



December 11, 2018

VIA E-FILE

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

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

Dear Secretary Chiavetta,

Enclosed for filing, please find the **Petition for Clarification and/or Reconsideration of Pittsburgh UNITED** in the above noted proceeding. Copies have been served in accordance with the attached Certificate of Service.

Respectfully submitted,

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

Elizabeth R. Marx
Counsel for Pittsburgh UNITED

CC: Certificate of Service

Enclosures.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the	:	Docket No.	M-2018-2640802
Public Utility Code Re Pittsburgh	:		M-2018-2640803
Water and Sewer Authority	:		

PETITION FOR CLARIFICATION AND/OR RECONSIDERATION

OF PITTSBURGH UNITED

PENNSYLVANIA UTILITY LAW PROJECT

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December 11, 2018

I. INTRODUCTION

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code § 5.44,¹ Pittsburgh UNITED, through its counsel at the Pennsylvania Utility Law Project (PULP), hereby petitions the Commission for reconsideration and/or clarification of the November 28, 2018 Secretarial Letter (Nov. 28 Sec. Ltr), which referred the Pittsburgh Water and Sewer Authority (PWSA) Compliance Plan to the Office of Administrative Law Judge (OALJ) for a two-stage evidentiary proceeding, and the Technical Staff Initial Report and Directed Questions Stage 1 (Stage 1 Staff Report), which set forth directed questions to be addressed by parties to the evidentiary proceeding.

Pittsburgh UNITED supports the expedited Petition for Clarification and Reconsideration filed by the Office of Consumer Advocate (OCA) at the above-captioned docket on December 11, 2018, which requests that the Commission proceed with consideration of PWSA's Compliance Plan in a single proceeding. However, in the event the Commission denies that request, Pittsburgh UNITED seeks clarification and/or reconsideration to resolve potential ambiguity regarding the resolution of issues not specifically enumerated for consideration in Stage 1 or explicitly reserved for consideration in Stage 2. Specifically, Pittsburgh UNITED believes that the Commission overlooked a critical health and safety issue² for consideration as part of the Stage 1 proceeding;

¹ Section 5.44, pursuant to which this Petition is filed, pertains to Petitions for Reconsideration and/or Clarification of an action by Commission Staff. Out of an abundance of caution, and in light of the pendency of the Compliance Plan proceeding, Pittsburgh UNITED is filing this Petition for Clarification and/or Recertification within the 15-day regulatory timeframe for Petitions established in 52 Pa. Code § 5.572, relating to Petitions for Reconsideration or Clarification of a Commission Order. As discussed below, we are requesting that the Commission consider this Petition on an expedited basis to allow for a procedural clarity at the start of the Compliance Plan litigation.

² Pittsburgh UNITED asserts that there are a number of issues expressly reserved for Stage 2 which also pertain to health and safety, and supports OCA's Petition for Clarification and Reconsideration to resolve issues related to Chapter 14 and 56 in the context of a single proceeding. See infra Paragraphs 13-14. However, to the extent that the Commission determines that it is nevertheless prudent to proceed with a two-stage process, Pittsburgh UNITED asserts that – at the very least – issues related to DSLPA/USTRA should be prioritized in the first stage.

namely, PWSA's compliance with the statutory protections for tenants contained in Chapter 15, subchapter B of the Public Utility Code, known as the Discontinuance of Service to Leased Premises Act (DSLPA), as well as the requirements of municipal authorities contained in the Utility Service Tenants Rights Act. See 66 Pa. C.S. §§ 1521-1533; 68 P.S. § 399.1 *et seq.*³ Thus, to avoid the potential for protracted litigation over the scope of Stage 1 in the event OCA's Petition for Reconsideration and Clarification is not granted, Pittsburgh UNITED seeks further clarity from the Commission that (1) issues related to PWSA's compliance with DSLPA/USTRA will be considered as part of the Stage 1 proceeding; and (2) parties to the Stage 1 proceeding are permitted to raise additional issues which are not expressly enumerated in the Stage 1 Staff Report or explicitly preserved for the Stage 2 proceeding. In support thereof, Pittsburgh UNITED asserts as follows:

II. LEGAL STANDARD

In Duick *et al.* v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Id. at 559.

