**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held February 4, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

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| Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1    Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan | M-2018-2640802  M-2018-2640803  P-2018-3005037  P-2018-3005039 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Compliance Proposal (Proposal) of the Pittsburgh Water and Sewer Authority (PWSA or Authority) filed on September 30, 2020, pursuant to the Commission’s Opinion and Order entered June 18, 2020 (*June 2020 Order*). On October 15, 2020, the Office of Consumer Advocate (OCA) and Pittsburgh UNITED (UNITED) filed their respective Comments to the Proposal. The PWSA filed Reply Comments on October 26, 2020. For the reasons stated below, we shall approve the Proposal, as modified, consistent with this Opinion and Order.

# I. History of the Proceeding[[1]](#footnote-2)

On September 28, 2018, the PWSA filed its Compliance Plan in response to the Final Implementation Order laying out the process for implementing Act 65 of 2017 (Act 65) and the amendments to Chapter 32 of the Public Utility Code (Code).[[2]](#footnote-3) Thereafter, the statutory advocates and various parties intervened and participated in the proceeding, including the Commission’s Bureau of Investigation and Enforcement (I&E), the OCA, the Office of Small Business Advocate (OSBA), the Pennsylvania-American Water Company (PAWC), and UNITED.

An evidentiary hearing was held on August 21, 2019, before Deputy Chief Administrative Law Judge (ALJ) Mark A. Hoyer and ALJ Conrad A. Johnson. On September 13, 2019, the PWSA, I&E, the OCA, the OSBA, UNITED, and PAWC (collectively, Joint Petitioners) filed a Partial Settlement.

In their Recommended Decision (R.D.) issued on October 29, 2019, the ALJs found that the Partial Settlement was in the public interest and recommended its approval without modification.[[3]](#footnote-4) Additionally, the ALJs recommended that the Commission approve without modification the PWSA’s residential Lead Service Line Replacement (LSLR) Program, which was revised over the course of the litigation and to which the PWSA has committed to continuous evaluation to meet its target date of replacing all residential service lines in its system by 2026; and therefore, the ALJs found the PWSA’s LSLR Program to be in the public interest. R.D. at 1*.*

The PWSA, I&E, the OCA, the OSBA, and UNITED filed Exceptions to the R.D. on November 18, 2019, and Replies to Exceptions on December 3, 2019.

In an Opinion and Order entered on March 26, 2020 *(March 2020 Order),* we adopted and modified the Partial Settlement. As discussed below, we modified the Partial Settlement to address the partial replacement of lead service lines (LSLs).[[4]](#footnote-5) Additionally, we granted, in part, and denied, in part, the Exceptions filed by the PWSA and I&E; denied the Exceptions of the OCA, the OSBA and UNITED; and adopted and modified the ALJs’ Recommended Decision.

On April 10, 2020, the PWSA filed a Petition for Reconsideration, Clarification and/or Amendment (PWSA Petition) and UNITED filed a Petition for Reconsideration and Clarification (UNITED Petition) to the *March 2020 Order*. On April 20, 2020, I&E, the OSBA, and UNITED filed Answers to the PWSA Petition and the PWSA filed an Answer to the UNITED Petition.

In the *June 2020 Order*, we ordered that the modifications to the Partial Settlement set forth in the *March 2020 Order* relating to partial LSL replacements be held in abeyance while the Parties conferred on the remaining issues and pending the issuance of a subsequent Opinion and Order. We also ordered the PWSA to file its Proposal to address these issues by September 16, 2020. *June 2020 Order* at 158.

On August 10, 2020, the Parties convened a meeting to discuss the remaining partial LSL replacement issues and some Parties expressed an interest in a second workshop. On September 3, 2020, the PWSA requested a 14-day extension to submit its Proposal in order to explore the resolution of several issues. By Secretarial Letter dated September 10, 2020, the Commission granted the PWSA’s request and directed the filing of the Proposal by September 30, 2020. Thereafter, the Parties convened a second workshop to address the partial LSL issues. Proposal at 4-5.

As indicated above, the PWSA filed its Proposal on September 30, 2020, and the OCA and UNITED filed their respective Comments to the Proposal on October 15, 2020. The PWSA filed Reply Comments on October 26, 2020.

# II. Discussion

We note that any arguments not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. Public Utility Commission*,625 A.2d 741 (Pa. Cmwlth. 1993).

## A. *March 2020 Order*

In the *March 2020 Order*, our modifications to the Partial Settlement stated that the PWSA is not permitted to reconnect a private-side LSL to the newly installed public-side service line in the four circumstances defined in the Partial Settlement. Three of the circumstances involved instances where a property owner does not consent to the PWSA’s offer to replace the private-side LSL; the fourth involved situations where the PWSA determines, in its sole discretion, that performing the replacement would be operationally infeasible and/or produce excessive cost. *March 2020 Order* at 98-99.

Regarding the circumstances where a customer does not consent to the replacement offer of the private-side LSL, we directed that the following three provisions of the Partial Settlement may not go into effect:

* 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.

*March 2020 Order* at 195.

Instead, we modified the Partial Settlement to direct that – in the event the PWSA is unable to obtain customer consent for the replacement of their private-side line – it shall begin the process to terminate service to the residence with prior notice pursuant to the existing termination provisions of the effective Tariff. In addition, we directed that reconnection of service would not be permitted until the customer certifies the removal of the private-side LSL. *March 2020 Order* at 125, 196.

As to the fourth circumstance pertaining to operational infeasibility and/or excessive cost, we directed that the following provision of the Partial Settlement may not go into effect:

* If PWSA determines, in its sole discretion, that replacement of the portion of the LSL owned by the property owner at a particular residence or related interior plumbing modification is not technically feasible, the residence is unsafe from a structural or sanitary condition, or will result in excess expense, due to conditions, such as length, terrain, obstructions, structures, pavements, trees, or other utilities, PWSA may exclude such residence and not replace private side of the LSL.

*March 2020 Order* at 194-95.

We modified this provision to state that the PWSA is to temporarily halt the replacement of public-side LSLs until it has reported the conditions or circumstances to the Community Lead Response Advisory Committee (CLRAC). After consulting with the CLRAC, the PWSA was directed to determine the appropriate next steps, which may include:

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 lead service line replacement in extraordinary circumstances.

*March 2020 Order* at 125, 195-96.

In the PWSA Petition, the PWSA requested, in part, that the Commission work with the Authority to attempt to clarify and revise the provisions added by the Commission in a manner that furthered the goal of minimizing the instances of partial LSL replacements, but in a manner that would not result in customers unreasonably losing their water service. In its Petition, PWSA proposed clarifications and amendments to enable some customers to receive water service without placing an undue hardship on the customer. PWSA Petition at 22.

## B. *June 2020 Order*

In the *June 2020 Order*, we held that our modifications to the Partial Settlement pertaining to the partial replacement of LSLs be held in abeyance to allow the Parties time to resolve the remaining issues. Specifically, we directed the Parties to confer about the partial LSL circumstances with respect to 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 lead service lines due to circumstances described in the Partial Settlement at ¶ III.VV.1.b.i [pertaining to operational infeasibility and/or excessive cost].

*June 2020 Order* at 158.

## C. Compliance Proposal, Comments, and Disposition

### 1. Pre-Termination Notice Requirements

In the *June 2020 Order*, we directed the PWSA to follow the currently effective termination procedures in its Tariff when a property owner refuses a private-side LSL replacement. However, we clarified that, in non-emergency replacement situations, the Authority should initiate non-emergency termination procedures as set forth in its applicable Tariff. The non-emergency termination procedures in its Tariff require the PWSA to provide written notice of termination to customers at least ten days in advance and make telephone call, e-mail or personal contact three days in advance of termination; owners with tenants and protected tenants (as defined in the Tariff) must receive 37- and 30-day notices respectively. *June 2020 Order* at 116-17 (citing PWSA Tariff, Section C, Rule 3.j.i.-iii.,v).

In emergency repair or replacement scenarios, we emphasized that the PWSA should use the termination procedures set forth in its Tariff, which permits 24‑hour prior notice, or no prior notice, depending on the circumstances. *June 2020 Order* at 117 (citing PWSA Tariff, Section C, Rule 3.j.iv). Nonetheless, we recognized that additional notice and outreach may be required in emergency repair situations so that the property owner and customer are adequately informed of the situation and the consequence for refusing the PWSA’s offer to replace the private-side LSL. Accordingly, we requested that the Parties confer on the notice and outreach procedures that the 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. *Id.*

Moreover, we 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.” [[5]](#footnote-6) *June 2020 Order* at 117-18. Alternatively, we requested the Parties to indicate whether they deem it appropriate or necessary to reserve and address this issue in Stage 2 Compliance proceedings rather than in the collaborative/comment period in this proceeding. *Id*. at 118.

In response, the PWSA proposes the following notice requirements:

* 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.
* 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.

Proposal at 6-7.

In explaining the pre-termination notice procedures, the PWSA asserts that they go beyond the requirements of its current Tariff for non-lead related issues. Currently, the Authority’s Tariff requires it to provide notice to owners with tenants thirty-seven days prior to termination. The PWSA’s proposal would require notice thirty-seven days in advance of a potential termination regardless of whether the property is owner occupied or tenant occupied. According to the PWSA, the only distinction between owner occupied and tenant occupied properties is that the Authority proposes to post a door hanger at least thirty days in advance of potential terminations at locations where the mailing address is different from the service address, which the PWSA submits would be at tenant-occupied properties. *Id*. at 8.

The PWSA contends that its proposed outreach efforts would adequately inform property owners and customers of the Authority’s LSL replacement plans and the consequences of a property owner’s decision to refuse a private-side LSL replacement. The PWSA believes its procedures will increase property owner participation in the LSLR Program. Proposal at 8.

In addition, the PWSA argues that its procedures would aid efficiency and ensure compliance with the extensive requirements for termination. The procedures would also help connect residents with legal service providers and community organizations that could aid in resolving potential property issues which might result in termination of service. However, due to the anticipated time needed to develop and produce the required notices, the PWSA requests that the Commission provide a compliance period of at least sixty days at which time the Authority would submit a proposed Tariff revision. *Id*. at 8-9.

Next, the PWSA addresses the request to consider whether it is necessary for the Commission to consider the repair or replacement of a utility-owned LSL without the simultaneous replacement of a customer-owned LSL as an “emergency” or “danger to life” for purposes of Section 1523(a) of the Code. The PWSA argues that the rights of tenants under Chapter 15, Subchapter B of the Code (pertaining to the discontinuance of service to leased premises) do not appear to apply in the context of LSL replacements. In support, the Authority cites to Section 1527(b) of the Code whereby a tenant may exercise the right to maintain service by paying the service bill directly to the utility. However, the PWSA continues, the termination of service in the LSL replacement context is unrelated to bill payment and, thus, the specific rights of tenants under Chapter 15, Subchapter B of the Code are inapplicable. Proposal at 10.

In consideration of the alternate request of whether the Commission should defer the issue of defining partial LSL replacements as an “emergency” or “danger to life,” the PWSA submits that reserving this issue to Stage 2 of the Compliance Plan proceedings would be appropriate. Stage 2 will address other issues related to termination, including the PWSA’s process for identifying and terminating service at tenant-occupied properties. The Authority asserts that it is prepared to further discuss and refine its proposed pre-termination procedures as part of the Stage 2 proceeding. *Id*. at 10-11.

#### a. Comments and Replies

In its comments, UNITED argues that four modifications or clarifications should be made to the termination notice procedures. UNITED Comments at 4-10.

