

COMMONWEALTH OF PENNSYLVANIA



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March 1, 2018

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

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:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief  
in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Phillip D. Demanchick".

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Enclosures

cc: Honorable Elizabeth Barnes, ALJ  
Certificate of Service

\*244583

## CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of March 2018.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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MAIN BRIEF  
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: March 1, 2018

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## **I. INTRODUCTION**

The Office of Consumer Advocate (OCA) hereby submits this Main Brief regarding the Petition of Pennsylvania-American Water Company (PAWC or the 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 (Petition). While the OCA generally supports PAWC's goal of replacing customer-owned lead service lines, allowing the Company to earn a return of these costs and afford it the rate recovery treatment it requests will result in a windfall to the Company, with customer payments far exceeding the actual cost of replacing the customer-owned lead service lines. Accordingly, the OCA requests that the Commission approve PAWC's Petition, consistent with the OCA's modifications and recommendations.

### **A. Procedural History**

Pennsylvania-American Water Company provides water service to approximately 655,632 customers and wastewater service to approximately 54,478 customers within its authorized service territory, which encompasses portions of thirty-six counties across the Commonwealth.

On May 22, 2017, PAWC filed its Petition seeking approval from the Commission to revise its tariff in order to replace customer-owned lead service lines. Specifically, PAWC requests the Commission (1) allow the Company to replace customer-owned lead service lines at its sole cost, subject to the specific accounting and rate recovery treatment proposals contained in its Petition, (2) authorize the Company to capitalize such costs incurred and to record those costs in Account No. 333 – Services (Services Account) for accounting purposes, and (3) affirm that the costs are “eligible property” for water utilities under Section 1351, which means the Company can recover



a return on and a return of the costs through its Distribution System Improvement Charge (DSIC) pursuant to 66 Pa. C.S. § 1357.

On June 12, 2017, the Bureau of Investigation and Enforcement (I&E) and the OCA each filed an Answer to the Company's Petition. On June 15, 2017, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention to represent the interests of small business consumers. On August 8, 2017, the parties participated in a prehearing conference to determine the procedural schedule and discovery rules.

The OCA issued one set of interrogatories and filed the direct and surrebuttal testimony of Scott J. Rubin setting forth the OCA's position in this proceeding.<sup>1</sup> On January 22, 2018, PAWC, the OCA, OSBA, and I&E jointly filed a Motion for Admission of Testimony and Exhibits, stipulating as to the authenticity of the statements and exhibits and waiving any cross-examination of the witnesses sponsoring the statements and exhibits. On January 25, 2018, Administrative Law Judge Elizabeth H. Barnes (ALJ Barnes) granted the Motion admitting the OCA's testimony and schedules into the record. Included in Appendix A is a list of testimony, schedules, and exhibits submitted by the OCA and admitted into the record.

## **B. Burden of Proof**

Section 332 of the Public Utility Code states:

(a) Burden of proof. — Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

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<sup>1</sup> Scott J. Rubin is an independent attorney and public utility industry consultant under contract with the OCA who has testified as an expert witness before utility commissions and courts in seventeen states and the District of Columbia and province of Nova Scotia. OCA St. 1 at 1-2. Since 1984, Mr. Rubin has provided legal and consulting services to a variety of parties interested in public utility regulatory proceedings. *Id.*, App. A.

66 Pa. C.S. § 332(a). As the petitioner seeking a Commission Order, PAWC has the burden of proof in this proceeding.<sup>2</sup>

It is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” Lansberry v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990) (Lansberry). In other words, PAWC’s evidence must be more convincing than the evidence presented by the other parties.<sup>3</sup> Additionally, the Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. The evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. Lansberry, 578 A.2d at 602. Even where a party has established a prima facie case, the litigant must show that:

the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.

Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983). The utility’s burden of proof to establish the justness and reasonableness of every component of its Petition is an affirmative one and remains with PAWC throughout the course of the proceeding.<sup>4</sup> Thus, PAWC has the burden of proof to show that every element of its proposal is just and reasonable.

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<sup>2</sup> See Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Docket No. P-00062227, Order (May 17, 2007).

<sup>3</sup> Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854 (Pa. 1950) (holding that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence, which is satisfied when one party has presented evidence that is more convincing, even by the smallest degree, than the evidence presented by the other party)

<sup>4</sup> See, Pa. PUC v. Columbia Gas of Pennsylvania, Inc. Docket No. R-2014-2407345, 2014 Pa. PUC LEXIS 691, at \*11 (Oct. 23, 2014) (“The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested Rider. Instead, the utility’s burden, to establish the justness and reasonableness of every component of its request, is an affirmative one and remains with the public utility throughout the course of the proceeding.”).

## II. SUMMARY OF ARGUMENT

Lead exposure is a significant health risk and exposure can occur when water passes through lead pipes. PAWC St. 1 at 5. While utilities have since ended the use of lead in distribution systems and the federal government has adopted standards eliminating the use of lead in solder, faucets, and other plumbing fixtures, many lead pipes remain. OCA St. 1 at 5-6. To that end, PAWC is replacing its company-owned lead service lines. Petition at 7. Partial lead service line replacements, however, *i.e.* where a utility only replaces its portion of the line and cannot replace the customer-owned portion of the service line, raises a number of issues related to public health and cost efficiency. OCA St. 1 at 8-9.

In order to avoid partial replacements, the Company has requested through its Petition that the Commission allow it to revise its tariff, allowing the Company to replace customer-owned lead service lines at the Company's initial expense. Petition at 5. In addition, the Company seeks to capitalize these costs, depreciate the costs over a period approximately fifty-seven years, earn a return on the undepreciated balance, and include costs in its Distribution System Improvement Charge (DSIC). Petition at 15-16.

As stated below, the OCA agrees substantially with PAWC's request to replace customer-owned lead service lines. Lead exposure can cause serious harm to consumers and the Commission has previously allowed gas utilities to replace customer-owned service lines where failure to do so would result in safety and reliability concerns.

The OCA, however, disagrees with PAWC's proposed accounting and ratemaking treatment. Allowing the Company to earn a return on these expenses would violate fundamental ratemaking principles, *i.e.* a company should only earn a return on property devoted to the public

use. These expenses, however, are for the benefit of individual customers. For these reasons, the Company cannot earn a return on these expenses.

The OCA submits, rather, that the Company be permitted to create a deferred regulatory asset through which it can track the expenses it incurs when replacing customer-owned lead service lines. OCA St. 1 at 21. Furthermore, the Company should be allowed to recover a return of the prudent and reasonable expenses over an amortization period to be determined in PAWC's next base rate proceeding. Id. The Commission frequently employs this method with extraordinary, non-recurring, one-time expenditures.

