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October 19, 2020

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**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:

Enclosed for filing is the **Prehearing Conference Memorandum of Aqua Pennsylvania, Inc.**, in the above-captioned proceeding. As evidenced by the Certificate of Service, copies have been served upon Administrative Law Judge Marta Guhl, and all parties of record.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per the Certificate of Service (w/encl.)

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**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 and affirm that I have this day served a copy of the **Prehearing Conference Memorandum of Aqua Pennsylvania, Inc.**, in the above-referenced proceeding on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

Administrative Law Judge Marta Guhl
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Dated: October 19, 2020

Counsel for Aqua Pennsylvania, Inc.

**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 CONFERENCE MEMORANDUM OF
AQUA PENNSYLVANIA, INC.**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Pursuant to the October 7, 2020 Prehearing Conference Order issued by Administrative Law Marta Guhl (the “ALJ”) and the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.222(d), Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) hereby submits its Prehearing Conference Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

Lead is a naturally occurring metal that can cause a variety of adverse health effects, including delays in normal physical and mental development of young children. While the most common sources of lead exposure are soil, paint chips and dust, drinking water is another route of lead exposure, primarily as a result of corrosion of lead pipes and plumbing materials. Recent events, including those in Flint, Michigan, have heightened customers’ concern about the possible presence of lead in their drinking water.

While the Company ceased installing lead service lines¹ by the 1930's, some remain in service in portions of Aqua's system that predate that change. 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"). To that end, the Company has implemented a variety of proactive measures, including effective corrosion control treatment, ongoing research to ensure that sampling and corrosion control protocols reflect the latest available science and best practices, robust customer education and eliminating lead service lines ("LSLs").

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),² 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. However, the applicable regulation permits 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 Aqua's case,

¹ Under Rule 4 of Aqua's existing tariff, the customer owns the portion of the service line "from the Property to the Curb Stop or curb line or such point as designated by the Company," and the Company owns the service line from that point to its main. Aqua Pennsylvania Inc. Tariff-Water PA P.U.C. No. 2 ("Tariff No. 2") at Original Pages 34-35 (effective May 24, 2019).

² See 40 C.F.R. §§ 141.80 *et seq.*; 25 Pa. Code §§ 109.1101 *et seq.* In 2019, the EPA proposed updates to the LCR that, among other things, would strengthen the requirements for LSL replacement. See National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions, 84 Fed. Reg. 61684 (Nov. 13, 2019) ("Proposed LCR"). The comment period for the Proposed LCR closed on February 12, 2020, but the EPA has not yet issued a final rule.

its options are further limited by Rules 20 and 25 of Tariff No. 2, which do not authorize the Company to replace a customer-owned LSL (“COLSL”).

The Pennsylvania General Assembly has determined that it is in the public interest for water utilities to replace COLSLs “concurrent[ly] with a scheduled utility main replacement project.”³ Act 120 allows a public water utility to replace COLSLs and recover a return on, and return of, the replacement costs through the utility’s base rates and its Distribution System Improvement Charge (“DSIC”).⁴ Act 120 requires a public utility to file a new tariff or supplement to an existing tariff with the Commission and receive approval prior to replacing COLSLs and recovering these costs.⁵ The tariff supplement must contain a cap on the maximum number of COLSLs to be replaced annually.⁶ Additionally, a COLSL replacement program must allow for a warranty period for the work completed and reimbursement to customers who have replaced their COLSL within one year of the commencement of a project in accordance with a Commission-approved tariff.⁷ The Commission has previously approved COLSL replacement programs for The York Water Company⁸ and Pennsylvania-American Water Company (“PAWC”).⁹

³ 66 Pa. C.S. § 1311(b)(2)(i). Section 1311(b)(2) was added to the Pennsylvania Public Utility Code by Act 120 of 2018 (“Act 120”), which became law on October 24, 2018. Act 120 also authorizes COLSL replacements that are not performed concurrently with main replacement projects if those replacements are done “under a commission-approved program.”

⁴ See 66 Pa. C.S. §§ 1311(b)(2)(ii) and (iii).

⁵ *Id.* at § 1311(b)(2)(v).

⁶ *Id.* at § 1311(b)(2)(vi).

⁷ *Id.* at § 1311(b)(2)(vii).

⁸ *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).

⁹ *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). While PAWC’s Petition was filed prior to enactment of Act 120, PAWC’s

On September 3, 2020, Aqua petitioned the Commission to approve its plan to replace COLSLs in conjunction with its main replacement projects and recover the associated costs consistent with Act 120 (the “Petition”). Aqua proposes to proactively remove and replace, with the customer’s consent, COLSLs that are encountered when it replaces its mains before the Company’s service line is connected to the new main. The customer will own, and be responsible for, the new service line after the replacement. Aqua proposes an annual cap on COLSL replacements of 200 per year or a maximum budgetary amount of \$800,000 per year, whichever comes first.

In its Petition, Aqua requests that the Commission: (1) approve the tariff revisions set forth in the Supplement to Tariff No. 2 that will allow the Company to replace COLSLs at its sole cost;¹⁰ and (2) authorize the Company to record COLSL replacement costs in Account No. 333 – Services and recover a return on, and a return of, its investment in COLSL replacements in accordance with Act 120. Due to ongoing main replacement projects where Aqua is encountering, and expects to continue to encounter COLSLs, Aqua requests expedited review and approval for Aqua to begin replacement of COLSLs in its Shenango system.¹¹

replacement plan was approved after Act 120 became effective. PAWC’s PUC-approved replacement plan conforms to the requirements of Act 120.

