



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Sarah C. Stoner
717.237.6026
sstoner@eckertseamans.com

September 30, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Implementation of Chapter 32 of the Public Utility Code RE: Pittsburgh Water
and Sewer Authority; Docket Nos. M-2018-2640802 and M-2018-2640803

Petition of the Pittsburgh Water and Sewer Authority for Approval of Its Long-Term
Infrastructure Improvement Plan; Docket Nos. P-2018-3005037 and P-2018-3005039

Dear Secretary Chiavetta:

On behalf of The Pittsburgh Water and Sewer Authority, enclosed for filing is the compliance proposal directed by Ordering Paragraph 4 of the Commission's Opinion and Order entered June 18, 2020 in the above-referenced matter.¹ The compliance proposal addresses various issues related to lead service line replacements, including termination of service in the lead service line replacement context.

Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Sarah C. Stoner

Sarah C. Stoner

Enclosure

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

¹ The Commission granted an extension of time for PWSA to make the compliance proposal via Secretarial Letter dated September 10, 2020.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the PWSA's Compliance Proposal upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Sharon Webb, Esq.
Erin K. Fure, Esq.
Forum Place Building
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov
efure@pa.gov

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Lauren E. Guerra, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Fl., Forum Place
Harrisburg, PA 17101-1923
choover@paoca.org
egannon@paoca.org
lguerra@paoca.org

Gina L. Miller, Esq.
John M. Coogan, Esq.
Bureau of Investigation &
Enforcement Commonwealth Keystone
Building 400 North St., 2nd Floor West
Harrisburg, PA 17120
ginmiller@pa.gov
jcoogan@pa.gov

Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
The Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@palegalaid.net

Susan Simms Marsh, Esq.
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Susan.marsh@amwater.com

Michael A. Gruin, Esq.
Stevens & Lee
17 North Second St., 16th Fl.
Harrisburg, PA 17101
mag@stevenslee.com

Brian Kalcic
Excel Consulting
225 S. Meramec Ave., Suite 720T
St. Louis, MO 63105
Excel.consulting@sbcglobal.net

Dimple Chaudhary, Esquire
Peter J. DeMarco, Esquire
Cecilia Segal, Esquire
Natural Resources Defense Council
1152 15th Street, NW, Ste. 300
Washington, DC 20005
dchaudhary@nrdc.org
pdemarco@nrdc.org
csegal@nrdc.org

Michelle Nacarati Chapkis
Mayor's Blue Ribbon Panel on Restructuring
the PWSA Care of Women for a Healthy
Environment
5877 Commerce St.
Pittsburgh, PA 15206
michelle@womenforahealthyenvironment.org

Sarah C. Stoner

Sarah C. Stoner, Esq.

September 30, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | | |
|---|---|------------|-----------------------------|
| Implementation of Chapter 32 of the Public | : | Docket No. | M-2018-2640802 (water) |
| Utility Code Regarding Pittsburgh Water and | : | | M-2018-2640803 (wastewater) |
| Sewer Authority – Stage 1 | : | | |

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|--|---|------------|-----------------------------|
| Petition of The Pittsburgh Water and Sewer | : | Docket No. | P-2018-3005037 (water) |
| Authority for Approval of Its Long-Term | : | | P-2018-3005039 (wastewater) |
| Infrastructure Improvement Plan | : | | |

**THE PITTSBURGH WATER AND SEWER AUTHORITY’S
COMPLIANCE PROPOSAL**

The Pittsburgh Water and Sewer Authority (“PWSA”) hereby submits this Compliance Proposal pursuant to the Commission’s Opinion and Order entered June 18, 2020 in the above captioned proceeding. The Commission’s Opinion and Order directed that PWSA meet with parties to its Compliance Plan Proceeding to discuss various issues relating to lead service line (“LSL”) replacements and develop and submit a compliance proposal to the Commission on those issues. PWSA hereby submits its Compliance Proposal, as described in more detail below.

I. INTRODUCTION

Pursuant to 66 Pa.C.S. § 3202(a)(1), the Commission entered an Opinion and Order on March 26, 2020 in PWSA’s Compliance Plan proceeding (“March 26, 2020 Order”). The March 26, 2020 Order approved a Joint Petition for Partial Settlement entered into by the active parties in the proceeding¹ but modified provisions in the Partial Settlement to address partial replacements of LSLs.² A partial LSL replacement is the replacement of a public-side (i.e.,

¹ The active parties in the proceeding were the Bureau of Investigation and Enforcement, (“BIE” or “I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Pittsburgh UNITED (“UNITED”) and Pennsylvania-American Water Company (“PAWC”).

