



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

IN REPLY PLEASE  
REFER TO OUR FILE

March 15, 2018

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, Second Floor  
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

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Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply Brief** 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) 783-6156.

Sincerely,

Carrie B. Wright  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #208185

CBW/wsf  
Enclosure

cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: March 15, 2018

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

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 lead service lines and allowing for the capitalization and subsequent socialization of the costs of these assets that PAWC will not retain ownership of or maintain.

I&E incorporates the procedural history as set forth in its Main Brief submitted on March 1, 2018.<sup>1</sup> Main Briefs were also submitted by PAWC, the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”). Pursuant to the procedural schedule and in accordance with Commission regulations at Section § 5.501, I&E now submits this Reply Brief.

## **II. BURDEN OF PROOF**

As noted in the I&E Main Brief,<sup>2</sup> the Public Utility Code (“Code”) mandates that the party seeking affirmative relief from the Commission bears the burden of proof.<sup>3</sup> To satisfy that burden, there is a duty to demonstrate by a preponderance of the evidence that the proposed transaction complies with Pennsylvania law.<sup>4</sup> Therefore, as the party requesting relief, PAWC continues to have the burden of proof in this proceeding. A review of the evidence and arguments presented by the parties demonstrates that while PAWC has met its burden to establish that replacement of customer-owned lead service

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<sup>1</sup> I&E MB, pp. 2-3.

<sup>2</sup> I&E MB, pp. 3-4.

<sup>3</sup> 66 Pa. C.S. § 332(a).

<sup>4</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. 1990).

lines is appropriate, PAWC has failed in its burden to establish that it should be allowed to earn a return of and on the customer-owned lead service lines.

### **III. SUMMARY OF THE ARGUMENT**

As stated in Main Brief, while PAWC is currently not in violation of the Lead and Copper Rule (“LCR”), I&E does not oppose the replacement of the lead service lines and believes that replacement of the entire service line will eliminate a major potential source of lead contamination. Taking a proactive approach to this problem is in the best interest of ratepayers.

I&E recognizes the need to move forward with removal of lead pipe before a detrimental incident occurs but disagrees with the ratemaking treatment proposed by PAWC. Allowing PAWC to earn a return on customer-owned service lines violates the fundamental ratemaking principle that a utility is only allowed to earn a return on assets devoted to public use. I&E submits that the appropriate approach is for the costs associated with customer-owned lead service line replacement to be recovered through a regulatory asset amortized over a period of ten years. This approach is reasonable given that this is an extraordinary, non-recurring expense.

### **IV. ARGUMENT**

#### **A. PAWC Should Not be Permitted to Include the Cost of Customer-Owned Lead Service Lines in Rate Base**

As outlined in the I&E Main Brief, it would be inappropriate to allow PAWC to include the cost of customer-owned lead service lines in rate base.<sup>5</sup> These costs are not

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<sup>5</sup> I&E MB, pp. 9-15.

appropriately included in rate base because these service lines will continue to be owned and maintained by the customer and do not consist of utility plant dedicated to the public use.

The Company's attempts to analogize these customer-owned lead line replacements to restoration costs fall flat. PAWC has failed to address a glaringly obvious distinction. The Company's analogy does not work because when the Company excavates a public street to install or replace a main and incurs restoration costs the Company then owns and maintains that main. Should that main burst or need to be repaired for some other reason, it is the Company's responsibility to complete that work. Should a customer-owned line burst or otherwise need repairs, the Company is under absolutely no obligation to do any work; that responsibility falls squarely on the customer. To be clear, these situations are completely different. In one case the Company is doing work related to a pipe under its ownership; in the other scenario the pipe in question is not, and likely never will be, owned by the Company. Therefore, the Company's analogy simply does not apply.

A further distinction that must not be ignored is that when the Company repairs or replaces mains, these mains are dedicated to the public service, whereas, customer-owned lead service lines are for private use only. In its Main Brief, the Company attempts to draw a corollary by stating that sometimes the Company makes an expenditure that only benefits a small number of customers or extends a main for only one customer, and the

Company is still allowed to earn a return on these costs.<sup>6</sup> This is true. However, no matter how small or large the number of customers benefitted by these expenditures the clear difference is that the associated pipe, in these instances, is dedicated to the public use. Even a main that extends to only one individual is dedicated to the public use; it is not under the sole ownership and responsibility of the customer. Dedication to public use is decided by the intention of the utility.<sup>7</sup> Therefore, the mere fact that a main may only serve one customer does not in some way indicate that the utility is earning a return on property that is not dedicated to the public use. In this instance, it is clear that the intention is that the service lines in question continue to be dedicated to private use otherwise PAWC would assume ownership of the lines. Main repair, replacement, or extension and the associated restoration costs are not similar to the customer-owned lead line replacements PAWC has proposed. Because of this, it would be inappropriate to include these costs in rate base.

