

# Morgan Lewis

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July 17, 2019

**VIA eFILING**

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

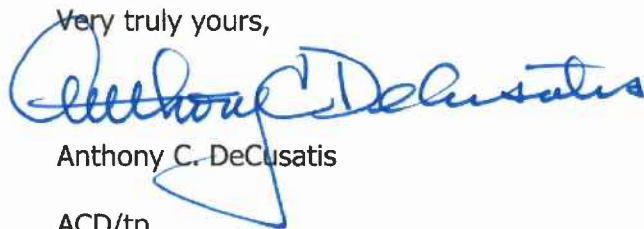
**Re: Petition of Pennsylvania-American Water Company for Approval  
of Tariff Changes and Accounting and Rate Treatment Related  
to Replacement of Lead Customer-Owned Service Pipes  
Docket No. P-2017-2606100**

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Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matter is the **Joint Petition for Settlement on Remand**. Copies have been served on all parties of record as indicated on the attached Certificate of Service.

Very truly yours,



Anthony C. DeCusatis

ACD/tp  
Enclosures

c: Per Certificate of Service (w/encs.)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                       |   |                                  |
|---------------------------------------|---|----------------------------------|
| <b>PETITION OF PENNSYLVANIA-</b>      | : |                                  |
| <b>AMERICAN WATER COMPANY FOR</b>     | : |                                  |
| <b>APPROVAL OF TARIFF CHANGES AND</b> | : | <b>Docket No. P-2017-2606100</b> |
| <b>ACCOUNTING AND RATE TREATMENT</b>  | : |                                  |
| <b>RELATED TO REPLACEMENT OF LEAD</b> | : |                                  |
| <b>CUSTOMER-OWNED SERVICE PIPES</b>   | : |                                  |

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Joint Petition for Settlement on Remand** on the following persons, in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC AND FIRST CLASS MAIL**

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Respectfully submitted,



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Dated: July 17, 2019

*Counsel for*  
*Pennsylvania-American Water Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| <b>PETITION OF PENNSYLVANIA-</b>  | : |                                  |
| <b>AMERICAN WATER COMPANY</b>     | : |                                  |
| <b>FOR APPROVAL OF TARIFF</b>     | : |                                  |
| <b>CHANGES AND ACCOUNTING AND</b> | : | <b>DOCKET NO. P-2017-2606100</b> |
| <b>RATE TREATMENT RELATED TO</b>  | : |                                  |
| <b>REPLACEMENT OF LEAD</b>        | : |                                  |
| <b>CUSTOMER-OWNED SERVICE</b>     | : |                                  |
| <b>PIPES</b>                      | : |                                  |

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**JOINT PETITION FOR SETTLEMENT  
ON REMAND**

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**July 17, 2019**

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## **EXHIBITS AND STATEMENTS IN SUPPORT**

|             |  |
|-------------|--|
| Exhibit 1   | PAWC Tariff Water-Pa. P.U.C. No. 5 Supplement No. __   |
| Statement A | Statement in Support of Joint Petition for Settlement of Pennsylvania-American Water Company         |
| Statement B | Statement in Support of Joint Petition for Settlement of the Office of Consumer Advocate             |
| Statement C | Statement in Support of Joint Petition for Settlement of the Bureau of Investigation and Enforcement |
| Statement D | Statement in Support of Joint Petition for Settlement of the Office of Small Business Advocate       |

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| <b>PIPES</b>                      | : |                                  |

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**JOINT PETITION FOR SETTLEMENT  
ON REMAND**

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**TO THE HONORABLE ELIZABETH H. BARNES, ADMINISTRATIVE LAW JUDGE:**

Pennsylvania-American Water Company (“PAWC” or “the Company”), the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) (collectively, the “Joint Petitioners”), by their respective counsel, submit this Joint Petition For Settlement on Remand (“Settlement”) in the above-captioned proceeding and request that the Administrative Law Judge approve the Settlement without modification. In support of this Settlement, the Joint Petitioners state as follows:

**I. BACKGROUND**

**A. Overview Of PAWC’s 2017 Replacement Plan**

1. This proceeding was initiated on May 22, 2017, when PAWC petitioned the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to approve its plan

(“Replacement Plan”) to replace customer-owned lead Service Pipes (“LSPs”)<sup>1</sup> and recover the associated costs (the “Petition”). In its Petition, PAWC requested that the Commission: (1) approve the tariff revisions set forth in the Supplement to PAWC Tariff Water-Pa. P.U.C. No. 4<sup>2</sup> provided as PAWC Exhibit No. 1 to the Petition, which would allow the Company to replace LSPs at its sole cost; (2) authorize the Company to capitalize costs incurred to replace LSPs (“LSP Replacement Costs”) and record those costs in Account No. 333 – Services for accounting and ratemaking purposes; and (3) deem the Company’s capitalized LSP Replacement Costs to constitute “eligible property” for water utilities as defined in 66 Pa.C.S. § 1351 on which it could recover its “fixed costs” through its Distribution System Improvement Charge (“DSIC”).<sup>3</sup>

2. With its Petition, PAWC filed the direct testimony and accompanying exhibits of David R. Kaufman (PAWC Statement No. 1) and John R. Cox (PAWC Statement No. 2).

3. PAWC’s Petition proposed a Replacement Plan with two parts.<sup>4</sup> First, PAWC proposed to remove and replace, with the customer’s consent, LSPs that are encountered when it replaces its mains and Service Lines (“Part 1”).<sup>5</sup> Second, PAWC proposed to remove and replace LSPs when requested to do so by a customer subject to verifying that the customer has a

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<sup>1</sup> Rules 2.15 and 2.16, respectively, set forth at page 43 of PAWC Tariff Water-Pa. P.U.C. No. 5 (“Tariff No. 5”), define a “Service Line” as “[t]he Company-owned piping and appurtenances which run between and are connected to the Company’s main and its street service connection,” and a “Service Pipe” as “[t]hat part of the water line not owned by the Company” that “begins at the Company-owned street service connection and continues into the structure on the premise[s] to be supplied.” Therefore, throughout this Joint Petition for Settlement, the terms “Service Line” and “Service Pipe” are used in the manner they are defined in Rules 2.15 and 2.16 of Tariff No. 5.

<sup>2</sup> Subsequent to PAWC’s filing of the Petition, the Commission approved Tariff No. 5 in the Company’s 2017 base rate proceeding at Docket No. R-2017-2595853 effective January 1, 2018.

<sup>3</sup> Petition, pp. 1 and 16.

<sup>4</sup> *Id.*, pp. 8-10; PAWC Statement No. 1, pp. 11-12.

<sup>5</sup> PAWC explained that, when it replaces a main, it typically replaces its Service Lines that are attached to that main at the same time. Petition, p. 2; PAWC Statement No. 1, p. 8. PAWC also explained that, in some locations, it replaces its Service Lines even though it is not replacing its mains. Petition, p. 2; PAWC Statement No. 1, pp. 11-12. In both of the aforementioned scenarios, PAWC would replace all of the lead Service Pipes it encounters pursuant to its Replacement Plan – Part 1. *Id.*



LSP (“Part 2”). Under Part 2, the Company would coordinate customer-requested replacements.<sup>6</sup> Customer requests would be grouped by geographic location, and replacements would be undertaken when the number of customer requests in a given location would allow the Company to obtain reasonable economies of scale by doing those replacements as a single project.<sup>7</sup> PAWC proposed a budget cap of \$6.0 million per year on the amounts expended to replace LSPs pursuant to Part 1 and Part 2 of the Replacement Plan.<sup>8</sup>

4. In the Petition and its accompanying testimony, PAWC explained that the Replacement Plan is designed to help eliminate conditions that could expose customers to lead in their drinking water and will help maintain compliance with applicable drinking water regulations.<sup>9</sup> PAWC witness Kaufman testified that PAWC currently complies with the Lead and Copper Rule<sup>10</sup> (“LCR”) by implementing various measures, including corrosion control treatment of the water it supplies.<sup>11</sup> Mr. Kaufman also explained that replacing LSPs in conjunction with the Company’s main replacement program would be a cost-effective way to continue PAWC’s main replacement program while avoiding the health and safety concerns associated with partial lead service line replacements.<sup>12</sup> In addition, Mr. Kaufman testified that replacing LSPs is a reasonable and cost-effective way to assure that a source of potential water-borne lead exposure would be eliminated.<sup>13</sup>

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<sup>6</sup> Petition, p. 9; PAWC Statement No. 1, p. 12.

<sup>7</sup> *Id.*

<sup>8</sup> Petition, p. 11; PAWC Statement No. 1, p. 12; PAWC Statement No. 2, pp. 5 and 10-11.

<sup>9</sup> Petition, p. 3; PAWC Statement No. 1, pp. 8-12.

<sup>10</sup> 25 Pa. Code §§ 109.1101 through 109.1108.

<sup>11</sup> PAWC Statement No. 1, p. 7.

<sup>12</sup> PAWC Statement No. 1, pp. 8-12.

<sup>13</sup> *Id.*

**B. Procedural History Leading Up To The Commission's January 2019 Order**

5. The Petition was served on the OCA, I&E, OSBA, and all parties of record in PAWC's Long-Term Infrastructure Improvement Plan proceeding at Docket No. P-2017-2585707. On June 12, 2017, I&E and the OCA each filed an Answer to the Petition. A Notice of Appearance and Notice of Intervention were filed by the OSBA on June 15, 2017.

6. A Prehearing Conference was held on August 8, 2017 before Administrative Law Judge ("ALJ") Elizabeth H. Barnes to whom this matter was assigned, and a schedule was established for submitting written testimony, holding evidentiary hearings and filing briefs. *See* Procedural Order (August 9, 2017). Thereafter, written direct, rebuttal and surrebuttal testimony was submitted by the Company, I&E, the OCA and OSBA on the dates previously established for each submission.

7. The evidentiary hearings scheduled for January 17-18, 2018 were cancelled because the parties waived cross-examination of their respective witnesses. On January 22, 2018, the parties moved into evidence, by motion and stipulation, their respective witnesses' written direct, rebuttal and surrebuttal testimony and associated exhibits. *See* Order Admitting Testimony and Exhibits Into the Evidentiary Record (January 25, 2018).

8. Pursuant to the established litigation schedule, Main and Reply Briefs were submitted by the parties on March 1, 2018 and March 15, 2018, respectively. In their briefs, the parties supported the Company's proposal to replace customer-owned LSPs in order to eliminate potential sources of lead exposure and protect public health and safety. However, I&E and OCA proposed that PAWC book its LSP Replacement Costs as a "regulatory asset" and, in its next base rate case, begin to amortize that regulatory asset over a prospective ten-year period without a return on the unamortized balance.

