

**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	:		

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**COMMENTS OF PITTSBURGH UNITED  
TO THE  
THE PITTSBURGH WATER AND SEWER AUTHORITY'S  
STAGE 2 COMPLIANCE PLAN: CHAPTERS 14 & 56**

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**PENNSYLVANIA UTILITY LAW PROJECT**  
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**April 29, 2021**

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## **I. INTRODUCTION**

Pittsburgh United, by and through its counsel at the Pennsylvania Utility Law Project (PULP), hereby files the following Comments to the Pittsburgh Water and Sewer Authority (PWSA) Stage 2 Compliance Plan: Chapters 14 & 56 DSLPA and Collections (Stage 2 Plan), which was filed with the Pennsylvania Public Utility Commission (Commission) for approval on April 9, 2021, at the above captioned dockets.<sup>1</sup>

Pittsburgh United is a coalition of local organizations committed to advancing the vision of a Pittsburgh community and economy that works for all people. Its members work collectively to build a community whereby all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development. The provision of safe, affordable, and publicly owned water and wastewater service is critically important to the long-term health, safety, welfare, and economic prosperity of all Pittsburgh residents, and is of paramount importance to Pittsburgh United members.

As such, Pittsburgh United has taken an active interest in PWSA's transition to Commission oversight to help advance PWSA's future success as a publicly owned and operated water and wastewater utility serving the City of Pittsburgh for decades to come.<sup>2</sup> Pittsburgh United is an active party in all phases of PWSA's transition to Commission jurisdiction, including PWSA's water and wastewater base rate, tariff, and LTIP proceedings, and is also an active participant in PWSA's Low Income Advisory Committee (LIAC), and its Community Lead Response Advisory Committee (CLRAC).

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<sup>1</sup> These Comments are being filed pursuant to the Commission's February 4, 2021 Opinion and Order, which indicated that stakeholders may file comments no later than twenty (20) days after filing of the Stage 2 materials.

<sup>2</sup> See 66 Pa. C.S. §§ 3201-3209.

## II. COMMENTS

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

In light of the limited timeframe for comments and the pending litigation of PWSA's Compliance Plan and its 2021 rate case, Pittsburgh United will not attempt to identify every Compliance related issue in these Comments – nor would it be able to do so, given many issues may not be apparent until further investigation is conducted through discovery. Rather, we seek to provide the Commission with an overview of the most readily apparent issues with PWSA's Stage 2 Plan, which we intend to fully explore through the litigated portion of this proceeding. In particular, our substantive Comments will identify issues to be explored further through litigation and offer initial observations and recommendations with respect PWSA's compliance with Chapters 14 and 56, as well as PWSA's compliance with the Discontinuance of Service to Leased Premises Act (DSLPA) and its collections activities. We note that Pittsburgh United intends to investigate all aspects of PWSA's consumer billing, collections, and termination procedures, as well as its tenant-related procedures, to ensure full compliance with all applicable laws, regulations, orders, and Commission policy.

### a. Definitions

#### i. *Definitions of Applicant, Customer, Occupant, and Person*

In its Stage 2 Plan, PWSA indicates that it does not plan to adopt the Chapter 14 and 56 definitions of Applicant, Customer, Occupant, and Person.<sup>3</sup> PWSA asserts that its refusal to abide by these statutory and regulatory definitions is “not intended to deny any applicant, customer,

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<sup>3</sup> Stage 2 Plan at 31.

occupant or person any rights provided to them pursuant to Chapters 14 and 56 nor any applicable rights provided pursuant to DSLPA” – and is instead “intended to preserve PWSA’s right to pursue a lien for payment.”<sup>4</sup> PWSA’s failure to adopt the Commission’s definitions directly contradicts multiple provisions of the Public Utility Code and, while it may not be intended, the *actual effect* of PWSA’s failure to adopt the Commission’s definitions will be to detrimentally impacts the rights of all consumers, and will be especially impactful to the rights of tenants.

In pertinent part, DSLPA provides that, where a tenant faces termination of service due to the nonpayment of a ratepayer landlord, the tenant has the right to continued service without being forced to pay the landlord’s overdue charges.<sup>5</sup> DSLPA provides the tenant two options. First, the tenant has the right to continue service by paying the amount due for the billing month preceding the termination notice.<sup>6</sup> Second, DSLPA provides as follows:

Agreement for individual service.--Any tenant of a residential building or mobile home park who has been notified of a proposed discontinuance of utility service pursuant to section 1523 (relating to notices before service to landlord discontinued) **shall have the right to agree to subscribe for future service individually** if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions.<sup>7</sup>

Thus, according to DSLPA, a tenant facing termination due to nonpayment of a landlord ratepayer has the right to become a “customer” of the utility.