Additionally, the OCA recommends that the Company provide a five-year warranty on all customer-owned service lines it replaces in the course of this program. OCA St. 1 at 23. The Company should also offer a partial compensation plan for customers that replaced their lead service line in the four years proceeding this Petition, as well as undertake a robust consumer outreach and education program related to identifying lead service lines, instructing the customer to contact the Company regarding replacement, and informing the customer on how to adapt to using a lead service line until it is replaced. Id. at 23-25.

### **III. ARGUMENT**

#### **A. Background**

In the early to mid-20<sup>th</sup> century, utilities commonly used lead to construct their service lines because of the low cost of lead and its ease of use. The use of lead in pipes ended in the 1950s or 1960s for most utilities. OCA St. 1 at 5. Furthermore, it was not until 1986, with the enactment of the Safe Drinking Water Act (SDWA), that Congress banned lead in solder, faucets, and other plumbing fixtures. Id. The SDWA, however, still allowed piping and certain plumbing fixtures to contain up to 8 percent lead, which Congress further reduced to 0.25 percent in 2011 with the

passage of the Reduction of Lead in Drinking Water Act. Id. at 6. The American Water Works Association estimates that in 2016 there were 6.1 million lead service lines still in use in the United States, with 160,000 lead pipes in Pennsylvania. Id. Lead pipes pose a problem because lead can leach into water that passes through these pipes resulting in lead exposure to the consumer.<sup>5</sup>

To prevent lead exposure, water utilities have utilized corrosion control to stop lead from leaching into the water (*i.e.* by building a passivation layer preventing the lead pipe from coming into contact with the water). PAWC St. 1 at 10. This technique is not 100% effective. OCA St. 1 at 6. “Moreover, when water sources or drinking water chemistry change, or when financial pressures limit the use of corrosion control (as was the unfortunate case in Flint, Michigan), there can be a significant risk of lead exposure to the public from old service lines.” Id.

Because of these issues with corrosion control, utilities can also address lead exposure by physically replacing the service line. There are two parts to a service line. The first part is the company-owned service line, which runs from the water main to the street service connection. Petition at 1. PAWC owns and maintains this portion (hereinafter Service Line, pursuant to Section 2.15 of the Company’s existing Tariff). Petition at 5. The other part, the customer-owned service line, is the portion that begins at the Company-owned street service connection and continues into the structure on the premise[s] to be supplied. Petition at 5. The customer owns and maintains this portion (hereinafter Service Pipe, pursuant to Section 2.16 of the Company’s existing Tariff). Id. A partial replacement can occur if the Company replaces the Company-owned Service Line and the customer does not replace the customer-owned Service Pipe.

Evidence shows, however, that a partial replacement of the line “can cause a spike in lead levels.” OCA St. 1 at 6-7. The National Drinking Water Advisory Council’s (NDWAC) report

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<sup>5</sup> Research has shown that adverse health effects can occur because of lead exposure, which includes permanent cognitive impairment in infants and children. OCA St. 1 at 5.

contains the following summary of the Science Advisory Board's (SAB) conclusion after evaluating the effectiveness of partial lead service line replacements:

While recognizing the limits to current data, the SAB concluded that **PLSLRs [Partial Lead Service Line Replacements] have not been shown to reliably reduce drinking water lead levels in the short-term, ranging from days to months, and potentially even longer.** Additionally, PLSLR is frequently associated with short-term elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period. **The available data suggest that the elevated tap water lead levels tend to increase then gradually stabilize over time following PLSLR, sometimes at levels below and sometimes at levels similar to those observed prior to PLSLR.** The SAB also concluded that in studies comparing full LSLR [Lead Service Line Replacement] versus PLSLR, the evaluation periods were too short to fully assess differential reductions in drinking water lead levels. However, the SAB fully explained that full LSLR appears generally effective in achieving long-term reductions in drinking water lead levels, unlike PLSLR. Both LSLR and PLSLR generally result in elevated lead levels for a variable period of time after replacement. The limited evidence available suggests that the duration and magnitude of the elevations may be greater with PLSLR than full LSLR.

Id. at 8-9 (emphasis added).

The physical replacement of the *entire* lead service line, therefore, is the current best practice in the water utility industry. OCA St. 1 at 10. Continuing research also suggests that, under certain conditions, lining or coating the interior of lead service lines may provide similar public health protections at lower cost and without the short-term spikes in lead levels that can occur with a physical replacement of the line. OCA St. 1 at 10.

For these reasons, the OCA's witness Scott Rubin summarized the current best practices in the water utility industry concerning lead service lines:

- Even when corrosion control is used properly, lead service lines should be replaced, in their entirety, as soon as possible. The current recommendation in the industry is for an approximately 30-year replacement, though there appears to be movement toward a more rapid replacement, such as within 10 years.
- Partial replacement of lead service lines (that is, replacing only the utility-owned portion of the line) should be avoided whenever possible. Partial

replacements may not be effective in reducing lead exposure, and under some circumstances may increase lead exposure.

- Removing all lead service lines will not eliminate the need for corrosion control because there still may be lead present in customers' plumbing or plumbing fixtures, or in old cast-iron pipe joints, but it will eliminate a major source of potential lead contamination.
- Coating and lining technologies appear to be effective for lead control without the need to physically remove lead service lines, but their efficacy and cost-effectiveness can vary based on local conditions. They may, however, prove to be part of an effective lead control program in some circumstances.

OCA St. 1 at 11-12.

## **B. Replacement Plan**

### **1. PAWC's Proposal**

Given the risk involved with lead service lines, the Company wants to replace its remaining lead Service Lines during its ongoing main and Service Line replacement program. PAWC St. 1 at 8. PAWC estimates that it has approximately 18,000 lead Service Lines. Id. The Company, however, recognizes the potential harm caused by partial lead service line replacements stating:

In light of this research suggesting that partial replacement increases the risk of lead exposure, an increasing number of utilities, including the Company are reconsidering or avoiding this practice where possible. For its part, PAWC has tried to stage its main replacements to avoid portions of its distribution system where lead Service Pipes are likely to remain in service.

PAWC St. 1 at 9. Nevertheless, “infrastructure rehabilitation in those areas is necessary and must be undertaken” and that will include replacing customer-owned lead Service Pipes. Petition, at 7.

Under PAWC's current Tariff, the Customer retains ownership and responsibility for the maintenance, repair, and replacement of the Service Pipe, which prevents the Company from replacing a customer's lead Service Pipe. Petition at 5. The Company now petitions the Commission for the requisite tariff authority and associated accounting and ratemaking treatment

to replace customer-owned lead Service Pipes. If given the authority, PAWC proposes to undergo the replacements in two phases, Replacement Plan – Part 1 and Replacement Plan –Part 2.