9. On May 15, 2018, the Commission issued the Recommended Decision of ALJ Barnes. The Recommended Decision found that PAWC's proposal to replace customer-owned LSP is in the public interest<sup>14</sup> and, therefore, recommended that the Commission approve PAWC's proposed Tariff revisions and authorize the Company to move forward with the replacement of customer-owned LSPs.<sup>15</sup>

10. The ALJ did not approve the Company's proposal to capitalize its expenditures to replace LSPs; record those expenditures in a capital account; amortize or depreciate its LSP replacements costs over a reasonable estimated service life; and recover its weighted cost of debt and equity capital on those expenditures.<sup>16</sup> The ALJ recommended accepting proposals made by witnesses for the OCA and I&E that would allow the Company to defer the costs it incurs to replace LSPs, amortize those costs over a period of up to ten years beginning in its next base rate case,<sup>17</sup> and not recover a return on the unamortized balance during the recovery period.<sup>18</sup>

11. PAWC filed Exceptions to the Recommended Decision on June 4, 2018. I&E, the OCA and the OSBA filed Replies to Exceptions on June 14, 2018.

### C. Act 120 Of 2018 And The Commission's January 2019 Order

12. In October 2018, while PAWC's Exceptions to the Recommended Decision were pending, Governor Wolf signed into law Act 120 of 2018 ("Act 120"), which became effective on December 23, 2018. Act 120 amended Section 1311(b) of the Public Utility Code, 66 Pa. C.S. § 1311(b) in order, *inter alia*, to authorize investor-owned water utilities to pursue

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<sup>14</sup> See, e.g., R.D., p. 30.

<sup>15</sup> *Id.*, p. 30.

<sup>16</sup> *Id.*, pp. 21-25.

<sup>17</sup> The ALJ did not recommend a particular amortization period, but rather stated that the amortization period should be established in PAWC's next rate base proceeding. R.D., p. 2.

<sup>18</sup> *Id.*, pp. 21-25.

comprehensive replacement of lead service lines that remain in service across the Commonwealth subject to budget caps approved by the Commission.<sup>19</sup>

13. Act 120 provides that replacing a LSP does not make the utility the owner of the new service line on the customer's property.<sup>20</sup> Act 120 also directs the PUC to establish standards to ensure a warranty on the utility's replacement work and reimburse customers who replaced lead service lines at their own cost.<sup>21</sup> Additionally, Act 120 establishes the accounting and ratemaking treatment of lead service line replacement costs by providing that the customer-owned portion of lead service lines (and damaged wastewater service laterals also covered by the law) may be included in a regulated utility's rate base upon which it is authorized to earn a return.<sup>22</sup>

14. On January 4, 2019, in response to Act 120, the Commission set aside the portions of the Recommended Decision dealing with accounting and ratemaking treatment of Replacement Plan Costs.<sup>23</sup> The Commission found that Act 120 prescribes the cost recovery for LSP Replacement Costs and addresses other contested issues in this proceeding such as warranties for the work performed.<sup>24</sup> The Commission remanded this proceeding to evaluate PAWC's Petition under Act 120 and develop a solution that might become a model for other Pennsylvania water utilities to address customer-owned LSPs in accordance with Act 120.<sup>25</sup>

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<sup>19</sup> 66 Pa.C.S. § 1311(b)(2)(v)-(vi).

<sup>20</sup> *Id.* at § 1311(b)(2)(i).

<sup>21</sup> *Id.* at § 1311(b)(2)(vii).

<sup>22</sup> *Id.* at §§ 1311(b)(2)(i)-(iii).

<sup>23</sup> *Petition of Pennsylvania-American Water Co. For Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Serv. Pipes*, Docket No. P-2017-2606100 (Opinion and Order entered Jan. 4, 2019) ("January 2019 Order").

<sup>24</sup> *See* January 2019 Order, p. 13.

<sup>25</sup> *Id.*, pp. 14-15.

#### **D. Procedural History On Remand**

15. In the January 2019 Order, the Commission directed PAWC to conform its Petition to Act 120 and supplement the record in this proceeding as necessary or to file a revised Petition at a new docket.<sup>26</sup> On January 11, 2019, the Joint Petitioners advised the ALJ that the Company elected to proceed at this docket and requested an opportunity to collaborate to enhance the previously-proposed Replacement Plan before initiating further formal proceedings. On January 14, 2019, the ALJ approved the Joint Petitioners request to explore the possibility of amicably resolving any outstanding remaining issues among the parties in light of Act 120 without the need for further litigation.

16. Through various telephone conferences and correspondence, the Joint Petitioners attempted to reach agreement on a revised Replacement Plan consistent with the terms of the January 2019 Order and Act 120. As a result, the parties were able to agree to the Settlement set forth herein. The Joint Petitioners notified the ALJ of the Settlement on June 7, 2019.

#### **II. TERMS AND CONDITIONS OF SETTLEMENT**

17. The Settlement consists of the following terms and conditions:

##### **A. Nature Of Replacement Plan And Tariff Revisions**

18. Notwithstanding Rules 2.12, 2.14 and 4.9 of Tariff No. 5, PAWC shall, provided that the customer consents, replace LSPs: (1) encountered as part of the Company's ongoing main and/or Service Line replacement work; and (2) at a customer's request, subject to certain conditions, including verification of the presence of an LSP and the Company's determination of when the replacement will occur based on various factors such as the number of customer requests, site conditions, contractor proximity, the annual cap described in Paragraph 35 below

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<sup>26</sup> *Id.*, p. 14.

and availability of funds within the budgeted allotment of \$6.0 million per year. The costs PAWC incurs as a result of replacing LSPs shall be subject to cost recovery as outlined in Section F.

19. Under both Parts of the Replacement Plan, the customer will own and retain responsibility for the maintenance, repair and replacement of its Service Pipe after it is replaced by the Company.

20. The Company will not replace a customer-owned LSP unless the customer enters into an agreement, in a form provided by the Company, that includes granting permission for the Company to enter onto the customer's property to do the replacement. If a customer refuses to enter into such an agreement with the Company, the Company will replace only the Company-owned portion of such customer's lead service line if the location of the Company's new main precludes connecting it to the existing Company-owned Service Line. The potential health risks associated with a partial lead service line replacement will be outlined in a communication to the homeowner.

21. The Joint Petitioners agree that PAWC shall be permitted to implement Rule 4.9.1 set forth in the Supplement to Tariff No. 5 attached to the Joint Petition as Exhibit 1.

22. The tariff revisions reflected in Rule 4.9.1 do not change the rules regarding a customer's obligation to replace or repair a leaking or otherwise defective Service Pipe, but the customer will not be required to repair an LSP prior to replacement by the Company.

23. In light of the annual cap provisions in Act 120, the Company's Replacement Plan does not specify an initial or any renewal terms. As discussed in Paragraph 41 below, the Company is providing information that will enable the parties to assess the operation of the program and will meet with the parties to discuss the program and its implementation if

requested. The Joint Petitioners, however, reserve the right to review and challenge the Company's Replacement Plan in future proceedings.

**B. Implementation Of Part 2 Of The Replacement Plan**

**(1) Coordination of Customer-Requested Lead Service Pipe Replacements**

24. Customer requests will be grouped by geographic location, and replacements will be undertaken when the number of customer requests in a given location allows the Company to realize reasonable economies of scale described in the Rebuttal Testimony of David R. Kaufman (PAWC Statement No. 1-R, pp. 7-8) by doing those replacements as a single project. With full implementation of Part 2, PAWC anticipates segmenting its service territory into at least five geographic regions.

**(2) Wait Time for Part 2 Replacements**

25. PAWC will strive to maintain the wait-time following a customer request under Part 2 to less than one year after the Company has the opportunity to evaluate the level of customer requests and address any program start-up issues.

26. The Company will verify whether the property for which a Part 2 replacement was requested has a LSP, and if so, will test water from the tap of the dwelling within four weeks after receiving such a request from the customer or property owner, as applicable. The Company will notify the customer occupying such property within three days of obtaining the test results. The Company also agrees that all customers will be informed of the use of a water filter while awaiting the replacement of a customer-owned LSP.

27. The Company will provide a 10-cup filtered water container to low-income residential customers who request (or if the customer occupies a rental property, the property-



owner has made, or has authorized the customer to make, such request) that the Company replace their LSPs under Part 2 of the Company's Replacement Plan, provided that:

a. The customer's household income is at or below 150% of the Federal Poverty Income Guidelines as determined by the Dollar Energy Fund, which PAWC will engage to make this determination based on information available to, or obtained by, Dollar Energy Fund in the same manner Dollar Energy Fund determines residential customers' low-income status for other low-income programs of the Company;

b. The Company has verified that the customer has a lead Service Pipe; and

c. The Company's testing of water from the customer's tap shows that the water has a lead level above the action level established by the Pennsylvania Department of Environmental Protection under the Environmental Protection Agency's LCR.

28. The Company agrees that its customer service representatives will be performing affirmative outreach to low-income customers making them aware of the offer of the water filter.

### **(3) Cost of Part 2 Lead Service Pipe Replacements**

29. The actual costs of a customer-owned LSP replacement reflects a number of site-specific factors, including the length of the Service Pipe. Therefore, the Company will proceed with replacements at the actual costs of such replacement up to the budget amount of \$6.0 million per year.

30. The Company will independently track customer-owned LSP replacement costs under both Parts of the Replacement Plan and will report these costs as part of its DSIC quarterly filings.



**C. Warranty**

31. The Company will provide a two-year warranty on workmanship and materials for customer Service Pipes that it replaces.

**D. Reimbursement To Customers Who Recently Paid For Their Own Lead Service Pipe Replacement**

32. If PAWC, at the request of a customer or property-owner (as applicable), visits a customer's site and determines that the Service Pipe has been replaced at or within one-year of the date PAWC commenced a project to replace lead Service Pipes and the customer or property-owner (as applicable) provides the Company with a paid invoice, a certification from a certified plumber, and other documentation determined by the Company to be appropriate to verify the replacement, the Company will reimburse the customer's or property-owner's (as applicable) reasonable costs up to an amount not to exceed 125% of the costs the Company would have incurred to perform the replacement of a similarly-sized service in the project area. A lead Service Pipe project will commence on the date the Company begins physical main replacement work in the project area that includes the customer's site or when PAWC deploys a contractor crew to the geographic area of a Part 2 project to perform grouped work activity, whichever is sooner.