In its Stage 2 Plan, PWSA indicates that it refuses to allow tenants to become customers due to its perceived right to pursue municipal liens on the landlord’s property, unless the tenant

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<sup>4</sup> Id.

<sup>5</sup> 66 Pa. C.S. § 1527.

<sup>6</sup> 66 Pa. C.S. § 1527(a).

<sup>7</sup> 66 Pa. C.S. § 1527(d).

agrees to be responsible for the landlord's outstanding balance.<sup>8</sup> PWSA asserts that tenants are presented with the “‘voluntary’ option to agree to pay any outstanding charges at the property” – but there is nothing voluntary about requiring a consumer to accept liability for someone else's debt as a condition to receiving service.<sup>9</sup> Requiring tenants to pay the landlord's past due charges in order to exercise their rights under DSLPA directly contradicts the statute and violates the due process rights of tenants seeking protection under its provisions.<sup>10</sup>

PWSA's asserts that its policies are “[s]imilar to other municipal authorities” and designed to protect the ability to lien. However, all municipal authorities are required to allow tenants facing termination due to nonpayment by a landlord ratepayer to individually subscribe to service according to the Utility Service Tenants' Rights Act.<sup>11</sup> In other words, PWSA's policies were noncompliant with the laws governing municipal authorities and are now noncompliant with the laws governing regulated utilities. Notably, Philadelphia Gas Works – also a municipally owned utility subject to Commission jurisdiction – is not exempt from the statutory and regulatory definitions of *Applicant*, *Occupant*, *Customer*, and *Person* merely because they have the ability to lien a property for nonpayment.<sup>12</sup>

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<sup>8</sup> Stage 2 Plan at 31.

<sup>9</sup> Stage 2 Plan at 33.

<sup>10</sup> 66 Pa. C.S. § 1527(d); see also *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 98 S. Ct. 1554 (1978).

<sup>11</sup> See 68 P.S. § 399.7(b):

Any tenant of a residential building or mobile home park who has been notified of a proposed discontinuance of utility service pursuant to section 3 **shall have the right to agree to subscribe for future service individually** if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions. (emphasis added).

<sup>12</sup> PGW's lien power was explicitly preserved in Chapter 14, but it is nevertheless subject to all of the Chapter 14 provisions – including the foundational definitions in the Chapter. 66 Pa. C.S. § 1414.

Chapter 32 is explicit: “Beginning April 1, 2018, unless otherwise provided in this chapter, the provisions of [Title 66 of the Public Utility Code] ... **shall apply to an authority in the same manner as a public utility.**”<sup>13</sup> With regard to PWSA’s compliance with Commission rules and regulations, Chapter 32 plainly required PWSA to develop a plan for how it would comply with all Commission standards – *including those related to both billing and collections*:

[PWSA] shall file a compliance plan with the commission which shall include provisions to bring an authority’s existing information technology, accounting, billing, collection and other operating systems and procedures into compliance with the requirements applicable to jurisdictional water and wastewater utilities under this title and applicable rules, regulations and orders of the commission.<sup>14</sup>

PWSA should be required to adopt the Commission’s definitions of Applicant, Customer, Occupant, and Person, and allow tenants to exercise their right to individually subscribe to service.

*ii. Definitions of Billing Month and Billing Period*

In its Stage 2 Plan, PWSA indicates that it does not have a formal definition of “billing month in its tariff.”<sup>15</sup> PWSA also indicates that the duration of its billing months may not be compliant with the Chapter 56 definition of billing month, which requires a billing month be “a period of not less than 26 days and not more than 35 days.”<sup>16</sup> PWSA asserts that it attempts to comply with this provision in the following manner:

The number of days in a billing month is maintained through the pre-billing edit process. PWSA Billing personnel run a report for each billing cycle that indicates how many days there are in the service period. If a service period falls outside of the range of 26 to 35 days, PWSA personnel will add a new “to” reading date that is within range.<sup>17</sup>

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<sup>13</sup> 66 Pa. C.S. § 3202.

<sup>14</sup> 66 Pa. C.S. § 3204(b)

<sup>15</sup> Stage 2 Plan at 35.

<sup>16</sup> Id.