Under Replacement Plan – Part 1, the Company will replace customer-owned lead Service Pipes that it encounters during its ongoing main and Service Line replacement program, whether or not the Service Line connected to it is made of lead or other materials. Petition at 8. The Company further states:

the affected customer must enter into an appropriate agreement with the Company, which... authorizes the Company to access the customer’s property to undertake the replacement work and acknowledges that the ownership and responsibility for future maintenance, repair and replacement of the newly replaced Service Pipe will remain with the customer.

PAWC St. 1 at 14.<sup>6</sup> In instances where the customer refuses to allow the Company to replace the lead Service Pipe, the Company will utilize a dielectric coupling to establish a separation between dissimilar metals of the Service Line and the lead Service Pipe. PAWC St. 1R at 6.

Replacement Plan - Part 2 addresses remaining customer-owned lead Service Pipes that the Company does not encounter during its ongoing main and Service Line replacement program. PAWC will replace the customer-owned lead Service Pipe at the customer’s request if the customer and the Company verify that the customer’s Service pipe is made of lead. PAWC St. 1 at 12. PAWC indicates, however, that it will not replace lead Service Pipes on a customer-by-customer basis. Id. Instead, it will keep a log of the requests grouped by “relevant geographic areas.” Id. PAWC states, “When a reasonable number of requests have been received in a given area, the Company . . . will undertake all of the replacements in an area as part of a single project.”

Id. The Company explained how it would achieve economies of scale:

For Part 2 replacements, the Company expects to utilize at least one contractor per geographical region, such as Central Pennsylvania, wherein the crew can replace approximately ten customer-owned lead Service Pipes per week. The number of

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<sup>6</sup> The Company will seek a similar agreement for Part 2 replacements. PAWC St. 1 at 14.



weeks this contractor crew would be utilized is dependent on the aggregate number of customer requests in a geographical region and the available funding under the \$6.0 million budget cap. To minimize repeated contractor mobilization/demobilization costs, the Company would need to aggregate at least ten lead Service Pipe replacements on the look-ahead schedule for the following two weeks in a localized geographic area. With full implementation of Replacement Plan – Part 2, the Company anticipates segmenting its service territory into at least five geographical regions, and could theoretically have capacity to perform fifty customer-owned lead Service Pipe replacements per week.

PAWC St. 1R at 8. Under this proposal, the wait time for replacement will depend on the number of requests and the available funding, but the Company will strive to keep it under one year. Id. Lastly, the Company asserts it will give priority to customers that request a replacement who can show verified water quality data indicating an elevated lead level at the tap exceeding the action level of 15 parts per billion. Id. at 9.

## 2. The OCA's Response

Considering the important role of utility tariffs, the Commission generally disfavors waiving tariff provisions as a matter of law and policy. Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Costs of Certain Customer-Owned Service Line Replacements to the Company's Service Account, Docket No. P-2016-2577404, Order at 5 (Mar. 8, 2017) (York Water); OCA Sch. SJR-5 at 5.<sup>7</sup>

The Commission, however, has waived tariff provisions where a Company sought to replace, at its expense, customer-owned gas service lines made of cast iron and unprotected bare

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<sup>7</sup> A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa. C.S. § 1303A. A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. PPL Electric Utilities Corp. v. Pa. PUC, 912 A.2d 386 (Pa. Commw. Ct. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, and regulations, and practices so that the public may inspect its contents. 66 Pa. C.S. § 1302; 52 Pa. Code § 53.25. Public utility tariffs must be applied consistent with their language. Public Utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pennsylvania Electric Co. v. Pa. PUC, 663 A.2d 281 (Pa. Commw. Ct. 1995); Tariff provisions previously approved by the Commission are prima facie reasonable. Zucker v. Pa. PUC, 437 A.2d 1067 (Pa. Commw. Ct. 1981).

steel upon finding that it was in the public interest because failure to do so would result in safety and reliability concerns. York Water, Order at 5; see 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, 2013 Pa. PUC LEXIS 543, at \*9, 14 (May 23, 2013) (granting tariff waivers to Peoples to replace customer-owned gas service lines in conjunction with the Company's main replacement and upgrade program because the existing customers' service lines would be incapable of handling the increased pressure otherwise resulting in loss of service) (Peoples), Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement, Docket No. P-00072337, 2008 Pa. PUC LEXIS 344, at \*8 (May 19, 2008) ("We also find it is in the public interest for Columbia to replace as its expense certain customer-owned service lines when the lines must be replaced as a result of Columbia's main replacement and upgrade program") (Columbia Gas).

Most recently, the Commission granted York Water a tariff waiver allowing it to replace customer-owned lead service lines, recognizing the risk of lead piping and lead exposure. York Water, Order at 6.

This case needs to move forward, as York Water is already gearing up for construction to ameliorate a problem of the utmost importance to its customers. Further, the proposed course of action by York Water coordinates the replacement of Company-owned and adjoining customer-owned service lines. As such, delay of customer-owned line replacements can result in a delay of Company-owned replacements, unnecessarily stalling the actions necessary under the [Consent Order and Agreement] and potentially harming the health and safety of York Water's customers. The efficiency of this approach minimizes total costs, thereby providing better service to York Water customers, particularly to those who might find the total cost of replacing the customer-owned line to be burdensome or too expensive a task to undertake independently. Additionally, a 'partial lead service line replacement' may not significantly reduce the lead level at the customer's tap, but may temporarily increase lead at the customer's tap due to disturbing the customer-owned service line during partial replacement.

Id., Order at 6.<sup>8</sup>

The same issues the Commission recognized in York Water apply equally in this proceeding. Lead in water service lines creates major safety and reliability concerns for customers. As stated above, lead exposure can cause a range of health effects including permanent cognitive impairment in infants and children. OCA St. 1 at 5. Further, current protections against lead exposure may be insufficient.

While corrosion control can be effective in reducing the leaching of lead from old service lines, lead solder, and older plumbing fixtures, it may not be 100% effective. Moreover, when water sources or drinking water chemistry change, or when financial pressures limit the use of corrosion control (as was the unfortunate case in Flint, Michigan), there can be a significant risk of lead exposure to the public from old service lines. In the last, few years, new research has shown that even the removal of an old lead service line can cause a spike in lead levels, particularly if only a portion of the service line is removed.

OCA St. 1 at 6-7. Because of these issues, the National Drinking Water Advisory Council concluded, “the driving proactive principle to improve public health protection is removing full lead service lines from contact with drinking water to the greatest degree possible...” OCA St. 1 at 9. Failure to grant PAWC a tariff waiver, however, will result in the Company potentially undertaking many partial lead service line replacements.