First, UNITED contends that the PWSA should ensure that all customers who might benefit from referrals to legal or social service receive information about how to access those services. However, UNITED contends, the PWSA proposal identifies only two occasions on which it will provide referral information: (1) in the initial authorization packet; and (2) on the door hangers announcing the 30-day termination notice. Although the information notices in those two instances are necessary, UNITED submits that the PWSA should also be required to provide legal and social service referrals in each termination notice, including the 37-day, 10-day, 3-day, and same-day notices. *Id.* at 5.

Regarding the referrals, UNITED also argues that the Authority should provide information as part of other communications with customers, including during canvassing and community meetings. Moreover, UNITED proffers that the PWSA, when possible, should invite representatives from local legal and social service providers to attend community meetings with the Authority to help ensure that community leaders are aware of and connected to these resources. *Id*.

Second, UNITED supports the PWSA’s proposal to provide the 3-day notice of termination in person but recommends that the Authority be required to attempt to contact the customer through alternative means – such as a phone call – if personal contact at the property is unsuccessful. Additionally, UNITED requests clarification for curtailing in-person notice at the residence prior to termination when the PWSA’s employees have been threatened. UNITED Comments at 5.

Regarding the issue of in-person notice, UNITED submits that face-to-face discussion with a resident on the verge of a water service shut off is an important opportunity for the Authority to explain its offer of a free LSL replacement. Thus, UNITED believes that the PWSA should clarify that it will only forgo in-person notice when a resident has communicated a threat to the physical safety of one of its employees. As an example, UNITED considers the brandishing of a weapon at an employee as qualifying as a threat, but that customers slamming doors shut or raising their voices on customer service calls as not constituting threats. Additionally, UNITED asserts that if the PWSA shifts from an in-person to a written notice because of a threat, the Authority should record that decision and the reasons for it. As an added measure, UNITED submits that the PWSA should provide this information to the CLRAC and the Low Income Assistance Advisory Committee (LIAAC), with customer details redacted for privacy. According to UNITED, these committees may have feedback based on the frequency of and justifications for curtailing in-person notice and the PWSA should consult with them to delineate standards for when in-person notice will be forgone. *Id*. at 5-6.[[6]](#footnote-7)

Third, UNITED proffers that the PWSA should make clear that property owners whose water service was terminated following a partial LSL replacement are still eligible for the income-based reimbursement program and provide information to residents on how to participate in the program. The Authority should inform customers verbally and in writing of their eligibility for the reimbursement program when it terminates their service. UNITED Comments at 6-7.

Fourth, UNITED argues that the PWSA should mail the initial Lead Service Line Replacement Packet to both the service address and billing address of customers to ensure that tenants are aware of the pending LSL replacement and are equipped with information necessary to protect their rights. In addition, UNITED asserts that the Authority should consult with the CLRAC and LIAAC to develop tenant-focused information for inclusion in the Lead Service Line Replacement Packet. Specifically, UNITED submits that information directed to tenants should be included in the initial cover letter for the packet and the packet should include a stand-alone information sheet that explains tenants’ options, urges tenants to contact their landlord to help facilitate the agreement, and provides referrals to available legal and social services if their landlord refuses to comply. UNITED Comments at 6-8.

In its comments, UNITED objects to the PWSA’s assertion that Chapter 15, Subchapter B of the Code does not apply in the context of LSL replacements. However, in light of the PWSA’s proposal to incorporate 37- and 30-day notices in its termination process for LSL refusals, UNITED agrees with the Authority that issues surrounding compliance with Chapter 15, Subchapter B of the Code, which UNITED describes as the Discontinuance of Service to Leased Premises Act (DSLPA), should be addressed in the context of the Stage 2 Compliance Plan proceeding. According to UNITED, the issues surrounding the PWSA’s compliance with the DSLPA go far beyond the replacement of LSLs and “are best handled in a holistic manner while examining the totality of PWSA’s termination procedures in the context of the Stage 2 proceeding.” UNITED Comments at 7-8.

Other than its requested modifications and clarifications, UNITED does not object to the other termination notice procedures proposed by the PWSA. Specifically, UNITED supports the Authority’s proposal to allow property owners to consent to private-side LSL replacements up to five days after termination. *Id*. at 10.

In its comments, the OCA states that the PWSA should explicitly notify customers that bill payment or overdue bills do not impact their qualification for assistance in the LSLR Program. The OCA asserts that notices and outreach efforts should take the form of positive statements concerning the benefits to the customer and the lack of any connection between this program and the customer’s current payment obligations for bills to the PWSA. OCA Comments at 3.

In its response to the comments, the PWSA agrees with several of the modifications and clarifications suggested by the OCA and UNITED. These recommendations are:

* The OCA’s recommendation that the PWSA explicitly notify customers that bill payment or overdue bills does not impact their qualification for assistance in LSL replacement;
* UNITED’s suggestion that the PWSA’s initial authorization packet include information directed at tenants in its cover letter and in a standalone insert;
* UNITED’s proposal that for the 3-day notice of termination, the PWSA attempt to contact the customer through alternative means (such as a phone call) if personal contact at the property is unsuccessful; and
* UNITED’s recommendation that the PWSA clarify that property owners whose water service is terminated following a partial LSL replacement may still be eligible for the income-based reimbursement program and provide residents information on how to participate in the program.

Reply Comments at 5.

Regarding UNITED’s additional recommendation that the PWSA mail the initial authorization packet to service addresses and billing addresses, the Authority notes that its current procedures already include this mailing process and that this modification is not necessary. *Id*.

The PWSA also notes that in response to its proposal to include legal services and community organization referral information in the initial LSLR packet and the 30-day posting, UNITED recommends expansion of this proposal so that referral information would be included within each termination notice. The PWSA states that it accepts this additional recommendation and is willing to provide such referral information with each termination notice. Additionally, the PWSA indicates it is receptive to additional modifications such as including referral information during canvassing and community meetings and that it should invite representatives from local legal services, community organizations and social services providers to attend community meetings with the Authority. Moreover, the PWSA states it is interested and amenable to discussing other novel outreach efforts with the OCA and UNITED. *Id*. at 7-8.

In direct response to the OCA’s request for additional information about its existing outreach efforts in situations where a customer refuses or fails to respond to a private-side LSL replacement offer, the PWSA provides the following:

In addition to the various termination notices, PWSA contacts customers by telephone several times. PWSA also utilizes robocall reminders to unresponsive property owners. PWSA provides various door hangers at locations where the property owner is unresponsive, conducts canvassing efforts and in-person outreach when an occupant is observed entering or exiting a property. PWSA’s outreach efforts also include various community meetings, advertisements, press releases and social media updates. PWSA’s multi-faceted approach to customer outreach regarding LSL replacements has been a substantial endeavor, and PWSA will continue to confer with the CLRAC regarding these efforts.

*Id*. at 8.

In response to concerns about curtailing in-person notices, the PWSA asserts that a one-size-fits-all approach is not feasible because evaluating threats requires a fact-specific analysis. Due to the complicated nature of customer threats to PWSA workers, the Authority submits that it should have the discretion to determine on a case-by-case basis when it will forgo in person notice of termination. According to the PWSA, customer threats typically occur in-person when the worker approaches the residence, however, threats also are made during telephone calls. In order to protect the safety of its employees and agents, the PWSA submits that a rigid policy is inappropriate given the endless situations that its workers may confront. Reply Comments at 6.

The PWSA adds that it currently records threats in its system and plans to continue this practice. In addition, the Authority is willing to share information about the number of times it has curtailed in-person notice due to customer threats with the CLRAC at the quarterly meetings. However, the PWSA asserts that it will not detail the circumstances and justify its curtailment decisions to the CLRAC and LIAAC as suggested by UNITED. The PWSA contends that, while it may be helpful for the Authority to consult with law enforcement in those situations, the CLRAC and LIAAC members lack the expertise to be beneficial in such circumstances. *Id*. at 7.

The PWSA also objects to UNITED’s proposal that the Authority work with the CLRAC and LIAAC committees to delineate standards for curtailing in-person notice and all aspects of LSL-related terminations. According to the PWSA, it is already obligated to consult with the CLRAC regarding a variety of issues and provides exceptionally detailed information about its lead remediation efforts at the quarterly CLRAC meetings and voluntarily exceeds the Partial Settlement reporting requirements. UNITED’s proposed expansion of the scope of matters to come before the CLRAC, the PWSA continues, is duplicative, unnecessary, and overly burdensome. Moreover, the PWSA believes that the sharing of data about service terminations and threats to its employees and agents will be of little value to the Authority or its customers. The PWSA is also concerned that requiring consultation on the development of such policies will result in delays in implementation without materially improving the process. *Id*. at 17-18.

#### b. Disposition

As a preliminary matter, we commend the PWSA, UNITED, and the OCA for their diligent efforts in working to resolve the outstanding issues regarding partial replacements of LSLs. Here, we emphasize again our prior determination that “unrefuted expert testimony” in this proceeding showed “that partial replacements of LSLs endanger public health because they can disturb the protective scales inside service pipes that help to prevent water from leaching lead by shaking loose lead-containing scales from the pipe’s interior, which flow to the household tap.” *March 2020 Order* at 116-117. It is evident that the Parties appreciate the importance of eliminating these severe health consequences related to such partial replacements while also maintaining safe and adequate water service to consumers.

Regarding the Pre-Termination Notice Requirements, the PWSA in its Proposal and the modifications agreed to in its Reply Comments presents a reasonable approach to addressing these issues. We believe that the Proposal as modified is a comprehensive attempt to alert and provide outreach to customers about the Authority’s private-side LSL program. It also provides a robust warning system to customers, occupants, and landlords about the consequences of refusing or failing to respond to the Authority’s offer of a free private-side LSL replacement. Furthermore, the PWSA’s Proposal of allowing customers to accept a free LSL replacement by returning a signed authorization to the Authority within five days of termination is an appropriate remedy window for customers who did not or could not respond to the Pre-Termination Notification attempts.[[7]](#footnote-8) Accordingly, with the exception of the expedited complaint process proposal discussed in the next section, we shall approve the PWSA’s plan for Pre-Termination Notice Requirements as modified in its Reply Comments.

In response to UNITED’s concerns about curtailing some in-person notifications, we agree with the PWSA that it should retain discretion to evaluate customer-made threats to its employees or agents on a case-by-case basis. While we appreciate the potential impact and importance of face-to-face discussions, we believe that the Authority is best positioned to evaluate the fact-specific circumstances of potential threats made by customers or occupants. The PWSA is responsible for the safety of its employees and agents when performing their work-related duties. Mandating a rigid policy and potentially limiting the discretion to evaluate potential threats would appear to impede upon those obligations to ensure employee safety. Although we encourage the PWSA to make all reasonable efforts to maintain the in-person notification procedures in the context of preventing partial LSL replacements, we will decline to modify the proposal as requested by UNITED.[[8]](#footnote-9)

However, we acknowledge that various customer service, collections and customer assistance program issues have been deferred to Stage 2 of the Compliance Plan Proceeding. One of these deferred issues pertains to the personal contact requirements of 52 Pa. Code §§ 56.94 and 56.336. *See* Partial Settlement at ¶ III.MM.1.d. It is not our intention to interfere with the subsequent consideration of these issues. Thus, we clarify that our approval of the PWSA’s policies and procedures herein is not intended to prejudge the full review of the PWSA’s compliance with Chapters 14 and 56 in the context of its Stage 2 Compliance Plan proceeding.

Additionally, we note the Parties’ agreement to defer the issues surrounding Chapter 15, Subchapter B, of the Code to the Stage 2 Compliance Plan proceeding. Accordingly, we decline to address these issues herein and expect the Parties to present substantive arguments pertaining to them in the subsequent proceeding.