² As directed by the Commission, PWSA’s Service Plan to Remove Lead Service Lines Existing in and Connected to its Water Distribution System was included in PWSA’s Amended Long-Term Infrastructure Improvement Plan which was approved on August 27, 2020 at Docket No. P-2018-3005037. Also as directed by the Commission, PWSA is proposing to include new language in its water tariff setting forth its lead service line

PWSA-owned) LSL of any material without the simultaneous replacement of a connected private-side (i.e., customer-owned) LSL. The Commission expressed concern that, in instances in which a customer does not consent to PWSA's offer to replace the private-side LSL at the same time PWSA is replacing the public-side of the service line, PWSA allows the private-side LSL to reconnect to PWSA's system after it has installed the new public-side service line.³ The Commission modified the settlement so that PWSA is not permitted to reconnect a private-side LSL to the newly installed public-side service line in the following circumstances:

- PWSA is replacing a public-side service line through the small-diameter water main replacement program or is moving a residential service line from an abandoned water main to a different water main, and PWSA is unable to obtain consent to replace the private-side LSL from the property owner after making at least one attempt to contact the property owner by mail, one attempt by telephone, and one attempt by visiting the residence in person;
- A property owner who also resides at the property signs a formal agreement stating that they do not consent to a free private-side LSL replacement and that they understand the risks of a partial replacement; or
- PWSA is replacing a public-side service line as a result of an emergency circumstance (e.g., water main leak, broken curb stop, or damage to other infrastructure requiring a public-side service line replacement), and PWSA is unable to obtain consent to replace the private-side LSL from the property owner after making at least one attempt to contact the property owner by telephone and one attempt by visiting the residence in person.⁴

In the aforementioned circumstances in which PWSA is unable to obtain customer consent for the replacement of their private-side line, the PUC directed that PWSA begin the process to terminate service to the residence with prior notice in accordance with the existing termination provisions of PWSA's currently effective Tariff.⁵ The PUC's March 26, 2020 Order

remediation policies. *See Pennsylvania Public Utility Commission, et. al. v. Pittsburgh Water and Sewer Authority*, Docket No. R-2020-3017951, Joint Petition for Settlement dated September 30, 2020 at Appendix G, Part VI.

³ March 26, 2020 Order at 119.

⁴ March 26, 2020 Order at 125.

⁵ *See* PWSA Tariff Water – Pa. P.U.C. No. 1, Part III, Section C “Discontinuance, Termination and Restoration of Service.”

mandated that reconnection of service is not permitted until the customer certifies the removal of the private-side LSL.⁶

The PUC also modified a provision in the Partial Settlement that permits PWSA to perform a partial replacement if certain conditions exist such as technical infeasibility, unsafe structural or sanitary conditions, or excessive cost. The March 26, 2020 Order provided that PWSA is to temporarily not replace the public-side service line until it has reported the conditions or circumstances to the Community Lead Response Advisory Committee (“CLRAC”).⁷ After consulting with the CLRAC, PWSA is to determine the appropriate next steps. Those steps may include “potentially not replacing the public side of the line while corrosion control treatments and distribution of water filters remain in place or potentially receiving Commission approval to make reasonable changes, substitutions and extensions in or to service and facilities as may be necessary or proper for the accommodation and safety of patrons with these extraordinary circumstances or potentially receiving Commission approval of tariff provisions quantifying specific limits on PWSA’s financial responsibility for a private-side LSL replacement in extraordinary circumstances.”⁸

On April 10, 2020, PWSA filed a Petition for Reconsideration, Clarification and/or Amendment and UNITED filed a Petition for Reconsideration and Clarification, seeking reconsideration of the March 26, 2020 Order.⁹ PWSA requested that the PUC work with the Authority to attempt to clarify and revise the provisions added by the PUC in a manner that furthered the PUC’s apparent goal (shared by PWSA) of attempting to minimize the instances of

⁶ March 26, 2020 Order at 125.

⁷ March 26, 2020 Order at 125.

⁸ March 26, 2020 Order at 125.

⁹ BIE, OSBA and UNITED filed an Answer to PWSA’s Petition. PWSA filed an Answer to UNITED’s Petition.

partial replacements, but in a fair and equitable manner that would not result in customers unreasonably losing their water service.¹⁰ PWSA proposed clarifications and amendments to the Commission's proposed language that would enable some, if not all, of those customers to continue to receive water service without placing an undue hardship on the customer.

The Commission's Opinion and Order on Reconsideration was entered June 18, 2020 ("Reconsideration Order"). The Commission ordered that its modifications to the Partial Settlement set forth in its March 26, 2020 Order relating to partial LSL replacements should be held in abeyance pending the issuance of a subsequent Opinion and Order.¹¹ The Reconsideration Order directed that the parties to the proceeding confer on the following issues: (i) pre-termination notice requirements; (ii) tenant-occupied properties and unresponsive landlords; (iii) tangled titles and other technical property issues; (iv) independent legal restrictions that bar service terminations due to non-payment of utility bills; (v) emergency repairs; (vi) properties with high restoration costs; and (vii) partial replacement of LSLs due to circumstances described in the Partial Settlement at ¶ III.VV.1.b.i.¹² The Reconsideration Order also directed PWSA to file a compliance proposal to address the aforementioned issues by September 16, 2020.¹³

PWSA held a workshop with the parties to the compliance proceeding on August 10, 2020, to discuss the issues raised in the Reconsideration Order. Numerous parties expressed an interest in a second workshop. On September 3, 2020, PWSA requested a 14-day extension of time to submit its compliance proposal to the Commission to provide it the opportunity to

¹⁰ Petition of PWSA for Reconsideration, Clarification and/or Amendment of the Commission's March 26, 2020 Order at 22.

¹¹ Reconsideration Order at 158, Ordering Par. 4(a).