Accordingly, the OCA agrees substantially with the Company’s Replacement Plan and request for limited waivers of its tariff provisions allowing the Company to replace customer-owned lead Service Pipes. As discussed in Section D, however, the OCA does not agree with PAWC’s proposed accounting and ratemaking treatment of the costs associated with replacement of Service Pipes. See p. 18-24, infra.

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<sup>8</sup> The General Assembly has also recognized the importance of removing lead piping from municipal water systems. Act 44, enacted into law on October 30, 2017, authorizes Municipal Authorities to replace or remediate private water and private sewer laterals made of lead if the Municipal Authority determines that it will benefit the public health, public water supply system, or the public sewer system. Act of Oct. 30, 2017, 2017 Pa. Laws 44, § 1719-E(c)(1) (codified as 72 PA CONS. STAT. § 1719-E(c)(1)).

## **C. Budget**

### **1. PAWC's Proposal**

While the Company states that the actual cost of Service Pipe replacements are based on a number of factors, it estimates that the cost of replacement will average \$3,500 per customer-owned lead Service Pipe for both Part 1 and Part 2 replacements. Petition at 10. The Company bases this estimate on its experience and information from several sources, “including discussions with Company field personnel and sample contractor pricing for Service Pipe replacements averaging 15 – 25 feet long.” PAWC St. 1R at 12. The Company has proposed a budget cap of \$6 million per year to replace customer-owned lead Service Pipes. PAWC St. 1 at 14-15. Part 1 of the Replacement Plan will have first priority. Id. at 15. Any funds not used in Part 1 will be applied to Part 2 in that year, subject to the coordination, grouping, and minimum customer level requirements stated above. Id. If the Company does not use the entire \$6 million budget in a single year, the remainder will carry forward and be added to the following year. Id. If the Company, however, does not use that remainder in the following year, it will not carry over again, *i.e.* the funds will not carry forward on a cumulative basis indefinitely. PAWC St. 1R at 17. If the Company determines that the proposed annual budget does not meet future needs, the Company may seek Commission approval to modify the amount. PAWC St. 1 at 15. Additionally, the Company will seek low cost state and federal funding through the Pennsylvania Infrastructure Investment Authority to the extent funds are available. Id. at 15-16.

### **2. The OCA's Response**

The OCA does not object to PAWC's proposed budget. Given the extraordinary, one-time nature of these costs, a \$6 million annual budget allotment appears to be a reasonable amount to replace remaining customer-owned lead Service Pipes over a ten-year period. OCA St. 1 at 25.

The OCA would reiterate that the Commission provide flexibility in how the Company implements its proposed \$6 million per year cap on spending for Service Pipes and allow the Company to rollover any unused funds for a single year to the following year, but not on a cumulative basis.

**D. Accounting and Ratemaking Treatment**

In addition to approval of its Replacement Plan and budget, the Company requests that any costs incurred as a result be subject to its accounting and ratemaking proposals. Specifically the Company requests the Commission allow it (1) to capitalize and earn a return on the costs incurred when replacing customer-owned lead Service Pipes, (2) to book such capitalized costs to its Account 333 under the USOA, thereby giving it a period of fifty-seven years over which to depreciate the customer-owned Service Pipe replacement costs, and (3) affirm that such costs constitute eligible property under Section 1351 of the Public Utility Code allowing it to immediately start earning a return of and a return on the costs through its DSIC.

In the following subsections, the OCA will first address its proposal that the Commission should permit PAWC to establish a deferred regulatory asset in which the Company can record the expenses it incurs when replacing customer-owned lead Service Pipes and allow the Company to recover the prudent and reasonable expenses over an amortization period to be decided in PAWC's next base rate proceeding. The OCA will then address each of PAWC's accounting and ratemaking treatment proposals in turn, stating its reasons why (1) the Company cannot earn a return on these costs, (2) cannot book these costs to its Services Account, and (3) cannot include these costs in its DSIC.

1. The OCA's Regulatory Asset Recommendation

The OCA submits that the Commission should permit the Company to create a deferred regulatory asset to record expenses associated with the replacement of customer-owned lead Service Pipes and receive only a return *of* the reasonable and prudent expenses over an

amortization period to be determined at PAWC's next general base rate proceeding. OCA witness

Scott Rubin succinctly stated the OCA's position:

Given the extraordinary, one-time nature of the program, the public health benefits of the program, and the likelihood that such a program will be legally required, I recommend that the Commission authorize the Company to establish a regulatory asset to defer the expenses the Company incurs to replace customer-owned lead service lines. The ratemaking treatment of the deferred costs should be determined in the Company's next base rate case. I further recommend that, as provided in the York Water settlement, the Company should not be permitted to earn a return on the amount deferred. This will have the effect of sharing the costs of the extraordinary, public-health program between the utility's investors and customers.

OCA St. 1 at 21.

The Commission frequently approves petitions seeking deferred accounting treatment of extraordinary, non-recurring, one-time costs. Popowsky v. Pa. PUC, 868 A.2d 606, 611 (Pa. Commw. Ct. 2004) (Popowsky), Petition of PPL Electric Utilities Corporation for Authority to Defer for Accounting and Financial Reporting Purposes Certain Losses from Extraordinary Storm Damage and to Amortize Such Losses, Docket No. P-00032069, 2004 Pa. PUC LEXIS 24, at \*7 (Jan. 16, 2004) (citing Petition of Columbia Gas of Pennsylvania, Inc. for Declaratory Order, Docket No. P-00930734, 1996 Pa. PUC LEXIS 123 (Oct. 28, 1996) (approving deferral of temporary conversion to alternative energy sources), Petition of Pennsylvania Power & Light Co. for a Declaratory Order, Docket No. P-820367, 1982 Pa. PUC LEXIS 75 (July 29, 1982) (approving of certain costs related to Susquehanna plant), Petition of Newtown Artesian Water Company for a Declaratory Order Re: Accounting Treatment for Costs of its Linton Hill Water Storage Tank and Transmission Main, Docket No. P-00940819, 1994 Pa. PUC LEXIS 13 (June 23, 1994)). To obtain Commission authorization for deferral accounting, the utility must establish, based on Commission precedent, that "the expense item appears to be within the scope of the type of items that the Commission has allowed as an exception to the rule against retroactive recovery of past expenses," *i.e.* that the expenses are extraordinary and non-recurring. Petition of West Penn

Power Company for Authority to Defer for Regulatory Accounting and Reporting Purposes  
Certain Losses from Extraordinary Storm Damage, Docket No. P-2010-2216111, 2011 Pa. PUC  
LEXIS 1270, at \*7-8 (Apr. 1, 2011).