While PAWC attempts to cast I&E and OCA in a bad light by stating that the advocates are attempting to “demonize” PAWC’s attempt to earn a profit on this replacement plan,<sup>8</sup> this is simply untrue. In fact, rate cases I&E regularly advocates for utilities, including PAWC, to earn a reasonable return on rate base in the course of base rate proceedings. The concern with PAWC earning a profit on this venture boils down to one simple fact; PAWC will not own or maintain these service lines and the lines will not

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<sup>6</sup> PAWC MB, p. 23.

<sup>7</sup> *Peoples Nat. Gas Co.*, C-850468, 1992 WL 814076, at \*8 (Dec. 7, 1992).

<sup>8</sup> PAWC MB, p. 10.



be devoted to public use. A utility earning a return on plant that is in service and dedicated to a public use is a well-accepted, traditional ratemaking principle. The Company suggests that the opposition from OCA and I&E stems from the fact that “...there is something unseemly about PAWC recovering its cost of capital in this instance because of the human health risk...”<sup>9</sup> this is not the real issue. The actual concern is that PAWC wants to earn a profit off of service lines that it will not own, be responsible for repairs on, mark for PA One Call purposes, and the lines will not be dedicated to public use. While the Company is pretending that this is traditional ratemaking, in reality it is not. The Company indicates that by not earning a return, the Company’s “...ability to fulfil their statutory service obligations and promote the public health and safety” will be impeded.<sup>10</sup> This is not true. The Company’s obligation to provide safe and reliable service and promote public health and safety is an obligation that that is not in anyway tied to the return the Company earns. Furthermore, as explained in the I&E Main Brief, as well as below, the regulatory asset as proposed by I&E allows the Company to recover the costs associated with this program.

As described in the I&E Main Brief, the Company’s attempt to analogize lead pipe service line replacement with gas service line replacement also fails.<sup>11</sup> While it is uncommon for a water company to own a service line, it is typical for a natural gas distribution company (“NGDC”) to own and maintain a service line from the main to the

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<sup>9</sup> PAWC MB, p. 10.

<sup>10</sup> PAWC MB, p. 11.

<sup>11</sup> I&E MB, pp. 13-15.

gas meter. Because of this, for an NGDC the service line is typically included in rate base. As noted in the I&E Main Brief, the result for the NGDCs who sought and received Commission approval to replace and include in rate base the cost of customer-owned service lines was to treat these customers similarly to their other customers.<sup>12</sup> Because it is uncommon for a water company to own and maintain a service line, the result in this lead line replacement proceeding would be the opposite of what occurred in the NGDC proceedings; namely, these PAWC customers would be treated differently than all other PAWC customers for ratemaking purposes. Therefore, the simple fact that two NGDCs were allowed to capitalize the costs of replacing customer-owned service lines when, traditionally, NGDCs own the service line does not amount to a showing that PAWC should be allowed to capitalize the costs of replacing these customer-owned lead service lines. Regarding its heavy reliance on what has occurred in the gas industry, PAWC criticizes OCA and I&E stating "...they have not provided a valid basis for the Commission to abandon findings and conclusions it only recently made with regard to replacement of customer-owned service lines for the gas industry and deny PAWC's request to capitalize its LSP replacement costs."<sup>13</sup> This statement is ironic considering PAWC would like for the Commission to ignore the fact that even more recently than the gas proceedings the Commission determined that it was appropriate for York Water to recover the costs of customer-owned lead line replacement through a regulatory asset and

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<sup>12</sup> I&E MB, p. 13.

<sup>13</sup> PAWC MB, p. 21.

not capitalize those costs.<sup>14</sup> The Company's reliance on the gas industry while the York Water proceeding was far more relevant and recent gives further credence to the statement that "...the Company is proposing to turn a customer's health risk into a profit center, at the expense of all other customers."<sup>15</sup>

Furthermore, I&E maintains that because the significant safety risks associated with natural gas service lines it is not unreasonable to expect that the Commission would treat them differently than water service lines. All Parties to this proceeding have recognized the dangers of lead in drinking water; however, not all water service lines contain lead. All gas service lines carry a volatile substance which poses a danger to both the customer's property as well as that of the other homes nearby. In the water industry you can remove the danger by removing the lead, while in the gas industry the danger will always be present because the danger ultimately lies in the gas itself.

Lastly, for all the reasons noted above, these costs are not appropriately included in rate base, and therefore, these costs do not meet the definition of eligible property for inclusion in the distribution system improvement charge ("DSIC"). The Company's determination that these costs would have a negligible on a customer's bill<sup>16</sup> in no way indicates that it would be appropriate for the company to earn a return on the costs. Therefore, for reasons set forth above, it would be inappropriate for the Commission to allow the Company to earn a return on these costs.

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<sup>14</sup> *Petition of York Water Co. 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 Mar. 8, 2017).

<sup>15</sup> OCA St. No, 1, p. 16.

<sup>16</sup> PAWC MB, pp. 30-31.