### 2. Expedited Complaint Process

In its Proposal regarding Pre-Termination Notice Requirements, the PWSA also adds a proposed accelerated complaint process for addressing terminations involving the LSLs. It would pertain to the filing of complaints both prior to and following the termination of service as follows:

* 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 [BCS] 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.

Proposal at 7-8.

The PWSA submits that its proposed expedited complaint process is in response to serious concerns about the resulting delays of utilizing normal complaint timeframes in the LSL replacement context. According to the Authority, requiring the PWSA to suspend termination after the filing of a complaint would cause severe negative impacts on its LSL replacement process which is currently accomplished as part of its small diameter water replacement effort. The PWSA explains that while replacing an entire water main on a city block, the Authority also replaces all public-side service lines and any private-side lines if they are lead. The PWSA contends that by requiring the suspension of service termination every time a complaint is pending will prevent the disconnection of the old water mains, require the maintenance of both old and new mains within that block, and prevent the restoration of streets. Essentially, the entire replacement effort would need to be stayed until the complaint of a single individual – which under typical timelines can take months – is resolved. The PWSA argues that such a process would stymie the pace of LSL replacements, create dangerous and unsightly excavation sites in the city streets and add millions of dollars in program costs as a result of contractor rescheduling. Proposal at 9.

The PWSA further asserts that the expedited complaint process would avoid these negative consequences by requiring a complaint decision within five business days of receipt of the Authority’s response to the complaint. The decision would be limited in scope to whether the PWSA complied with its termination procedures. In its proposal, the PWSA envisions BCS conducting an initial investigation and determining whether there is an any reason to stay the termination pending a decision on the complaint. According to the Authority, the special procedures are justified because there is no reasonable basis for customers to oppose the free replacement of their LSL, which is a potential health concern for them and future occupants of the properties. *Id*. at 9-10.

Specifically, the PWSA proposes that the expedited complaint process should apply to 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.’” *Id*. at 10.

#### a. Comments and Replies

UNITED objects to the PWSA’s requested expedited complaint procedures because such a process would require a regulatory waiver of critical due process dispute rights. Although UNITED recognizes the inconvenience and potential costs related to delays in construction that may arise if a consumer complaint were to halt the termination process for a long period of time, it argues that the potential impact of service termination poses far ranging risks to the health and safety of an entire household. Moreover, UNITED deems it unlikely that consumers would go to the trouble of filing complaints to preserve the right to reject a free LSL replacement without good cause. In the event that such a complaint were to be filed, UNITED continues, there are ample ways to address abuse of process issues without stripping back due process protections. UNITED Comments at 16.

In addition, UNITED argues that consumer protections from involuntary termination are not limited to payment-related issues. According to UNITED, Chapters 14 and 15 of the Code and Chapter 56 of our Regulations, cover terminations under a wide range of circumstances and the associated rights and remedies of consumers to prevent termination in those circumstances. *Id*. at 16-17 (citing 66 Pa. C.S. § 1406(a), (e), and (f); and 52 Pa. Code §§ 56.81, 56.91- .100, 56.111- .118).

UNITED submits that the Commission is prohibited from approving the proposal to shorten the timeframe and narrow the consumer complaint rights in the context of this comment process. Rather, UNITED contends that the PWSA is required to file a formal Application or Petition with the Commission with appropriate notice to the affected persons who may be impacted by the modification or exemption. According to UNITED, the short timeframe for comments herein does not provide adequate opportunity to fully vet the far-ranging legal and policy implications associated with the broad waiver of a consumer’s due process rights. UNITED Comments at 17 (citing 52 Pa. Code § 56.222).

The OCA also opposes the expedited complaint proposal because it may lead to a lack of due process for the consumer. Thus, it should not be implemented at this time. However, as an alternative, the OCA suggests that the PWSA and the BCS, with the Commission’s approval, could negotiate an informal agreement to conduct a prompt investigation of these complaints with the due process rights required to be given to a customer and the Authority. The OCA submits that, depending on the resources available to BCS, an informal agreement to provide a high priority to customer complaints of this nature would be reasonable. OCA Comments at 4.

In its Reply, the PWSA appreciates the OCA’s suggestion, but argues that such a non-litigation type process would not be helpful unless at the end of the informal process the Authority would be authorized to proceed with termination. If it must await the outcome of a formal complaint process, the PWSA remains concerned that such delays would impose significant additional postponements and costs on the Authority and its customers. For the reasons set forth in its Proposal, the PWSA argues that a single complaint would result in the stay of an entire replacement effort with resulting impacts on the pace of LSL replacements and the creation of dangerous excavation sites and other ramifications. Reply Comments at 14-15.

The PWSA also contends that UNITED’s interpretation that an Application or Petition is required to address the proposal is incorrect. According to the PWSA, Chapters 14 and 15 and Chapter 56 of our Regulations are inapplicable to LSL-related terminations directed by the Commission. Thus, the PWSA urges the Commission to approve its solution for addressing consumer complaints which it believes appeases due process concerns and permits the PWSA to eliminate lead lines from its system in a timely, efficient, and cost-effective manner. *Id*. at 15.

Alternatively, the PWSA requests that, if the Commission rejects the expedited complaint process, the Authority be permitted to replace the public-side LSL and reconnect the private-side LSL when a complaint is pending related to termination of service. The PWSA submits that this approach would eliminate due process concerns and allow the Authority to proceed with its small-diameter water main replacement program without significant delays. In such a scenario, the customers who filed the complaints would be eligible to replace their own LSLs and apply to the PWSA for reimbursement in the future. *Id*. at 15-16.

#### b. Disposition

Upon review, we shall deny the PWSA’s request for an expedited complaint process at this time. Although we recognize and share in the Authority’s concerns about the potential negative impacts to construction progress and costs as well as to excavation site safety conditions, should an individual consumer complaint halt the service termination process to an individual residence during the PWSA’s systematic small diameter water main replacement efforts, we have reservations about the PWSA’s solution of creating a new set of administrative complaint procedures at this time for a sub-set of customers. Full consideration of the PWSA’s proposal to waive procedures with potentially broad legal and policy ramifications should occur through the filing of a formal Application or Petition proceeding with the Commission. *See, e.g.*, 52 Pa. Code § 56.222.

In addition, as a practical matter, it is speculative at this time whether the Authority’s concerns will bear fruit. The Authority asserts that there should be no reasonable basis for customers to oppose the free replacement of their LSLs. Proposal at 9-10. UNITED also contends that it would be unlikely for a consumer to go through the trouble of filing a complaint to reject a free LSL replacement without good reason. UNITED Comments at 16. These presumptions, coupled with the comprehensive Pre-Termination Notifications discussed and approved above, and coupled with the limitations approved in the *March 2020 Order* relating to PWSA’s property restoration obligations, [[9]](#footnote-10) would appear to limit or greatly decrease the likelihood of such complaints being filed or, if filed, resulting in extensive litigation.

Moreover, in the event that a consumer were to file a complaint pertaining to termination of service because of the rejection of a free LSL replacement, the PWSA has options to expedite the resolution of the matter under our existing procedures and Regulations. First, the Authority could request expedited mediation through our Office of Administrative Law Judge (OALJ). Second, the Authority could file a motion requesting expedited treatment for final resolution by the OALJ and the Commission. Third, the PWSA could file a petition for emergency relief pursuant to 52 Pa. Code §§ 3.1, *et seq*. Indeed, we strongly encourage the PWSA to “flag” these individual complaints for the Commission’s attention by utilizing currently available administrative procedures to request expedited treatment.

As suggested by the OCA, the PWSA has the added option of working with the Commission to streamline the informal complaint investigation process. Accordingly, we direct the PWSA to submit an investigation plan and/or process for investigating informal complaints involving LSL replacement efforts to BCS for its approval, as deemed appropriate, consistent with this Opinion and Order.

### 3. Tenant-Occupied Properties and Unresponsive Landlords

The PWSA notes that the *March 2020 Order* directed the Authority to terminate water service to tenant-occupied properties when a non-occupant landlord does not accept the PWSA’s offer to replace their private-side LSL. If 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 be resumed at the service address. Proposal at 11 (citing *March 2020 Order* at 120-22, 136). In the PWSA Petition, the Authority requested reconsideration of this directive. Although we denied the PWSA’s request for reconsideration as to this issue, we found that in such tenant-occupied properties, both the landlord and the tenant should receive sufficient notice, in content and timing. We also requested that the Parties confer and submit a proposal on the notices to tenant-occupied properties with unresponsive landlords. Proposal at 11.

The PWSA asserts that its pre-termination procedures for tenant-occupied properties with unresponsive landlords are set forth in the general section on pre-termination notices. *Id*. at 12.

#### a. Comments and Replies

The OCA recommends that the Authority consider possible accommodations for tenants, including the provision of potable water for the household if the termination is occurring as a result of the failure of a third party to respond or agree to a private-side LSL replacement. The OCA argues that if a landlord has an obligation to provide permission for a replacement and fails to respond, and the landlord’s actions thereby threatens the health and safety of the tenant, accommodations should be made to prevent consequences to the tenant. According to the OCA, the PWSA should be empowered to take legal action against the landlord. The OCA asserts that its approach is similar to the “tangled lines” situation in which a third-party has the obligation and authority to provide the necessary permission and access. *Id*. at 3-4.

In response, the PWSA notes that it is open to evaluating certain accommodations for tenants but has reservations about providing potable water for the household of tenants facing termination of service. The PWSA submits that such a burden should fall on landlords who have obligations under lease agreements. The Authority contends that if a landlord denies authority or fails to respond, it is the tenant, and not the Authority, who is empowered to take legal action against the landlord. Reply Comments at 5-6.

#### b. Disposition

Upon review, we find that the Pre-Termination Notice procedures approved herein – which includes the bolstered referral information for legal services and community organization with each termination notice – is a critical step to helping tenants resolve the issue of a landlord’s failure to consent to the PWSA performing the private-side LSL replacement at their residences. Tenants are empowered to take legal actions against landlords who jeopardize their water service and should exercise their rights to the extent they are able. At this time, we must be careful not to overstep our jurisdiction by turning what is potentially a landlord-tenant dispute (*see,* *e.g.*, the implied warranty of habitability) into a tenant-utility dispute and refrain from creating a new duty that does not currently exist for a water utility. However, importantly, and within the current duties of the PWSA, the PWSA’s proposed pre-termination notice procedures approved herein will ensure that a tenant, who is served by private-side LSL owned by the tenant’s landlord, will receive the same notices regarding the LSL replacements and service terminations as the landlord will receive.

Ultimately, this issue is about the rights and responsibilities of water facility ownership in the context of a utility’s provision of safe and reasonable service. In the *March 2020* and *June 2020 Orders*, we found that the mandate to provide “safe” service under Section 1501 required enforcement of PWSA’s existing tariff provisions that require the PWSA to refuse the reconnection of non-conforming lead, customer-owned service lines to its system. We must consider the application of this rule in the two distinguishable situations before us. The first situation is where the customer receiving service owns the service line and, after receiving pre-termination notice, the customer either refuses or neglects to respond to the PWSA’s offer to replace the private-side LSL. The application of the rule in the first situation will lead to a termination of service to the customer. A termination of service in such circumstance, we concluded in the *March 2020 Order*, constitutes “reasonable” service under Section 1501. *See March 2020* *Order* at 122.

In contrast, the second situation is where the tenant-customer receiving service does not own the service line – rather, the service line is owned by the property owner, or the landlord – and the landlord refuses or neglects to respond to the PWSA’s offer to replace the private-side LSL. However, unlike the customer in the first situation who holds certain rights and responsibilities with respect to the service line, in the second situation, the landlord, not the tenant-customer, holds these rights and responsibilities in relation to the utility’s system. Accordingly, the landlord’s neglect of such rights and responsibilities will result in a service termination to the tenant. This essentially places the landlord in an untenable position of creating a public health and safety risk for the tenants due to a loss of service to the tenant for reasons not within the control of the tenant.