In the instant proceeding, the OCA submits that the cost of replacing customer-owned lead Service Pipes qualifies as an extraordinary, non-recurring, one-time expense. As explained by Scott Rubin:

It is not typical for a utility to perform work on customer-owned facilities. Moreover, this work is required on a one-time basis for only a relatively small subset of the Company's nearly 700,000 customers. Once this work is completed, the health hazard will have been removed and there will be no need to have a similar program again. I consider this to be a one-time, extraordinary expenditure, even though the "one time" may last as long as 10 years due to the time-consuming nature of the work and the need to schedule it in conjunction with other projects. In short, the work will be performed at a few thousand properties, it is essential for the work to be performed in order to protect public health, it will be performed once, and there will be no need to repeat it once this program is finished.

OCA St. 1 at 20. Moreover, Mr. Rubin stated that given the catastrophe in Flint, Michigan, and the trend in current water industry publications, it is "highly likely that lead service line replacement will be legally required at some point in the next few years, if not sooner." Id.

The OCA also recommends the same treatment the Commission approved in York Water. As stated in the York Water Settlement,

The Joint Petitioners agree that York Water shall be permitted to record the cost of all customer-owned service line replacements to a regulatory assets account. York Water will be permitted to amortize the amounts booked to the regulatory asset account in a base rate proceeding over a reasonable period to be not less than four years and not to exceed six years. No amortization will commence until the effective date of new rates in a base rate proceeding that established the amortization. The regulatory asset account will remain in place until all eligible costs are finally amortized. Because costs may be booked to the regulatory asset account for up to nine years, York Water will reconcile amounts amortized to amounts incurred, and the difference shall continue to be amortized in subsequent base rate proceedings. York Water agrees that it will not be permitted to recover interest or return on any unamortized balance.

OCA Sch. SJR-5, p. 17.

The OCA's approach has several benefits when compared to the Company's proposed accounting and ratemaking treatment. OCA Witness Scott Rubin described these benefits as follows:

There are at least four benefits to this approach. First, and most importantly, it would enable the Company to remove customer-owned lead service lines as expeditiously and efficiently as possible, providing a significant public health benefit.

Second, PAWC will not have any profit motivation in performing this work, so if a less expensive technology (like coating or lining) proves workable, the Company would not have any disincentive to using a lower-cost approach.

Third, the limitations of the Company's DSIC will not apply to this work. Those limitations include, for example, a cap on total spending and limits on the time period in which work is performed. For example, in PAWC's pending base rate case, it is using a calendar year 2018 test year. This means that any DSIC work performed in 2018 would be included in the test year and would not be eligible for inclusion in the DSIC; that is, the DSIC would remain at zero until some point in time in 2019. The replacement of customer-owned lead service lines was not included in the test year in that case. Thus, by keeping that work out of the DSIC, PAWC would be able to defer the costs incurred during 2018.

Finally, my proposal reduces the costs for customers when compared to rate base treatment because the Company's expenditures will not earn a return.

OCA St. 1 at 22-23. In addition, the regulatory asset method provides incentive for the Company to seek potential funding from the state or federal government that can be booked as an offset to the regulatory asset. If the Commission allowed the Company to earn a return on these costs, however, it will more likely use investor-supplied capital, rather than low-interest government funding, to earn additional return on the costs.

Based on past Commission practice and the benefits of a deferred regulatory asset, the OCA submits that the Commission should allow the Company to establish a regulatory asset tracking the costs of replacing customer-owned lead Service Pipes, offsetting those costs with



other funding obtained, and amortizing recovery of the prudent and reasonable expenses over a period of years determined in PAWC's next base rate proceeding.

2. OCA's Response to PAWC's Proposal

- a. *The Company's proposal to capitalize and earn a return on costs associated with the Replacement Plan should be denied.*

The Company first requests that the Commission allow it to capitalize the costs it incurs when replacing customer-owned lead Service Pipes. PAWC St. 2 at 6. By capitalizing the costs, the Company would earn a return on and a return of the costs for replacing customer-owned lead Service Pipes. The OCA, submits, however, that the Company should not be able to capitalize these costs and earn a return on costs related to customer-owned property.

- i. The Company cannot earn a return on property that is not devoted to the public use

The Pennsylvania Commonwealth Court has stated that utilities are entitled to earn a return only on property devoted to the public use. Keystone Water Co. v. Pa. PUC, 339 A.2d 873, 877 (Pa. Commw. Ct. 1975) (quoting Scranton v. Scranton Steam Heat Co., 176 A.2d 86 (Pa. 1961)) (Keystone Water); see also Pa. PUC v. Pennsylvania Power and Light Co., Docket No. R-84265, 1985 Pa. PUC LEXIS 56, at \*25 (Apr. 26, 1985) (citing Bell Teleph. Co. v. Pa. PUC, 408 A.2d 917, 925 (Pa. Commw. Ct. 1979)) ("If the Commission reasonably finds that a particular class or property is not used and useful in serving the public, it may exclude the value of the property from rate base and thus disallow the utility's return on that property.") (PP&L). The Commission, has stated that expenditures for the exclusive benefit of one customer, such as the improvement of service lines, constitute customer specific costs not for the public use. Klossman v. Duquesne Light Co., Docket No. C-00945802, 1995 Pa. PUC LEXIS 136, at \*20, Initial Decision (Dec. 22, 1995), aff'd 1996 Pa. PUC LEXIS 112, at \*43-44, Order (July 24, 1996) ("Costs incurred at the request of an individual customer which are beyond the standard service supplied to other customers, in

the same rate class, are considered to be customer-specific. Such non-standard service requests include private property service line extensions...”), Pa. PUC v. Western Pa. Water Co., Docket No. R-870825, 1988 Pa. PUC LEXIS 422, at \*13 (July 1, 1988) (“In our view, a service line not lying in the public right-of-way cannot be considered dedicated to the public use...”).

In this instance, the Company is attempting to perform work on property that the Commission has already recognized as not dedicated for the public use. Furthermore, the Company has acknowledged on numerous occasions that the customers own and are responsible for the maintenance of the Service Pipes. Petition at 5, PAWC St. 1 at 4, PAWC St. 2 at 4, 7-8. The tariff language states:

**Service Pipe:** That portion of a water line not owned by the Company which transmits water from the Company-owned water main to the Customer’s premise. The water service pipe begins at the Company-owned street service connection and continues into the structure on the premise to be supplied.