¹² Reconsideration Order at 158, Ordering Par. 4(b).

¹³ Reconsideration Order at 158, Ordering Par. 4(c).

continue to explore resolution of several issues. A Secretarial Letter dated September 10, 2020, granted PWSA's request to submit its compliance proposal no later than September 30, 2020. A second workshop was held on September 11, 2020.

PWSA hereby submits its plan, as described in more detail below.

II. COMPLIANCE PROPOSAL

Pre-Termination Notice Requirements

Background:

The Commission's Reconsideration Order directed PWSA to follow the currently effective termination procedures in its Tariff when a property owner refuses a private-side LSL replacement. The Commission clarified that, in non-emergency replacement situations, PWSA should initiate non-emergency termination procedures as set forth in its Tariff, Part III, Section C, Rule 3.j.i.-iii.,v. In emergency repair or replacement situations, however, the PWSA should use the emergency termination procedures set forth in its Tariff, Part III, Section C, Rule 3.j.iv. Non-emergency termination procedures under the PWSA Tariff require the PWSA to provide written notice of termination to customers at least 10 days in advance and make telephone call, e-mail or personal contact three days in advance of termination.¹⁴ Owners with Tenants and Protected-Tenants (as defined in PWSA's Tariff) must receive 37 days' and 30 days' notice, respectively.¹⁵

The Reconsideration Order directed that the Parties to the proceeding confer on pre-termination notice procedures that PWSA will employ when a property owner refuses a private-

¹⁴ See Tariff, Section C, Rule 3.j.i. and 3.j.v.

¹⁵ See PWSA Tariff at Sec. C, Rule 3.j.ii-iii.

side LSL replacement.¹⁶ The Commission further directed that the content and timing of pre-termination notices should apply to both owner-occupied and tenant-occupied properties.¹⁷

The Commission requested that the Parties address “whether it is appropriate for the Commission to define as an ‘emergency’ or ‘danger to life’ for purposes of Section 1523(a), the repair or replacement of a utility-owned LSL without the simultaneous replacement of a customer-owned LSL, and that the termination of service will alleviate this emergency or danger to life.”¹⁸ The Commission also inquired as to whether the Parties deem it “appropriate or necessary to reserve and address the issue in Stage 2 Compliance proceedings rather than in the collaborative / comment period provided herein.”¹⁹

Proposal:

PWSA proposes the following:

- PWSA will mail the Lead Service Line Replacement packet at least 45 days prior to performing the service line work. The packet will include a letter that states that, if the customer does not return the agreement to allow PWSA to replace the customer’s private-side LSL (which PWSA requests be returned within 10 days), PWSA will terminate the service.
- PWSA will send a notice of termination at least 37 days in advance of a potential termination, regardless of whether the property is owner occupied or tenant occupied, to the service address and, if different, the mailing address.
- PWSA will post (by door-hanger) locations where the mailing address is different from the service address a minimum of 30 days in advance of potential termination.
- PWSA will use notices and postings that are substantially similar to what is currently used by PWSA for termination due to lack of access to the meter, with certain provisions modified to reflect the context of the termination of service.

¹⁶ Reconsideration Order at 118-119, 158.

¹⁷ Reconsideration Order at 118.

¹⁸ Reconsideration Order at 117-118. Section 1523(a) states that “Except when required to prevent or alleviate an emergency as defined by the commission or except in the case of danger to life or property, before any termination of service to a landlord ratepayer for nonaccess as defined by the commission in its rules and regulations or nonpayment of charges, a public utility shall...” and then it continues to define the advanced notice obligations of the public utility. 66 Pa. C.S. § 1523(a).

¹⁹ Reconsideration Order at 118.

- When a private-side LSL has been verified, and PWSA does not receive a customer agreement authorizing PWSA to replace the line, PWSA will:
 - Mail a 10-day notice of termination letter to the service address and property owner (if the addresses are different);
 - Three days prior to termination, a PWSA Representative will visit the site, attempt contact and leave a termination door hanger (on the door or with the occupant, as applicable). If an occupant has previously threatened PWSA workers, this step will be conducted via phone call. If the mailing address for the owner is different from the service address, PWSA will attempt to contact the owner via telephone; and
 - On the day of termination, a PWSA Representative will visit the property and attempt contact with the occupant. If an occupant has been threatening to workers, this step will not be followed.
- All pre-termination notice steps taken by PWSA will be documented in its data management system.
- PWSA will develop the content for its pre-termination notices in the LSL replacement context. The content of its pre-termination notices will be similar to the notices PWSA uses for termination due to lack of access to the meter.
- The initial Lead Service Line Replacement packet provided by PWSA and the 30-day posting will include legal services/community organization referral information.
- If after termination the property owner indicates that he or she will execute the customer agreement, water service will be restored to their property. The property owner will then have five days to provide the executed agreement and coordinate with PWSA to schedule the replacement. If the aforementioned steps are not completed within that timeframe, PWSA will terminate service again on the fifth day. PWSA will not repeat the pre-termination notices previously provided.
- PWSA proposes an expedited complaint process for complaints regarding terminations of service in the LSL context due to the severe negative impacts on PWSA's construction progress and LSL replacement efforts if a complaint is filed with the Commission that would require PWSA to suspend termination while the complaint is pending. A proposed expedited complaint process is set forth below.
 - Upon the filing of a complaint regarding a termination of service in the LSL context, Commission staff (potentially, Bureau of Consumer Services staff) will immediately notify PWSA. The complaint will be treated as an informal complaint. PWSA will provide a response to the complaint and any supporting information and/or documents regarding the matter within 3 business days of when PWSA is notified of the complaint.
 - The complaint process will be limited to reviewing if PWSA followed the proper LSL termination procedures. A decision on the informal complaint would be issued within 5 business days of receipt of PWSA's response to the complaint.
 - If a complaint is filed prior to termination of service, the Commission's Staff may stay the termination pending a decision on the informal complaint. If it is