We request the PWSA and the other interested parties to explore all available options in the Stage 2 Compliance Plan proceeding of preventing termination to tenants in these situations. For example, we note the language in PWSA’s Tariff that permits the PWSA, in a situation where a customer permits water to leak or flow unnecessarily from a water service line or from any pipe, fixture, or appliance that creates a public hazard or damage to public infrastructure, to not only terminate service to the property immediately, but if the condition of the service line appears such that there is a risk to public health or safety, “to make the necessary repair or replacement.” The full language is as follows:

Where a Customer permits water to leak or flow unnecessarily from a Water Service Line or from any pipe, fixture or appliance and the amount of water is creating a public hazard or damaging public infrastructure, as determined by the Authority, the Authority reserves the right to terminate water service to the property immediately, until the leak or other condition is repaired. 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 the replacement. Should the property Owner fail to reimburse the Authority within 30 days of the Authority’s invoice therefor, the Authority shall have the right to file a lien against the property or properties served by the service line.

PWSA Tariff Water – Pa. P.U.C. No. 1, Original Page No. 35, Part III, Section B, Paragraph 12(e).

For the reasons explained above, if a landlord declines to permit the PWSA to replace the private-side LSL, it will likely create a condition of the customer service line such that there is a risk to the public health or safety of the tenants becoming subject to service termination for reasons not within their control. As such, we request the Authority to develop and submit appropriate Tariff language that would provide the PWSA with step-in rights to make the necessary replacement of the private LSL where a landlord is nonresponsive to the pre-termination notice procedures. Such step-in rights would be intended to avoid service termination to the PWSA’s tenant-customers due to circumstances beyond the tenants’ control – that is, due to the landlord standing in the way of the tenants receiving safe service. Because the exercise of such step-in rights may result in the landlord filing a complaint against the PWSA, the Tariff should be clear on the PWSA’s limitation of liability with respect to property restorations when performing a private-side LSL.[[10]](#footnote-11)

Additionally, the PWSA expressed reservations about the OCA’s proposed accommodation of providing potable water to the households of tenants in these circumstances. Although the Authority indicates its willingness to explore solutions for tenants, the PWSA argues that the ultimate burden falls on landlords because of their obligations under lease agreements. We agree. The enhanced notification and referral process discussed above is intended to help tenants address such legal issues with their landlords. It should not be the responsibility of the PWSA and, ultimately its ratepayers, to pay for the provision of potable water in excess of the measures agreed to in the Partial Settlement because of a violation of a landlord’s duty under a lease agreement. Accordingly, we shall deny the OCA’s proposed modification.

### 4. Tangled Title and Other Technical Property Issues

The PWSA recognizes that in tangled title or other technical property issues – such as when a private-side LSL crosses a neighboring property – individual customers may lack sufficient legal authority to consent to a LSL replacement. In those situations, the PWSA attempts to get both property owners to agree to allow the necessary work to replace the private-side LSL. Typically, in these situations, the Authority refers individuals to a lawyer or Neighborhood Legal Services to assist them when a neighbor refuses to consent to the private-side LSL replacement work. Proposal at 12-13.

In its Proposal, the PWSA submits that it will evaluate solutions available to install conforming service lines. However, if it is unable to obtain the neighboring owner’s consent and there is no other viable alternative, the PWSA proposes to commence termination procedures to terminate service to the neighboring owner’s property pursuant to its Tariff. Proposal at 13.[[11]](#footnote-12)

The PWSA argues that customers should not have their water service terminated because their uncooperative neighbor denies the Authority access to their property to remove an LSL. According to the PWSA, access to water plays a critical role in protecting public health and that good cause exists to proceed with termination of service to a neighboring property owner who denies access to their property to replace a neighbor’s LSL.[[12]](#footnote-13) Due to the potential health implications of private-side LSLs, the PWSA proposes to rely on this provision should a neighboring property owner deny the Authority access to their property. However, the PWSA indicates that it will not charge the neighboring property owner for the replacement of the private-side LSL. Proposal at 14.

The PWSA explains that it has explored its legal authority and has decided to accept certain legal risks of replacing private-side LSLs in tangled title situations. It will therefore replace private-side LSLs in those situations on a going forward basis. However, the PWSA submits that its funding from the Pennsylvania Infrastructure Investment Authority (PENNVEST) for the first phase of its small diameter water main replacement plan requires that the PWSA obtain an executed agreement from the property owner consenting to replacement of the LSL. Accordingly, the Authority proposes to utilize other funds to replace LSLs in tangled title situations. *Id*.

In response to the Commission’s request that the Authority explore solutions to install conforming service lines, the PWSA submits that it will continue to do so on a case-by-case basis. Such an approach is necessary due to the fact-specific nature of complex technical property issues and the unique configurations of plumbing structure at each property. Furthermore, the PWSA asserts that it continues to evaluate ways to coordinate outreach with legal services and community organizations and notes that its procedures will include legal services and community organization referral information in the initial LSL replacement packets and the 30-day posting. *Id*. at 14-15.

#### a. Comments and Replies[[13]](#footnote-14)

UNITED supports the PWSA’s proposal to allow customers residing at homes with tangled titles to accept the Authority’s offer of a free LSL replacement. In addition, UNITED agrees with the Authority’s plan to terminate service to a property owner if its owner refuses to consent to the replacement of an LSL that runs across it to a neighboring property. UNITED reasons that the potential for termination creates a significant but appropriate consequence property owners who stand in the way of their neighbors receiving safe service. UNITED Comments at 10-11.

The OCA did not file comments as to the PWSA’s proposal on these issues.

#### b. Disposition

Upon review, and in consideration of the support expressed by UNITED, we find the PWSA’s proposal to be reasonable. Accordingly, we shall approve the Authority’s proposal to address Tangled Title and Other Property Issues.

### 5. Independent Legal Restrictions

The PWSA asserts that there are some situations in which the Authority does not terminate water service for bill payment issues. These include the winter moratorium, medical cases, and the Commission’s COVID-19 moratorium. In the *March 2020 Order*, we directed that in situations following a partial replacement where a property owner rejects the Authority’s offer to replace a private-side LSL, the PWSA must: (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 service after the customer certifies that their private-side LSL has been removed. Proposal at 15.

In the PWSA Petition, the Authority sought reconsideration of this directive to include exceptions to termination of service when there are independent legal restrictions such as the winter moratorium, medical cases, and the COVID-19 moratorium. The *June 2020 Order* granted the Parties additional time to confer on the following two options involving these circumstances: (1) the PWSA will not replace either the public-side LSL or the private-side LSL; or (2) the PWSA may proceed with the replacement of the public-side LSL and follow the directive in the *March 2020 Order* to refuse the reconnection of the private-side LSL. Proposal at 15-16.

In its Proposal, the PWSA submits that in these circumstances it will proceed with replacing public-side LSLs and will follow the directive in the *March 2020 Order* to refuse reconnection of the private-side LSL. The PWSA explains that the situations in which the Authority does not terminate water service, such as the winter moratorium, medical cases, and the COVID-19 moratorium, involve consumer protections to prevent termination of utility service despite a customer’s payment delinquency. However, the PWSA asserts that the situation addressed in the LSL replacement context is not related to bill payment. Proposal at 16.

If weather conditions are favorable, the PWSA expects its main replacement work to overlap with the winter moratorium months. Thus, the PWSA proposes to proceed with replacing the public-side line and refusing to reconnect the private-side line to further the goal of eliminating lead lines from its system. *Id*.

#### a. Comments and Replies

In its comments, UNITED opposes the PWSA proposal arguing that it would circumvent critical laws and rules designed to protect vulnerable consumers from the loss of water and wastewater services to their homes and result in unsanitary and unsafe living conditions to their residential properties. UNITED asserts that statutory and regulatory protections for consumers facing involuntary termination of service to their homes apply to circumstances beyond nonpayment of service. According to UNITED, these protections explicitly apply to all authorized non-emergency terminations including termination for nonaccess to service connections for the purpose of replacement, maintenance, or repair. UNITED Comments at 11 (citing 66 Pa. C.S. § 1406(a), (e), and (f); and 52 Pa. Code §§ 56.2, 56.81, 56.91- .100, 56.111- .118).

UNITED contends that involuntary termination of service based on refusal to accept a free private-side LSL replacement is not an “emergency” as defined in Section 56.2 of our Regulations.[[14]](#footnote-15) Although UNITED acknowledges that the removal of all lead from the PWSA’s system is critically important and must occur in a timely and efficient manner, UNITED is concerned about setting the precedent of defining termination of service for this reason as an emergency within the Code. UNITED Comments at 11-12.

If the PWSA seeks to waive various termination-related provisions – and to the extent such provisions are not statutory requirements – UNITED argues that the Authority must file a separate Application pursuant to 52 Pa. Code § 56.222. UNITED submits that the brief comment period in this proceeding does not provide adequate time to fully assess the factual and legal consequences of waiving our Regulations governing the termination of service to residential customers. Thus, UNITED argues that the Commission must deny the PWSA’s proposal to proceed with replacement of the public-side service line and refuse reconnection during an emergency or winter moratorium or where a medical certificate is in place. UNITED Comments at 12.

The OCA also opposes the PWSA’s proposal arguing that any termination authorized in the Compliance Plan, including the refusal to reconnect the private-side LSL, should not occur during the emergency orders associated with the Pandemic, the winter termination moratorium, or other rights associated with the declaration of medical emergencies. According to the OCA, there are other accommodations that could be made in those circumstances. OCA Comments at 2.

In its replies to the comments, the PWSA contends that the *June 2020 Order* forced the Authority to decide between two options, both with negative consequences. “In other words, the Commission offered [the] PWSA the choice to hold off replacing public-side LSLs in its system (which the Commission emphasized should be of paramount concern) or terminate service to customer[s] who are potentially in a vulnerable situation.” Reply Comments at 12.

The PWSA asserts that it does not want to terminate service to potentially vulnerable customers but is extremely concerned about the ramifications of not replacing public-side LSLs when it replaces its mains. These ramifications, the Authority continues, range from ensuring the PWSA provides safe service as dictated by the Code to imposing unduly burdensome costs to ratepayers associated with demobilization and remobilization at work sites. Additional ramifications include unsightly and unrestored roadways and the inability of the PWSA to close out construction contracts and PENNVEST loans. *Id*. at 12-13.

In its Proposal, the PWSA elects the option of replacing the public-side LSL and refusing to reconnect the private-side LSL. The PWSA asserts that this approach will help further the goal of eliminating as many lead lines as possible from its system. The PWSA notes the OCA’s assertion that other accommodations should be made where vulnerable customers refuse to agree to free private-side LSL replacements. However, the OCA failed to provide any specific details. Nonetheless, the PWSA implores the Commission to consider other alternatives to the two situations set forth in the situations in the *June 2020 Order*. Reply Comments at 13.

The PWSA submits that permitting it to make a temporary partial replacement of the LSLs would resolve the concerns. Although acknowledging that this solution would not be consistent with the Commission goal of eliminating all partial LSL replacements, the PWSA argues it is a reasonable and equitable alternative to the two unenviable choices presented. However, the PWSA requests that, if the Commission denies the proposal of performing temporary partial replacements when independent legal restrictions exist, the Commission should authorize the Authority to replace the public-side LSL and refuse the reconnection of the private-side LSL in those situations. *Id*. at 13-14.