Supplement No. 2. Thus, PAWC has requested a tariff waiver to permit it to perform the replacements of the customer-owned Service Pipes. Petition at 5. Moreover, PAWC states that it does not intend to retain ownership or maintenance responsibilities of the Service Pipes after it has made the replacements. Petition at 10. These expenses, therefore, are for the benefit of a customer’s private property and not for public use. Accordingly, the Company should not earn a return on expenses it incurs when replacing customer-owned lead Service Pipes.

ii. The Company’s proposed ratemaking and accounting treatment provides no cost sharing arrangement

In addition to being inconsistent with case law and unsound policy as described above, the Commission has also recognized that expenses incurred at the fault of no single party, requires a sharing of the risk. See e.g. PP&L, 1985 Pa. PUC LEXIS 56, at \*23 (“For the purposes of this proceeding we agree with the judge that the sudden burden of this new plant investment on the company’s customers was no fault of Penn Power or of its investors; but neither was it the fault of

ratepayers. Under these circumstances there must be some sharing of the risk associated with bringing large plants on line.”).

PAWC, however, is attempting to collect profits for shareholders over a very long period of time for property that it does not own. Mr. Rubin provided an example:

To keep the numbers simple, I assume that the replacement of a customer-owned service line costs \$2,500 and I'll further simplify the numbers to assume that the depreciation life is 50 years, 2% per year. So under PAWC's proposal, the investment would depreciate by \$50 per year. I also will simplify the numbers by assuming a pre-tax return for the Company of 10% (in reality, the figure is higher). So after two years, the Company would have \$2,400 in rate base for which customers pay \$240 in return, plus \$50 in depreciation, or \$290, for that one year. After 10 years, there still would be \$2,000 on the books, at which time the customers would pay \$200 plus \$50 in depreciation, or \$250 in total that year. On Schedule SJR-9, I carry this out for the first 20 years. It can be seen that during that time, customers would pay depreciation expense of \$1,000 and return on investment (profit) of \$3,950, or a total of \$4,950 -- roughly twice the original expenditure. Moreover, there still would be an investment of \$1,500 on the books that would continue to depreciate and earn a profit for another 30 years.

This stream of revenues (and profits) would be even more significant because the Company is proposing an approximately 11-year program to replace thousands of customer-owned lead service lines. Thus, the Company would have a stream of profits lasting more than 60 years as a result of this program -- all of which would be paid by other customers and none of which would be borne by either the utility's investors or the customers whose service lines were replaced.

OCA St. 1 at 17. Moreover, when compared to the cost-sharing arrangements between investors and ratepayers in other cases dealing with customer-owned lead Service Pipes, the inequity and unreasonableness of PAWC's proposal becomes more apparent. As explained by Mr. Rubin:

As I discussed, the New York Settlement has the utility's shareholders bearing 100% of the cost during a one-year pilot period, so there is no cost to customers from that program at the present time. I have prepared Schedule SJR-10 to provide a similar illustration for York Water and Halifax. For purposes of this illustration, I have kept all the assumptions the same. In reality, however, the cost of capital would be lower for Halifax because it is a public entity (similar in some ways to a municipal authority in Pennsylvania, but subject to rate and tariff regulation by the NSUARB), and York Water estimated a lower cost per replacement than PAWC has estimated.

Under these simplifying assumptions, it can be seen that the effect on the general body of ratepayers is substantially less in the other utilities than it would be under PAWC's proposal. Using the hypothetical \$2,500 replacement, the 20-year cost to customers for this one replacement would be zero in New York, \$2,500 in York Water, and \$1,238 in Halifax. In contrast, the 20-year cost to customers under PAWC's proposal would be \$4,950.

Id. at 18, OCA Sch. SJR-10; see also Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York American Water Co. for Water Service, Case No. 16-W-0259, Order (NY PSC May 18, 2017), In the Matter of an Application by Halifax Regional Water Commission for an Order Approving Amendments to its Regulations to Provide for the Repair and Replacement of Lead Service Pipes in the Provision of Water Service, Matter No. M07891, 2017 NSUARB 138, Decision (Nova Scotia Utility and Review Board Aug. 22, 2017). In the face of this extraordinary, non-recurring expense, the Company's position would not only require ratepayers to bear the burden of these costs, but also allow stockholders to realize large profits, rather than establish a cost sharing arrangement as is typical with extraordinary, non-recurring expenses and other lead service line cases. The OCA submits that establishing a deferred regulatory asset will provide a sharing of the risk between stockholders and ratepayers.

*b. The Company's proposal to include the costs of replacing customer-owned lead Service Pipes in Account 333 – Services should be denied.*

The Company next claims that if allowed to capitalize the costs, the Commission should also allow the Company to book the costs to its Services Account. PAWC St. 2 at 6. The practical effect of this accounting treatment ensures that a long depreciable life will attach to these expenses (1.74% or roughly fifty-seven years). Id. at 7. The OCA submits, however, that the Company cannot book the costs of replacing customer-owned lead Service Pipes to its Services Account because it specifically excludes such expenses. OCA St. 1 at 18-19. The proper treatment, rather,

is to book the costs as a jobbing expense under Account 416 – Jobbing Expense in the USOA. Id. at 20.

The Services Account as defined in the USOA states that the account shall include “the cost installed of service pipes and accessories leading to the customers’ premises.” Id. at 19. In determining the meaning of the term ‘premises,’ the analysis must begin with the plain language. In doing so, OCA witness Scott Rubin stated the following:

The USOA defines Account 333 as the ‘cost installed of services pipes and accessories leading to the customer’ premises.’ (Emphasis added). The USOA does not define ‘premises,’ so I looked in the dictionary which defines premises as “a tract of land with the buildings thereon.” This is consistent with my understanding of the utility’s portion of the service line: it runs from the water main in the public right-of-way to the end of the right-of-way (that is, the start of the property under the customer’s exclusive control), usually terminated at the curb (or corporation) stop. Thus, in my opinion, an expenditure made on a customer’s premises, in facilities owned and controlled by the customer, does not meet the definition of an amount that is eligible for inclusion in [A]ccount 333.

OCA St. 1 at 19. Additionally, the Company itself relies on the term ‘premises’ when defining Service Pipe in its tariff. Supplement No. 2, see p. 19, supra. For this reason, the Company cannot book these costs to its Services Account.

The proper treatment for expenses on customer-owned facilities, rather, is for the Company to book the costs as a jobbing expense under Account 416. OCA St. 1 at 19. A jobbing expense is reserved for work the Company performs on behalf of a third-party on an incidental or contract basis. OCA St. 1 at 19. The typical effect of such treatment would be for the Company to “expense such work, not capitalize it, and to neither charge the costs nor credit the revenues to ratepayers.” Id. at 19-20.