³ The continued applicability of USTRA, in light of Chapter 32, is an outstanding issue which should be addressed by the Commission as part of its consideration of whether PWSA is compliant with the requirements of the DSLPA. Consideration of the continued applicability of USTRA as part of the Stage 1 proceeding is consistent with the Commission's express instruction that the parties to the Stage 1 proceeding address "[t]he appropriateness of PWSA following the Municipal Authorities Act" with respect to advance financing, refunds, and facilities on private property. See Stage 1 Staff Report at 10. Indeed, a determination from the Commission regarding the continued applicability of laws governing water and wastewater authorities in Pennsylvania, in light of Chapter 32, will bring needed certainty to PWSA and its consumers.

This Petition satisfies Duick, in that it raises issues “which appear to have been overlooked or not addressed by the Commission.” Id. Specifically, Pittsburgh UNITED is concerned that the Commission’s November 28 Secretarial Letter and Stage 1 Staff Report do not adequately contemplate that additional issues may arise through the course of the Stage 1 proceeding which have not otherwise been expressly assigned to Stage 1 or reserved for further consideration in Stage 2. In turn, and relatedly, Pittsburgh UNITED believes that the Commission has overlooked the need to explicitly consider whether PWSA is in compliance with DSLPA, and in turn whether PWSA must also comply with similar requirements contained in USTRA. Thus, Pittsburgh UNITED seeks further clarification of these issues to limit the need for protracted procedural disputes amongst the parties.

III. BACKGROUND

1. On September 28, 2018, PWSA filed a Petition with the Commission for approval of its Compliance Plan, which it filed pursuant to section 3204(b)-(c) of the Public Utility Code. (66 Pa. C.S. § 3204(b)-(c)).

2. Two days prior to PWSA’s filing, on September 26, 2018, the Commission issued a Secretarial Letter setting forth the process for review of PWSA’s Compliance Plan. In relevant part, the Secretarial Letter explained that the Commission would publish notice of PWSA’s Compliance Plan and the procedures related thereto in the Pennsylvania Bulletin on October 13, 2018. (Sep. 26 Sec. Ltr. at 2; 48 Pa.B. 6635). The Commission further provided for a comment period of 20 days from the date of publication in the Pennsylvania Bulletin. (Id.) Moreover, the Commission provided that within 45 days from the date of publication in the Pennsylvania Bulletin, it would refer PWSA’s Compliance Plan by Secretarial Letter to the Office of

Administrative Law Judge “for the resolution of any factual matters that PWSA or interested parties may seek to develop.” (Id. at 3).

3. On November 1, 2018, Pittsburgh UNITED filed Comments in response to PWSA’s Compliance Plan, pursuant to the Commission’s September 26 Secretarial Letter. These comments identified various issues in PWSA’s Compliance Plan with respect to its compliance with statutory and regulatory provisions in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations and prevailing public policy governing customer billing, collections, and terminations; DSLPA and USTRA tenant protections; PWSA’s provision of universal service programs; and service quality issues related to the presence of lead service lines in PWSA’s system. (See Cmts. of Pittsburgh UNITED, filed Nov. 1, 2018).

4. Also on November 1, 2018, Pittsburgh UNITED filed a Petition to Intervene, seeking full intervenor status in the pending Compliance Plan proceeding and identifying preliminary issues that it intends to pursue in the context of the fully litigated proceeding.

5. On November 28, 2018, the Commission issued a Secretarial Letter, which established a two-stage evidentiary process to examine issues related to PWSA’s Compliance Plan. (Nov. 28 Sec. Ltr). The Commission explained how it intends for issues to be divided between the two stages as follows:

Stage 1 is directed toward urgent infrastructure remediation and improvement, and the revenue and financing requirements of maintaining service that supports public health and safety. Stage 2 will address important PWSA billing issues and the development of a proposed PWSA stormwater tariff.

In other words, Stage 1 of the Commission’s review *will address all issues except for PWSA’s compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations and the development of a PWSA stormwater tariff, which are reserved for the second stage.* ... To be clear, metering and related revenue issues will be addressed immediately regardless of their connection to billing practices.

(Id. at 3 (emphasis added)).

6. The Commission explained in its November 28, 2018 Secretarial Letter that the forthcoming Recommended Decision in PWSA's pending base rate and tariff proceeding may result in "perceived conflicts" with the staged litigation of PWSA's Compliance Plan, and explained that the Commission would "entertain resolution of those conflicts by motion or petition within Stage 1 of the Compliance Plan." (Nov. 28 Sec. Ltr. at 4).