**E. Customer Outreach And Communications Plan**

33. PAWC's customer outreach and communications plan for the Replacement Plan will include, but is not limited to, 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. In addition, PAWC plans to release an educational video about lead and notify customers when lead is encountered on the customer-owned segment of the service line.

34. The Company will share with the statutory advocates the communications materials to be used in its customer outreach plan. Some of these materials have already been provided as exhibits to Mr. Kaufman's testimony. PAWC agrees to work with the statutory advocates on the communication plan for how it intends to roll-out to customers the approved PAWC-specific elements of its Replacement Plan.

**F. Cost Recovery**

**(1) Annual Cap, Budgetary Allotment and Priority of Expenditures**

35. Upon full implementation of the plan, PAWC will perform a maximum of 1,800 LSP replacements per year within a maximum budgetary amount of approximately \$6 million per year. As the Replacement Plan is rolled-out during the first year of implementation, the Company expects that the number of LSP replacements will be less than the annual maximum of 1,800.

36. LSP replacements under Part 1 will have priority on the use of the annual budgetary allotment as they address conditions that pose relatively greater risks of raising lead levels for the affected customers. If the Company does not expend the entire budgetary allotment for any given year under the Replacement Plan, the excess budgetary allotment will carry forward to the subsequent year, subject to the cap on number of LSP replacements per year. If the Company does not use the excess budgetary allotment in the subsequent year, the excess budgetary allotment will not carry forward into the following year, i.e. excess budgetary allotments will not carryforward on a cumulative basis, subject to the cap on the number of LSP replacements per year.

**(2) Accounting and Ratemaking Treatment of Lead Service Pipe Replacement Costs**

37. The Company will capitalize LSP replacement costs and record those costs in Account 333 – Services.

38. PAWC agrees to create a separate sub-account in Account 333 – Services to record LSP replacement costs. Only customer-side replacement costs will be included in this sub-account.

39. The Company will include its actual LSP replacement costs in the Company's rate base in a subsequent base rate case and will recover the fixed costs of such investments in property placed in service between base rate cases through the Company's existing DSIC.

**(3) Cost Allocation**

40. LSP Replacement Costs will be allocated to all water customers.

**G. Reporting**

41. PAWC shall provide to I&E, OCA, and OSBA an annual report on the number of customer-owned LSPs replaced, and the cost of replacements, broken down by customer rate class and, secondarily, geographic location.

**III. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

42. PAWC, the OCA, I&E and OSBA have prepared, and attached to this Joint Petition, Statements in Support identified as Statements A through D, respectively, setting forth the bases on which they believe the Settlement is in the public interest.

43. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:

- ***The Settlement Provides a Framework To Implement Act 120.*** The Settlement represents the collaborative effort of the parties to develop an approach to facilitate comprehensive replacement of customer-owned lead service lines in PAWC's service territory in the Commonwealth consistent with Act 120. The Replacement Plan, as set forth in the Settlement, should provide a way to eliminate a possible risk of lead exposure at the customer's tap from Service Pipes.
- ***Substantial Litigation And Associated Costs Will Be Avoided.*** The Settlement resolves a number of important and contentious issues that were litigated before the Commission.
- ***The Settlement Is Consistent With Commission Policies Promoting Negotiated Settlements.*** The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery and engaging in in-depth discussions over several weeks. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*see* 52 Pa. Code §§ 5.231, 69.391 and 69.401), and is supported by substantial record evidence.

#### **IV. ADDITIONAL TERMS AND CONDITIONS**

44. The Commission's approval of the Settlement shall not be construed as approval of any party's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. Accordingly, this Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

45. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any party in this or any other proceeding, if it were fully litigated.

46. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

47. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to fully litigate this remanded case, including but not limited to presentation of

witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

48. If the ALJ, in her Recommended Decision on this Joint Petition, recommends that the Settlement be adopted as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the Administrative Law Judge in her Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

**WHEREFORE**, the Joint Petitioners, by their respective counsel, respectfully request as follows:

1. That Administrative Law Judge Barnes enter a Recommended Decision and the Commission enter an Order approving the Settlement on Remand embodied in this Joint Petition, including all terms and conditions thereof without modification.

2. That the Commission approve the Replacement Plan as set forth herein and grant the Company permission to file the Tariff Supplement attached hereto as Exhibit 1 to become effective on one day's notice.

Respectfully submitted,



---

Susan Simms Marsh  
Pennsylvania-American Water Company

Anthony C. DeCusatis  
Brooke E. McGlinn  
Morgan, Lewis & Bockius LLP

*Counsel for Pennsylvania-American Water  
Company*

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Christine Maloni Hoover  
Phillip D. Demanchick, Jr.  
Office of Consumer Advocate

*Counsel for Office of Consumer Advocate*

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Sharon E. Webb  
Erin K. Fure  
Office of Small Business Advocate

*Counsel for Office of Small Business Advocate*

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Carrie A. Wright  
Bureau of Investigation & Enforcement

*Counsel for Bureau of Investigation &  
Enforcement*

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Respectfully submitted,

Dated: July 17, 2019

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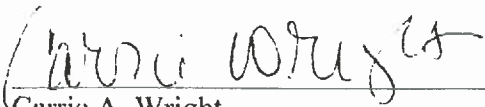
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Carrie A. Wright  
Bureau of Investigation & Enforcement

*Counsel for Bureau of Investigation &  
Enforcement*

# EXHIBIT 1

**Pennsylvania-American Water Company**

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**4.9.1 Replacement of Lead Service Pipes**

4.9.1.1 Notwithstanding Rules 2.11, 2.12, 2.14 and 4.9, the Company shall, provided that the customer consents, replace lead Service Pipes pursuant to Parts 1 and 2 of its lead Service Pipe replacement plan (Replacement Plan), subject to the budgeted allotment of \$6.0 million per year for all lead Service Line replacements under its Replacement Plan. Pursuant to its Replacement Plan – Part 1, the Company will replace lead Service Pipes it encounters when replacing its mains and/or Service Lines up to 1,800 lead Service Pipe replacements per year within a maximum amount of approximately \$6.0 million per year. Pursuant to its Replacement Plan – Part 2, the Company will replace a lead Service Pipe at a Customer's request subject to the following conditions: (1) verification that the Customer has a lead Service Pipe; (2) the time when the replacement occurs will be determined by the Company based on factors determined by the Company including, without limitation, the number of customer requests for Service Pipe replacements in Company-designated geographic areas; (3) the annual cap of 1,800 lead Service Pipe; and (4) availability of funds not used for Part 1 replacements under the Company's budgeted allotment of \$6.0 million per year. Lead Service Pipe replacements performed pursuant to Replacement Plan – Part 1 will have priority on the use of funds under the annual budget allotment and, therefore, in any year, funds will be used for lead Service Pipe replacements under Replacement Plan – Part 2 only to the extent that funds are available within the budget allotment and are not allocated to Part 1 replacements planned for that year. Portions of the annual budget allotment of \$6.0 million that are not expended on lead Service Pipe replacements under Part 1 or Part 2 of the Replacement Plan in a year will roll-over to the next subsequent year, but use of the roll-over funds will still be subject to the requirement that priority be given to Part 1 replacements. If the Company does not use the excess budgetary allotment in the subsequent year, the excess budgetary allotment will not carry forward into the following year, i.e. excess budgetary allotments will not carryforward on a cumulative basis, subject to the cap on the number of lead Service Pipe replacements per year. The Company may, but shall not be required, to petition the Commission for approval to modify its annual budget allotment of \$6.0 million if the Company, in its sole discretion, determines that its annual budget allotment no longer meets the future needs of administering both Parts of the Replacement Plan. However, no change may be made without prior Commission approval. Costs the Company incurs to replace lead Service Pipes under the Company's Replacement Plan shall be subject to the accounting and rate treatment approved by the Order of the Pennsylvania Public Utility Commission (Commission) entered [date] and Settlement at Docket No. P-2017-2606100 (Approval Order). After a lead Service Pipe is replaced by the Company, the Customer shall own the Service Pipe and shall have full responsibility for the repair, replacement and maintenance of the new Service Pipe, which, upon installation, shall thereafter be subject to the terms of Rules 2.12, 2.14 and 4.9.

4.9.1.2 The Customer shall enter into an Agreement for Replacement of Lead Service Pipe, in a form provided by the Company, prior to the initiation of any work by the Company to replace a Customer's Service Pipe. The Company will provide a two-year warranty on workmanship and materials for any Customer lead Service Pipes it replaces.

Issued:

Effective:

**Pennsylvania-American Water Company**

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4.9.1.3 The Company will verify whether the property for which a Replacement Plan - Part 2 replacement was requested has a lead Service Pipe, and if so, will test water from the tap of the dwelling within four weeks after receiving such a request from a Customer or property owner, as applicable. The Company will notify the Customer occupying such property within three days of obtaining the test results.

4.9.1.4 The Company will provide a 10-cup filtered water container to low-income residential Customers who request (or if the Customer occupies a rental property, the property-owner has made, or has authorized the Customer to make, such request) that the Company replace their LSPs under Part 2 of the Company's Replacement Plan, provided that:

1. The Customer's household income is at or below 150% of the Federal Poverty Income Guidelines as determined by the Dollar Energy Fund, which the Company will engage to make this determination based on information available to, or obtained by, Dollar Energy Fund in the same manner Dollar Energy Fund determines a residential Customer's low-income status for other low-income programs of the Company;
2. The Company has verified that the Customer has a lead Service Pipe; and
3. The Company's testing of water from the Customer's tap shows that the water has a lead level above the action level established by the Pennsylvania Department of Environmental Protection under the Environmental Protection Agency's Lead and Copper Rule.

4.9.1.5 If the Company, at the request of a Customer or property-owner (as applicable), visits a Customer's site and determines that the Service Pipe has been replaced at or within one-year of the date the Company commenced a project to replace lead Service Pipes and the Customer or property-owner (as applicable) provides the Company with a paid invoice, a certification from a certified plumber, and other documentation determined by the Company to be appropriate to verify the replacement, the Company will reimburse the Customer's or property-owner's (as applicable) reasonable costs up to an amount not to exceed 125% of the costs the Company would have incurred to perform the replacement of a similarly-sized Service Pipe in the project area. A lead Service Pipe project will commence on the date the Company begins physical main replacement work in the project area that includes the Customer's site or when the Company deploys a contractor crew to the geographic area of a Replacement Plan – Part 2 project to perform grouped work activity, whichever is sooner.