In addition, the Company claims that it should still be allowed to book the cost of Service Pipe replacements to its Services Account, even though it does not own the Service Pipes or intend to own them after replacement. PAWC St. 2 at 7-8. The Company analogizes these expenses to

substantial roadway restoration costs and costs to restore customer lawns, curbs, sidewalks, and driveways to original condition when opening a public street to “install, replace, or rehabilitate its mains, services, or appurtenances,” which the Company is allowed to capitalize and book to its property account. PAWC St. 2 at 8, PAWC St. 1R at 14. Similar to this situation, the Company argues that the work the Company does to its Service Lines directly impacts the serviceability to customer Service Pipes in the same way that excavation work needed to access Company mains directly impacts the serviceability of municipally-owned property. PAWC St. 1R at 16.

The Company’s attempt to analogize these two situations fails, however, because expenses it incurs with roadway restoration and customer property restoration arises out of necessity in order to access its *own* property, *i.e.* mains, services, and appurtenances. OCA St. 1SR at 5. As OCA witness Scott Rubin stated:

PAWC has the legal right to occupy public rights-of-way and, in particular, to bury its water mains underneath public roads. Opening and then repairing a roadway is absolutely essential in order for PAWC to use the right-of-way and to install or access its property. That is, it is physically impossible for PAWC to use its rights and to access Company-owned property without damaging a publicly owned road surface. Thus roadway opening and repair costs are an essential, unavoidable cost that is directly associated with the installation, repair, or replacement of Company-owned property.

Id. In the case of customer-owned lead Service Pipes, it is not strictly necessary to replace the customer-owned lead Service Pipe when replacing the Company-owned Service Line in the same way the Company must physically open the roadway to access Company-owned mains and services.

c. *The Company’s request to affirm that the costs of the Replacement Plan constitute eligible property for the purposes of the DSIC should be denied.*

PAWC also requests affirmation from the Commission that these replacement costs constitute ‘eligible property’ as defined in Section 1351 of the Public Utility Code and, therefore,

the Company can start earning a return on and a return of the fixed costs through its DSIC pursuant to Section 1357 prior to filing a base rate case. Petition at 16. Specifically, the Company claims that such costs are DSIC eligible by virtue of such costs being recorded in the Company's Services Account and/or pursuant to Section 1351(3)(vi) of the Public Utility Code defining 'eligible property' to include "other capitalized costs."

First, for the reasons just stated, the Company cannot book these costs to its Services Account. See pgs. 21-23, supra. Secondly, as stated in Section (D)(2)(a)(i) of this Brief, the Company cannot earn a return on these expenses. See pgs. 18-19, supra. Section 1357 of the Public Utility Code, however, states that a utility is entitled to recover the fixed cost of eligible property through its DSIC, which includes depreciation and pre-tax return. 66 Pa.C.S. § 1357(a). Allowing the Company to include these costs in its DSIC, therefore, will allow it to improperly earn a return on expenses not devoted for the public use. Thus, the OCA submits that the phrase "other capitalized costs" does not properly include the replacement costs of customer-owned lead Service Pipes. Section 1351(3)(vi) should not be expanded to include customer-owned lead Service Pipes for the reasons set forth above.

For these reasons, the Commission should not affirm these costs as "eligible property" under Section 1351 of the Public Utility Code and it should deny the Company's request to recover these costs through its DSIC.

#### **E. The OCA's Additional Recommendations**

##### **1. Five-Year Warranty**

The OCA recommends that the Company provide a five-year warranty to each customer that had a Service Pipe replaced as part of the Company's Replacement Plan. OCA St. 1 at 23. OCA Witness Scott Rubin explained the necessity of this warranty for consumers:

A service line is expected to last for 50 years or longer and the customer should have some assurance that the Company's work was performed properly. Thus, for a period of five years after the work on a customer's line is performed, the Company should be required to repair any leaks or other defects that are discovered in a customer-owned service line that the Company replaces.

Id. PAWC, however, states that it will only provide a one-year limited workmanship warranty similar to other routine utility work performed by the contractor. PAWC St. 1R at 11.

The Commission has required warranties where a utility hires an independent contractor to perform work on customer property, most notably with the low-income usage reduction programs. See 52 Pa. Code § 58.14(b); see also Surrec v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2014-2408741, 2015 Pa. PUC LEXIS 282, at \*18 (June 8, 2015), Detariffing of Customer Premises Equipment, Docket No. M-820334, 1983 Pa. PUC LEXIS 90, at \*6 (Jan. 13, 1983) (requiring a 30 day limited warranty on in-place Computer Premises Equipment (CPE) and a 90 day limited warranty on CPE sold from inventory).

The OCA submits that PAWC should provide a warranty on the installation of customer property in accordance with the decisions above. A water service line has a very long expected service life, which is usually between 50 and 75 years. OCA St. 1SR at 2-3. A one-year limited workmanship warranty would be inappropriate given the long service life. As explained by Mr. Rubin:

I do not consider a one-year warranty to be adequate. In our climate, weather conditions can cause disturbances, especially if the pipe is not installed properly. Events such as freezing and thawing or heavy rain might affect subsurface installations. If there is one relatively mild winter or relatively dry spring, there may be little disturbance, so the pipe might not be stressed in just one year. Over a five-year period, however, it is likely that there would be at least several occasions where more extreme weather occurred so that the integrity of the installation could be assured. Thus, I consider a five-year warranty to be reasonable..."

Id. at 3. Further, the OCA's warranty recommendation will not unduly burden the Company with extra costs as it is highly unusual for a service line to fail a few years into its service life if properly



installed. Id. Mr. Rubin testified that a “warranty of that length would be expected to cost the Company nothing, unless there was contractor or manufacturer error, and would provide the customer with some assurance that the work was being performed properly.” OCA St. 1SR at 3.

## 2. Partial Compensation Program

The OCA recommends that the Company implement a partial compensation program for customers who have recently replaced a lead Service Pipe at the customer’s expense. If a customer has replaced its customer-owned lead Service Pipe in the past four years, the customer should be entitled to some compensation for that expense (and the compensation should be included in the regulatory asset). OCA St. 1 at 23. The Compensation plan would work as follows:

Specifically, if a customer has replaced its customer-owned lead service line in the past four years, the customer should be entitled to some compensation for that expense (and the compensation should be included in the regulatory asset). I recommend that if a Company representative visits the customer’s site and determines that the service line has been replaced, and the customer provides the Company with a paid invoice, a certification from a verified plumber, and other documentation as determined by the Company, the Company should offer a cash payment as follows: 20% of the customer’s cost, but not more than \$700, for work performed during the calendar year 2014; 40% of the customer’s cost, but not more than \$1,400, for work performed during calendar year 2015; 60% of the customer’s cost, but not more than \$2,100, for work performed during calendar year 2016, and 80% of the customer’s cost, but not more than \$2,800, for work performed during calendar year 2017 or the first quarter of 2018.

OCA St. 1 at 23-24.