#### b. Disposition

In considering the PWSA’s proposal here, it is important to be clear on the group of customers we are discussing in this section. We are referring to a group of customers who, when otherwise faced with a termination of service due to – payment delinquency, failure to establish credit, failure to comply with a payment arrangement, or failure to provide the utility access to its meters or facilities – are temporarily relieved of service termination because of certain protections under Chapter 14, the Commission’s Chapter 56 Regulations, and/or the Commission’s COVID-19 moratorium (Customers with Independent Legal Restrictions).

In considering the PWSA’s proposal here, it is also important to revisit the unopposed factual findings and unrefuted descriptions of the record evidence referenced in our prior Orders. In the *March 2020 Order*, we explained that the unrefuted expert testimony supported a finding “that partial replacements of LSLs endanger public health because they can disturb the protective scales inside service pipes that help to prevent water from leaching lead by shaking loose lead-containing scales from the pipe’s interior, which flow to the household tap.” *March 2020 Order* at 116-117.

We also found that partial replacements endanger public health because they “cause spikes in drinking water lead levels from days to several months or potentially even longer.” *Id*. at 117 (citing UNITED St. C-2 at 10, 22-25; UNITED St. C-3 at 15-24). The Parties did not dispute our finding of a lack of evidence demonstrating the presence of any effective techniques, either upstream or downstream of the curb stop, to mitigate the elevated exposure to lead in tap water following the completion of a partial replacement. *March 2020 Order* at 118. As for upstream mitigation, we found that no expert testimony was presented to demonstrate that orthophosphate water treatment will effectively mitigate the elevated exposure to lead in the short term resulting from the disturbance of the protective scale in the service pipe caused by a partial replacement. In fact, we found the record showed the opposite – that it could take up to a year for the corrosion control benefits of orthophosphate water treatment to be fully realized. *March 2020 Order* at 118 (citing UNITED St. C-2 at 16‑18; UNITED St. C-3 at 21, 34; UNITED St. C-3SR at 8). No Party challenged this finding.

Similarly, the Parties did not object to our findings pertaining to downstream mitigation. In the *March 2020 Order*, we found that no expert testimony was presented to support the notion that efforts to inform or notify customers of the risks of lead exposure and/or to provide households with instructions on flushing, testing kits and water filters are, in fact, effective in mitigating exposure to lead following the completion of a partial replacement. *March 2020 Order* at 118. Specifically, we found that no expert testimony supported the notion that customers, or any and all members of customers’ households, who drink water from the tap and who employ any amount of informed or practical testing, flushing, use of water filters, or even a temporary discontinuance of tap water for drinking and cooking, will effectively mitigate the elevated exposures to lead in the short term following the completion of a partial replacement. *Id*.

Finally, we emphasized that the Parties did not dispute our finding that “[t]he negative effects of partial service line replacements are well documented in scientific literature…” and that “[t]he permanent negative health effects from lead exposure, especially to uniquely vulnerable populations of developing fetuses, infants and children, is explained in the *unrebutted* testimony of [UNITED’s expert witness] Dr. Lanphear, the only qualified medical expert in this proceeding.” *March 2020 Order* at 117 (citations omitted) (emphasis added). Indeed, UNITED affirmed these findings. *June 2020 Order* at 93 (citations omitted).

In the *June 2020 Order*, we explained that the PWSA failed to offer any new and novel arguments or identify considerations overlooked or not addressed in the *March 2020 Order* with respect to mitigation efforts following a partial replacement. Additionally, we addressed the Authority’s argument that harm to customers from a cessation of service would outweigh the harm to customers resulting from elevated lead levels in water following a partial replacement and UNITED’s contention that a cessation of service would be unfair in certain circumstances. We concluded that these arguments did not address the findings of record in the *March 2020 Order* with respect to adequate, safe, and reasonable water utility service and facilities. *June 2020 Order* at 133-134.

Although we denied reconsideration of the directives in the *March 2020 Order* when a customer rejects the PWSA’s offer to replace the private-side LSL, we granted additional time for the Parties to confer on the following two apparent options for the PWSA when encountering independent legal restrictions prohibiting service termination due to non-payment of utility bills: (1) the PWSA will not replace either the public-side LSL or the private-side LSL; or (2) the PWSA may proceed with the replacement of the public-side LSL and follow the directive to refuse the reconnection of the private-side LSL. *June 2020 Order* at 138-139.

As noted above, the PWSA responds by electing the option of replacing the public-side LSL and refusing to reconnect the private-side LSL. However, the Authority acknowledges the concerns of potentially terminating service to Customers with Independent Legal Restrictions who refuse to agree to free private-side LSL replacements. Instead, the PWSA implores the Commission to consider other alternatives to the two situations set forth in the *June 2020 Order* such as its suggestion of permitting it to make a temporary partial replacement of the LSLs. Other than rehashing its partial LSL replacement plan – an action which directly contravenes the evidentiary record established in this proceeding – the Parties offer no viable solution to this situation.

In the *June 2020 Order*, we emphasized that our directive to terminate service for refusing a free private-side LSL replacement does not pertain to a customer’s refusal to pay a bill. We also noted that the situations in which the PWSA does not terminate water service, such as the winter moratorium, medical cases, and the Commission’s COVID-19 moratorium, relate directly to a customer’s non-payment of a utility bill and the rights and responsibilities of public utilities and customers alike, citing 66 Pa. C.S. § 1402.[[15]](#footnote-16) Although we recognized the importance of these consumer protections as provided under Chapter 14 of the Code and the Commission’s Regulations and Orders, we reasoned that the scenario in this proceeding is not related to bill payment (or any of the situations that give rise to a customer belonging to the group of Customers with Independent Legal Restrictions). *June 2020 Order* at 139.

Rather, we explained that the situation pertains to the fundamental issue of safety of service and the PWSA’s right and responsibility to refuse to connect with a lead service pipe on the private portion of the service line because the record demonstrated that private-side lead pipe is material through which safe water service cannot be delivered following the PWSA’s removal of the connecting public-side pipe (whether comprised of lead or any material) and the installation of non-lead pipe on the public portion of the service line. Regarding the option of terminating service due to customer refusal of an LSL replacement offer, we stated: “[i]t bears repeating here that the safety of utility service and facilities remains the Commission’s paramount concern, and we interpret the broad safety mandate of Section 1501 to mean that *there shall be no provision of service by a public utility unless it is safe service*.” *Id*. (citing 66 Pa. C.S. § 1501) (emphasis in original).

Despite our prior rationale and directives, the PWSA suggests we should permit temporary partial LSL replacements for Customers with Independent Legal Restrictions as a reasonable alternative. In our view, to adopt such a proposal would be to ignore, without a rational basis, the record evidence and the legal rationale set forth in the *March 2020* and *June 2020 Orders.*

Moreover, as explained above, the likelihood of Customers with Independent Legal Restrictions making the irrational decision to reject a free private-side LSL replacement, and thereby suffer a service termination, appears remote and speculative, especially when such termination is unrelated to the non-payment of bills. However, expecting any customer to make objectively rational decisions hinges on whether they have been properly and adequately informed about the PWSA offer and the consequences of refusing the private-side LSL replacement. Accordingly, as approved herein, we fully support the modifications proposed in the comments to modify the Pre-Termination Notification Proposal to add notification language that explicitly notifies customers that bill payment or overdue bills do not impact their qualification for assistance in the LSL replacement program. In this regard, we also direct that such language be emphasized in an appropriate manner so that a customer will not miss reading this crucial information. It is critical that the Authority’s responsibility to adequately inform and educate its customers be satisfied.

Under the circumstances and in light of the evidentiary record and the lack of any reasonable alternative, we shall deny the PWSA’s request to authorize temporary partial LSL replacements for Customers with Independent Legal Restrictions. We shall further approve the PWSA’s request to proceed with the second option to replace the public-side LSL and refuse the reconnection of the private-side LSL in such situations involving Independent Legal Restrictions. We reiterate here our guidance from the *June 2020 Order* that the rendering of safe service by public utilities is of paramount concern to the Commission and “*there shall be no provision of service by a public utility unless it is safe service*.” *June 2020 Order* (citing 66 Pa. C.S. § 1501).

### 6. Emergency Repairs

When performing emergency repairs, the PWSA explains that it provides a temporary connection and, if a property owner approves, engages a private contractor to replace the private-side LSL. However, the PWSA acknowledges that at some locations a temporary connection is not possible because of weather conditions or due to the configuration of the structure or plumbing. When the PWSA cannot contact the property owner or if the property owner fails to respond in a timely manner, the Authority may need to reconnect the private-side LSL to ensure the residents have water service. The PWSA asserts that, in those situations, it provides the requisite water testing for lead, drinking water filters with instructions, and satisfies other applicable requirements. Proposal at 16-17.

In its Proposal, the PWSA contends that emergency repairs are relatively uncommon events. For example, it asserts that since July 1, 2019, 120 public-side emergency line replacements have been performed and 84 of those lines were connected to private-side LSLs. For the private-side LSLs, only seven emergency partial replacements were made, with four of those private-side LSLs eventually being replaced when the property owner responded to PWSA’s outreach. Although the emergency repairs are infrequent, the PWSA Petition requested the Commission to provide an exception to the directive of requiring termination of service when the PWSA replaces a public-side LSL under emergency circumstances and cannot obtain the property owner’s consent. *Id*. at 17.

In the *June 2020 Order*, we directed that in such emergency repair situations the PWSA is to use the emergency termination provisions set forth in its Tariff which permits 24 hours’ prior notice or no prior notice depending on the circumstances. *Id*. (citing PWSA Tariff, Section C, Rule 3.j.iv). Additionally, we requested that the Parties confer on the notice and outreach procedures in these circumstances. Proposal at 17.

Regarding the notice and outreach procedures for emergency repairs in which the PWSA cannot obtain the property owner’s consent for the private-side LSL replacement, the Authority proposes the following:

* 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 of 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.

Proposal at 18.

The PWSA submits that its proposal aligns with its current Tariff and because of the challenge presented by emergency repairs, it provides adequate notice and outreach to both the property owner and the resident. *Id*.

#### a. Comments and Replies

UNITED argues that the PWSA’s proposal is incomplete because it lacks an opportunity for customers whose service is terminated under emergency circumstances to accept the Authority’s offer of a free LSL replacement after termination. In contrast, UNITED notes that the PWSA proposes to extend such an opportunity to customers whose service is terminated during a scheduled small-diameter water main replacement.[[16]](#footnote-17) UNITED contends that customers who have their water service terminated following an emergency replacement must be given a reasonable amount of time to consent to a free private-side LSL replacement. UNITED believes that such customers should have at least thirty days to provide consent after termination. Additionally, UNITED submits that such customers should be eligible for the PWSA’s income-based reimbursement program if they later decide to replace their LSL. UNITED Comments at 13.

The OCA did not file comments as to the PWSA’s proposal on these issues.

In its Replies, the PWSA asserts that the UNITED proposal would result in open excavation sites for an inordinate amount of time because a temporary service connection at the curb stop cannot be backfilled with soil. The Authority adds that, in circumstances where non-emergency termination procedures are followed, UNITED’s proposal could result in excavation sites remaining open for over two months. According to the PWSA, this would contravene the public interest. Reply Comments at 9.

Additionally, the PWSA states that its personnel currently investigate and resolve complaints made to the Mayor’s Service Center/311, including open utility cuts. The Authority asserts that city residents who make such complaints about open utility cuts find that they impede ingress and egress and consider them to be dangerous to pedestrians, especially children. Moreover, the PWSA believes that UNITED’s proposal would delay restoration efforts including the reestablishment of sidewalks. *Id*.

Although the PWSA objects to the 30-day proposal, it is willing to provide customers who have water service terminated after an emergency public-side LSL replacement up to ten days after termination to provide the executed agreement consenting to a private-side LSL replacement. According to the PWSA, providing a 10‑day period fairly balances providing ample opportunity to the customer, avoiding safety concerns due to open sidewalk excavations, and delays in restoring property, and concluding work at the property. *Id*. at 9-10.