Issued:

Effective:

# STATEMENT A

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                       |   |                                  |
|---------------------------------------|---|----------------------------------|
| <b>PETITION OF PENNSYLVANIA-</b>      | : |                                  |
| <b>AMERICAN WATER COMPANY FOR</b>     | : |                                  |
| <b>APPROVAL OF TARIFF CHANGES AND</b> | : |                                  |
| <b>ACCOUNTING AND RATE</b>            | : | <b>DOCKET NO. P-2017-2606100</b> |
| <b>TREATMENT RELATED TO</b>           | : |                                  |
| <b>REPLACEMENT OF LEAD CUSTOMER-</b>  | : |                                  |
| <b>OWNED SERVICE PIPES</b>            | : |                                  |

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**VERIFIED STATEMENT OF PENNSYLVANIA-AMERICAN WATER COMPANY  
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT ON REMAND**

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**July 17, 2019**

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|   |                                 |                                  |
|---|---------------------------------|----------------------------------|
| <b>PETITION OF PENNSYLVANIA-<br/>AMERICAN WATER COMPANY FOR<br/>APPROVAL OF TARIFF CHANGES AND<br/>ACCOUNTING AND RATE<br/>TREATMENT RELATED TO<br/>REPLACEMENT OF LEAD CUSTOMER-<br/>OWNED SERVICE PIPES</b> | :<br>:<br>:<br>:<br>:<br>:<br>: | <b>DOCKET NO. P-2017-2606100</b> |
|---|---------------------------------|----------------------------------|

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**VERIFIED STATEMENT OF PENNSYLVANIA-AMERICAN WATER COMPANY  
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT ON REMAND**

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**I. INTRODUCTION**

On July 17, 2019, Pennsylvania-American Water Company (“PAWC” or “the Company”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) (collectively, the “Joint Petitioners”) filed with the Commission a Joint Petition For Settlement on Remand (“Joint Petition”) in the above-captioned proceeding. The Joint Petition contains a statement of the factual background and procedural history of this case, which is incorporated herein by reference. This Statement in Support (the “Statement”) is filed pursuant to Paragraph 42 of the Joint Petition.

The settlement set forth in the Joint Petition (the “Settlement”) was reached after an extensive investigation by the parties of PAWC’s voluntary initiative to proactively eliminate customers’ potential risk of exposure to lead from customer-owned lead Service Pipes (“Replacement Plan”),<sup>1</sup> which included substantial discovery and the submission of direct,

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<sup>1</sup> Rules 2.15 and 2.16, respectively, set forth at page 43 of PAWC Tariff Water-Pa. P.U.C. No. 5 (“Tariff No. 5”), define a “Service Line” as “[t]he Company-owned piping and appurtenances which run between and are connected to the Company’s main and its street service connection,” and a “Service Pipe” as “[t]hat portion of the water line not owned by the Company” that “begins at the Company-owned street service connection and continues into the

rebuttal and surrebuttal written testimony. In addition, the parties engaged in discussions and negotiations about the terms of the Settlement over an extended period.

PAWC is in full agreement with each of the reasons the Joint Petitioners stated the Settlement is in the public interest. In this Statement, PAWC offers additional reasons why the Settlement is in the public interest and should be approved.

## **II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FACILITATES COMPREHENSIVE REPLACEMENT OF LEAD SERVICES REMAINING IN THE COMMONWEALTH AS ENVISIONED BY ACT 120 OF 2018**

Lead in drinking water presents significant health risks. While the Company ceased installing lead Service Lines by the 1950's, some remain in service in portions of PAWC's system that predate that change or were acquired from other water utilities. The Company employs a proactive approach to protect customers from lead exposure in the drinking water the Company supplies consistent with federal and state regulatory standards established by the United States Environmental Protection Agency ("EPA") and the Pennsylvania Department of Environmental Protection ("DEP"), including the Lead and Copper Rule ("LCR"). PAWC has, thus far, complied with the LCR by implementing a number of measures, including effective corrosion control treatment of the water it supplies.

The current LCR requires utilities, among other things, to test drinking water inside older homes for lead and take additional action if more than 10% of tap water samples exceed the lead concentration limit (i.e., 15 parts per billion),<sup>2</sup> including replacement of utility-owned and customer-owned lead piping. Consequently, remaining in compliance with applicable drinking water regulations necessarily requires taking steps to address possible sources of lead contamination from customer-owned property. In addition, as recognized by the Commission,

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structure on the premise[s] to be supplied." Therefore, throughout this Statement in Support, the terms "Service Line" and "Service Pipe" are employed in the manner they are defined in Rules 2.15 and 2.16 of Tariff No. 5.

<sup>2</sup> See 40 C.F.R. §§ 141.80 *et seq.*; 25 Pa. Code §§ 109.1101 *et seq.*

physical replacement of the entire lead service line is emerging as a best practice in the water utility industry to improve public health protection from lead in drinking water.<sup>3</sup> However, applicable LCR regulations permit the utility to replace only the segment it owns if a customer is unable or unwilling to pay for replacing the portion of the service piping for which the customer is responsible. In PAWC's case, its options are further limited by Rule 4.9 of Tariff No. 5, which does not authorize the Company to replace a customer's Service Pipe.

In its original filing on May 22, 2017 ("2017 Petition"), PAWC proposed tariff changes to implement a two-part plan to replace, at its expense, customer-owned lead Service Pipes ("LSPs"): (1) encountered as part of the Company's ongoing main and/or Service Line replacement work ("Part 1"); and (2) at a customer's request, subject to certain conditions, including verification of the presence of an LSP and the Company's determination of when the replacement will occur based on various factors ("Part 2"). In the 2017 Petition, the Company also requested approval to capitalize the LSP replacements for accounting purposes and recover a return on, and a return of, the capital PAWC invests in that property.

Under the Settlement, PAWC's Replacement Plan maintains the core parameters and goals originally proposed in the 2017 Petition with several enhancements to conform to Act 120 of 2018 ("Act 120") enacted on October 24, 2018 – after Administrative Law Judge ("ALJ") Elizabeth H. Barnes issued her Recommended Decision ("R.D.") in this proceeding – to facilitate comprehensive replacement of lead water services in the Commonwealth. Act 120 adds a new provision to Section 1311(b) of the Public Utility Code and expressly authorizes water utilities to include investments in replacing customer-owned LSPs under a Commission-approved program in rate base in a subsequent base rate case or the utility's DSIC for property

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<sup>3</sup> *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 (Opinion and Order entered Jan. 4, 2019) ("January 2019 Order"), pp. 6-7.

placed in service between base rate cases. *See* 66 Pa.C.S. § 1311(b)(2)(i)-(iii). The rate recovery authorized by Act 120 requires prior Commission approval of a tariff or supplement with a cap on the number of customer-owned lead water service lines that will be replaced annually. *Id.* at § 1311(b)(2)(i), (v), (vi). In addition, Act 120 directs the Commission to establish rules to ensure:

- A warranty on the work performed by a public utility to replace a customer-owned lead water service line that the Commission determines appropriate.
- Reimbursement to customers who replaced their own lead water service line within one year of commencement of a utility project.

*Id.* at § 1311(b)(2)(vii).

As described in the Settlement and in this Statement, PAWC's Replacement Plan is consistent with Act 120, will proactively eliminate a source of lead in drinking water, and will help PAWC maintain compliance with important drinking water standards. Key elements of the Settlement are discussed in more detail below.

**A. PAWC's Replacement Plan, As Modified By The Settlement Is A Reasonable And Prudent Approach To Eliminate The Risk of Exposure To Lead In Drinking Water Through Service Pipes**

The Commission, ALJ, and all parties to this proceeding have recognized the public health benefits associated with both Parts of the Company's originally proposed Replacement Plan to address conditions that may increase the risk of exposure to lead at the customer's tap. Specifically, Part 1 will avoid creating a risk of exposing customers to elevated lead levels in their drinking water from PAWC's extension of its infrastructure rehabilitation program into areas where LSPs are more likely to exist. This risk arises from a "partial" replacement, which physically disturbs, but leaves in place, the customer's segment of a service connection. Part 2 of the Replacement Plan will proactively remove any possible risk of lead exposure from Service

Pipes in areas where the stability of the existing LSPs will not be disturbed by main replacements. *See* January 2019 Order, pp. 4-6, 13; R.D., p. 30; OCA St. No. 1, pp. 5-13; I&E St. Nos. 1, p. 9 & 1-SR, p. 4; *see also* PAWC St. Nos. 1, pp. 8-12 & 1-R, pp. 2-3.

While fully supporting the purpose and goals of the Company's original proposal, the OCA recommended programmatic changes to a few discrete components of the Replacement Plan. Those recommendations include: (1) a five-year – instead of one-year – warranty for each newly installed customer-owned Service Pipe in light of the long useful life of the property; (2) a sliding scale of reimbursement to customers who paid for their own LSP replacement between 2014 and the first quarter of 2018; and (3) a customer outreach and communications plan developed in consultation with the statutory advocates. The OSBA also generally supported the Replacement Plan, subject to its concern about the Company's proposal to recover what the OSBA characterized as "excessive" Part 2 LSP replacement costs. OSBA St. Nos. 1, pp. 3-4 & 1-SR, pp. 2-3.

The Settlement adopts the Company's original proposed parameters for both Parts of the Replacement Plan with the revisions discussed below to conform to Act 120 and address the concerns raised by the OCA and OSBA, while preserving the Company's fundamental goals of reducing customers' exposure to water-borne sources of lead. Under the Settlement, the Joint Petitioners agree that PAWC shall be permitted to file the Supplement to Tariff No. 5, which is attached to the Joint Petition as Exhibit No. 1, which is necessary to implement the Replacement Plan as modified by the Settlement.

#### **1. The Settlement Provides an Appropriate Warranty For LSP Replacement Work**

Under the Settlement, PAWC commits to a two-year limited workmanship warranty to the customer on the newly installed customer-owned Service Pipe. Joint Petition, ¶ 30. Act 120 does not prescribe the length of the warranty that water utilities or their contractors must provide

to replace customer-owned LSPs concurrent with a scheduled main replacement project or under a Commission-approved program. PAWC believes that a two-year warranty is appropriate because such commitment is consistent with other routine utility work performed by its contractors and addresses the OCA's concern about the length of the warranty.

**2. The Settlement Establishes a Reasonable Implementation Plan for Part 2 of the Replacement Plan**

Under the Settlement, customer requests will be grouped by geographic location, and replacements will be undertaken when the number of customer requests in a given location allows the Company to realize reasonable economies of scale as described in the Rebuttal Testimony of David R. Kaufman (PAWC St. No. 1-R, pp. 7-8) by doing those replacements as a single project. With full implementation of Part 2, PAWC anticipates segmenting its service territory into at least five geographic regions. Joint Petition, ¶ 24.