determined that PWSA did not follow proper LSL pre-termination procedures, PWSA may not terminate service to the customer until it has followed proper termination procedures.

- If a complaint is filed post-termination of service and Commission staff determines that PWSA did not follow the proper LSL termination procedures, PWSA will reconnect service to the subject property until the owner agrees to PWSA's offer to replace the private-side LSL or PWSA demonstrates that the proper termination procedures are followed.

PWSA submits that its proposed pre-termination procedures provide notice beyond what is required in its current Tariff for non-lead related issues. While PWSA's currently effective Tariff requires it to provide owners with tenants 37 days' notice prior to termination, PWSA proposes to send a notice of termination at least 37 days in advance of a potential termination, regardless of whether the property is owner occupied or tenant occupied. The only distinction in PWSA's proposal between owner-occupied and tenant-occupied properties is that PWSA proposes to post a door hanger at least 30 days in advance of potential terminations at locations where the mailing address is different from the service address (i.e., at tenant-occupied properties). PWSA's proposed outreach efforts would adequately inform the property owner and customer of PWSA's LSL replacement efforts and the consequences of a property owner's decision to refuse a private-side LSL replacement. PWSA is optimistic that the proposed pre-termination procedures will increase property owner participation in its Lead Service Line Replacement Program.

The pre-termination procedures proposed would aid PWSA in administering PWSA's LSL replacement efforts in an efficient manner and ensure compliance with the extensive requirements for termination. The proposed procedures would connect residents to legal service providers and community organizations that could aid in resolving any potential property issues that could result in termination of service. Due to the time and resources required to develop and produce the proposed pre-termination notices, PWSA requests that the Commission's Opinion

and Order provide PWSA at least 60 days to come into compliance with the Order's directives and to submit proposed tariff revisions.

PWSA proposes the expedited complaint process outlined above because of PWSA's serious concerns about the delays that will result if normal complaint timeframes are utilized in the LSL replacement context. If a complaint filed with the Commission would require PWSA to suspend termination in the LSL replacement context, it would cause severely negative impacts on PWSA's LSL replacement progress. PWSA's LSL replacement program is currently accomplished as part of its small diameter water main replacement effort. As part of replacing an entire water main on a City block, PWSA also replaces all "public side" service lines. PWSA also replaces any "private side" lines if they are lead. If PWSA is required to suspend termination of service to a customer every time a complaint is pending, PWSA will not be able to disconnect the old water mains (essentially keeping and maintaining both the old and new water main within that block or section of street), restore streets, etc. This means that the entire replacement effort would have to be stayed until the complaint of a single individual was resolved. Under typical timelines, the resolution of a consumer complaint can take months. This could stymie the pace of lead service line replacements, create dangerous and unsightly "temporary" excavation sites in City streets and add millions of dollars of cost to the program as a result of contractor rescheduling.

The proposed expedited complaint process is an effort to avoid these negative consequences. It would require a decision on the complaint (limited in scope to whether PWSA complied with its termination procedures) within 5 business days of receipt of PWSA's response to the complaint. Potentially, the Commission's Bureau of Consumer Services could conduct an initial investigation and determine whether there was any reason for staying the termination pending a decision on the complaint. These special procedures are justified because there is no

reasonable basis on which a customer should oppose the (free) replacement of their lead service line, which is a potential health issue for them (as well as future occupants of the property). PWSA proposes that the expedited complaint process apply in the context of various LSL termination situations, including tenant-occupied properties and unresponsive landlords, technical property issues, independent legal restrictions (winter moratorium, medical cases and the Commission’s COVID-19 moratorium), owner opt-outs due to high property restoration costs, where unsafe structural or sanitary conditions exist as well as when a customer merely “refuses.”

At this time, PWSA does not believe that the rights of tenants under Chapter 15, subchapter B of the Public Utility Code apply in the context of the replacement of a LSL replacement. Chapter 15, subchapter B does not appear to be applicable as a tenant may exercise the right to maintain service by paying the service bill directly to the utility.²⁰ Since termination of service in the LSL replacement context is unrelated to bill payment, PWSA does not believe that the specific rights of tenants under Chapter 15, subchapter B apply in this context. PWSA submits that it would be appropriate for the Commission to reserve for Stage 2 of PWSA’s Compliance Plan proceedings the issue of whether it should define as an “emergency” or “danger to life” for purposes of Section 1523(a), the repair or replacement of a utility-owned LSL without the simultaneous replacement of a customer-owned LSL, and that the termination of service will alleviate this emergency or danger to life.