Regarding eligibility for the income-based reimbursement program, the PWSA asserts that customers are eligible for this program as indicated in its Lead Infrastructure Plan, so long as the Authority is not currently replacing the public-side of the line. The PWSA contends it is not proposing any limitation on the income-based reimbursement program impacting customers who had their service terminated due to an emergency repair. *Id*. at 10.

#### b. Disposition

Consistent with our discussion of the Independent Legal Restrictions, we shall deny the PWSA’s request to permit partial LSL replacements in Emergency Repair situations. For the reasons set forth above, it would be potentially a violation of Section 1501 of the Code to authorize the PWSA’s alternative when the record evidence shows that partial LSL replacements, even temporary ones, are unsafe.

Additionally, we acknowledge with approval the enhanced outreach and notification process proposed by the PWSA and its agreement to allow customers up to ten days to accept a free LSL replacement offer after termination involving emergency repair situations. These procedures should help to prevent or reduce the timeframe in which customers may be subject to service termination due to an emergency repair.

Accordingly, we shall deny the PWSA’s proposal to permit partial LSL replacements and shall approve the PWSA’s notification and outreach procedures and the modification to permit a 10-day post termination period for customers to accept a free LSL replacement.

### 7. Properties with High Restoration Costs

The PWSA notes that property owners may choose to opt out of a private-side replacement because of unreasonably large impacts to their property. Explaining its current policy of installing a service line and backfilling any necessary excavations, the PWSA emphasizes that it does not restore any landscape or hardscape – such as retaining walls, walkways or driveways. However, the PWSA asserts that it does restore public sidewalks disturbed during its LSL replacement efforts and patches walls where service lines enter the residences. Proposal at 18-19.

The Authority contends that property owners opt out for a variety of reasons but that the rate of opt out is only 4%. According to the PWSA, some owners opt out because of the restoration costs involving the removal of retaining walls or some extensive landscaping or hardscaping in place. In such situations, the PWSA submits that its work may impose unaffordable costs on the Authority’s customers and that it does not have the resources to replace both the LSL and pay for all restoration work. The PWSA notes that, in situations involving high anticipated restoration costs, the Authority provides information about United Way’s 211 program, the assistance programs of Pittsburgh’s Urban Redevelopment Authority and other available resources. *Id*. at 19.

Moreover, the PWSA submits that high restoration costs rarely result in a property owner declining a LSL replacement. In support, the PWSA references its 2019 LSLR Program which indicated a decline rate of only 4% of the total agreements secured. A much smaller fraction opted out due to high restoration costs. According to the Authority, of the 339 property owners opting out of the program, only twenty-five property owners opted out due to high restoration costs. Proposal at 19.

In the *June 2020 Order*, we rejected the request of PWSA and UNITED to exempt properties with high restoration costs from the termination directive. However, we requested that the Parties confer to determine if there are reasonable changes, substitutions and extensions that may be necessary for the accommodation and safety of customers with unduly burdensome restoration costs related to customer mobility and stairs, walkways and driveways, but excluding landscaping and hardscaping. We also requested that the Parties confer on other potential solutions and for the Authority to quantify any specific maximum limits on its financial responsibility for private-side LSL replacement in those extraordinary circumstances. *June 2020 Order* at 141.

In its Proposal, the PWSA asserts it will evaluate reasonable changes, substitutions and extensions involving services and facilities involving high restoration cost properties. An example of such an evaluation will typically involve exploring less intrusive installation techniques or installing the service line in a different location within the property to avoid disruption and cost to the customer. The PWSA will also continue to provide information about the assistance programs of United Way 211, Pittsburgh’s Urban Redevelopment Authority and other available resources. Additionally, the PWSA submits it will pursue legal service providers and community organizations which can connect with residents about assisting and defraying property restoration costs. Proposal at 20.

The PWSA objects to specifying a maximum limit on its financial responsibility for private-side LSL replacement in these extraordinary circumstances because its current policy assigns sole cost responsibility for restoring any landscape or hardscape to the property owner. However, the PWSA notes it will continue to restore public sidewalks disturbed during its LSL replacement efforts. The PWSA asserts that its policy on restoration costs is based on the belief that its limited funds should be directed at removing LSLs from service rather than replacing private landscaping. Such a policy, the PWSA adds, is supported by the belief that its actions in replacing private-side LSLs will actually increase the value of such property owners. *Id*. at 20-21.

The PWSA states that it has discussed with the Parties and the CLRAC members the possibility of establishing a process for determining if property restoration costs are unduly burdensome to a customer. According to the Authority, this process would avoid termination of service if a property owner is unwilling to consent to a private-side LSL due to unduly high restoration costs and thereby result in a partial LSL replacement. The PWSA requests that the Commission modify its termination directive for properties facing unduly burdensome restoration costs. Although the PWSA recognizes that this modification would be inconsistent with the goal of avoiding all partial LSL replacements, the Authority believes its request is a reasonable and equitable alternative. As support, the PWSA reiterates that in some scenarios, reasonable changes, substitutions, and extensions in or to service or facilities may not be available and terminating service could cause greater harm to the customer than a partial LSL replacement. However, the PWSA suggests it is willing to work with the Parties and the CLRAC members to explore this process if the Commission authorizes an exception to its termination directive in such limited circumstances. *Id*. at 21.

#### a. Comments and Replies

In its comments, UNITED acknowledges that it is rare for customers to refuse the offer of a free LSL replacement because of the resulting costs of repairing property damage. However, UNITED asserts that a handful of customers could face consequential damages impeding their mobility – because of damages to steps, walkways and driveways – and the habitability of their homes. UNITED argues that such damage would be particularly harmful to disabled and elderly occupants. According to UNITED, neither termination of service nor partial LSR replacement is appropriate in these circumstances. Thus, UNITED proposes that the PWSA should be required to pay for the restoration necessary to remove the impediments to customers’ mobility. Additionally, UNITED suggests that the Authority should work with the CLRAC to determine eligibility criteria and program terms. UNITED Comments at 14.

UNITED believes its proposed assistance program expense would be modest because of the small number of customers impacted. However, if the Commission rejects the proposed assistance program, UNITED supports the PWSA’s proposal pertaining to high restoration costs. *Id*.

The OCA did not file comments as to the PWSA’s proposal on this issue.

In reply to UNITED’s proposal, the PWSA submits that it does not have adequate resources to both replace LSLs and pay for restorative work. In addition, the Authority contends that in over 5,000 private-side LSL replacements completed to date, it has not encountered a scenario in which replacement efforts caused private property damage that impairs a low-income customer’s mobility. Thus, the PWSA believes that “UNITED’s proposal is a solution in search of a problem.” Reply Comments at 10-11.

The PWSA submits that its current plan already conveys a significant benefit to a customer’s property, which is the free replacement of a customer-owned lead service line. According to the Authority, it should not be required to incur additional expenses to resolve what it deems to be esthetic issues. However, the PWSA agrees with UNITED’s alternative suggestion to: “(1) evaluate engineering solutions to avoid high restoration costs; (2) put customers in contact with services that may help defray restoration costs; and (3) if sufficient assistance is unavailable, perform a partial replacement (in lieu of terminating service) and provide filters, filter cartridges, flushing instructions and testing kits.” *Id*. at 11.

In addition, the Authority will consult with the CLRAC to develop criteria for evaluating whether a customer’s restoration costs are unduly burdensome and should result in a partial replacement. While recognizing that its proposal does not fully comply with the goal of avoiding all partial LSL replacements, the PWSA submits that its plan is a reasonable and equitable alternative. *Id*. at 11-12.

#### b. Disposition

Consistent with our discussion of the Independent Legal Restrictions, we shall deny the PWSA’s request to permit partial LSL replacements in some scenarios involving high restoration costs. For the reasons set forth above, it would be potentially a violation of Section 1501 of the Code to authorize the PWSA’s alternative when the record evidence shows that partial LSL replacements are unsafe.

Moreover, we note that the PWSA asserts that the circumstances in which a property owner declines a LSL is rare. The Authority submits that in 2019 property owners seldomly declined LSL replacement – the PWSA secured 7,773 property owner agreements and had only 339 property owners opt-out of the program. The Authority states that of the 339 property owners opting out of the program, only twenty-five property owners (or approximately 7%) opted out due to high restoration costs. Proposal at 19. Additionally, the PWSA asserts that it has never encountered a scenario in which replacement efforts caused private property damage that impairs a low-income customer’s mobility. Reply Comments at 10-11.

Thus, by the Authority’s own estimation, the circumstances in which a property owner declines a LSL replacement would be extremely rare and possibly non-existent for low-income customers concerned with repair costs impacting mobility. In such rare or limited circumstances in which a customer faces prohibitive restoration costs or which impacts mobility, we find that it would be appropriate for such customers to seek redress through the Commission’s administrative complaint procedures.[[17]](#footnote-18) In contrast, permitting a partial LSL replacement of indefinite determination for those customers who simply decline the replacement based on allegations of high restoration costs would be impermissible under the evidentiary record established in this proceeding.

Regarding UNITED’s request that the PWSA be required to pay for damage repairs impacting the mobility of low-income consumers, we find that the record evidence fails to support such a remedy. However, we note that the PWSA supports UNITED’s additional suggestions, such as its evaluation of engineering solutions to avoid high restoration costs and to connect customers with services that may help to defray restoration costs. Accordingly, we shall approve these additional evaluation and referral aspects of the proposal.

### 8. Partial Replacement of LSLs in Certain Circumstances

The PWSA summarizes our request in the *June 2020 Order* that the Parties confer on issues relating to replacement of LSLs in various circumstances listed in the Partial Settlement. These circumstances involve the replacement of private-side LSLs which are not technically feasible or involve unsafe structure or sanitary conditions, or the replacement would result in excessive cost – due to conditions such as length, terrain, obstructions, structures, pavement, trees, or other utilities. According to the PWSA, these properties have non-water related infrastructure issues that impact the Authority’s ability to perform its work. Proposal at 21-22.

The PWSA submits that the costs to improve the conditions to permit a safe work environment can be excessive in some situations. In circumstances where there are sanitary or structural concerns related to the ability of PWSA workers and contractors to work safely at a property, the PWSA provides information to the property owners about United Way’s 211 program and the assistance programs of Pittsburgh’s Urban Redevelopment Authority. *Id*. at 22.

As background, the PWSA submits that during its 2019 LSLR Program it opted-out of approximately seventy-three locations of nearly 7,000 customer locations at which replacement work occurred. The PWSA notes that at nearly all of the seventy-three locations, replacing the private-side LSL presented an unacceptable risk to the health and safety of its employees and construction staff. According to the PWSA, approximately two-thirds of these locations were owned by the City of Pittsburgh because of tax delinquencies and were in deplorable condition. The PWSA adds that it reports information regarding these opt-outs to the CLRAC at its regularly scheduled meetings. *Id*.

In the PWSA Petition, the Authority requested an exemption from the termination directive for what it characterizes as infrequently encountered scenarios. However, we denied the request and directed the Parties confer to determine if there are reasonable changes, substitutions and extensions that may be necessary 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 replacement in such extraordinary circumstances. *June 2020 Order* at 150.

In its Proposal, the PWSA focuses only on scenarios involving unsafe structural or sanitary conditions. According to the Authority, it has never opted out of replacing a private-side LSL due to the cost to the PWSA for the replacement or to technical infeasibility. The PWSA submits it will evaluate reasonable changes, substitutions, and extensions in or to service and facilities when unsafe structural or sanitary conditions exist. Such an evaluation requires an analysis of the features of each property and the unique configuration of the structure or plumbing at each location. The PWSA asserts it will continue “to make best efforts” to connect property owners to resources to help correct the issue. Proposal at 23.