7. Also on November 28, 2018, the Commission released its Stage 1 Staff Report, which was attached to the November 28 Secretarial Letter. This report "consist[s] of directed questions or issue areas that PWSA and interested parties are to address." (Nov. 28 Sec. Ltr. at 2). Specifically, the report indicates the following broad directive to the parties:

As directed in the Secretarial Letter to which this Initial Report is attached, PWSA and interested parties are to address the questions and issues in the report to the extent that each believes appropriate and necessary to obtain a Compliance Plan suitable for approval under 66 Pa. C.S. § 3204.

(Stage 1 Staff Report at 1).

8. The Stage 1 Staff Report sets forth specific topic areas to be addressed, including supplemental documentation requirements; projected expenditures; system and operations activities; comprehensive performance evaluation; accidents (52 Pa. Code § 65.2); metered service (52 Pa. Code § 65.7); meters (52 Pa. Code § 65.8); mandatory conservation measures (52 Pa. Code § 65.11); notice of desire to have service discontinued (52 Pa. Code § 65.12); measurement (52 Pa. Code § 65.14); system of accounts (52 Pa. Code § 65.16); standards of design (52 Pa. Code § 65.17); water conservation measures (52 Pa. Code § 65.20); duty of public utility to make line extensions (52 Pa. Code § 65.21); customer advance financing, refunds and facilities on private property (52 Pa. Code § 65.22); special utility service (52 Pa. Code § 65.23); service outages (52 Pa. Code § 67.1); tariff provisions that limit the liability of utilities for injury or damage as a result

of negligence or intentional torts (52 Pa. Code § 69.87); standby charge (52 Pa. Code § 69.169); Customer Assistance Program (CAP) (52 Pa. Code § 69.261); unscheduled service interruptions and associated actions (52 Pa. Code § 69.1601); annual depreciation reports (52 Pa. Code § 73.3); service life study report (52 Pa. Code § 73.5); capital investment plan report (52 Pa. Code § 73.7); public utility preparedness (52 Pa. Code § 101); PWSA's relationship with the City of Pittsburgh; unmetered and/or unbilled usage; PWSA's billing arrangements with ALCOSAN and Pennsylvania American Water; PWSA's plan to address lead levels in the water supply and replacement of lead service lines; PWSA's plan to address non-revenue water; bulk water resale; and bulk wastewater conveyance.

9. On November 29, 2018, PWSA and parties to PWSA's base rate proceeding filed a Joint Petition for Settlement at dockets R-2018-3002645 and R-2018-3002647. See Pa. PUC v. PWSA, Docket Nos. R-2019-3002645, -3002647, Joint Petition for Settlement (filed Nov. 29, 2018). The Joint Petition for Settlement is currently pending before Administrative Law Judges Mark A. Hoyer and Conrad A. Johnson. In relevant part, the proposed settlement terms resolve a number of critical issues, while explicitly deferring a number of other important issues for further investigation and resolution in the context of PWSA's Compliance Plan proceeding.

10. On December 6, 2018, parties received notice that a telephonic Pre-hearing Conference was scheduled in the Stage 1 proceeding for Thursday, December 20, 2018.

11. On December 7, 2018, parties received a Prehearing Conference Order, which required parties to the proceeding to file a Prehearing Memorandum on or before December 19, 2018 at 2:00 pm setting forth – in relevant part – the issues the parties have preliminarily identified for litigation, any expert witnesses the parties intend to call, a proposed schedule for litigation, and proposed modifications to the discovery rules.

12. On December 11, 2018, the OCA filed a Petition for Reconsideration and Clarification requesting, in relevant part, that the Commission reconsider its two-stage approach to PWSA's Compliance Plan review. OCA requests that the Commission provide additional time for litigation of PWSA's full Compliance Plan in a single proceeding. In addition, OCA requests clarification – consistent with Pittsburgh UNITED's requested clarification below – that the parties are permitted to raise additional issues which were not otherwise expressly identified by the Commission in the Stage 1 Staff Report. Given the pendency of the prehearing conference and the start of litigation in this proceeding, the OCA's request was made on an expedited basis.

IV. REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION

13. Pittsburgh UNITED supports OCA's request to address the full Compliance Plan in a single proceeding, and asserts that issues related to PWSA's compliance with Chapters 14 and 56 – which cover billing, collections, and termination processes and procedures – are intimately related to public health and safety. Indeed, involuntary termination of water and wastewater service presents a serious and substantial matter of public health, and can have severe consequences to the wellbeing of members of the household, particularly children, elderly, and disabled individuals, and households with low or fixed income. The involuntary loss of water and wastewater service is not a mere inconvenience, and can have far-ranging impacts, including the spread of illness and disease, the forcible removal of children from the home, lack of hygiene, eviction, and homelessness. As such, the prompt resolution of outstanding compliance issues in a timely manner is critically important, and a decision should not be delayed until late 2020.

