

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Petition of Pennsylvania-American  
Water Company for Approval of  
Tariff Charges and Accounting  
And Rate Treatment Related to  
Replacement of Lead Customer  
Owned Facilities**

**Public Meeting December 6, 2018  
2606100-OSA  
Docket No. P-2017-2606100**

**JOINT MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.  
AND COMMISSIONER NORMAN J. KENNARD**

Before the Pennsylvania Public Utility Commission (Commission) are Exceptions and Reply Exceptions to the Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes of May 15, 2018, recommending granting in part, and denying in part, the Petition of Pennsylvania-American Water Company (PAWC) in the above-captioned proceeding.

PAWC seeks a tariff revision to allow the replacement of customer-owned lead service pipes at the Company's recoverable expense. Under its current tariff, PAWC owns and is responsible for the service line from the water main to the curb stop, and the customer owns and is responsible for the service pipe from the curb stop to the premises. PAWC submitted this proposal to facilitate the replacement of customer-owned lead service pipes, given the significant health and environmental impacts that can result from lead being introduced into its customers drinking water. PAWC already has a program to replace company-owned lead lines, and it is the industry best practice to replace both company and customer-owned lead service lines and pipes as part of an overall lead line remediation program.

In its Petition, PAWC asks that it be allowed to capitalize the replacement costs associated with these service pipes and that the Commission affirm that such replacements constitute "eligible property" to which it is entitled to recover a return of, and a return on its investment through, its distribution system improvement charge (DSIC). PAWC's Petition also proposes a replacement plan schedule, a yearly budget cap, rules for access to a customer's property, and a one-year warranty on the newly installed service pipes.

The Office of Consumer Advocate (OCA), the Office of Small Business Advocate and the Commission's Bureau of Investigation and Enforcement (I&E) participated in this evidentiary adjudication proceeding and took the position that they did not oppose the replacement of customer-owned lead service pipes. However, they did disagree with aspects of PAWC's proposed accounting and cost-recovery methodologies. Specifically, the OCA and I&E oppose the capitalization of replacement costs and recommend that they be treated as one-time expense and recovered through a deferred regulatory asset.

The ALJ recommended that PAWC be allowed to amend its tariff, and to replace customer-owned lead service pipes. However, the ALJ agreed with the OCA and I&E that PAWC should not be allowed to capitalize these expenses, and thereby recover these costs through its base rates and DSIC. Instead, it is recommended that the Commission adopt the OCA and I&E proposal for accounting and cost-recovery.

In its Exceptions, PAWC noted that its Petition was voluntary, and that its present service is compliant with the Environmental Protection Agency's Lead and Copper Rule. Additionally, PAWC alleged that it was at risk of not being properly compensated for the replacement work under the ALJ's recommendations. Because of these factors, PAWC stated that it would not implement the replacement program if the Commission adopted the ALJ's recommendations on accounting and cost-recovery.

After the filing of Exceptions and Reply Exceptions, the Pennsylvania General Assembly passed legislation addressing the accounting and cost-recovery questions at issue in this case.<sup>1</sup> Relevantly, the new law provides that an investor-owned water utility may include the replacement costs for customer-owned lead service lines in rate base when they are replaced as part of a Commission approved program. The legislation also addressed other issues raised in this proceeding, including utility access to customer premises and warranties for the work performed.

While Act 120 has not yet taken effect, the General Assembly has adopted a clear mandate for the accounting and cost-recovery for expenses related to the replacement of customer-owned lead service pipes. We believe it appropriate, and expected, that the program of our state's largest, investor-owned water utility be reviewed under the provisions of Act 120. The enactment of this legislation also resolves the dilemma presented by PAWC's stated position that it would not implement the plan under the terms recommended by the presiding ALJ. Accordingly, we will move that the Recommended Decision be set aside, and the case remanded to the OALJ for the express purpose of evaluating the PAWC Petition under Act 120. The ALJ is directed to conduct such proceedings as may be necessary to supplement the record with evidence and legal argument culminating in a new Recommended Decision.<sup>2</sup>

Accordingly, if PAWC wishes to proceed at this docket, they are directed to supplement the record, as may be necessary, to conform this Petition to all the provisions of Act 120. If they choose to do so, our expectation is that the parties to this proceeding would thoroughly address all relevant issues so that this case may be used as a model for the implementation of Act 120 by

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<sup>1</sup> House Bill 2075 of 2018 (Act 120) was signed in the House and Senate on October 17, 2018 and approved by the Governor on October 24, 2018. Act 120 takes effect on December 23, 2018. It amends Section 1311(b) of the Public Utility Code, Pa.C.S. §1311(b).


<sup>2</sup> The ALJ also recommended that PAWC collaborate with the parties on consumer education for the program, implement certain annual reporting requirements, and make reasonable efforts to obtain grants or loans to offset program costs. PAWC did not file Exceptions to these requirements, and Act 120 does not address them. These may be reasonable elements of a replacement plan, and we would encourage the parties to consider their inclusion in any revised proposal.


other water utilities. In the alternative, if PAWC concludes that it would be more appropriate or efficient to file a revised Petition at a new docket, they are free to propose the withdrawal of this Petition.

**THEREFORE, WE MOVE THAT:**

1. The Recommended Decision of Administrative Law Judge Elizabeth H. Barnes be set aside, and the matter remanded to the Office of Administrative Law Judge for further proceedings consistent with this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**DATE: December 6, 2018**

  
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**JOHN F. COLEMAN, JR.**  
**COMMISSIONER**

  
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**NORMAN J. KENNARD**  
**COMMISSIONER**