right to continued service, accept as proof of identification
13 any document issued by any public agency which contains the name and address of the
14 tenant. Additionally, identification documents such as social security cards, birth
15 certificates, health insurance cards, school ID, work ID, or government benefit cards that
16 do not list and address should be acceptable if they are presented in combination with a
17 utility bill or lease.

18 • Accept ongoing USTRA/DSLPA tenant payments by any means that PWSA would
19 otherwise accept payment from a ratepayer.

20 • PWSA needs to develop a new form exclusively to inform USTRA/DSLPA tenants of
21 the amount they owe each month.

- 1 • Extend Chapter 56 protections for medically vulnerable households and victims of
2 domestic violence, as well as PWSA's winter termination moratorium, to tenants who
3 exercise their right to continued service under USTRA/DSLPA without subscribing to
4 service in their own name.
- 5 • Require a landlord ratepayer who seeks to voluntarily discontinue service to a residential
6 dwelling unit to submit a notarized document swearing under penalty of perjury that the
7 unit is unoccupied, consistent with the requirements of USTRA and DSLPA.
- 8 • Require PWSA to review its records for partial payments from USTRA/DSLPA Tenants
9 since December 21, 2017, which is the date Act 65 of 2017 was signed into law, and
10 refund the amount of any partial payments retained from tenants who were ultimately
11 terminated because they could not come up with the full amount due.
- 12 • Remove instructions to call center employees to accuse tenants with high usage of
13 maliciously running water from its training materials.

14 **COLLECTION AND LIEN PRACTICES**

15 To ensure that low-income customers are not unduly affected by excessive collection fees
16 and burdensome liens, I recommend that PWSA be required to reform its collection and lien
17 practices, including but not limited to the following:

- 18 • Discontinue the contract with JTS as soon as possible.
- 19 • Cease perfecting liens for debts less than \$1,000, and only pursue liens after a request is
20 made for a final bill. Further, I recommend that PWSA's proposed fee structure be

1 disallowed and that it be ordered to discontinue its contract with JTS at the earliest
2 possible termination date.

3 • Cease permitting the imposition of any fees that are more than the 1.5% interest
4 permitted by Commission regulation 52 Pa. Code § 56.22(a).

5 • Examine the process for referring overdue charges to collections to ensure that charges
6 are not being referred out prematurely.

7 **Q:** Does this conclude your Direct Testimony?

8 **A:** Yes.