Under the Settlement, PAWC will strive to maintain the wait-time following a customer request under Part 2 to less than one year after the Company has the opportunity to evaluate the level of customer requests and address any program start-up issues. The Company will verify whether the property for which a Part 2 replacement was requested has a LSP, and if so, will test water from the tap of the dwelling within four weeks after receiving such a request from the customer or property owner, as applicable. The Company will also provide water filters to low-income residential customers who satisfy the criteria in Paragraph No. 27 of the Joint Petition.

**3. The Settlement Appropriately Incorporates a Customer Outreach Plan and Reporting Requirements to Inform Future Evaluations of the Replacement Plan**

In his testimony in this proceeding, PAWC witness Kaufman explained that the Company's current public education efforts regarding lead service lines are consistent with the National Drinking Water Advisory Council's recommendations. He also described PAWC's communications plan for the Replacement Plan, which will include 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. Nos. 1, p. 14 & 1-R, p. 12.

Under the Settlement, PAWC will share its communications materials to be used in its customer outreach plan with the statutory parties and will work with them to implement the PAWC-specific elements of that plan. Joint Petition, ¶ 23. This commitment ensures that the Company will collaborate with the statutory advocates to develop a robust outreach and communications plan as recommended by the OCA.

The Settlement also addresses the OSBA's concern about Part 2 LSP replacement costs. Under the Settlement the Company committed to provide to the Joint Petitioners an annual report on the number of customer-owned LSPs replaced, and the cost of replacements, broken down by customer rate class. Joint Petition, ¶ 41. Based on those reports, the issue of whether costs of specific investments in LSP replacements are reasonable and prudently-incurred can be reviewed and addressed in base rate cases or DSIC filings when actual LSP replacement costs are claimed for recovery. In addition, the information provided by the Company in the annual reports will enable the Commission and interested parties to assess the operation of the Replacement Plan on an ongoing basis.

**B. The Annual Cap And Budgetary Allotment Under The Settlement Will Mitigate The Impact Of The Replacement Plan On Customer Rates**

PAWC originally proposed to set a budget cap of \$6.0 million per year on the amounts expended to replace LSPs in order to mitigate the impact of the Replacement Plan on customer rates. The Company also proposed the following priority of expenditures within the budgetary allotment: (a) LSP replacements under Replacement Plan – Part 1 will have priority on the use of the \$6.0 million annual budgetary allotment as they address conditions that pose relatively greater risks of raising lead levels for the affected customers; (b) if the Company does not

expend the entire budgetary allotment for any given year under the Replacement Plan, the excess budgetary allotment will carry forward to the subsequent year; and (c) if the Company does not use the excess budgetary allotment in the subsequent year, the excess budgetary allotment will not carry forward into the following year, i.e. excess budgetary allotments will not carry forward on a cumulative basis. PAWC St. No. 1, pp. 14-15 & 1-R, p. 17. No party objected to PAWC's proposed budgetary allotment, but the OCA asserted that the Company should offer a sliding scale of reimbursement to customers who recently replaced LSPs at their own cost. OCA St. Nos. 1, pp. 23-24 & 1-SR, pp. 3-4.

Act 120 provides that a Commission-approved lead service line replacement plan shall be subject to an annual cap on replacements. 66 Pa.C.S. §1311(b)(2)(v). Under the Settlement, PAWC will perform a maximum of 1,800 LSP replacements per year within a maximum budgetary amount of approximately \$6 million per year with the same priority of expenditures originally proposed by the Company. Joint Petition, ¶¶ 35-36.

In addition, to address the OCA's concerns and consistent with Act 120, the Settlement provides reimbursement to customers who replaced LSPs at their own cost within one year of commencement of a project under the Replacement Plan. Specifically, subject to the eligibility and verification requirements outlined in Paragraph 32 of the Joint Petition, the Company will reimburse the customer's or property-owner's (as applicable) reasonable costs up to an amount not to exceed 125% of the costs the Company would have incurred to perform the replacement of a similarly-sized service in the project area.

**C. The Accounting and Ratemaking Treatment of the Company's Investments In Customer-Owned Lead Service Pipes That Are Needed To Protect The Public Health Established By The Settlement Is Consistent With Act 120**

In its 2017 Petition, PAWC proposed to capitalize LSP replacement costs up to the annual budget cap of \$6.0 million and include such investment in the Company's rate base in a



subsequent base rate case or the Company's existing DSIC for property placed in service between base rate cases. As demonstrated in the direct testimony of PAWC's Director of Rates and Regulations, John R. Cox, under the Company's proposed accounting and ratemaking treatment, the LSP Replacement costs would have a negligible effect on customers' bills for water service (i.e., an annual increment of less than 10 cents per month). PAWC St. No. 2, pp. 10-11; PAWC Exhibit No. 2. The Company's testimony also explained that such proposed accounting and ratemaking treatment is appropriate because PAWC's investment in replacing customer-owned LSPs provides a multi-year assurance that it can continue to comply with important drinking water standards, including the LCR. PAWC St. Nos. 2, pp. 7-8 & 1-R, pp. 14-15.

Despite emphasizing that proactive investments in customer-owned LSPs are needed to protect the public health, I&E and the OCA both opposed the Company's cost recovery proposal, asserting that any LSP replacement costs incurred by PAWC should be deferred through a regulatory asset and amortized without a return or carrying charge. I&E St. No. 1, pp. 7-8; OCA St. No. 1, pp. 18-20. The ALJ recommended that the Commission approve the cost recovery proposals offered by I&E and the OCA. R.D., pp. 21-25, 37.

Act 120 was enacted after the Commission issued the ALJ's Recommended Decision. Act 120 establishes a clear mandate for the accounting and ratemaking treatment of LSP replacement costs. Section 1311(b) of the Public Utility Code provides in relevant part:

(2)(i) The value of the property of a public utility providing water or wastewater service shall include the original cost incurred by the public utility for replacement of a customer-owned lead water service line or a customer-owned damaged wastewater lateral performed concurrent with a scheduled utility main replacement project or under a commission-approved program, notwithstanding that the customer shall hold legal title to the replacement water service line or wastewater lateral.

(ii) The original cost of the replacement water service line or wastewater lateral shall be deemed other related capital costs that are part of the public utility's distribution system.

(iii) For the purpose of calculating the return of and on a public utility's prudently incurred cost for the replacement of a water service line and for the replacement of a wastewater lateral that is recovered in a public utility's base rates or distribution system improvement charge, the commission shall employ the equity return rate for water and wastewater public utilities calculations set forth in section 1357(b)(2) and (3) (relating to computation of charge).

66 Pa.C.S. § 1311(b)(2)(i)-(iii).

Accordingly, the Settlement adopts PAWC's original proposed accounting and ratemaking treatment for LSP replacement costs and provides that PAWC will record LSP replacement costs in a separate subaccount in Account 333 - Services. Joint Petition, ¶¶ 37-39. In addition, consistent with Act 120, under the Settlement, the Company will allocate LSP replacement costs to all water customers. Joint Petition, ¶ 40.

### **III. CONCLUSION**

For the reasons set forth above and in the Joint Petition, the Replacement Plan, as enhanced by the Settlement, is a prudent and efficient approach to eliminate any possible risk of lead exposure at the customer's tap from Service Pipes consistent with Act 120. Moreover, the Settlement terms have been carefully designed to resolve, in a reasonable fashion, the issues and concerns that were raised by the testimony in this case without the need for additional costly

litigation. Accordingly, the Settlement is in the public interest and should be approved without modification.

Respectfully submitted,



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*Counsel for Pennsylvania-American Water Company*

Dated: July 17, 2019

DB1/ 104568911.2

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                     |   |                                  |
|-------------------------------------|---|----------------------------------|
| <b>PETITION OF PENNSYLVANIA-</b>    | : |                                  |
| <b>AMERICAN WATER COMPANY FOR</b>   | : |                                  |
| <b>APPROVAL OF TARIFF CHANGES</b>   | : |                                  |
| <b>AND ACCOUNTING AND RATE</b>      | : | <b>DOCKET NO. P-2017-2606100</b> |
| <b>TREATMENT RELATED TO</b>         | : |                                  |
| <b>REPLACEMENT OF LEAD</b>          | : |                                  |
| <b>CUSTOMER-OWNED SERVICE PIPES</b> | : |                                  |

**VERIFICATION**

I, David R. Kaufman, Vice President of Engineering of Pennsylvania-American Water Company, hereby state that the facts set forth in the foregoing **Statement of Pennsylvania-American Water Company in Support of the Joint Petition for Settlement** are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing if held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: July 17, 2019



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David R. Kaufman  
Vice President of Engineering

# STATEMENT B

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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STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE  
IN SUPPORT OF THE JOINT PETITION FOR  
SETTLEMENT ON REMAND

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The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Settlement on Remand (Settlement) in the above-referenced proceeding, finds the terms and conditions of the Settlement to be in the public interest for the following reasons:

**I. INTRODUCTION**

On May 22, 2017, Pennsylvania-American Water Company (PAWC or the Company) filed its Petition 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 (Petition). Through its Petition, the Company sought approval from the Pennsylvania Public Utility Commission (Commission) to revise its tariff in order to replace customer-owned Lead Service Pipes (LSPs). Petition at 1. Further, the Company proposed that costs it incurs to replace customer-owned LSPs shall be subject to the specific accounting and rate recovery treatment proposals contained in its Petition. Id. Specifically, the Company proposed to capitalize the costs incurred and record those costs in Account No. 333 – Services for accounting purposes, recover the fixed costs of the replacements placed in service between base rate cases through the Company's existing Distribution System

Improvement Charge (DSIC), and include all actual replacement costs incurred in the Company's rate base in a subsequent base rate proceeding. Petition at 1-2.

In response to the Petition, the Bureau of Investigation and Enforcement (I&E) and the OCA each filed an Answer and the Office of Small Business Advocate (OSBA) filed a Notice of Intervention. Generally, the statutory advocates supported the Company's proposal to replace customer-owned LSPs in order to avoid partial lead service-line replacements and reduce lead exposure in communities that still utilize lead service lines. OCA St. 1 at 13; See also I&E St. 1 at 9; OSBA St. 1 at 3-4. The OCA and I&E, however, challenged the Company's proposed accounting and ratemaking treatment as it would have allowed the Company to earn a return on customer-owned property, violating fundamental ratemaking principles. OCA St. 1 at 16-17; see also I&E St. 1 at 7-8. Rather, the OCA and I&E proposed that the Company be permitted to create a deferred regulatory asset through which it can track the expenses it incurs and recover its expenses over a reasonable amortization period to be determined in PAWC's next base rate proceeding. OCA St. 1 at 21-22; see also I&E St. 2 at 2-4. In addition, the OCA recommended that the Company provide a five-year warranty on all customer-owned LSPs it replaces as part of the program, implement a partial compensation plan to reimburse customers that replaced their lead service line prior to implementation of the Company's Replacement Plan, and develop a thorough education and outreach program to inform customers. OCA St. 1 at 23-25.

