



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

June 12, 2017

Via E-Filing

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

Re: Petition of Pennsylvania-American Water Company for Approval of Tariff
Changes and Accounting and Rate Treatment Related to Replacement of
Lead Customer-Owned Service Pipes
Docket No. P-2017-2606100

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E)
Answer to Petition in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of
service. If you have any questions, please contact me at (717) 783-6151.

Sincerely,

Phillip C. Kirchner
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313870

Enclosure
PCK/sea

cc: Certificate of Service
Cheryl Walker-Davis - OSA

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Pennsylvania-American Water	:	
Company for Approval of Tariff Changes	:	
and Accounting and Rate Treatment	:	Docket No. P-2017-2606100
Related to Replacement of Lead	:	
Customer-Owned Service Pipes	:	

CERTIFICATE OF SERVICE

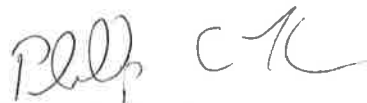
I hereby certify that I am serving the foregoing **Answer to Petition** dated June 12, 2017, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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Phillip C. Kirchner
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313870

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Pennsylvania American	:	
Water Company for Approval of	:	
Tariff Changes and Accounting and	:	Docket No. P-2017-2606100
Rate Treatment Related to	:	
Replacement of Lead Customer-	:	
Owned Service Lines	:	

**ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT TO
THE PETITION OF PENNSYLVANIA AMERICAN WATER COMPANY FOR
APPROVAL OF TARIFF CHANGES AND ACCOUNTING AND RATE
TREATMENT RELATED TO REPLACEMENT OF LEAD CUSTOMER-
OWNED SERVICE LINES**

On May 22, 2017, the Pennsylvania American Water Company (“PAWC” or “Company”) filed the above-captioned Petition requesting changes of certain tariff provisions in order to allow the Company to replace customer-owned service lines made of lead and allowing for the capitalization and subsequent socialization of the costs of these assets that PAWC will not retain ownership of or maintain via recording in Account No. 333 - Services. The Bureau of Investigation and Enforcement (“I&E”) now timely files this Answer pursuant to 52 Pa. Code § 5.61.

I. INTRODUCTION

As noted in the Company’s Petition, PAWC is a water utility in the Commonwealth of Pennsylvania and subject to regulation by the Environmental Protection Agency (“EPA”) and Department of Environmental Protection (“DEP”),

which oversee enforcement of the Lead and Copper Rule (“LCR”) pertaining to drinking water.

PAWC still has lead service lines in use in its system. Although the exact number and locations are not known, PAWC estimates that there are approximately 18,000 lead service lines remaining on its system. These lines pose potential health risks by creating an avenue for lead ingestion in consumers. While there are mitigating measures that PAWC has undertaken, the Company maintains that total risk reduction is only achievable through replacement of lead service lines. PAWC, by and through this Petition, seeks to begin this endeavor.

Service line components are owned separately by PAWC and by consumers. The former extending from the water main to a curb stop or valve and the latter extending from the curb stop or valve to the premises. These components are owned and maintained by their respective owners, as outlined in PAWC’s Tariff No. 4 at Rules 2.1, 2.2, and 4.9. This Petition would allow PAWC to modify its tariff and authorize the replacement of customer-owned portions of the service line. As proposed, the Company would capitalize the cost of the customer-owned portion and earn a return on that investment. The Company would not retain ownership of the line; rather, as proposed, ownership and the responsibility to maintain the service line would remain with the customer.

The Company proposes to establish a \$6.0 million budget cap per year for customer-owned lead service line replacements. This proposed Replacement Plan will be implemented in two parts. Under Replacement Plan-Part 1, PAWC will proactively

remove customer owned lead lines that are encountered when the Company replaces its mains and services. Under Replacement Plan- Part 2, the Company will coordinate customer requested replacements, which will be grouped by geographic location.

I&E, while acknowledging the safety concern posed by lead service lines, requests that this Petition be referred to the Office of Administrative Law Judge (“OALJ”) in order to develop an evidentiary record regarding the source of the lead, the two phase Replacement Plan proposed by the Company, the potential ratemaking impact of socializing the proposed annual \$6.0 million cost to replace customer-owned service lines to all of its customers and the Company’s proposal to earn a return of and on assets that it does not own.

II. RESPONSE TO AVERMENTS

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

11. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

12. Admitted.

a. Admitted.

b. Admitted.

13. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

14. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

15. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

16. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

17. Admitted.

18. Admitted in part, denied in part. I&E understands PAWC's proposal but maintains that if the Company's request to replace customer-owned lead service lines is approved, it may be in the public interest for PAWC to retain ownership of the lead service lines that it replaces. Referring this matter to OALJ is appropriate so that ownership and the ratemaking treatment of lead service lines can be fully reviewed by the parties and recommendations that best serve the public interest can be made to the Commission.

19. After reasonable investigation, I&E is without knowledge or information sufficient to form a belief as the truth of this averment.

20. Admitted in part, denied in part. I&E understands PAWC's proposal but is without sufficient information to know whether the proposed budget cap of \$6.0 million per year is appropriate. Referring this matter to OALJ is proper so that the proposed budget cap and ratemaking recovery can be fully reviewed by the parties, a record can be established and recommendations can be made to the Commission.

21. Admitted. However, I&E is without sufficient information to know if the proposed \$6.0 million annual budget is adequate to address lead service lines under Part 1 and Part 2 of the Replacement Plan.