The PWSA Proposal also makes distinctions between unoccupied and occupied properties with unsafe structural or sanitary conditions. If an unoccupied property has an unsafe structure or sanitary condition, and reasonable changes, substitutions, and extensions in or to service and facilities are not feasible, the PWSA will follow termination of service procedures and replace the public-side LSL. *Id*.

However, for a similarly situated occupied property, the PWSA proposes to replace the public-side LSL and reconnect the private-side line. In these situations, the PWSA would provide the occupied property with requisite water testing for lead, drinking water filters with instructions, and follow other applicable requirements. *Id*.

For the occupied property scenario, the PWSA acknowledges that its Proposal does not comply with the goal of avoiding all partial LSL replacement. However, the Authority contends that it has not identified any viable solution. The PWSA argues that termination of service to a customer lacking the 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.” *Id*. at 23‑24.

#### a. Comments and Replies

UNITED supports the Authority’s proposal not to terminate service at occupied residences where it cannot safely replace a private-side LSL. UNITED notes that the unsafe structural or sanitary conditions preventing the LSL replacement is most often the result of customers lacking the financial resources to repair them. In such circumstances, UNITED encourages the PWSA to work with the CLRAC to continue to improve the methods for referring customers to government agencies and services with funding or resources to help defray repair costs. However, UNITED recognizes the time delays associated with such referrals. In those situations, UNITED agrees that a partial replacement, coupled with the provision of filters, filter cartridges, flushing instructions and assistance, if necessary, and testing, is preferable to leaving vulnerable residents without water. UNITED Comments at 15.

The OCA did not file comments as to the PWSA’s proposal on this issue.

#### b. Disposition

In the *June 2020 Order*, we declined the PWSA’s request to be able to proceed with completing partial replacements in such situations including where it is not technically feasible or if it involves unsafe structural or sanitary conditions. Instead, we emphasized our directive in the *March 2020 Order* that the PWSA is required, in the context of its next rate case (as either part of its direct case or supplemental direct case), to propose 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 circumstances. *June 2020 Order* at 150 (citing *March 2020 Order* at 124).

We further reminded the PWSA that as part of Section 1501’s mandate that utility service and facilities be “adequate, efficient, safe and reasonable” the PWSA is required to “make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” *June 2020 Order* at 150 (quoting 66 Pa. C.S. § 1501). Accordingly, we granted the Parties time to confer on the directive in the *March 2020 Order* and for the PWSA to submit a proposal consistent with this prior Order or to submit it as part of its next base rate case. *Id*.

The PWSA’s Proposal does not directly address our expressed concerns pertaining to the Section 1501 mandate or indicate how it will be addressing these extraordinary circumstances in its next rate case. Rather, the PWSA argues that it is not financially responsible for rectifying structural or sanitary conditions in a residence. Additionally, the PWSA indicates that it has never opted out of replacing a property owner’s private-side LSL due to the cost to the Authority for the replacement or for technical infeasibility. Thus, the PWSA states that its Proposal focuses on scenarios involving unsafe structural or sanitary conditions. Proposal at 23.

The PWSA presents two proposals depending on whether the properties are unoccupied or occupied. If an unoccupied property has an unsafe structure or sanitary condition, and reasonable changes, substitutions, and extensions in or to service and facilities are not feasible, the PWSA will follow termination of service procedures and replace the public-side LSL. However, for a similarly-situated, occupied property, the PWSA proposes to replace the public-side LSL and reconnect the private-side line. In the latter situation, the PWSA would provide the occupied property with requisite water testing for lead, drinking water filters with instructions, and follow other applicable requirements. *Id*.

While we appreciate the PWSA’s expressed concerns of protecting the safety of its employees and contractors in declining to replace private-side LSLs, we are concerned about the Authority’s proposal for occupied properties. The PWSA acknowledges that its proposal to allow partial LSL connections fails to comply with our prior directives but asserts there is no other reasonable alternative. The PWSA submits that the costs to property owners to improve conditions that would allow the Authority to work safely can be excessive in some situations. Proposal at 23.

In support of its Proposal, the PWSA emphasizes the infrequent nature of these situations. Referencing the 2019 LSL Replacement Program, the Authority notes that it opted out of seventy-three locations out of almost 7,000 customer locations at which replacement work occurred. According to the PWSA, nearly all of these seventy-three locations involved situations in which the replacement of the private LSL presented an unacceptable risk to the health and safety of its employees and construction staff. Moreover, the PWSA asserts that approximately two-thirds of these locations were owned by the City of Pittsburgh, taken because of non-payment of taxes, and were in deplorable condition. Proposal at 23.

UNITED agrees with the PWSA’s Proposal and the OCA did not supply any responses. In its Comments, UNITED explains that the unsafe structural and sanitary conditions preventing the private-side LSL replacements most often exist because customers lack the financial resources to repair them. As noted above, UNITED emphasizes the importance of the PWSA’s work with the CLRAC to continue to improve referrals and connections with governmental and social service organizations with available funding or resources to help defray repair costs. However, UNITED acknowledges that mobilizing such assistance requiring thousands of dollars in aid takes time. According to UNITED, in many cases it would be impossible for customers to secure these repairs in the few short weeks between the PWSA notifying them that it cannot safely repair their private-side LSL and the PWSA’s replacement of the public-side line along with termination of their service. In these situations, UNITED submits that it would be preferable to allow a partial LSL replacement coupled with the water filter and testing obligations and flushing instructions approved in the *March 2020 Order* rather than leave the City’s most vulnerable residents without water. UNITED Comments at 15.

As explained throughout this Opinion and Order, there is a lack of evidentiary support in the record before us to allow the private-side LSL to reconnect to the PWSA’s system after the Authority has disturbed the public side of the service line. This is the same, but apparently even more so, under the limited circumstances involving an unsafe structure or unsafe sanitary conditions which may prevent private-side replacements. Accordingly, we shall deny the PWSA’s request to permit partial LSL replacements in these situations.

However, we shall modify the Proposal to clarify that, in the occupied property scenario where the PWSA has followed our directive to enforce its Tariff and refuse reconnection to the private-side LSL, the PWSA shall also contact the City of Pittsburgh, a health agency, local plumbing inspector or other similar authority, as appropriate, to notify and inform them of the unsafe structural condition and/or sanitary conditions and to request such appropriate authority’s review and determination of the property’s non-compliance with applicable laws and ordinances pertaining to residential properties. In addition, we direct the PWSA to urge such authorities to evaluate all available sources of emergency funding to help resolve or ameliorate the unsafe or unsanitary conditions to the residence, which would permit the private-side LSL replacement. However, given that the City owns two-thirds of these properties discovered in 2019, we emphasize that the responsibility for the safe and sanitary conditions of these properties falls squarely on the City (or their other owners) while the responsibility for ensuring safe water facilities and connecting customer-owned facilities rests solely with the PWSA under Section 1501 of the Code. Additionally, the PWSA shall assert its authority under its Tariff, the Commission’s *March 2020* and *June 2020 Orders*, and other applicable legal authority, to require the property owner, whether it be the City or any other property owner, to make the required repairs that would facilitate the replacement of the private-side LSL as appropriate under the circumstances. *See* *e.g*., PWSA Tariff Water – Pa. P.U.C. No. 1, Original Pages 39-40, Section C.3.g. (permitting the Authority to terminate service upon receipt by the Authority of an order or notice from the Department of Environmental Protection, a health agency, local plumbing inspector or other similar authority, to terminate service to the property served on the grounds of violation of any law or ordinance, or upon notice to the Authority from any such authority that it has ordered an existing violation on the property to be corrected and that such order has not been complied with).

Finally, we shall modify the policy to require the PWSA to certify with the CLRAC that all directives herein with respect to the occupied properties have been followed.[[18]](#footnote-19)

### 9. Consultation with CLRAC and LIAAC

As a final matter, we note UNITED’s request that additional directives be imposed that would require the PWSA to consult both the CLRAC and the LIAAC regarding all aspects of LSL-related terminations. UNITED Comments at 17-18. Upon review, however, the PWSA is already obligated to consult with the CLRAC regarding a variety of issues and we find that the additional directives, to the extent that they exceed the Proposal as modified in this Opinion and Order, are not necessary or appropriate. Accordingly, we shall deny UNITED’s requested additional directives.

# III. Stage 2 Compliance Plan

With this Opinion and Order providing resolution of the remaining Stage 1 Compliance Plan issues that have not otherwise been deferred to Stage 2 of the Compliance Plan proceeding, we find it appropriate to provide direction regarding the commencement of Stage 2 of the Compliance Plan proceeding considering the provisions approved.

By the Final Order entered on December 3, 2020, the Commission approved a Joint Petition for Settlement (Rate Case Settlement) for the PWSA’s water and wastewater rate cases.[[19]](#footnote-20) The Rate Case Settlement proposed, *inter alia*, to modify the Commission’s prescribed plan for moving the PWSA further into compliance with Act 64 of 2017, the Code and the Commission’s Regulations, as further described below. The Rate Case Settlement modified, in part, the predetermined staged review of the PWSA’s compliance by agreeing to: (1) defer development of the PWSA’s storm water tariff to the PWSA’s upcoming water, wastewater, and storm water rate filings; and (2) request consolidation of Stage 2 storm water issues with the PWSA’s upcoming water, wastewater, and storm water rate filings. Rate Case Settlement at 7, Sections III.9.B.1.-III.9.B.2. The Commission notes that ultimate end-state compliance with the Code and Commission Regulations is not limited to only those items covered in a PWSA tariff. Indeed, similar to Stage 1 of the Compliance Plan proceeding, the Commission continues to expect the PWSA to segregate services and property in its Compliance Plan such that the Commission and interested parties are able to engage in a meaningful review of the PWSA’s Compliance Plan for Stage 2 of the Compliance Plan proceeding. Because the Settlement appears to conflict with the pre-determined staged review of the PWSA’s Compliance Plan, the Commission finds that providing clarity is appropriate at this time.

In the Final Implementation Order entered on March 15, 2018, the Commission directed the following regarding the PWSA’s compliance plans:

As to the compliance plans, the Commission expects that these plans will detail how PWSA will reach ultimate end-state compliance with the Public Utility Code and Commission regulations. That is, after the compliance plans achieve full force and effect through a Commission order approving the plans, the Commission will enforce those orders as it would any other.

*Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Final Implementation Order*, Docket Nos. M‑2018-2640802 and M‑2018‑2640803 (Order entered March 15, 2018) at 33.

In addition, the Commission directed the PWSA to develop a plan to implement a separate tariff for its storm water service, along with a compliance plan, to be filed no later than its next wastewater base rate case filing after the July 2018 filing. *Id.* at 45. By a Secretarial Letter dated November 28, 2018 (*November 2018 Secretarial* *Letter*), the Commission established two stages for review for the PWSA Compliance Plan. *November 2018 Secretarial Letter* at 3. The Commission noted that the focus for Stage 2 will be on Chapter 56 billing and collection issues and the development of a storm water tariff. *Id*. The Commission noted that, to the extent that perceived conflicts may arise between the PWSA rate proceeding and the staged litigation of the PWSA Compliance Plan, the Commission would entertain resolution of those conflicts by motion or petition within Stage 1 of the PWSA Compliance Plan.

