

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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October 19, 2020

Rosemary Chiavetta, Secretary  
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

Dear Secretary Chiavetta:

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

Copies have been served per the attached Certificate of Service.

Very truly yours,

/s/ Christine Maloni Hoover  
Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
E-Mail: [CHoover@paoca.org](mailto:CHoover@paoca.org)

Enclosures:

cc: The Honorable Marta Guhl (**email only**)  
Pamela McNeal, Legal Assistant (**email only**)  
Certificate of Service

\*297991

CERTIFICATE OF SERVICE

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

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

Dated this 19<sup>th</sup> day of October 2020.

**SERVICE BY E-MAIL ONLY**

Gina L. Miller, Esquire  
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Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: October 19, 2020  
\*297429

**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 :

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333 and the Prehearing Conference Order issued by Administrative Law Judge Guhl on October 7, 2020, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION

On September 3, 2020, Aqua Pennsylvania Water (Aqua or Company) filed with the Public Utility Commission (Commission) a Petition which will allow it to replace customer-owned lead service lines (COLSL) when it is replacing mains, and recover those costs as provided in Section 1311(b)(2) of the Public Utility Code, which was added to the Public Utility Code pursuant to Act 120 of 2018. 66 Pa. C.S. § 1311(b)(2). Aqua sets forth its proposal to record those costs in Account No. 333 and to include the costs, between rate cases, in its Distribution System Improvement Charge (DSIC). It also proposes an annual cap of 200 COLSL replacements or \$800,000, whichever comes first. Petition at 1-2. Aqua also requested expedited approval. Petition at 3.

As explained in the Petition, there are two parts to the service lines: the portion of the service line which runs “from the Property to the Curb Stop or curb line or such point as designated by the Company” (customer-owned) and the portion of the service line from that point to Aqua’s

main (Company-owned). Petition at 4. The Company-owned portion is maintained by Aqua while current tariff rules 20 and 25 place the responsibility on the customer to maintain the customer-owned portion of the service line. Petition at 4-5. Aqua's plans to replace COLSL when it is replacing mains, whether or not the Company's service line is made of lead. Petition at 2, 8-9.

Aqua indicates that it ceased installing lead service lines by the 1930's. Petition at 4. Aqua estimates that there are approximately 200 Company-owned lead service lines (LSL) remaining on its system and it states that it is reasonable to assume that the majority of the same customer premises served by the Company's LSL will have COLSL. Petition at 8. As set forth in its Petition, Aqua indicates that it will replace COLSL that it encounters during main replacements whether or not the Company-owned service line is made of lead or some other materials. Petition at 2, 8-9. It begin replacing COLSL as soon as practicable after the Commission approves the Petition. Id. at 9. It seeks "expedited approval to begin replacements in West Chester, Shenango, and Bristol systems in order to avoid delay in completing main replacement projects, including road restoration work." Id.

## II. ISSUES

Aqua does not propose language to address COLSL replacements that are made at a customer's request (outside of planned main replacement projects) because it expects that COLSL that remain throughout its system will be addressed during the main replacement projects. Petition at 11. The Petition does not provide the basis for this conclusion. Section 1311(b)(2)(i) contemplates a Commission-approved program to address the situation where a customer requests the replacement of their COLSL. 66 Pa. C.S. § 1311(b)(2)(i). Other water utilities that have received approval for a plan for COLSL replacement have addressed this situation of a customer-

requested COLSL replacement. Petition of The York Water Co. for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Costs of Certain Customer-Owned Service Line Replacements to the Company's Service Account, Docket No. P-2016-2577404 (Order entered Mar. 8, 2017); Petition of Pennsylvania-American Water Co. For Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Service Pipes, Docket No. P-2017-2606100 (Order entered Oct. 3, 2019).

Aqua intends to communicate with and provide information to its customers about lead service lines. See Petition at 12. It appears that those communications will be provided to all of its water customers, not just to those who live in a main replacement project area. As discussed below, the OCA supports communications with and providing information to customers so that those customers can check their service lines for the presence of lead. In conjunction with the broad communication, the OCA submits that it would be beneficial to have the appropriate plan in place to address requests from customers who may discover lead service lines at their homes and seek replacement of those COLSL by the Company. Under Aqua's request and its proposed tariff language, this situation cannot be addressed unless Aqua files another Petition.

Aqua states that it estimates that the average cost to replace a COLSL will be \$4,000. Petition at 9. The Company has proposed a budget cap of \$800,000 per year<sup>1</sup> or 200 COLSL per year. Id. If the funds are not used in any year, they will be carried forward and added to the next year. Petition at 10. This cap "is adequate to address COLSLs that are encountered when conducting main replacements given the scope of the projects in areas where Aqua anticipated

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<sup>1</sup> It is not clear whether Aqua intends to use a calendar year for purposes of the budget cap, but for purposes of this Answer, OCA will treat the proposal in that manner.

encountering COLSLs.” Id. The basis for that conclusion is not clear from the Petition. Aqua also states that in developing its proposed budget cap, it “attempted to balance the impact of replacing COLSLs upon customer rates.” Id. The information related to the balancing of the replacement of COLSLs with the impact upon customer rates is not provided in the Petition. It would be reasonable to have Aqua provide the basis for its proposed average cost per replacement, its proposed budget cap and why it believes the budget cap is adequate to address COLSLs and provides a proper balance of replacement and impact upon customer rates.