<sup>17</sup> Id.

Through this response, PWSA admits that its billing months exceed the range of duration allowed by Chapter 56. PWSA does not provide any further details on the actual length of its billing months or whether it intends to adjust customer bills for the billing months that exceed 35 days. Large fluctuations in the number of days in a billing month can be confusing for customers and can make it difficult for consumers to keep up with their bills. Further investigation is needed to determine the impact of PWSA's current policy and procedure, and whether PWSA should be ordered to adopt the Chapter 56 definition of a billing month.

*iii. Definition of Nonresidential Service*

PWSA's Tariff definition for "Nonresidential Service" would include master-metered mobile homes or multi-tenant apartment buildings, which house customers who are eligible for residential customer and tenant protections in DSPLA and Chapters 14 and 56.<sup>18</sup> In its Stage 2 Plan, PWSA asserts that it uses this Nonresidential classification for billing purposes only and maintains a separate billing code for residential properties.<sup>19</sup> It is unclear from PWSA's description how it identifies whether these properties have a "residential component" and whether that designation changes over time. Further investigation is needed to determine whether PWSA is accurately identifying residential versus nonresidential properties and to ensure that residential customers and tenants are not deprived of their rights and protections due to the mislabeling of residential properties.

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<sup>18</sup> Stage 2 Plan at 35.

<sup>19</sup> *Id.* at 36.



## **b. Billing and Payment Standards**

### *i. PWSA Non-Access Program*

PWSA's Stage 2 Plan describes its process for encouraging customers to enable PWSA to enter a consumer's property to enable PWSA to access meters.<sup>20</sup> Pittsburgh United is concerned about PWSA's Non-Access Process for tenant occupied accounts. PWSA's process as detailed in the Stage 2 Plan indicates that service to a tenant occupied property will be terminated if the "customer" does not make an appointment for meter reading, PWSA will terminate service to the property.<sup>21</sup> This is troubling because, as indicated above, PWSA does not include tenants in its definition of "customer."<sup>22</sup> Thus, as expressed in the Stage 2 Plan, tenants are unable to schedule an appointment for meter reading and will be terminated if their landlord does not contact PWSA to make an appointment. This is problematic for tenants with absentee landlords who may not be responsive to PWSA's communications. Thus, PWSA must be ordered to allow tenants to become "customers" and to schedule meter readings or cease terminating tenant accounts through its Non-Access Policy.

## **c. Credit and Deposit Standards**

### *i. Third Party Requests for Service*

In its Stage 2 Plan, PWSA does not permit third parties to establish service on behalf of another person and, therefore, complies with Section 56.36(b)(3), which requires utilities to have processes in place to verify the legitimacy of the request.<sup>23</sup> However, PWSA does not specify how and whether it accommodates applicants with Limited English Proficiency and/or a disability. Applicants for service who do not speak English or those with a disability may require

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<sup>20</sup> *Id.* at 39.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 31.

<sup>23</sup> Stage 2 Plan at 47.

another person to set up service on their behalf. PWSA must develop a plan to make accommodations for these types of applicants and must also develop a plan to verify the legitimacy of the request in these circumstances.

**d. Termination of Service**

*i. Medical Certificates*

In describing its process for accepting medical certificates, PWSA indicates that it gives customers 7 days to provide a medical certificate pursuant to the Commission's Moratorium on Terminations Emergency Order, but does not describe its regular process.<sup>24</sup> The Moratorium has now expired. PWSA should amend the plan to describe its process for accepting medical certificates in the absence of the Commission's COVID-19 termination moratorium.

*ii. Personal Contact Immediately Prior to Termination*

In its Stage 2 Plan, PWSA indicates that it does not intend to attempt to make personal contact at the residence immediately prior to termination pursuant to 52 Pa. Code § 59.94 (aka, the "Knock Rule"). Instead, PWSA intends to "place a phone call the day prior to immediately prior to residential service terminations."<sup>25</sup> This approach is not compliant with Chapter 14 of the Public Utility Code or the Commission's regulations. Section 56.94 states:

Immediately preceding the termination of service, a public utility employee, who may be the public utility employee designated to perform the termination, shall attempt to make personal contact with a responsible adult occupant at the residence of the customer.<sup>26</sup>

Compliance with this provision requires **(1) personal contact (2) at the residence (3) immediately prior to termination.**<sup>27</sup> This is why it is colloquially known as the "Knock Rule."

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<sup>24</sup> *Id.* at 57.

