



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 19, 2020

Via Electronic Filing

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

Re: Petition of Aqua Pennsylvania, Inc. for Approval of Tariff Changes
Authorizing Replacement of Customer-Owned Lead Service Lines
Docket No. P-2020-3021766
I&E Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) **Prehearing Memorandum** for the above-captioned proceeding.

Consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order at Docket No. M-2020-3019262 (Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements), electronic copies of this letter only are being served on all active parties of record as evidenced in the attached Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 313863
(717) 787-8754
ginmiller@pa.gov

GLM/ac
Enclosures

cc: Honorable Marta Guhl (*ALJ, PUC Philadelphia – via email only*)
Pam McNeal (*Legal Assistant, PUC Philadelphia – via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Aqua Pennsylvania, Inc. for :
Approval of Tariff Changes Authorizing : Docket No. P-2020-3021766
Replacement of Customer-Owned Lead :
Service Lines :

**PREHEARING MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

In accordance with the Prehearing Conference Order dated October 7, 2020, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits this Prehearing Memorandum in the above-captioned docket. The I&E prosecutor assigned to this proceeding is Gina L. Miller. Ms. Miller may be contacted as follows:

By mail:¹ Gina L. Miller
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

By E-mail: ginmiller@pa.gov

Telephone: (717) 787-8754

¹ In accordance with page 4, paragraph 8 the *Commission’s Emergency Order Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements* (Docket No. M-2020-3019262) entered on March 20, 2020, I&E will not require hard-copy service by mail in this case for the effective duration of the Emergency Order, and I&E will not provide hard-copy service by mail. Electronic service will be made and accepted by I&E while the Emergency Order remains in place.

I. BACKGROUND

On September 3, 2020, Aqua Pennsylvania, Inc. (“Aqua”) filed a Petition for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines (“Aqua’s Petition”). Through its Petition, Aqua proposes revisions to its Tariff-Water PA P.U.C. No. 2 that will authorize Aqua to replace customer-owned lead service lines (“COLSLs”) and recover the associated costs as pursuant to Section 1311(b)(2) of the Public Utility Code.² Aqua proposes to replace COLSLs when they are encountered in conjunction with its main and/or its service line replacements regardless of whether the associated Company service line that is also being replaced is made of lead or some other material.³

Aqua estimates that the average cost to replace a COLSL is approximately \$4,000 and it proposes an annual cap of \$800,000 to replace an estimated 200 COLSLs each year.⁴ Aqua seeks to require impacted customers to enter into an agreement in order to permit Aqua to perform the replacement on the customers’ property and to memorialize the customers’ ownership of the customer service line.⁵ Finally, Aqua’s Petition also requests expedited review and approval for Aqua to begin replacement of COLSLs in its West Chester, Shenango, and Bristol systems, which it represents are older systems that are

² By way of Section 1311(b), the Pennsylvania General Assembly permitted regulated utilities to seek Commission approval to replace customer-owned lead water service lines. If approved by the Commission, 66 Pa. C.S. § 1311(b)(2) would permit Aqua to include the original cost it incurs for the replacement of a customer-owned lead water service line or a customer-owned damaged wastewater lateral, which is 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.

³ Aqua’s Petition, ¶ 14.

⁴ Aqua’s Petition, ¶¶ 16-17.

⁵ Aqua’s Petition, ¶ 15.

more likely to consist of COLSLs and where populations are likely to face economic constraints.⁶

On September 23, 2020, the Office of Consumer Advocate filed an Answer to Aqua's Petition. On October 5, 2020, I&E entered its appearance in this case. Subsequently, Aqua's Petition was assigned to the Office of Administrative Law Judge ("OALJ") for the development of an evidentiary record, including an Initial Decision. The OALJ assigned the proceeding to Administrative Law Judge ("ALJ") Marta Guhl for investigation and scheduling of hearings for Aqua's Petition. ALJ Guhl issued a Prehearing Conference Order in this case on October 7, 2020, which, among other things, scheduled a telephonic Prehearing Conference for October 21, 2020 at 2 p.m. and directed that parties file and serve a prehearing memorandum on or before noon on October 19, 2020. I&E submits this Prehearing Memo in accordance with the directive in the Prehearing Order.