14. Notably, the Commission's Stage 1 Staff Report includes a number of issues which are tangential to health and safety, including for example issues related to the voluntary discontinuance

of service, customer financing, metering, and measurement. (Stage 1 Staff Report at 6-10). Pittsburgh UNITED recognizes the importance of resolving these issues in a timely manner. However, the consequences associated with many of the issues delineated for resolution in the Stage 1 proceeding do not pose a direct and immediate consequence to the physical health and safety of consumers that is comparable to the consequences of involuntary termination of service. Pittsburgh UNITED submits that it is most appropriate to consider PWSA's Compliance Plan as a whole, in a single litigated proceeding, where all pressing issues – and PWSA's prioritization for resolving those issues – can be addressed in tandem.

15. Notwithstanding this support, Pittsburgh UNITED asserts that if the Commission rejects the request to proceed with all issues in a single proceeding, additional clarity regarding the delineation of issues between Stages 1 and 2 is nevertheless important to help facilitate the orderly and timely resolution of this proceeding.

16. While the November 28 Secretarial Letter clearly stated that Stage 1 is to include “all issues except for PWSA's compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations and the development of a PWSA stormwater tariff,” (Nov. 28 Sec. Ltr. at 3), the Stage 1 Staff Report's directive described above in paragraph 7, together with the specific enumeration of issues described in paragraph 8, raises ambiguity as to whether parties to the Stage 1 proceeding are permitted to raise other issues – or unspecified aspects of identified issues – that are not specifically identified in the Stage 1 Staff Report or preserved for Stage 2.

17. Pittsburgh UNITED is operating under the assumption that additional issues which were not expressly identified in the Stage 1 Staff Report may be raised to the extent that they are not addressed in Chapter 14 or 56 or the creation of a stormwater tariff (the only issues specifically reserved for Stage 2 in the November 28 Secretarial Letter). Through the course of litigation, issues

not previously contemplated are often unearthed, and the parties should be free to address those issues as they arise. Pittsburgh UNITED asserts that additional clarity from the Commission at this stage is necessary and prudent to prevent additional procedural disputes between the parties through the course of the Stage 1 proceeding. Procedural disputes of this nature are unnecessarily disruptive to the course of litigation, and require parties to divert critical time and attention away from the many and varied substantive issues which must be addressed.

18. Specifically, PWSA's compliance with DSLPA and/or USTRA is notably missing from both the Secretarial Letter describing the division of issues between Stages 1 and 2, as well as the Stage 1 Staff Report. DSLPA and USTRA are designed to protect tenants from the loss of utility service as a result of their landlord's actions, including both nonpayment by a landlord and/or attempts by the landlord to discontinue service to a premises as a means to constructively evict a tenant, in violation of Pennsylvania law. PWSA's full compliance with DSLPA and/or USTRA presents a critical health and safety issue which Pittsburgh UNITED intends to explore immediately, as part of Stage 1, to ensure that tenants are not subject to immediate and far-reaching harm to their physical safety and wellbeing. Indeed, the intimate link to health and safety is evident from the text of the law, which requires PWSA to notify the Public Health Department prior to terminating service to a leased premises for nonpayment by a landlord. 66 Pa. C.S. § 1523 (Notices before service to landlord terminated).

19. Compliance with DSLPA is directly tied to issues that the Stage 1 Staff Report sets forth as specific topics to be addressed in Stage 1 of the proceeding. Namely, the report states that parties should address "[t]he language and format of PWSA's current suspension and termination notices," as well as the "method of providing suspension and termination notices to the customer."

(Stage 1 Staff Report at 8).⁴ DSLPA sets forth special requirements for discontinuance notices and related procedures. See 66 Pa. C.S. § 1523(b). It would be imprudent to examine PWSA's compliance with discontinuance of service requirements without also examining whether PWSA's policies and procedures also fully comply with these unique and critically important provisions of the law.

20. Jurisdictional issues related to the continued applicability of USTRA to PWSA also overlap with issues that the Stage 1 Staff Report sets forth to be addressed in the Stage 1 proceeding. Specifically, the report states the parties should address the appropriateness of PWSA's intentions to follow the Municipal Authorities Act in lieu of the sections 65.21, 65.22, and 65.23 of the Commission's regulations, which relate to line extensions. (Stage 1 Staff Report at 9-10). The analysis of whether and to what extent USTRA remains applicable to PWSA policies and procedures related to tenant's rights is implicated in the analysis of whether and to what extent the Municipal Authorities Act controls PWSA policies and procedures related to line extensions. Both of these issues require unique and interconnected legal analysis of conflicts between statutes that control PWSA as a municipal authority and the Public Utility Code that controls PWSA now that it is a regulated utility.