22. Denied. As filed, there is insufficient evidence to demonstrate that PAWCs' Replacement Plan is reasonable and in the public interest. The Replacement Plan must be referred to OALJ in order to obtain more information regarding the Part 1 and Part 2 of the Replacement Plan, the potential ratemaking impact of socializing the proposed annual \$6.0 million cost to replace customer-owned service lines to all of its customers and the Company's proposal to earn a return of and on assets that it does not own.

a. Admitted.

b. Admitted. However, referring this matter to OALJ for development of a record is appropriate to determine what PAWC considers to be "reasonable grouping measures" and "reasonable customer-request levels" in Replacement Plan- Part 2.

c. Admitted in part, denied in part. Referring this matter to OALJ is appropriate to determine whether it PAWC's proposal to capitalize the Replacement Plan cost is a "reasonable means to recover the fixed costs of its investments."

23. Admitted.

24. After reasonable investigation, I&E is without information to determine whether the Replacement Plan, as filed, is efficient and cost-effective. Referring this matter to OALJ will provide the parties the opportunity to fully review these aspects of the Replacement Plan and build a record for the Commission's consideration.

25. Admitted. By way of further response, I&E was active in the York Water proceeding and was a signatory to the Commission-approved Settlement wherein York agreed to record the cost of all customer owned service line replacements to a regulatory asset account and amortize the amount over a period of not less than four years and not to exceed six years, rather than capitalize those costs as proposed by PAWC in the instant Petition. The Commission approved this ratemaking treatment by Order entered March 2, 2017.

26. Denied. I&E maintains that it may not be appropriate to capitalize the cost to replace customer-owned service lines as the costs incurred in the Replacement Plan will not create a "long-lived asset" for PAWC given that it will not retain ownership of the lines or bear any responsibility to maintain and mark the lines for PA One Call purposes. As was done in York Water, it may be more appropriate for ratemaking

purposes to create a regulatory asset and amortize the cost over a period of time. This would allow PAWC to recover the cost to replace the customer-owned lead lines in furtherance of its mandate to provide safe and reliable service, but would mitigate the ratemaking impact for its customers by not allowing PAWC to earn a return on the investment.

27. Denied. For the reasons discussed above, it may not be appropriate for the Company to capitalize these costs. This is further demonstrated when the potential financial impact to ratepayers is considered as follows: In 2018, the average remaining life for account 333 is projected to be 44.4 years.¹ The total return to PAWC from its Distribution System Improvement Charge (DSIC) as of April 1, 2017 is 7.90%.² Using a straight-line depreciation methodology, allowing the Company to capitalize \$6.0 million through account 333 would earn a return on that investment of *over* \$10.0 million for property it would not own, maintain, or mark for PA One Call purposes. PAWC is proposing to capitalize \$6.0 million each year this program is in effect. Referring this matter to OALJ will allow the parties the opportunity to address the propriety of the ratemaking impact from PAWC's Petition.

28. Denied. The Commission's most recent decision³ supports treating the cost of

¹ Pa. P.U.C. v. Pa. American Water Company, Docket No. R-2017-2595853, Exhibit No. 11-C, P. 111.

² DSIC Calculation effective at April 1, 2017 for Tariff Water-PA P.U.C. No. 4, Docket No. M-2017-2594415.

³ Petition of the York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account, Docket No. P-2016-2577404. (Order entered March 2, 2017).

replacing customer-owned service expenses as a regulatory asset, which ensures that the Company recovers the costs of replacing service lines but does not make a profit on those expenses. PAWC is correct that customer-owned service lines have been replaced at the utility's initial expense for Peoples Natural Gas Company and Columbia Gas of Pennsylvania⁴ but there are crucial distinguishing factors between those dockets and the case at hand. Unlike the water industry where customers own the service lines from the curb box to the premises, gas utilities traditionally own and maintain service lines to the home. In limited portions of the Commonwealth, customers own their gas service line, which is why Peoples and Columbia sought waivers from the Commission to replace those service lines for customers. However, in the water industry service lines are traditionally owned and maintained by the customer at their expense. This is also complicated by the fact that there are different regulations applied to water and gas utilities, so actions that have been taken in the gas industry may not be the optimal strategy for water utilities. Accordingly, while I&E recognizes that two regulated gas utilities have been permitted to replace customer-owned gas service lines, I&E maintains that it is appropriate to refer this matter to OALJ for discovery, testimony and evidentiary hearings before permitting a regulated water utility to replace an uncertain number of customer-owned service lines and recover those costs through rates at an incentivized rate of return.

⁴ Petition of Peoples Natural Gas Co. LLC for Approval of Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement, Docket No. P-2013-2346161. (Order entered May 23, 2013); Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement, Docket No. P-00072337 (Order entered May 19, 2008).

29. Denied. For the reasons discussed above, I&E maintains that it may not be in the public interest to capitalize the customer owned replacement costs. Therefore, those costs may not be “eligible property” under Section 1351 of the Public Utility Code. Referring this matter to OALJ will allow the parties the opportunity to address the ratemaking impact of PAWC’s request.

30. Existing Commission policy and precedent run contrary to this averment and adoption of this proposal as filed may not be in the public interest.

31. Admitted.

III. CONCLUSION

I&E does not dispute the health concerns that lead water mains and service lines can pose. However, PAWC's Petition as filed proposes ratemaking treatment of the customer-owned portion of service lines that may be contrary to the public interest. Furthermore, the precedential impact this decision may have and the proposed annual \$6.0 million cost that may be eventually socialized through this proposal support I&E's request for further discovery, development of a record and hearings in this matter. Accordingly, I&E respectfully requests that this Petition be referred to the Office of Administrative Law Judge.

Respectfully submitted,



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Dated: June 12, 2017