II. WITNESSES

At this time, I&E has not determined whether expert witness testimony will be necessary to support its position in this case. If I&E does determine that expert witness testimony is necessary, I&E will promptly notify Your Honor and all active parties, by letter, of the identity of its witness(es), the business address and telephone number of the witness(es), and the anticipated subject matter of testimony.

⁶ Aqua's Petition, ¶ 13.

III. ISSUES

The following list represents I&E's preliminary determination of the potential issues in this proceeding:

- The adequacy of, and basis for, Aqua's proposed annual cap of \$800,000 to replace customer-owned lead service lines;
- How replacement of customer-owned lead service lines will be prioritized;
- Any facts and assumptions that underly Aqua's estimation of the number of customer-owned lead service lines that serve customers' premises within its service territory;
- The content and terms of the agreement that Aqua proposes to require impacted customers to enter into in order to permit Aqua to perform the replacement on the customers' property; and
- Which customers will be informed of replacement options and how they will be informed.

I&E notes that the above listing of issues is provided without analysis of the positions of all parties to this proceeding and without the benefit of completed discovery. I&E reserves the right to supplement this list, to delete entries from this list, as necessary to facilitate the development of a full and accurate record in this case.

IV. EVIDENCE

I&E may elect to present written direct, rebuttal, and surrebuttal testimony and accompanying exhibits at the evidentiary hearing. Moreover, I&E intends to rely on Aqua's filing and all supplemental materials provided by Aqua, answers to interrogatories, other documents submitted or filed with the Commission, and other

public documents and reports. However, there may be issues of law or Commission policy that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony. I&E thereby reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed through briefing.

V. DISCOVERY

At this time, I&E is not proposing any modifications to the Commission's Rules of Practice and Procedure for the conduct of discovery in this case.

VI. PROPOSED SCHEDULE

At this time, I&E is working with the Parties to develop a mutually agreeable procedural schedule that may also permit time for a more collaborative approach than that afforded in a "traditional" litigated proceeding. I&E anticipates agreement on a schedule in the near future, and remains committed to developing a schedule that is mutually agreeable to all parties and Your Honor.

VII. SERVICE OF DOCUMENTS

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony and briefs during the closure of Commission offices, and consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order,⁷ I&E will both only serve and accept electronic delivery of documents. Upon re-opening of Commission offices, and only on a forward-moving basis from that point onward, I&E requests parties

⁷ Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*.

provide a follow-up hard copy by regular first-class mail in addition to electronic delivery.

VIII. PUBLIC INPUT HEARINGS

To the extent that public input hearings are deemed necessary in this proceeding, I&E advocates for the use of telephonic hearings, “Smart Hearings,” or hearings by use of any other platform that will facilitate the public’s easy and safe access to providing input during the COVID-19 pandemic.

IX. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties to reach a resolution of any or all issues. In the event settlement discussions fail to result in a complete resolution of the matter, I&E is prepared to fully or partially litigate this proceeding.

Respectfully submitted,



Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

October 19, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Aqua Pennsylvania, Inc. for :
Approval of Tariff Changes Authorizing : Docket No.: P-2020-3021766
Replacement of Customer-Owned Lead :
Service Lines :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated October 19, 2020, in the manner and upon the persons listed below:

Served via Electronic Mail Only

Christine Maloni Hoover, Esq.
Office of Consumer Advocate
Forum Place
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
choover@paoca.org

Steven C. Gray, Esq.
John R. Evans
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101-1923
sgray@pa.gov
jorevan@pa.gov

Kenneth M. Kulak, Esq.
Anthony C. DeCusatis, Esq.
Brooke E. McGlinn, Esq.
Morgan Lewis & Bockus, LLP
1701 Market Street
Philadelphia, PA 19103
ken.kulak@morganlewis.com
anthony.decusatis@morganlewis.com
brooke.mcglinn@morganlewis.com
Counsel for Aqua Pennsylvania, Inc.



Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 313863