21. It is also important to note that the parties to PWSA's tariff proceeding expressly reserved DSLPA/USTRA issues for resolution in the Compliance Plan proceeding as part of a carefully negotiated Settlement proposal. See Joint Petition for Settlement at 28, § III.H.8.c. While the Joint Petition for Settlement is still pending approval, the fact that this issue was

⁴ While the Stage 1 Staff Report mentions "suspension and termination notices", the provisions of the cited regulation refer to discontinuance of service notices. We presume the Staff Report is referring to suspension and *discontinuance* notices, as the requirements for termination notices and associated procedures are contained in Chapters 14 and 56, which the Commission's Secretarial Letter deferred for consideration in Stage 2. As noted above in paragraph 13, Pittsburgh UNITED continues to assert that termination of service is a critically important matter related to health and safety, though we ultimately do not object to the process outlined for resolution of Chapters 14 and 56. See *supra* paragraph 13.

expressly preserved for prompt resolution in the Compliance Plan proceeding – prior to the Commission’s announcement of a prolonged two-stage procedure – is important. Indeed, Pittsburgh UNITED agreed to defer DSLPA/USTRA issues in part because, at the time the Settlement was negotiated and agreed-to, it believed these issues would be fully resolved by the end of 2019, not the end of 2020.⁵

WHEREFORE, and for the reasons enumerated above, Pittsburgh UNITED respectfully requests that the Commission reconsider its two-stage approach, and allow all issues to be addressed in a single proceeding consistent with the OCA’s Petition for Reconsideration and Clarification. To the extent that request is denied, Pittsburgh UNITED requests that the Commission clarify and/or reconsider its guidance with respect to the division of issues between Stages 1 and 2 of PWSA’s Compliance Plan proceeding as follows: (1) parties to the Stage 1 proceeding are permitted to identify additional issues that were not otherwise identified in the November 28 Secretarial Letter or the Stage 1 Staff Report, and do not otherwise pertain to PWSA’s compliance with Chapters 14 and 56 or the creation of a PWSA stormwater tariff; and (2) issues related to PWSA’s compliance with DSLPA, as well as the continued applicability of USTRA, will be addressed in Stage 1 of PWSA’s Compliance Plan proceeding. Finally, in light of the timing of this Petition in relation to the pending Prehearing Conference and the start of the Stage 1 proceeding, Pittsburgh UNITED respectfully requests that the Commission consider its Petition on an expedited basis.

⁵ See supra note 3. While other issues related to Chapter 14 and 56 were also expressly preserved for consideration as part of the Compliance Plan, and Pittsburgh UNITED agreed to that deferral before the two-stage procedure was announced, Pittsburgh UNITED has ultimately decided that – in balance – it would not object to the process proposed for resolution of Chapters 14 and 56.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
On Behalf of Pittsburgh UNITED



Elizabeth R. Marx, Esq., PA ID: 309014
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December 11, 2018

Verification

I, Alyson Shaw, on behalf of Pittsburgh UNITED, hereby state that the facts contained in the foregoing **Petition for Clarification and/or Reconsideration of Pittsburgh UNITED** are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

On behalf of Pittsburgh UNITED



Alyson Shaw
Environmental Justice Organizer
Pittsburgh UNITED
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724-809-9014

December 11, 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Chapter 32 of the	:	Docket No.	M-2018-2640802
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Certificate of Service

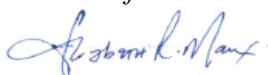
I hereby certify that I have this day served copies of the **Petition for Reconsideration and/or Clarification of Pittsburgh UNITED** upon the parties and interested stakeholders in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons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

VIA FIRST CLASS MAIL AND EMAIL

The Honorable Mark A. Hoyer Deputy Chief Administrative Law Judge Piatt Place, Suite 220 301 Fifth Avenue Pittsburgh, PA 15222 mhoyer@pa.gov	The Honorable Conrad A. Johnson Administrative Law Judge Piatt Place, Suite 220 301 Fifth Avenue Pittsburgh, PA 15222 cojohnson@pa.gov
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Respectfully submitted,
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Counsel for Pittsburgh UNITED



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