<sup>25</sup> *Id.* at 58.

<sup>26</sup> 52 Pa Code § 56.94; see also 66 Pa. C.S. § 1406(b).

<sup>27</sup> 52 Pa. Code § 56.94.

A phone call made the day before termination meets none of these requirements. PWSA's interpretation of Section 59.94 as allowing it to supplant the requirement to attempt personal contact with an adult at the residence immediately prior to termination with a phone call the day before termination is clearly erroneous.<sup>28</sup> Section 56.93 requires a phone call before termination, which is made 72 hours before the day of the scheduled termination.<sup>29</sup> Consumers facing the loss of water and wastewater service often have unstable access to telecommunications service as well, and may not receive the 72-hour call – or a call placed the day before a termination. But there are many reasons why a phone call to the property may not reach consumers – either 72 hours prior to termination or the day before. The “Last Knock” rule serves a very specific and critically important purpose, and provides a final backstop to help prevent termination to medically vulnerable households or after payment has been made. While PWSA voices concern about the safety of its employees who would be required to attempt personal contact at the residence, all other regulated utilities comply with the “Knock Rule” without issue.

PWSA indicates that it has agreed to include as part of a then-upcoming Request for Proposals (“RFP”) process for a vendor to post termination notices that the vendor also agree to perform the requirements of Section 56.94.<sup>30</sup> While this is not technically compliant with Section 59.94, it would be a step in the right direction and help protect the rights of those facing termination. PWSA indicates it anticipated issuing the RFP in February 2020 with implementation in May or June 2020, but that the onset of the COVID-19 pandemic and the Commission's Moratorium on Terminations Emergency Order entered March 13, 2020 the RFP has not yet been

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<sup>28</sup> 52 Pa. Code § 56.94

<sup>29</sup> 52 Pa. Code § 59.93.

<sup>30</sup> Stage 2 Plan at 59.

issued.<sup>31</sup> PWSA must move forward with the RFP to ensure protection of the due process rights of those facing termination now that the Moratorium is lifted.

*iii. Termination Notice Scripts*

In Appendix B to its Stage 2 Plan, PWSA includes call scripts for calls made to consumers facing imminent termination. Pittsburgh United notes that there are minor technical issues with these scripts that must be addressed to ensure that consumers are appropriately advised about their rights and available assistance programs that could help stop the termination.

**e. Standards for Victims of Domestic Violence**

PWSA asserts that it is fully compliant with sections L through V of Chapter 56, which applies to victims of domestic violence with a Protection from Abuse Order or other court order that contains evidence of domestic violence, and notes that it received on-site training “to better understand issues related to domestic violence victims and the Commission’s requirements.”<sup>32</sup> Pittsburgh United is supportive of PWSA’s efforts to comply with the Commission’s regulations, and notes that it appears many of PWSA’s policies are compliant. That said, PWSA’s policy regarding Section 56.285 – which exempts victims of domestic violence from occupant liability rules contained in Chapter 14 and 56 – is vague. In its plan, PWSA notes only that it “takes this [rule] into account” – but does not specify whether domestic violence victims are in fact charged with third party arrears, or how it applies the rule. Further investigation is necessary to ensure that victims of domestic violence are not charged with debt accrued in the name of a third party.

**f. Lead Service Line Replacements**

In its June 2020 Stage 1 Order on Reconsideration, the Commission set forth a number of requirements for PWSA to proceed with termination of service to a residential property when the

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<sup>31</sup> *Id.*

<sup>32</sup> Stage 2 Plan at 65.

home owner does not accept a free lead service line replacement. As part of that Order, the Commission noted that parties to this Stage 2 proceeding should address whether PWSA must comply with DSLPA before proceeding with termination to a tenant-occupied property for refusal of the property owner to accept a lead service line. Pittsburgh United asserts that PWSA must comply with DSLPA when it seeks to terminate service to a property in these circumstances, and notes that it will further address this issue through litigation.

**g. Collections**

With regard to collections, PWSA's Stage 2 Compliance Plan first sets forth a legal framework for Commission review of its collections activities, in which PWSA claims the Commission has no jurisdiction over its lien practices and that PWSA has nevertheless "elected to present a comprehensive description of its Collections Plan."<sup>33</sup> Pittsburgh United disagrees with PWSA's legal analysis, and notes that it intends to further investigate the issue through the course of the litigated proceeding.