On January 22, 2018, a joint Motion for Admission of Testimony and Exhibits (Motion) was filed by all the parties, wherein the OCA requested to enter into evidence the written direct and surrebuttal testimony of its witness, Scott J. Rubin<sup>1</sup>, in addition to the testimony and

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<sup>1</sup> Mr. 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 1-3. Since 1984, Mr. Rubin has provided legal and consulting

evidence of the other parties. On January 25, 2018, an Order was issued granting the Motion. Subsequently, in March 2018, the OCA submitted its Main Brief and Reply Brief extensively advocating for its position in this matter.

On May 15, 2018, the Presiding Officer issued the Recommended Decision, granting the Company's proposal to replace customer-owned LSPs in accordance with the Company's proposed Replacement Plan as it is in the public interest. R.D. at 18. The Presiding Officer, however, rejected the Company's proposed accounting and rate recovery proposals. R.D. at 18-21. Instead, the Presiding Officer adopted the proposal advocated by the OCA and I&E. That is, the Company would establish a regulatory asset to record the costs incurred and amortize those costs over a reasonable period to be determined in the Company's next base rate proceeding. R.D. at 21. Additionally, the Company would not be able to earn a return on the unamortized balance during the amortization period. Id. The Recommended Decision also adopted the OCA's proposed partial compensation program, which would provide reimbursement to customers that replaced their LSPs at their own expense within four years prior to the effective date of the Company's proposed Replacement Plan. R.D. at 27-28. Lastly, the Recommended Decision stated that the Company should provide a one-year warranty for all customer-owned LSPs that it replaces as part of the Replacement Plan. R.D. at 26.

After the issuance of the Recommended Decision, while the matter was awaiting a decision from the Commission, Act 120 of 2018 was signed into law by Governor Wolf on October 24, 2018. Act 120 became effective on December 23, 2018, and amended Section 1311(b) of the Public Utility Code. 66 Pa. C.S. § 1311(b). Section 1311(b), as amended, states in relevant part:

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services to a variety of parties interested in public utility regulatory proceedings. A complete description of Mr. Rubin's qualifications is provided in OCA Statement 1, Appendix A.



**§ 1311. Valuation of and return on the property of a public utility.**

\* \* \*

(b) Method of Valuation.

(2) (i) The value of the property of a public utility providing water or wastewater service shall include the original cost incurred by the public utility for the replacement of a customer-owned lead water service line or a customer-owned damaged wastewater lateral, performed concurrent with a scheduled utility main replacement project or under a commission-approved program, notwithstanding that the customer shall hold legal title to the replacement water service line or wastewater lateral.

(ii) The original cost of the replacement water service line or wastewater lateral shall be deemed other related capitalized costs that are part of the public utility's distribution system.

\* \* \*

(vi) A new tariff or supplement to an existing tariff approved by the commission under subparagraph (v) shall include a cap on the maximum number of customer-owned lead water service lines or customer-owned damaged wastewater laterals that can be replaced annually.

(vii) The commission shall, by regulation or order, establish standards, processes and procedures to:

(A) Ensure that work performed by a public utility or the public utility's contractor to replace a customer-owned lead water service line or a customer-owned damaged wastewater lateral is accompanied by a warranty of a term that the commission determines appropriate and the public utility and the public utility's contractor has access to the affected customer's property during the term of the warranty.

(B) Provide for a reimbursement to a customer who has replaced the customer's lead water service line or customer-owned damaged wastewater lateral within one year of commencement of a project in accordance with a commission-approved tariff.

66 Pa.C.S. § 1311(b).

Act 120 authorizes public utilities providing water and/or wastewater service to, *inter alia*, replace customer-owned LSPs, include the costs incurred between base rate proceedings in the DSIC, and, upon the filing of a base rate case, include the costs in rate base thereby earning a return of and on the costs to replace customer-owned LSPs. Additionally, Act 120 provides that

there shall be a cap on the number of customer-owned LSPs replaced annually, that a reasonable warranty accompany the replacement, and that any customer that previously replaced their LSP within one year of commencement of a Commission-approved project to replace a customer-owned LSP shall be reimbursed. Id.

On January 4, 2019, the Commission entered its Opinion and Order noting that Act 120 of 2018 demonstrates a “clear mandate” from the General Assembly “for the accounting and cost-recovery for expenses related to the replacement of customer-owned lead service pipes.” Opinion and Order at 13-14. Accordingly, the Commission set aside the Recommended Decision and remanded the case to the Office of Administrative Law Judge to evaluate the Company’s Petition under Act 120. Id., at 14.

On January 11, 2019, the Company requested that, prior to filing a revised Petition to address Act 120, it be allowed to consult with the statutory advocates to explore the possibility of amicably resolving or minimizing any issues that might remain outstanding among the parties. The parties were granted leave to do so and began engaging in settlement negotiations. On June 7, 2019, after extensive settlement negotiations, the parties informed the Presiding Officer that the parties had reached a settlement in principle on all issues.

Subsequently, on June 11, 2019, an Order on Remand was issued granting the parties leave until July 17, 2019, to file a Joint Petition for Approval of Settlement and a Joint Stipulation for Admission of Evidence and Copies of Statements and Exhibits. In accordance with the Order on Remand, the OCA submits that the Settlement is in the public interest for the following reasons.

## **II. STATEMENT IN SUPPORT**

### **A. Nature of Replacement Plan and Tariff Revisions (Settlement ¶¶ 18-23)**

The Settlement provides that, upon Commission approval, the Company will be allowed to replace customer-owned LSPs pursuant to the Company's proposed Replacement Plan. Settlement ¶ 18. The Replacement Plan will allow the Company to replace customer-owned LSPs encountered as part of the Company's ongoing main and/or service line replacement program (Replacement Plan – Part I) and, in addition, replace customer-owned LSPs upon request, subject to certain conditions (Replacement Plan – Part 2), as described in more detail below. Id.

The Settlement also provides that the Customer will retain ownership of the new service pipe and responsibility for maintenance, repair and replacement after the Company replaces the LSP. Settlement ¶ 19. Additionally, the Settlement states that the Customer must enter into an agreement granting the Company permission to replace the customer-owned LSP. Settlement ¶ 20. Otherwise, it will not replace the customer-owned LSP and, if the existing Company-owned service line is made of lead, will have to perform a partial lead service line replacement to remove the Company's portion of the lead service line. Id.

As the OCA has recognized throughout this proceeding, lead in water service lines creates major safety and reliability concerns for customers. OCA St. 1 at 5-6. For example, lead exposure can cause a range of health effects including permanent cognitive impairment in infants and children. Id. Current protections against lead exposure such as corrosion control, however, may be insufficient. OCA St. 1 at 6. Additionally, while replacing the entire portion of the entire lead service line, including both the Company portion and the customer portion, is best practice within the water utility industry, replacing only a portion of the lead service line can create just

as much lead exposure as it seeks to eliminate. OCA St. 1 at 10-11. By providing the Company with the ability to replace customer-owned LSPs, the Commission will limit partial lead service line replacements thereby protecting customers from significant lead exposure. See OCA St. 1 at 8 (detailing the problematic nature of partial lead service line replacements). For these reasons, the OCA supports the Company's Replacement Plan and request for limited waivers of its tariff provisions allowing the Company to replace customer-owned LSPs.

The Settlement also provides additional measures for continued development and improvement of the Company's Replacement Plan. By way of example, the Settlement provides that the Company will meet with the parties, if requested, to discuss the program and its implementation. Settlement ¶ 23. Furthermore, each party reserves the right to review and challenge the Company's Replacement Plan in future proceedings. Id. The OCA submits that a program of this nature may be an iterative process that develops over time. The Settlement allows for continued discussions and forums for further refinement of the program, if necessary.

**B. Implementation of Part 2 of the Replacement Plan (Settlement ¶¶ 24-30)**

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. Petition at 8. For Part 2 replacements, PAWC will replace the customer-owned LSP at the customer's request if the Company verifies that the customer's service pipe is made of lead. Petition at 9. The Settlement contains numerous provisions detailing the parameters of Replacement Plan – Part 2, considering the logistical issues that may arise.

First, the Settlement indicates that customer requests for Part 2 replacements will be grouped by geographic location and replacements will be undertaken when the number of customer requests in a given location allows the Company to realize reasonable economies of

scale by doing those replacements as a single project. Settlement ¶ 24. In other words, the Company seeks to minimize repeated contractor mobilization/demobilization costs by aggregating ten to twenty LSP replacements for a given week in a geographic region, with a similar amount planned for the following two weeks. PAWC St. 1-R at 7-8. PAWC will segment its service territory into at least five geographic regions. Settlement ¶ 24.

The parties indicated in the underlying proceeding that the Company's proposal could lead to extended wait times for Part 2 replacements, which would be imprudent considering those customers have lead service lines. I&E St. 1 at 4. To that end, the Settlement provides several provisions that protects the interest of customers. First, the Settlement states that PAWC will strive to undertake Part 2 replacements less than one year after the Company has had an opportunity to evaluate the customer requests and address any program start-up issues. Settlement ¶ 25. Secondly, the Settlement provides that once a Part 2 replacement request is placed, the Company will test lead levels in the water at the customer's tap within four weeks and will notify the customer within three days of receiving test results. Settlement ¶ 26. Lastly, for low-income customers, the Company will provide a 10-cup filtered water container provided that the customer is at or below 150 percent of the Federal Poverty Income Guidelines and has a lead level at the tap that exceeds the lead action level established by the Lead and Copper Rule. Settlement ¶ 27.

These above provisions provide numerous conditions and parameters for the Company as it undertakes Replacement Plan – Part 2. These additional conditions serve to protect customers during the time the Company requires to reach economies of scale for Part 2 replacements.