Stage 2 of PWSA’s Compliance Plan proceedings will address other issues related to termination of service, including the PWSA’s process for identifying and terminating service at

²⁰ 66 Pa. C.S. § 1527(b).

tenant-occupied properties.²¹ PWSA is prepared to further discuss and refine its proposed pre-termination procedures as part of Stage 2 of its Compliance Plan proceedings.

Tenant-Occupied Properties and Unresponsive Landlords

Background:

The Commission's March 26, 2020 Order directed that PWSA terminate water service to tenant-occupied properties when a landlord does not accept PWSA's offer to replace their private-side LSL.²² In other words, "a landlord who does not live at a property who refuses to authorize the PWSA to replace a private-side LSL will not stop the PWSA's replacement of the public-side LSL but will cause the termination of service to the property. After the landlord removes the private-side LSL, installs a conforming line, and receives the PWSA's approval for reconnection to the public-side service line, water service may resume to the property."²³ In its Petition for Reconsideration, Clarification and/or Amendment, PWSA expressed its desire to avoid unnecessary terminations of service to tenants that do not have the ability to authorize replacement of a private-side LSL.²⁴ In its Reconsideration Order, the Commission declined to grant reconsideration but found that "in tenant-occupied properties, with regard to the private-side LSL and service termination, both the landlord and the tenant(s) should receive sufficient notice, in content and in timing."²⁵ The Commission requested that the Parties confer and submit a proposal on the notices to tenant-occupied properties with unresponsive landlords.

²¹ Reconsideration Order at 116.

²² March 26, 2020 Order at 120-122.

²³ Reconsideration Order at 136.

²⁴ PWSA Petition at 25-26.

²⁵ Reconsideration Order at 137.

Proposal:

PWSA's proposed pre-termination procedures for tenant-occupied properties with unresponsive landlords are addressed above in the general section on pre-termination notices.

Tangled Titles and Other Technical Property Issues

Background:

Individuals may have homes with a “tangled title” or other technical property issue that does not provide them with sufficient legal authority to consent to a LSL replacement. Currently, PWSA typically tries to connect these individuals to a lawyer or Neighborhood Legal Services to assist them in resolving these issues.

PWSA was awarded low interest loans from the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) to fund the first phase of its small diameter water main replacement plan, including certain LSL replacements. A condition of PENNVEST's funding is that PWSA must obtain an executed agreement from the property owner consenting to replacement of the LSL. This funding condition presents a challenge in certain technical property situations. PWSA continues to evaluate procedures to perform LSL replacements at properties with “tangled titles” or where there are other technical property issues.

The Reconsideration Order directed that PWSA confer and explore its legal authority to replace a LSL in tangled title situations and without a neighboring property owner's consent. The Commission also directed that PWSA “explore solutions to installing conforming service lines, including proposing reasonable changes, substitutions and extensions in or to its service and facilities as may be necessary or proper for the accommodation and safety of customers.”²⁶

²⁶ Reconsideration Order at 138.

During the workshop/stakeholder process, UNITED recommended that PWSA coordinate a referral process with Neighborhood Legal Services (“NLS”). UNITED recommended that PWSA refer individuals facing tangled title or other technical property issues to NLS to help resolve the issue before termination of service. Since PWSA is usually not aware of tangled title or other technical property issues until it reviews a signed agreement, PWSA’s LSL replacement work in a particular neighborhood/street is typically completed long before those issues can be resolved.

Proposal:

When a private-side LSL crosses one property to access another, PWSA will continue the procedures it currently follows to attempt to get both property owners to agree to allow the work necessary to replace the private-side LSL. PWSA will also evaluate solutions available to install conforming service lines. If PWSA is unable to obtain the neighboring property owner’s consent and there is no viable and economic solution to install conforming service lines, PWSA will commence procedures to terminate service to the neighboring property owner’s property pursuant to its Tariff.

Original Page No. 39 of PWSA’s Tariff Water – Pa. P.U.C. No. 1, Part III, Section C.3 provides that “service to the customer may be terminated for good cause, including, but not limited to....”²⁷ A customer should not have their water service terminated because their uncooperative neighbor denies PWSA access to their property to remove a LSL. As access to water plays a critical role in protecting public health, PWSA submits that good cause exists in these scenarios to proceed with termination of service to a neighboring property owner who denies PWSA access to their property to replace a LSL that serves a neighboring property.

²⁷ PWSA Tariff Water – Pa. P.U.C. No. 1, Original Page No. 39.

PWSA's Tariff also provides that "should the condition of a customer service line be such that there is a risk to public health or safety or of damage to public property, and the property Owner fails to take prompt action to cure the problem following notice to do so, the Authority shall have the right, but not the duty, to make the necessary repair or replacement and to charge the property Owner with the reasonable cost of the repair or replacement."²⁸ PWSA proposes to also rely on this provision should a neighboring property owner deny PWSA access to their property. Due to the potential health implications of a private-side LSL, a neighboring property owner's refusal to provide access to his or her property presents a risk to public health or safety and grants PWSA the authority to make the necessary LSL replacement. PWSA will not charge the neighboring property owner for the replacement of the private-side LSL.