In describing its collections process, PWSA focuses on the collections practices in place through the pandemic as a result of the Emergency Termination Moratorium.<sup>34</sup> However, PWSA does not describe its standard, non-emergency collections process or how that process complies with the Public Utility Code and applicable Commission regulations and order. Specifically, PWSA did not describe its payment application rules and its timeline for triggering various collections actions and associated customer communications. This is an area that requires further factual inquiry and investigation to ensure that PWSA's collections policies are compliant with all applicable laws and regulations.

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<sup>33</sup> Stage 2 Plan at 67

<sup>34</sup> Id. at 68-69.

With regard to its efforts to collect “bad debt”, PWSA briefly explains the steps it has recently taken to collect aged debt that was previously subject to collections by its former third party collections agency, Jordan Tax Service (JTS).<sup>35</sup> PWSA explains that it terminated its contract with JTS on June 30, 2019, and that it thereafter debited over 6,000 accounts for unpaid water and wastewater charges under four years where the customer who incurred the debt is still the owner of record.”<sup>36</sup> PWSA intends to lien an additional 8,529 accounts for approximately \$16.5 million for unpaid charges older than four years.<sup>37</sup> PWSA notes that it is evaluating whether to contract with a collections agency, and asserts that any contract would “ensure that all residential customer protections as set forth in Chapter 14, Chapter 56, and DSLPA would be followed.”<sup>38</sup>

In PWSA’s 2018 rate and tariff proceeding, the record showed that JTS was levying excessive fees and charges that far exceeded the Commission’s standards. Through Settlement, the parties agreed that PWSA would suspend its contract with JTS, that PWSA would submit supplemental information about its collections policies in its Stage 2 Compliance Plan proceeding, and that the parties would “investigate whether PWSA’s third party collection activities conform with the Public Utility Code and the Commission’s regulations applicable to residential customers.”<sup>39</sup>

Pittsburgh United asserts that further investigation of the process used to recover debts previously held by JTS is necessary to determine whether PWSA’s “bad debt” collection activities are compliant with all applicable laws and policies. Pittsburgh United intends to fully review PWSA’s collections practices, including applicable data and information about the amount of the

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<sup>35</sup> Id. at 69.

<sup>36</sup> Stage 2 Plan at 70.

<sup>37</sup> Id.

<sup>38</sup> Stage 2 Plan at 70.

<sup>39</sup> Pa. PUC v. PWSA, Joint Petition for Settlement, Docket Nos. R-2018-3002645, -3002647, para. G.1.d (filed Nov. 29, 2018).

debts collected, the process used to notify and educate consumers of the aged debts, the process to appeal disputed amounts, the availability of payment arrangements, and the programs available to help remediate the hardship that the resurrection of old debt may cause.

PWSA next describes its process for accounts with balances over \$10K, and noted that “each account is reviewed to ensure that all available collection actions have been taken by the authority.” However, it does not provide any information necessary to assess PWSA’s process and identify whether additional arrearage management policies or programs are necessary.

In the final section of its Stage 2 Plan, with regard to collections, PWSA notes that its collections process “has evolved since coming under the jurisdiction of the Commission” – which has necessitated safeguards to protect residential customer rights pursuant to Chapter 56 and DSLPA. However, PWSA provides no details for how it safeguarded consumers – it merely refers back to its earlier discussion of Chapter 14, Chapter 56, and DSLPA.

In sum, there are a number of critical pieces of information and data which are currently missing from PWSA’s Stage 2 Compliance Plan. Pittsburgh United intends to fully engage in the pending litigation to investigate PWSA’s collections plans, processes, and procedures, as well as applicable data which may help to illuminate whether PWSA’s policies and procedures are appropriate and consistent with the Public Utility Code, Commission regulation, and other orders or policies of the Commission.

### **III. CONCLUSION**

Pittsburgh UNITED respectfully asserts that the above comments and recommendations will assist the Commission and interested stakeholders to perform a more thoughtful, well informed, and complete assessment of PWSA’s applicable policies and practices through the

course of the litigated proceeding. We look forward to continuing as an active and engaged participant in PWSA's successful transition to Commission jurisdiction.

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**  
***On Behalf of Pittsburgh UNITED***



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<b>Water and Sewer Authority</b>	<b>:</b>		

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**Certificate of Service**

I hereby certify that I have this day served copies of the **Comments of Pittsburgh UNITED** upon the parties and interested stakeholders in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54, as modified by the Commission's March 20, 2020 Emergency Order, in the manner and upon the persons listed below.

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