**C. Warranty (Settlement ¶ 31)**

The Settlement states that the Company will provide a two-year warranty on workmanship and materials for customer-owned LSPs that it replaces. Settlement ¶ 31. In the underlying proceeding, the OCA recommended that the Company provide a five-year warranty to each customer that had an LSP replaced by the Company. OCA St. 1 at 23. A five-year warranty would give the customer assurance that the work was performed properly. Id. In response, the Company was willing to provide a one-year limited warranty on workmanship and materials. PAWC St. 1-R at 11. The OCA, however, noted that a one-year warranty was not reasonable, given that faulty replacements may only be affected by extreme occurrences in weather, which might take a few years to occur. OCA St. 1-SR at 2-3. The Recommended Decision, however, agreed with the Company adopting a one-year limited warranty. R.D. at 26.

Accordingly, in an effort to reach a compromise, the Settlement provides for a two-year limited warranty on workmanship and materials. While this is not the five-year period that the OCA initially requested, two years should be sufficient to expose the replacements to extreme weather conditions and/or substantial usage, which would allow the customer to assess whether the work was performed properly.

**D. Reimbursement Program (Settlement ¶ 32)**

The Settlement also requires the Company to provide reimbursements for customers that have replaced their LSP at their own expense. Settlement ¶ 32. Specifically, the Settlement states that the customer must have replaced their LSP within one-year of the date PAWC begins physical main replacement work in the project area that includes the customer's site or when PAWC deploys a contractor crew to the geographic area of a Part 2 project, whichever is sooner. Id.

This provision is in response to the OCA's recommendation in the underlying proceeding. The OCA initially recommended that the Company provide reimbursements to customers that have replaced their LSP within four years of the effective date of the Company's Replacement Plan. OCA St. 1 at 23. Further, the customer would be reimbursed a percentage of the costs to replace the LSP depending on how recently the customer-owned LSP was replaced. OCA St. 1 at 24. The OCA advocated for the reimbursement program because failure to provide reimbursements would lead to equity concerns, considering that these customers had replaced their own LSP at their expense, but would now be expected to pay the costs to replace other customer-owned LSPs. OCA St. 1-SR at 3-4. As a result, the Recommended Decision adopted the OCA's proposal on the basis that failure to reimburse these customers would result in undue discrimination for the reasons previously stated. R.D. at 27-28.

While this proceeding was pending a decision before the Commission, the General Assembly passed Act 120 of 2018, which included a provision requiring a utility providing water/wastewater service to:

Provide [] a reimbursement to a customer who has replaced the customer's lead water service line or customer-owned damaged wastewater lateral within one year of commencement of a project in accordance with a commission-approved tariff.

66 Pa.C.S. § 1311(b)(vii)(B). In other words, the amended statute provides a statutory period of a one-year reimbursement program for customers that previously replaced their LSP at their own expense.

Accordingly, while the Settlement does not adopt the OCA's initial position in this matter, the reimbursement program complies with the framework of Act 120. These reimbursements partially address the OCA's equity concerns and provides a meaningful approach to ensure that more customers with LSPs can benefit from this program.

**E. Customer Outreach and Communications Plan (Settlement ¶¶ 33-34)**

The Settlement provides that the Company will perform customer outreach and implement a communication plan to notify potentially affected customers through various means, including direct mailings, bill inserts, information on the Company's website, and an educational video. Settlement ¶ 33. Additionally, the Company has agreed to share its communications with the statutory advocates and work with them to develop certain communications sent to customers. Settlement ¶ 34.

These provisions allow for a collaborative effort between the parties to ensure that affected customers receive accurate, timely, and detailed information concerning the Replacement Plan.

**F. Cost Recovery (Settlement ¶¶ 35-40)**

The following provisions of the Settlement deal with several issues raised in the underlying proceeding and were specifically addressed by Act 120 of 2018, including limits on the Company's annual replacements, accounting and ratemaking treatment of the costs the Company incurs as part of the Replacement Plan, and cost allocation.

**1. Annual Cap, Budgetary Allotment and Priority of Expenditures (Settlement ¶¶ 35-36)**

The Settlement provides that the Company will perform a maximum of 1,800 LSP replacements per year within a maximum budgetary allotment of approximately \$6 million per year. Settlement ¶ 35. This provision is consistent with Act 120, which requires that any lead service line replacement program have an annual cap. See 66 Pa. C.S. § 1311(b)(vi). Additionally, PAWC has provided evidence demonstrating that there are approximately 18,000 company-owned lead service lines, indicating that there could likely be a similar amount of customer-owned LSPs in the Company's water system. PAWC St. 1 at 10-11. Accordingly, a replacement cap of 1,800 customer-owned LSPs and an annual budget of approximately \$6



million will allow the Company to replace a significant majority, if not all, customer-owned LSPs over a period of 10 years.

The Settlement also states that replacements under Replacement Plan – Part I will have priority on the use of the annual budgetary allotment. Settlement ¶ 36. This is critical as it ensures that as the Company performs its ongoing main and service line replacement program, the Company will have enough funds to replace the customer-portion of a lead service line if it encounters one. If funds were not available, that would either result in the Company having to seek additional waivers for more funds, require the customer to pay for the replacement creating equity concerns, or undergoing a partial lead service line replacement, which can cause a spike in lead levels at the tap.

Lastly, the Settlement provides that any excess budgetary allotment that is not used in a given year will roll over to the subsequent year. Settlement ¶ 36. Any rollover funds not used in the subsequent year, however, will not carry over into the following year. Id. That is, excess budgetary allotments will not carry forward on an indefinite, cumulative basis. Id. This provision prevents the Company from making a significant amount of expenditures in a single year, but rather promotes consistent and gradual replacement of customer-owned LSPs.

2. Accounting and Ratemaking Treatment of Lead Service Pipe Replacement Costs (Settlement ¶¶ 37-39)

The following Settlement provisions set forth the recovery of costs the Company incurs to replace customer-owned LSPs. Specifically, the Settlement, in accordance with Act 120, allows the Company to capitalize the replacement costs. The Company has agreed to record those costs in a sub-account of the Company's Account 333 – Services (this account generally tracks the costs associated with installation of services pipes and accessories leading to the customer's premises). Settlement ¶ 37-38. The Settlement, in accordance with Act 120, also

allows the Company to include the actual costs of replacing customer-owned LSPs in the Company's rate base in a subsequent base rate proceeding, thereby allowing the Company to earn a return of and on those costs. Settlement ¶ 39. Additionally, pursuant to the Settlement, the Company will be allowed to recover the fixed costs of those replacements placed in service between base rate cases through the Company's existing DSIC. Id.

Cost recovery was a contentious issue in the underlying proceeding. The Settlement outlined above reflects the initial proposal of PAWC. The OCA and I&E, however, argued that it would be inappropriate for the Company to earn a return on the costs associated with customer-owned property not for public use. OCA St. 1 at 16-17; see also I&E St. 1 at 7-8. Rather, the OCA and I&E recommended that the Company establish a regulatory asset to record the costs incurred and amortize those costs over a reasonable period to be determined in the Company's next base rate proceeding. OCA St. 1 at 21-22; see also I&E St. 2 at 2-4. The Recommended Decision agreed adopting the recommendation of the OCA and I&E. R.D. at 21.

Subsequently, Act 120 of 2018 was signed into law, which states that "[t]he value of the property of a public utility providing water or wastewater service shall include the original cost incurred by the public utility for the replacement of a customer-owned lead water service line or a customer-owned damaged wastewater lateral," that is replaced pursuant to a Commission-approved program. 66 Pa. C.S. § 1311(b). Furthermore, Act 120 states that "[t]he original cost of the replacement water service line or wastewater lateral shall be deemed other related capitalized costs that are part of the public utility's distribution system. Id. In other words, pursuant to Section 1351 of the Public Utility Code, such costs would be eligible for recovery under the Company's existing DSIC. See 66 Pa. C.S. §§ 1351, 1357(a).

Notwithstanding the problematic nature of earning a return on customer-owned property, the OCA understands that the Commission and regulated utilities are bound by statutory law. See 66 Pa. C.S. § 501. Considering that Section 1311 of the Public Utility Code, as amended, allows for utilities to include in rate base, and in the DSIC between rate cases, the actual costs to replace customer-owned LSPs, the Settlement reflects that newly-enacted amendment to the Public Utility Code. 66 Pa. C.S. § 1311(b). The OCA would, however, continue to encourage utilities to minimize costs and the impacts to ratepayers in undertaking plans to remove lead service lines from water systems.

3. Cost Allocation (Settlement ¶ 40)

The Settlement provides that the costs to replace customer-owned LSPs shall be recovered from water customers. Settlement ¶ 40. This is a reasonable allocation of the costs as all water customers, regardless of rate class, will be able to benefit from this program.

G. Reporting (Settlement ¶ 41)

The Settlement provides that the Company shall provide to the statutory advocates an annual report on the number of customer-owned LSPs replaced and the costs of those replacements, separated by rate class and geographic region. Settlement ¶ 41. This provision is helpful for the parties to continue to monitor the program and ensure that it is operating effectively and efficiently.

## STATEMENT B

### III. CONCLUSION

The OCA submits that the terms and conditions of the proposed Settlement, taken as a whole, represent a fair and reasonable resolution of the issues raised by the OCA in this matter. Therefore, the OCA submits that the Settlement should be approved by the Commission without modification as being in the public interest.

Respectfully Submitted,



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Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

DATE: July 17, 2019  
274581

# STATEMENT C

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                       |          |                       |
|---------------------------------------|----------|-----------------------|
| <b>PETITION OF PENNSYLVANIA</b>       | <b>:</b> |                       |
| <b>AMERICAN WATER COMPANY FOR</b>     | <b>:</b> | <b>DOCKET NO.</b>     |
| <b>APPROVAL OF TARIFF CHANGES AND</b> | <b>:</b> | <b>P-2017-2606100</b> |
| <b>ACCOUNTING AND RATE TREATMENT</b>  | <b>:</b> |                       |
| <b>RELATED TO REPLACEMENT OF LEAD</b> | <b>:</b> |                       |
| <b>CUSTOMER-OWNED SERVICE PIPES</b>   | <b>:</b> |                       |

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S  
STATEMENT IN SUPPORT OF  
JOINT PETITION FOR SETTLEMENT**

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**TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Carrie B. Wright, hereby respectfully submit that the terms and conditions of the foregoing *Joint Petition For Settlement* (“Joint Petition” or “Settlement Agreement”) are in the public interest and represent a fair, just, reasonable and equitable balance of the interests of Pennsylvania American Water Company (“PAWC” or “Company”) and its customers. The parties to this Settlement Agreement have conducted extensive discovery and negotiations which have resulted in the submission of the attached Joint Petition. The request for acceptance of the

*Joint Petition for Settlement* is based on I&E's conclusion that the Settlement Agreement is in the public interest, which is the "prime determinant in the consideration of a proposed Settlement."<sup>1</sup>

#### **A. Legal Landscape Regarding Public Utilities**

A business may acquire "public utility status" when that business is the sole organization that maintains the infrastructure utilized in providing an essential service to the public for compensation.<sup>2</sup> In order to protect consumers, the public utility's rates and services are regulated.<sup>3</sup> Price regulation strives to replicate the results of effective competition.<sup>4</sup> A public utility is entitled to a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers and allows the utility an opportunity to obtain a reasonable rate of return on its investment.<sup>5</sup> A public utility shall also provide safe and reliable service by furnishing and maintaining adequate facilities and reasonable services and by making the necessary improvements thereto.<sup>6</sup>

#### **B. I&E's Role**

Through its bureaus and offices, the Commission has the authority to take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders.<sup>7</sup> The Commission established

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<sup>1</sup> *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

<sup>2</sup> James C. Bonbright, *Principles of Public Utility Rates*, Columbia University Press: New York (1961) at 3-14; 66 Pa.C.S. § 102.