Aqua indicates that it will provide an agreement for an affected customer to execute prior to the COLSL being replaced and that it will post an example of the agreement on its website. Petition at 9, 12. Aqua has not provided a draft of that agreement for review. The OCA submits that such agreement should be provided for review before the Commission acts on the Petition.

Regarding a customer who might refuse to enter into an agreement with Aqua for the replacement of the COLSL, Aqua indicates that it will replace the Company-owned portion and will “outline the potential health risks associated with a partial LSL replacement in a communication to the homeowner.” Petition at 9. Aqua did not provide its proposed communications to the homeowner regarding a partial replacement. The OCA submits that it is appropriate for Aqua to provide enhanced communications in this situation, especially given Aqua’s knowledge of the health risks related to partial replacements. See Petition at 7-8.

The OCA submits that Aqua should have an outreach process in place to work with customers who may initially be hesitant to enter into an agreement for the replacement of a COLSL. Aqua should be required to track those customers who choose not to enter into the agreement and the reasons provided by the customers. This information would be helpful in its outreach to its customers.

Aqua states that it will record the original cost of the COLSL in its Service account, Account 333. Petition at 12. Account 333 does not anticipate that costs related to customer-owned service lines would be included in it because those costs are not normally recovered by the utility. Although Section 1311(b)(2) permits the recovery, it would be beneficial for the costs for the replacement of COLSL to be identifiable. As such, the OCA submits that Aqua should create a subcategory within Account 333 that separately identifies costs for replacement of COLSL. The OCA also submits that it will be helpful to the Commission and to stakeholders to receive an annual report of the number of COLSL replaced and the cost of those replacements by geographic region.

Aqua indicates that it will issue a press release and “provide a bill insert to customers upon approval of the Company’s Petition describing the requirements of the Company’s program and how customers can participate in the program.” Petition at 12. Aqua also states that it will provide information related to lead and lead service lines on its website. Id. The OCA does not think that one press release and one bill insert, along with general information about lead and lead service lines on its website will be sufficient to inform its customers of this program. The OCA submits that Aqua should be required to provide a plan for ongoing communications with its customers regarding the program. In addition, Aqua should provide an opportunity for the statutory advocates to review and comment on its materials and proposed communication plan.

Aqua’s Petition also addresses the reimbursement of customers who replaced their lead service lines. Petition at 13. Customers who have replaced their lead service line within one year prior to the “commencement of the main replacement project” and have the necessary proof of their costs, can be reimbursed the lower of the actual costs or the average costs the Company would have incurred to perform the replacement of a similarly-sized service line. Petition at 13; Exhibit

No. 1 (proposed rule 20.2 (b)). It is unclear what the “commencement of the main replacement project” means and how a customer would know that date. For example, does the commencement of the main replacement project mean the date that the permits were received or the date that the first excavation took place? Although Aqua has provided its current estimate of the average cost of a COLSL replacement, it is not clear whether the average cost may change, and if it does, how anyone would know what that average cost is for a given year. The OCA proposes that along with the ongoing communications that will be necessary, as discussed above, that the Company provide additional communication to the areas in which it is beginning main replacement projects so that customers who will be impacted by each project will be aware of these provisions. In addition, the OCA submits that subsequent average cost be updated by Aqua at the start of each year, including adequate support for its calculation, along with the budgeted amount available in that year for COLSL replacements (because of the carryover of unused funds from the prior year).

The OCA reserves the right to raise additional issues after discovery is conducted and completed.

### III. WITNESSES

At this time, the OCA has not yet determined whether it will present a witness. Once the OCA determines that a witness is necessary for any portion of its case, it will notify all parties of record immediately.

### IV. DISCOVERY

In order to effectively investigate and adequately develop a record in this proceeding, the OCA requests a modification to the Commission’s procedural rules, 52 Pa. Code §5.321, *et seq.*, on a going-forward basis, as set forth below:



1. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories;

2. Objections to interrogatories will be communicated orally within three (3) calendar days of service; unresolved objections shall be served on the parties in writing within five (5) calendar days of service of the interrogatories;

3. Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) calendar days of service of written objections;

4. Answers to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) calendar days of service of such motions;

5. Any discovery or discovery related pleadings such as objections, motions, or answers to motions served after noon (12 p.m.) on a Friday or on any business day preceding a state holiday shall be deemed to have been served on the following business day for purposes of tracking responsive due dates;

6. Due dates will be “in-hand” with electronic service on the due date satisfying the “in-hand” requirement and where such service is immediately followed by a hard copy sent by first-class mail;

7. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within five (5) calendar days;

8. Requests for admission will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service; and

9. Rulings over motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.

#### V. SERVICE ON THE OCA

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Christine Maloni Hoover. At the present time, OCA is providing service by email only and can accept service by email. The OCA asks that all documents should be served by email on the OCA as follows:

Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
E-Mail: [CHoover@paoca.org](mailto:CHoover@paoca.org)

In addition to serving the undersigned, the OCA requests that [LMyers@paoca.org](mailto:LMyers@paoca.org) also be copied on any emails that provide service of any documents.

VI. PROPOSED SCHEDULE

The OCA will work with the parties to develop a litigation schedule that is acceptable to the Presiding Officer and the parties.

VII. SETTLEMENT

The OCA is willing to participate in settlement discussions.

Respectfully Submitted,

/s/ Christine Maloni Hoover  
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Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
E-Mail: [CHoover@paoca.org](mailto:CHoover@paoca.org)

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DATED: October 19, 2020  
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