Per the Commission's directive, PWSA has explored its legal authority to replace a private-side LSL in tangled title situations. PWSA has decided that it is willing to accept certain legal risks of replacing private-side LSLs in tangled title situations and will replace private-side LSLs in those situations on a going forward basis. Since PENNVEST funding requires that PWSA obtain an executed agreement from the property owner consenting to replacement of the LSL, PWSA will utilize other funds to replace LSLs in tangled title situations.

In response to the Commission's directive that PWSA "explore solutions to installing conforming service lines, including proposing reasonable changes, substitutions and extensions in or to its service and facilities as may be necessary or proper for the accommodation and safety of customers,"²⁹ PWSA submits that it will continue, as it does under current procedures, to explore solutions on a case-by-case basis. A case-by-case analysis of the potential solutions is

²⁸ PWSA Tariff Water – Pa. P.U.C. No. 1, Original Page No. 35.

²⁹ Reconsideration Order at 138.

necessary due to the fact-specific nature of complex technical property issues and the unique configuration of the structure or plumbing of each property.

PWSA will continue to evaluate ways that it can coordinate with legal services and community organizations to assist individuals that have homes with technical property issues. PWSA will develop outreach procedures to connect customers to legal services and other community organizations to assist them in resolving these issues. Primarily, those procedures will include providing legal services/community organization referral information in the initial Lead Service Line Replacement packets and the 30-day posting.

Independent Legal Restrictions

Background:

There are several situations in which PWSA does not terminate water service for bill payment issues, including winter moratorium, medical cases and the Commission's COVID-19 moratorium. In its March 26, 2020 Order, the Commission instructed that following a partial replacement where a property owner rejects PWSA's offer to replace a private-side LSL, PWSA is to: (1) not permit the reconnection of the private-side LSL to the newly installed public-side service line; (2) begin the process to terminate service to the residence; and (3) only reconnect customers after the customer certifies that their private-side LSL has been removed.³⁰ In its Petition, PWSA requested that the Commission permit certain exceptions to the March 26, 2020 Order directive, including in situations where there are independent legal restrictions such as the winter moratorium, medical cases and the COVID-19 moratorium.³¹

In its Reconsideration Order, the Commission directed that the Parties confer on the following two options that are available to the PWSA when encountering situations where these

³⁰ March 26, 2020 Order at 125.

³¹ PWSA Petition at 24-27.

independent legal restrictions exist: (1) PWSA will not replace either the public-side LSL or the private-side LSL; or (2) PWSA replace the public-side LSL and follow the directive in the March 26, 2020 Order to refuse the reconnection of the private-side LSL.

Proposal:

In situations where there are independent legal restrictions, PWSA proposes to proceed with replacing the public-side LSL and following the directive in the March 26, 2020 Order to refuse the reconnection of the private-side LSL. As the Commission aptly identified, the situations where PWSA does not terminate water service, including the winter moratorium, medical cases and the Commission's COVID-19 moratorium, are directly tied to consumer protections to prevent termination of utility service despite a customer's payment delinquency.³² The situation addressed in the LSL replacement context is not related to bill payment.

PWSA anticipates that the months PWSA will perform main replacement work will overlap with the winter moratorium months. If weather conditions permit, PWSA intends to perform main replacement work during the winter moratorium months. Notwithstanding the foregoing, PWSA proposes to proceed with replacing the public-side line and refusing to reconnect the private-side line to further its goal to eliminate lead lines from its system.

Emergency Repairs

Background:

Currently, when PWSA performs an emergency repair it provides a temporary connection and engages a contractor (with property owner approval) to replace the private-side LSL. At some locations, however, establishment of a temporary connection is not possible due to weather conditions or the configuration of the structure or plumbing. If PWSA cannot get in contact with the property owner, or the property owner does respond in a timely manner, PWSA may need to

³² Reconsideration Order at 139.

reconnect to the private-side LSL to ensure the residents are not without water. In these cases, PWSA provides the requisite water testing for lead, drinking water filters with instructions, and satisfies other applicable requirements.

Since July 1, 2019, 120 public-side emergency service line replacements have been performed and 84 of those lines were connected to private-side LSLs. Of those private-side LSLs, only 7 emergency partial LSL replacements were made, with 4 of those private-side LSLs ultimately being replaced when the property owner eventually responded to PWSA's outreach. While these emergency repairs a relatively uncommon event, PWSA requested that the Commission narrow the circumstances in which the directives in the March 26, 2020 Order (directing termination of service) will apply, by permitting an exception if PWSA replaces a public-side LSL under emergency circumstances and cannot obtain the property owner's consent.³³

The Commission directed in its Reconsideration Order that in emergency repair situations where PWSA cannot obtain consent from the property owner to replace the private-side LSL, PWSA is to use the emergency termination procedures set forth in its Tariff. PWSA's Tariff permits 24 hours' prior notice, or no prior notice, depending on the circumstances.³⁴ The Commission directed that the parties confer on the notice and outreach procedures that PWSA will undertake to residences in instances where PWSA does not complete the replacement of a private-side LSL due to an emergency repair and a non-responsive property owner.³⁵

³³ PWSA Petition at 24-27.

³⁴ Tariff, Section C, Rule 3.j.iv.

³⁵ Reconsideration Order at 117.