<sup>3</sup> *Principles of Public Utility Rates*, at 3-14; 66 Pa.C.S. §§ 1301, 1501.

<sup>4</sup> See *Cantor v. Detroit Edison*, 428 U.S. 579, 595-6, fn. 33 (1976).

<sup>5</sup> *City of Lancaster v. Pennsylvania Public Utility Commission*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002); see also *Hope*, 320 U.S. at 602-603.

<sup>6</sup> 66 Pa.C.S. § 1501.

<sup>7</sup> Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11); 66 Pa.C.S. § 101 *et seq.*; 52 Pa.Code § 1.1 *et seq.*

I&E to serve as the prosecutory bureau to represent the public interest in ratemaking and utility service matters and to enforce compliance with the Public Utility Code.<sup>8</sup> By representing the public interest in rate related proceedings before the Commission, I&E works to balance the interest of customers, utilities, and the regulated community as a whole to ensure that a utility's rates are just, reasonable, and nondiscriminatory.<sup>9</sup>

### **C. Procedural History**

I&E adopts, for purposes of this Statement in Support, the procedural history as set forth in paragraphs B.5 through D.16 of the *Joint Petition for Settlement*.

## **II. DISCUSSION**

During the pendency of this proceeding Act 120 of 2018 was signed into law and became effective on December 23, 2018. The Settlement is intended to represent an approach to replace customer-owned lead service lines in PAWC's service territory in compliance with Act 120.

The adverse health effects of ingesting lead are well known and significant. Further, it is well known that partial replacement of lead service lines can lead to elevated levels of lead in drinking water. While there still may be lead present in the customer's plumbing or fixtures, replacement of the entire service line serves to eliminate a major source of lead contamination. Therefore, I&E believes that it is important to have these lines replaced before a significant problem occurs.

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<sup>8</sup> *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

<sup>9</sup> *See* 66 Pa.C.S. §§ 1301, 1304.



Per the settlement, PAWC will replace customer-owned lead service lines encountered as part of its ongoing main or service line replacement work, or, under certain conditions, at the customer's request. PAWC will perform a maximum of 1,800 replacements per year with a budgetary cap of \$6 million per year. This is in the public interest as it allows PAWC to quickly and efficiently remove customer-owned lead service lines while not exposing ratepayers to an untenable cost.

The customer-owned lead service line replacement costs will be capitalized and recorded in Account 333 – Services. The Company has agreed as part of this settlement to create a separate sub-account in Account 333 – Services in which it will record lead service line replacement costs. This is in the public interest as it allows for interested parties to quickly and easily determine which portion of Account 333 – Services is related to lead service line replacement. It also aids in the ease of determining whether the costs associated with lead service line replacement were accurate and proper.

Under the replacement plan part 2, customers will be grouped by geographic location. Once the number of requests for replacement in a certain location allows the Company to realize reasonable economies of scale, the Company will begin to undertake these replacements as a single project. PAWC has agreed that it will attempt to maintain a wait-time of less than a year once the level of customer requests and program start up issues have been evaluated. The wait-time limit ensures customers are not waiting an inordinate amount of time for their lead service line replacement. By agreeing to wait until the number of requests in a certain area will allow the Company to realize

reasonable economies of scale, the Company will be able to undertake these replacements in a fiscally responsible manner.

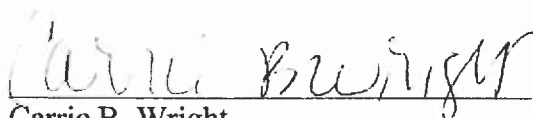
Overall, I&E agrees that the terms of the settlement are consistent with the requirements of Act 120 and will result in customer-owned lead service lines being replaced in an acceptable manner. In addition, the settlement furthers the Commission's goal of promoting negotiated settlements. It lessens the time and expense of continued litigation of these issues.

### **III. CONCLUSION**

Based on I&E's analysis, acceptance of this proposed Joint Petition is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding and will help PAWC in its swift removal of both Company owned and customer owned lead service lines. I&E further submits that acceptance of this agreement will protect ratepayers interests by allowing regulatory oversight while still ensuring that PAWC appropriately recovers the associated costs.

**WHEREFORE**, the Commission's Bureau of Investigation and Enforcement represents that it supports the *Joint Petition for Settlement* as being in the public interest and respectfully requests that Administrative Law Judge Elizabeth Barnes recommend, and the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in cursive script, reading "Carrie B. Wright", written in dark ink over a horizontal line.

Carrie B. Wright  
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Dated: July 16, 2019

# STATEMENT D

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE  
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT  
ON REMAND**

**I. Introduction and Procedural History**

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”).

On May 22, 2017, the Pennsylvania-American Water Company (“PAWC” or the “Company”) filed a petition to approve tariff changes that will allow PAWC to replace customer-owned lead “Service Pipes” (as defined in Rule 2.12 of PAWC Tariff-Water Pa. P.U.C. No.4) and recover associated costs (“Petition”).

Answers to the Petition were filed by the Office of Consumer Advocate (“OCA”) and the Commission’s Bureau of Investigation and Enforcement (“I&E”) on June 12, 2017.

On June 15, 2017, the OSBA filed a Notice of Intervention and Public Statement.

A telephonic Prehearing Conference on this case was held on June 19, 2017, before presiding officer Administrative Law Judge (“ALJ”) Elizabeth H. Barnes, at which time a procedural schedule and discovery modifications were established.

The OSBA submitted the Direct and Surrebuttal Testimony of Brian Kalcic on October 23, 2017 and November 30, 2017, respectively.

Despite good faith settlement discussions throughout this proceeding, the parties were unable to resolve this matter. However, the parties agreed that the evidentiary hearings scheduled for January 17 and 18, 2018, were not necessary and waived cross-examination of witnesses. On January 16, 2018, ALJ Barnes canceled the scheduled hearings and instructed the parties to submit testimony to be entered into the record by motion and stipulation. Such motion was granted by order dated January 25, 2018.

On March 1, the OSBA, PAWC, OCA and I&E all filed Main Briefs. The OSBA filed a Main Brief on the limited issue of cost recovery for the Company's proposed Replacement Plan-Part 2 ("Part 2"). The OSBA, OCA, I&E and PAWC all filed Reply Briefs on March 15, 2018.

On May 15, 2018, the Commission issued the Recommended Decision ("RD") of ALJ Barnes. The RD, while approving the Company's proposal to replace customer-owned lead service pipes, did not approve the Company's request relative to the recovery and treatment of excessive costs from all rate payers.<sup>1</sup>

The Company filed Exceptions to the RD on June 4, 2018. The OSBA, the OCA and I&E filed Replies to Exceptions on June 14, 2018.

In October 2018, while PAWC's Exceptions to the Recommended Decision were pending in the underlying proceeding, Governor Wolf signed into law Act 120 of 2018 ("Act 120"), which became effective on December 23, 2018. Act 120 amended Section 1311(b) of the Public Utility Code, 66 Pa. C.S. § 1311(b) in order, *inter alia*, to authorize investor-owned water

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<sup>1</sup> Recommended Decision, pp. 25-26.

utilities to pursue comprehensive replacement of lead service lines that remain in service across the Commonwealth subject to budget caps approved by the Commission.<sup>2</sup>

Subsequently on January 4, 2019, in response to Act 120, the Commission remanded the portions of the underlying case dealing with cost recovery of customer owned lead service pipes (“LSPs”). The parties worked collaboratively to reach agreement on a revised replacement plan which is consistent with the terms of the Commission’s January 2019 Order, and also the requirements of Act 120. The parties’ collaborative efforts culminated in the submission of the *Joint Petition for Settlement on Remand* (“Settlement”) on July 17, 2019. The OSBA is a signatory to the Settlement.

## **II. Summary of the OSBA’s Principal Concerns**

The OSBA generally supported PAWC’s Replacement Plan-Part 1, whereby PAWC plans to replace customer-owned lead service lines encountered in connection with scheduled main replacement projects (“Part 1”). The OSBA agreed that Part 1 projects should have priority due to the relatively greater risk of raising lead levels for affected customers when replacing mains.

OSBA’s concerns remained with the Company’s proposal to recover potentially excessive costs from ratepayers in connection with Replacement Plan-Part 2 (“Part 2”).<sup>3</sup>

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<sup>2</sup> 66 Pa. C.S. § 1311(b)(2)(v)-(vi).

<sup>3</sup> OSBA Statement No. 1 at 1-4.

### **III. Settlement**

The Settlement sets forth a comprehensive list of issues which were resolved through the negotiation process. Specifically, the Joint Petition for Settlement continues the annual program budgeted allotment of \$6.0 million per year.<sup>4</sup> Further, the Company will track customer-owned LSP replacement costs, report those costs as part of its quarterly DSIC filings, and also provide to the OSBA, the OCA and I&E an annual report on the number of customer-owned LSPs replaced, and the cost of those replacements broken down by customer rate class, as well as geographic location.<sup>5</sup> The annual reporting requirements, coupled with the retention of PAWC's proposed maximum budgetary cap of \$6.0 million per year, should help mitigate against the Company incurring excessive costs in connection with its Part 2 replacement plan in any given year.

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<sup>4</sup> Settlement, Para. 18

<sup>5</sup> Settlement, Para. 41.



**WHEREFORE, the OSBA respectfully requests that the Administrative Law Judge and the Commission approve the Settlement without modification.**

**Respectfully submitted,**



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**Assistant Small Business Advocate**  
**Attorney I.D. 73995**

**For:**

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**Small Business Advocate**

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**July 17, 2019**