The Company has opposed this recommendation on the basis that it would be administratively complex and that the proper focus of this proposal is on customer-owned Service Pipes that remain in service and pose a health risk. PAWC St. 1R at 17-18.

There is little evidence to suggest, however, that this reimbursement program would be administratively complex. The Company stated that it “anticipates a small number of customers would qualify for reimbursement.” PAWC St. 1R at 18. Moreover, the OCA’s recommendation limits the reimbursement period to four years prior to the enactment of the Replacement Plan. This

is “consistent with the general limitation on refunds of customer bills under the Public Utility Code (Section 1312(a)).” OCA St. 1SR at 4. The administration of this program, therefore, should not pose a burden to PAWC.

Additionally, the OCA’s recommendation provides sufficient protection for the Company. Under the OCA’s proposal, the Company would verify the customer’s lead Service Pipe replacement by visiting the customer site to confirm, as well as require a paid invoice, a certification from a verified plumber, and other documentation as determined by the Company. OCA St. 1 at 23-24.

The OCA submits that failure to include such a partial compensation program creates equitable concerns. PAWC’s Petition expresses the importance of replacing lead Service Pipes and requests that all ratepayers subsidize the replacement of pipes exclusively benefitting individual consumers. It would be unfair for customers that have recently replaced their lead Service Pipe at their sole cost to pay for future replacements on behalf of other customers, as stated by Mr. Rubin:

I agree that the focus of the program is on the removal of lead from the distribution system, but that must be done in a way that is fair to all customers. Reimbursing customers who recently replaced a lead service line is fair and will help avoid customers feeling that they are being disadvantaged by the new program -- they recently paid for their own service line replacement and they are now being asked to subsidize line replacements for other customers, too.

OCA St. 1SR at 3-4. If the Company expects all ratepayers to pay these expenses, ratepayers who have had a lead Service Pipe replaced in recent years should also have the opportunity to recover some of their costs.

For the reasons above, the Commission should adopt the OCA’s proposal to institute a partial reimbursement program for PAWC customers that replaced their lead Service Pipe within the past four years.

### 3. Communication and Education Program

PAWC states that it will undertake “appropriate customer education in areas that align with the scope of its Replacement Plan – Part 2 to inform customers in those areas that the Company is offering to replace their lead Service Pipes under the terms and on the timeline explained above.” Petition at 10. This includes “direct mailings to notify potentially affected customers of the Replacement Plan, press releases, bill inserts, information on the Company’s website regarding the health effects of lead, and a lead information pamphlet to be distributed to all customers.” PAWC St. 1R at 12. In addition, PAWC plans to release an educational video about lead and notify customers when lead is found on the customer-owned segment of the service line. Id.

While the OCA supports the Company’s stated outreach efforts as part of its Replacement Plan, the OCA also recommends that the Company develop a comprehensive outreach and education program in conjunction with the statutory advocates. Specifically, PAWC must also ensure that its public education program informs consumers about lead contamination and instructs consumers on how to identify whether their Service Pipe is made of lead. OCA St. 1 at 24. Further, the program should include “information about the Company’s project to replace lead service lines and who to contact to have the Company evaluate whether the customer should be placed on the service line replacement list.” Id. Moreover, the Company should develop a program that follows the NDWAC subcommittee’s recommendations on consumer education. The subcommittee states:

[P]ublic education programs for lead should move away from past practices of one-way communication from “experts” to the “public” toward newer concepts of risk communication that involve sustained, multiple, two-way channels of ongoing communication and partnership with the public...

Communication in languages appropriate to the demographics of the community, in clear terms understandable by the public, and with engaging, reader-friendly graphics, photos, and video all help achieve greater understanding. Outreach programs and materials can be improved by involving people with diverse, and consumer-oriented expertise and perspectives, including consumer-centered risk

communication experts, community members with extensive experience with lead in water including individuals not necessarily affiliated with an organization, lead/copper corrosion experts, grassroots public-health workers, and staff of PWSs [public water systems], state and federal regulatory agencies and public health agencies. This information can and should be conveyed in different ways and through different communication channels, tailored to the specific circumstances.

OCA St. 1 at 24-25. Working with the statutory advocates at the start and during the course of this multi-year process is an important component of the education and outreach on these issues.

#### **IV. CONCLUSION WITH REQUESTED RELIEF**

As the OCA demonstrated above, the Commission should grant a tariff waiver to PAWC in order for it to replace customer-owned lead Service Pipes, which otherwise may cause harmful effects to consumers. The Company, however, has failed to show by a preponderance of the evidence that the Commission adopt its proposed accounting and ratemaking treatment. Given the extraordinary nature and risks of lead piping, however, the OCA asks the Commission to allow the Company to book such costs into a deferred regulatory asset in which it may recover the prudent and reasonable expenses over an amortization period to be decided in the Company's next base rate proceeding. Additionally, the OCA requests that the Company provide a 5-year warranty for replaced Service Pipes, partial compensation to customers that replaced their lead Service Pipe prior to this proposal, and work with the statutory advocates to develop a comprehensive education and outreach program.

Respectfully submitted,



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Date: March 1, 2018  
244785

Appendix A  
OCA List of Documents

## OCA - Sponsored Testimony, Appendices and Schedules

The following OCA Testimony, Appendices, and Schedules were admitted into the record when Administrative Law Judge Elizabeth H. Barnes granted the jointly filed Motion for Admission of Testimony and Exhibits on January 25, 2018.

Direct Testimony of Scott J. Rubin, OCA Statement No. 1

Appendix A - Curriculum Vitae of Scott J. Rubin

Schedules – SJR-1 (Paper published in the American Water Works Association Journal entitled “Role of the water main in lead service line replacement: A utility case study”), SJR-2 (Cover letter sent from NDWAC to the EPA Administrator), SJR-3 (Executive summary of a report published by the EPA and the Water Research Foundation entitled “Evaluation of Lead Service Line Lining and Coating Technologies”), SJR-4 (Newspaper article entitled “PWSA tests epoxy coating to make lead water lines safer”), SJR-5 (Order entered on March 8, 2017, approving York Water Company’s Petition to replace customer-owned lead service lines), SJR-6 (Order issued on May 18, 2017, approving New York American Water Company’s Lead Pipe Removal Program), SJR-7 (Order dated August 22, 2017, approving Halifax Regional Water Commission’s program to replace customer-owned lead service lines), SJR-8 (Missouri-American Water Company’s Application to replace customer-owned lead service lines), SJR-9 (Illustration of cost to customers of PAWC’s proposal), SJR-10 (Illustration of cost to customers of York Water’s Program)

Surrebuttal Testimony of Scott J. Rubin, OCA Statement No. 1-SR