By a Secretarial Letter dated January 24, 2020 *(January 2020 Secretarial* *Letter)*, the Commission provided additional direction regarding Stage 2 of the PWSA’s Compliance Plan. Among other things, the *January 2020 Secretarial Letter* reiterated that the PWSA must segregate services and property such that the Commission and interested parties are able to engage in a meaningful review of its Compliance Plan. *January 2020 Secretarial Letter* at 2. The Commission also noted that Stage 2 would include issues deferred from Stage 1 to accommodate the PWSA Compliance Plan workshops and any matters deferred from Stage 1 in the final Stage 1 Compliance Plan order. *Id*. Finally, the Commission directed that Stage 2 of the PWSA’s Compliance Plan shall proceed as follows:

* No later than 60 days after the entry of a final unappealable order on Stage 1, PWSA will file with the Secretary materials related to Stage 2 of its Compliance Plan.
* No later than twenty (20) days after filing of the Stage 2 materials, Stakeholders may file comments prior to assignment to our Office of Administrative Law Judge (OALJ). However, comments filed at that early stage will not be included in the evidentiary record developed by OALJ.
* No later than forty-five (45) days after the filing of PWSA’s Stage 2 materials, the Commission will, via Secretarial Letter, assign Stage 2 of the Compliance Plan to the OALJ for the resolution of any matters that PWSA or interested parties may seek to develop. The Commission will attach to that Secretarial Letter the Stage 2 reports and directed questions authored by Commission staff regarding issues to be addressed by PWSA and interested parties. The Bureau of Consumer Services (BCS) Stage 2 report and directed questions shall address matters relating to PWSA compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations. The Bureau of Technical Utility Services (TUS) Stage 2 report and directed questions shall address matters related to PWSA operations as a regulated stormwater utility.
* Consistent with the direction of this Secretarial Letter and previously established schedules, OALJ is hereby directed to incorporate the Stage 2 Initial Report and directed questions into its Prehearing Order and to conduct evidentiary hearings to address matters raised therein.
* No later than nine (9) months from the date of assignment of Stage 2 to OALJ, OALJ will issue a recommended decision on the matters raised in Stage 2.

*Id.* at 2-3.

Neither the *November 2018 Secretarial Letter*, nor the Commission’s approval of the Rate Case Settlement, were intended to obviate the PWSA’s responsibility to file with the Commission a compliance plan for storm water service. The reference to “materials related to Stage 2 of [PWSA’s] Compliance Plan” in the *January 2020 Secretarial Letter* is intended to reference revisions to the PWSA’s Compliance Plan needed to segregate the PWSA water, wastewater and storm water services and property such that the Commission and interested parties are able to engage in a meaningful review of the PWSA’s compliance with Chapters 14 and 56 for water, wastewater and storm water services, the PWSA storm water service compliance with the Code and Commission regulations and any matters deferred from Stage 1 in the final Stage 1 Compliance Plan Order. Finally, to the extent that perceived conflicts may arise between a PWSA rate proceeding and the staged litigation of the PWSA Compliance Plan, the Commission will continue to entertain resolution of those conflicts by motion or petition within Stage 2 of the Compliance Plan.

# IV. Conclusion

For the reasons stated, *supra*, we shall approve the PWSA’s Proposal, as modified, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Compliance Proposal of the Pittsburgh Water and Sewer Authority filed on September 30, 2020, pursuant to the Commission’s Opinion and Order entered June 18, 2020, is approved, as modified, consistent with this Opinion and Order.

2. That within sixty (60) days of entry of this Opinion and Order, the Pittsburgh Water and Sewer Authority shall file with the Commission’s Secretary’s Bureau at Docket No. M-2018-2640802 and M-2018-2640803 revisions to the Pittsburgh Water and Sewer Authority’s Compliance Plan incorporating the policy terms approved by the Commission in this Opinion and Order.

3. That within sixty (60) days of entry of this Opinion and Order, the Pittsburgh Water and Sewer Authority shall file with the Commission’s Secretary’s Bureau, at Docket Nos. M-2018-2640802 and M-2018-2640803, revisions to the Pittsburgh Water and Sewer Authority’s Compliance Plan detailing how the Pittsburgh Water and Sewer Authority will reach compliance with the Public Utility Code and Commission regulations for the following matters:

a. Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations for water and wastewater services;

b. Storm water services; and

c. Issues deferred from Stage 1 of the Pittsburgh Water and Sewer Authority Compliance Plan proceeding.

4. That the Pittsburgh Water and Sewer Authority shall serve copies of the documents referenced in Ordering Paragraph Nos. 2 and 3 above on all the Parties of record in this proceeding.

5. That the revised Compliance Plan required in Ordering Paragraph No. 2, shall replace Paragraph III.VV.1.b of the Joint Petition for Partial Settlement filed by the Pittsburgh Water and Sewer Authority, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Office of Small Business Advocate, Pittsburgh UNITED and Pennsylvania-American Water Company on September 19, 2019.

6. That within sixty (60) days of entry of this Opinion and Order, the Pittsburgh Water and Sewer Authority shall file a Tariff revision incorporating the compliance provisions approved in this Opinion and Order.

7. That the Pittsburgh Water and Sewer Authority is directed to submit an investigation plan and/or process for investigating informal complaints involving lead service line replacement efforts to the Commission’s Bureau of Consumer Services for its approval, as deemed appropriate, consistent with this Opinion and Order.

8. That a copy of this Opinion and Order be served on the Commission’s Bureau of Technical Utility Services and the Bureau of Consumer Services.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 4, 2021

ORDER ENTERED: February 4, 2021

1. Below is an abbreviated summary of this proceeding relative to the Proposal. For a background and a full history of the proceeding, *see* *June 2020 Order* at 3-10. [↑](#footnote-ref-2)
2. Pursuant to Act 65, the Commission has jurisdiction over the utility service of water, wastewater, and storm water provided by Pennsylvania cities of the second class and such jurisdiction is applicable to the PWSA. *See* *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority, Tentative Implementation Order*, Docket Nos. M-2018-2640802 and M-2018-2640803 (Order entered January 18, 2018). [↑](#footnote-ref-3)
3. The ALJs also addressed various aspects of the litigated issues of the Compliance Plan in the proceeding and recommended various revisions which are not at issue in this Opinion and Order. [↑](#footnote-ref-4)
4. A partial LSL replacement is the replacement of a public-side service line made of any material without the simultaneous replacement of a connected private-side LSL. *See* UNITED St. C-2 at 9-10; Partial Settlement at ¶ III.OO.6. The evidence in the proceeding established that partial LSL replacements result in elevated lead levels in tap water. Therefore, we determined that in instances where the PWSA replaces a public-side service line, to allow a private LSL to reconnect to PWSA’s water system, without being replaced, would endanger public health. *March 2020 Order* at 119. [↑](#footnote-ref-5)
5. 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). [↑](#footnote-ref-6)
6. UNITED contends that the issues surrounding the in-person notice at the residence before termination – which UNITED describes as the “last knock” rule – have been deferred for litigation to Stage 2 of the Compliance Plan Proceeding. UNITED Comments at 6 (citing Partial Settlement at ¶ III.MM.1.d). Thus, UNITED asserts that the resolution of the various factual and legal issues associated with this issue is not appropriate in this proceeding. Accordingly, UNITED argues that the Commission should clarify that any approval of the PWSA’s policies and procedures herein should not interfere with the full review of the PWSA’s compliance with Chapters 14 and 56 in the context of its Stage 2 Compliance Plan proceeding. *Id*. [↑](#footnote-ref-7)
7. We note here UNITED’s comment that the PWSA’s proposal might be read to suggest that customers must first “indicate” their acceptance of the Authority’s offer of a free private-side LSL replacement within an unspecified period of time after termination, opening a 5-day window to return a signed authorization form. However, UNITED believes that the PWSA is actually proposing to allow customers to accept a free LSL replacement by returning a signed authorization to the Authority within five days of termination, regardless of when the customers indicate an acceptance. UNITED Comments at 10. We agree with UNITED’s logical interpretation of this provision and direct the PWSA to clarify this language in its subsequent compliance filing. [↑](#footnote-ref-8)
8. The Commission also notes the PWSA’s responsibility for employee and customer safety in ensuring that COVID-19 precautions are taken by the Authority’s field employees. Although the issue of pandemic-related safety measures is not before us in this proceeding, we acknowledge that the PWSA in its discretion may require the substitution of in-person visits with a phone call where an in-person visit cannot be made in compliance with federal and state pandemic guidelines, such as the employee remaining outdoors, the employee and the customer wearing masks, and the interaction occurring at least six feet apart. [↑](#footnote-ref-9)
9. In the *March 2020 Order*, we approved limitations on PWSA’s obligations with respect to property restoration. Specifically, “PWSA will restore roadways and public sidewalks, backfill any trenches excavated as part of the replacement process and will fill and seal any wall or floor penetrations in the private home. No other restoration will be conducted for the private side replacement. PWSA will not replace any landscaping, interior finishes, paving, seeding, or walkways. All restoration costs shall be borne by the homeowner.” *See March 2020 Order*, Appendix A, Section H.4, pp. 192-193. [↑](#footnote-ref-10)
10. *See supra*, n. 9, [↑](#footnote-ref-11)
11. The Authority cites to Original Page No. 39 of PWSA’s Tariff Water – Pa. P.U.C. No. 1, Part III, Section C.3 which provides that “service to the customer may be terminated for good cause, including, but not limited to ….” Proposal at 13. [↑](#footnote-ref-12)
12. As additional support, the PWSA contends that its Tariff permits it to take action when the conditions of a customer service line present a risk to public health or safety or of damage to public property, citing PWSA Tariff Water – Pa. P.U.C. No. 1, Original Page No. 35. However, as shown above in the Tenant-Occupied and Unresponsive Properties section, we do not believe this language can be taken out of the context of the entire provision to which it belongs to be applied in this context. However, we approve the PWSA’s proposal herein and encourage the development of appropriate Tariff language to implement it. [↑](#footnote-ref-13)
13. For this and the subsequent sections in which the OCA and UNITED support or do not oppose the components of the Proposal, the PWSA simply references the Comments generally and includes them in a reference chart. Reply Comments at 3-4 and Attachment A. [↑](#footnote-ref-14)
14. “Emergency – An unforeseen combination of circumstances requiring temporary discontinuance of service to effect repairs or maintenance or to eliminate an imminent threat to life, health, safety, or property.” 52 Pa. Code § 56.2. [↑](#footnote-ref-15)
15. The Chapter 14 provisions are implemented in the Commission’s Chapter 56 Regulations. *See* 52 Pa. Code § 56.1 (statement of purpose of Chapter 56 regulations); *see also* 52 Pa. Code § 56.81 (authorizing a termination of service only for the following four actions by the customer: (1) nonpayment of an undisputed delinquent account; (2) failure to complete payment of a deposit, provide a guarantee of payment or establish credit; (3) failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading; or (4) failure to comply with the material terms of a payment arrangement). [↑](#footnote-ref-16)
16. UNITED asserts that for small-diameter water main replacements customers receive several notices weeks, if not months, in advance of service termination; and following termination, customers have another five days to change their minds. UNITED Comments at 13. [↑](#footnote-ref-17)
17. Allowing such a case to proceed through the complaint process has the potential benefit of permitting the complainant to develop an evidentiary record and to prove by substantial record evidence an entitlement to relief based on the unique circumstances of that particular case. As discussed above in the Expedited Complaint Process section, the PWSA has available options for addressing its concerns about the timing of such complaint proceedings. [↑](#footnote-ref-18)
18. Our determination herein is not intended to prejudge the consideration of proposed 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 circumstances as part of its next base rate case. [↑](#footnote-ref-19)
19. *See Pa. PUC, et al., v. Pittsburgh Water and Sewer Authority – Water and Pittsburgh Water and Sewer Authority – Wastewater*, Docket Nos. R-2020-3017951, R‑2020-3017970, *et seq.* (Final Order entered December 3, 2020). [↑](#footnote-ref-20)