Proposal:

PWSA proposes the follow the following notice and outreach procedures in the event of an emergency repair where PWSA cannot obtain consent from the property owner to replace the private-side LSL:

- PWSA's Operations Team will notify PWSA Lead Help Desk personnel when an emergency repair is required and a private-side LSL is observed.
- PWSA's Lead Help Desk personnel will attempt to contact the property owner via telephone regarding the private-side LSL. Lead Help Desk personnel will leave voicemail message(s) for the property owner if a voicemail box is available.
- A member of PWSA's Operations Team or a Field Liaison will visit the property if the property owner cannot be reached by telephone. If the attempted in-person contact with the property owner is unsuccessful, the Operations Team member or Field Liaison will leave a door hanger to inform the property owner and/or resident of the emergency repair, request for authorization to replace the private-side LSL and the consequence for refusing PWSA's offer to replace the private-side LSL.
- If feasible, PWSA will install a temporary service connection. If it is not feasible for PWSA to install a temporary service connection, PWSA will terminate service in accordance with its Tariff which permits 24 hours' prior notice, or no prior notice, depending on the circumstances.
- If a temporary service connection is established, PWSA will follow non-emergency termination procedures and will replace the private-side LSL if it receives a property owner agreement consenting to replacement of the private-side LSL. After the non-emergency termination procedures are followed and the property owner has not consented to replacement of the private-side LSL, PWSA will remove the temporary service connection and terminate service.

PWSA's proposed procedures align with its current Tariff. In light of the challenge presented by emergency repairs, the proposed procedures provide adequate notice and outreach to both the property owner and the resident.

Properties with High Restoration Costs***Background:***

Property owners may opt-out of a private side replacement because of unreasonably large impacts to their property. Current PWSA policy is that PWSA will install the service line and backfill any excavations necessary to do so, but PWSA does not restore any landscape or

hardscape (including retaining walls, walk-ways, driveways, etc.). PWSA does restore public sidewalks that are disturbed during its LSL replacement efforts and patches the wall where the service line enters the residence. Property owners opt-out for many different reasons (in PWSA's experience to date typically there is about a 4% opt-out rate). Some of the property owners opt out because of the costs to them for restoration due to the need to remove a retaining wall or some extensive landscaping or hardscaping they have in place. In these locations, PWSA's work may impose unaffordable costs on PWSA's customers. PWSA does not have the resources to both replace a LSL and pay for all restorative work, including landscaping, hardscaping etc., especially when the necessary restoration work is extensive. In situations where it is anticipated that a property will have high restoration costs, PWSA provides information to the property owner about United Way's 211 program, Pittsburgh's Urban Redevelopment Authority's assistance programs and other resources available.

By way of further background, high restoration costs rarely result in a property owner declining a LSL replacement. In PWSA's 2019 Lead Service Line Replacement Program, PWSA secured 7,773 property owner agreements and only 339 property owners opted out of the program. Of the 339 property owners that opted out of the program, only 25 property owners opted out due to high restoration costs.

Both PWSA and UNITED requested that the Commission exempt from its termination directive instances where properties have high restoration costs.³⁶ In denying those requests, the Commission directed that the Parties confer and collaborate to determine "if there are reasonable changes, substitutions and extensions in or to service and facilities as may be necessary or proper for the accommodation and safety of customers with unduly burdensome restoration costs related

³⁶ PWSA Petition at 24-27; UNITED Answer at 6.

to customer mobility and stairs, walkways, driveways (but excluding landscaping and hardscaping).”³⁷ The Commission also requested that the Parties confer on other potential solutions and for PWSA to quantify any specific maximum limits on PWSA’s financial responsibility for a private-side LSL replacement in those extraordinary circumstances.³⁸

Proposal:

When a property has high restoration costs, PWSA will evaluate reasonable changes, substitutions and extensions in or to service and facilities. Reasonable changes, substitutions and extensions in or to service and facilities require analysis of the unique configuration of the structure or plumbing of each property. PWSA is committed to evaluating creative solutions when it encounters a property with high restoration costs. Examples of reasonable changes, substitutions and extensions in or to service and facilities typically include: exploration of less intrusive installation techniques or installing the service line in a different location within the property to avoid the disruption that is causing the cost to the customer.

PWSA proposes to continue to provide information to property owners facing high restoration costs about United Way’s 211 program, Pittsburgh’s Urban Redevelopment Authority’s assistance programs and other resources available. PWSA will also pursue additional legal service providers and community organizations that it can connect residents to that could assist with defraying the property restoration costs.

PWSA does not propose a specific maximum limit on PWSA’s financial responsibility for a private-side LSL in these extraordinary circumstances because its current policy assigns sole cost responsibility for restoring any landscape or hardscape (including retaining walls, walk-

³⁷ Reconsideration Order at 141.

³⁸ Reconsideration Order at 141.

ways, driveways, etc.) to the property owner. PWSA does restore public sidewalks that are disturbed during its LSL replacement efforts. PWSA's policy on restoration costs was established because PWSA believes that its limited funds should be directed at getting LSLs out of service rather than replacing private landscaping, especially in light of the increased value of the property from the LSL replacement.