## **B. PAWC Should Be Permitted to Recover the Costs of Customer-Owned Lead Service Lines Through a Regulatory Asset**

As set forth in Main Brief, I&E recommends that the Company recover the costs of replacing customer-owned lead service lines through a regulatory asset rather than including the costs in rate base as the Company has requested.<sup>17</sup> Recently, the Commission approved a settlement for York Water that allowed it to do just that.<sup>18</sup> PAWC believes that the Commission should ignore what it approved for York Water and rely instead on what has occurred in the gas industry.

In Main Brief, PAWC attempts to distinguish itself from York Water in three ways, none of which are convincing.<sup>19</sup> First, PAWC indicates that because York Water had pre-existing violations of the LCR, PAWC should be able to capitalize the costs that York Water was not allowed to capitalize. This argument is illogical. Currently PAWC is not in violation of the LCR and, therefore, is under no obligation to address lead service lines at all. The fact that York Water needed to expeditiously replace customer-owned lead service lines in order to meet environmental obligations is not the determinant for why York Water is not earning a return on these costs as PAWC indicates.<sup>20</sup> The primary determinant for why York Water is not earning a return on these assets is simply because they are not assets that York Water owns or are devoted to

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<sup>17</sup> I&E MB, pp. 15-17.

<sup>18</sup> *Petition of York Water Co. 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 Mar. 8, 2017).

<sup>19</sup> PAWC MB, pp. 21-22.

<sup>20</sup> *Id.* at 21.

public use. Traditional ratemaking principles dictate that York Water not earn a return on these service lines.

The second argument made by PAWC is that “consistent with long-standing practice, the Commission approved the [York Water] settlement on the express condition that it is not precedential.”<sup>21</sup> The problem with this argument is inherent in that very statement. Namely, it is Commission practice that virtually all settlements are considered non-precedential. This does not mean that the Commission cannot require that PAWC recover the costs of replacement of customer-owned lead service lines through a regulatory asset just like York Water. The approval of the York Water Settlement indicates that the Commission believes that this is a lawful approach to the issue of cost recovery related to customer-owned lead service lines. The Commission is certainly not prohibited from adopting this approach for PAWC.

Lastly, PAWC argues that the York Water settlement is not controlling because it allows York to file a petition requesting the Commission to amend its Order approving the York Settlement if another water utility is allowed to capitalize customer-owned lead pipe replacement costs so that York can also capitalize these costs.<sup>22</sup> The inclusion of this provision in the Settlement does not mean that the Commission will ever approve rate base treatment for the same types of costs incurred for other water utilities. Nor does it in any way indicate that PAWC should be allowed to rate base these costs.

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<sup>21</sup>

*Id.*

<sup>22</sup>

*Id.* at 21-22.

As stated in Main Brief, a regulatory asset is beneficial not only for the customers, but for the utility as well.<sup>23</sup> The customers are not bearing the burden of paying a return on an asset not owned by the Company and because the amortization period recommended by I&E is ten years, the Company will recover the associated costs faster than it would have through the DSIC and base rate recognition. The public interest is balanced because lead lines are removed from service, and although all existing PAWC ratepayers will pay for the removal, they will not have the burden of paying the Company a profit for assets the Company does not own. The Company is benefitted because it is allowed to do the replacements; a proposition that would be illegal under its current tariff. Further the Company can recover the full costs of replacement faster than through the Company's proposal in its Petition. Although the Company has gone to great lengths to promote the notion that this lead line replacement plan should be treated as traditional ratemaking, it is clear that what the Company is proposing is not at all traditional. Therefore, the Company is not entitled to place these assets in rate base and earn a return on them. While it is important to have these lead service lines removed it is also important to note that requiring the Company to recover the costs through a regulatory asset amortized over ten years will not in anyway impede the Company from fulfilling its obligation to provide safe and reliable service to its customers and promote public health and safety.

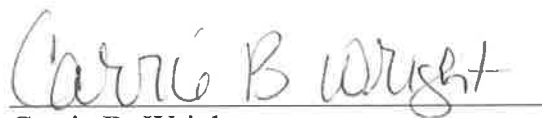
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<sup>23</sup> I&E MB, p. 16

## V. CONCLUSION

The Commission's Bureau of Investigation and Enforcement recommends that the proper balance of the interest of the ratepayers, the Company, and the regulated community as a whole would be to allow the Company to replace the lead service lines and allow the Company to recover the replacement costs through the use of a regulatory asset amortized over a period of ten years. The Company's request to include those replacements in rate base and earn a return on assets it will not own or maintain unfairly burdens its customers and must be rejected.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright". The signature is written in dark ink and is positioned above a horizontal line.

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Dated: March 15, 2018

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 **Reply Brief** dated March 15, 2018,  
in the manner and upon the persons listed below, in accordance with the requirements of  
52 Pa. Code § 1.54 (relating to service by a party):

**Served via Electronic and First Class Mail**

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