PWSA has discussed with the Parties and CLRAC members the possibility of establishing a process to determine if property restoration costs are unduly burdensome to a customer. The process would avoid termination of service if a property owner is unwilling to consent to a private-side LSL due to unduly burdensome restoration costs, therefore resulting in a partial LSL replacement. PWSA respectfully submits that the Commission should modify its Order so as to avoid termination at homes with unduly burdensome restoration costs. While the proposed process may not be consistent with the Commission's goal of avoiding all partial LSL replacements, PWSA offers this process as a reasonable and equitable alternative. PWSA offers this process because, in some scenarios, reasonable changes, substitutions and extensions in or to service and facilities may not be available and terminating service could cause greater harm to the customer than a partial LSL replacement. PWSA is willing to work with the Parties and CLRAC members to continue to explore this potential process should the Commission authorize an exception to its termination directive in these limited circumstances.

Partial Replacement of Lead Service Lines in Certain Circumstances

Background:

The Commission ordered that the Parties confer on issues relating to the partial replacement of LSL due to circumstances described in Paragraph III.VV.1.b.i of the Partial Settlement. Paragraph III.VV.1.b.i of the Partial Settlement refers to circumstances such as when replacement of the private-side lead line is not technically feasible, unsafe structural or

sanitary conditions exist or the replacement would result in excessive cost (due to conditions such as length, terrain, obstructions, structures, pavement, trees or other utilities). Typically, these properties have non-water related infrastructure issues that impact PWSA's ability to perform the work. The cost to property owners to improve conditions that would allow PWSA to work safely can be excessive in some situations. When PWSA identifies a sanitary or structural concern related to the ability of PWSA workers and contractors to work safely at a property, it provides information to the property owner about United Way's 211 program and Pittsburgh's Urban Redevelopment Authority's assistance programs.

During the PWSA's 2019 Lead Service Line Replacement Program, PWSA opted-out at approximately 73 locations out of the almost 7,000 customer locations at which replacement work occurred. At almost all of the 73 locations, replacing the private LSL presented an unacceptable risk to the health and safety of the PWSA's employees and construction staff. Approximately two-thirds of these locations were properties owned by the City (e.g., taken for non-payment of taxes) and were in deplorable condition.³⁹ PWSA reports information regarding these opt-outs to the CLRAC at its regularly scheduled meetings.

Due to the excessive costs typically associated with addressing structural and sanitary issues and other limited conditions, PWSA requested that the Commission exempt from its termination directive those infrequently encountered scenarios. The Commission denied PWSA's request and directed that the Parties confer on "reasonable changes, substitutions and extensions in or to service and facilities as may be necessary or proper for the accommodation and safety of customers in these extraordinary circumstances and to quantify any specific limits on PWSA's financial responsibility for a private-side LSL replacement in such extraordinary

³⁹ PWSA Petition at 28.

circumstances.”⁴⁰ PWSA maintains that it is not reasonable to terminate service in these situations.

Proposal:

PWSA’s proposal focuses on scenarios where an unsafe structural or sanitary condition exists.⁴¹ PWSA is not financially responsible for rectifying structural or sanitary conditions in a residence. However, based on an assessment of the particular features of each property, PWSA will evaluate reasonable changes, substitutions and extensions in or to service and facilities when unsafe structural or sanitary conditions exist. Reasonable changes, substitutions and extensions in or to service and facilities require analysis of the features of each particular property and the unique configuration of the structure or plumbing of each property. PWSA proposes to continue to make best efforts to connect the property owner to resources to help rectify the issue.

PWSA also proposes that, if a property has an unsafe structure or sanitary condition, is unoccupied, and reasonable changes, substitutions and extensions in or to service and facilities are not feasible, PWSA will follow termination procedures and replace the public-side LSL. If a property has an unsafe structure or sanitary condition, is occupied, and reasonable changes, substitutions and extensions in or to service and facilities are not feasible, PWSA proposes to replace the public-side LSL and reconnect the private-side line. In these cases, PWSA would provide the requisite water testing for lead, drinking water filters with instructions, and follow other applicable requirements. PWSA recognizes that its proposal may not be consistent with the Commission’s goal of avoiding all partial LSL replacements. However, PWSA has not identified any other viable solution. Termination of service to a customer that does not have the

⁴⁰ Reconsideration Order at 150.

⁴¹ PWSA’s proposal is limited to these scenarios as PWSA has never opted out of replacing a property owner’s private-side LSL due to: (1) the cost to PWSA for the replacement; or (2) technical infeasibility.

resources to address structural and sanitary issues in their home, is not a viable or reasonable solution and termination of service would unnecessarily jeopardize their health and safety.

III. CONCLUSION

WHEREFORE, PWSA respectfully requests that the Pennsylvania Public Utility Commission issue an Order accepting the Company's plan for addressing termination of service in the lead service line replacement context and the associated lead service line replacement matters, as set forth herein.

Respectfully submitted,

Sarah C. Stoner

Daniel Clearfield, Esq.
(PA Attorney ID No. 26183)
Sarah C. Stoner, Esq.
(PA Attorney ID No. 313793)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000
717.237.6019 (fax)
dclearfield@eckertseamans.com
sstoner@eckertseamans.com

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Counsel for
The Pittsburgh Water and Sewer Authority