¹⁰ This revision is required because Rules 20 and 25, at pages 41 and 42 of Tariff No. 2, currently provide that:

“[t]he Customer shall have full responsibility for the installation, repair, replacement, and maintenance of all Service Pipes.” All connections, service lines and fixtures owned by the Customer shall be maintained by the Customer in good order All leaks in or other deteriorated condition of the Customer’s service line or any other pipe or fixture in or upon the premises supplied must be repaired immediately by the owner or occupant of the premises.

...

The Company shall in no event be responsible for the condition of, or for maintaining or replacing, any portion of the Customers service line or other lines or fixtures on the Customer’s property

¹¹ The Company originally requested expedited treatment for its Bristol and West Chester systems as well. However, the Company has postponed the planned infrastructure rehabilitation in those areas to avoid replacing

The Petition was served on the Commission's the Bureau of Investigation & Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA"). As of this date, an Answer to Aqua's Petition has been submitted by the OCA on September 23, 2020. A Notice of Appearance was filed by I&E on October 5, 2020.

II. STATEMENT OF ISSUES

The two principal issues before the Commission in this proceeding are: (1) whether the Company's proposed COLSL replacement program is in the public interest and (2) whether Aqua should be allowed to capitalize COLSL replacement costs for accounting purposes and recover a return on, and a return of, such costs by including them in rate base in a subsequent base rate case and through its existing DSIC for property placed in service between base rate cases.

With respect to the first issue, as explained in Aqua's Petition, a relatively recent and growing body of research indicates that a "partial" replacement, which physically disturbs, but leaves in place, the customer's segment of a service connection, may potentially increase the risk of lead exposure through drinking water. Significantly, COLSLs largely remain in neighborhoods that face economic constraints, including the Company's Shenango system, making it unlikely that affected customers could bear the cost of replacing their LSLs and avoid the risks that may be posed by partial replacements. Aqua is proposing to perform a maximum of 200 COLSL replacements per year within a budget cap of \$800,000 per year to mitigate the impact of replacing COLSLs on customer rates. Aqua's proposed COLSL replacement program also provides a warranty for COLSL replacement work consistent with other routine utility work

mains until Spring 2021 because LSLs are likely to remain in service in those portions of the Company's distribution system.

performed by the Company's contractors, incorporates a customer outreach plan, and provides reimbursement to customers who recently replaced COLSLs at their own cost. In sum, the Company's proposal is consistent with Act 120, will proactively eliminate a source of lead in drinking water, and help Aqua maintain its excellent track record of compliance with important drinking water standards.

As to the second issue, and as explained in the Petition, Aqua proposes to capitalize COLSL replacement costs 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. Aqua's proposed accounting and ratemaking treatment of its investments in COLSLs that are needed to protect the public health is consistent with Act 120.

III. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, Aqua hereby designates the following individual for the service list in this proceeding:

Alexander R. Stahl
Regulatory Counsel
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
610.645.1130 (bus)
astahl@aquaamerica.com

Parties are requested to also serve documents on the following attorneys as a courtesy:

Kenneth M. Kulak
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Aqua agrees to accept electronic service in this proceeding.

IV. DISCOVERY

Aqua proposes that a Protective Order be adopted in this case to protect sensitive information from public disclosure. Therefore, Aqua respectfully requests that the ALJ approve the proposed Protective Order attached hereto as Appendix “A,” which is similar to the Protective Order entered in Aqua’s last base rate case proceeding at Docket Nos. R-2018-3003558 and R-2018-3003561.

V. REQUEST FOR EXPEDITED APPROVAL AND PROPOSED SCHEDULE

The Company, I&E, the OCA and OSBA have discussed the procedure going forward that would be most efficient in light of the parties’ positions in this case. As explained in the Petition, Aqua has encountered a number of COLSLs during the course of its main replacement work over the past few months in the Company’s Shenango service area. Accordingly, the Company is requesting expedited approval in the form of a temporary limited waiver of Rules 20 and 25 of Tariff No. 2, pending the final Commission Order in this proceeding, to begin replacements in Shenango to avoid the potential risks associated partial LSL replacements. The Company proposes to submit direct testimony in support of its request for expedited approval of limited tariff waivers for its Shenango system within 30 days of the Prehearing Conference.

With respect to Aqua’s proposed COLSL replacement program for the remaining portions of its distribution system where the Company encounters LSLs in the future, the parties believe there may be a reasonable opportunity to reach a resolution of the issues raised in Aqua’s Petition and the OCA’s Answer by means of a stipulation or settlement. Accordingly, the parties request that the ALJ hold in abeyance establishing a procedural schedule at this time to allow the parties to work collaboratively to achieve an amicable resolution that does not require formal

litigation. The parties will provide the ALJ a status report within 30 days after the Prehearing Conference. The parties will also notify the ALJ if it becomes necessary to establish a schedule for submitting written testimony and conducting an evidentiary hearing.

VI. WITNESSES

As previously noted, in support of its request for expedited approval of limited tariff waivers pending the conclusion of this proceeding, the Company will present the direct testimony of James S. Willard to describe the Company's ongoing main replacement projects in its Shenango system and explain why it is necessary to proceed with COLSLs replacements expeditiously in this service area. Mr. Willard is employed by Aqua as Area Manager of Western Pennsylvania. His business address is 665 S. Dock Street, Sharon, PA 16146 and his phone number is 724-981-1200.

If it should become necessary to present written testimony unrelated to the Company's request for expedited approval of limited tariff waivers to proceed with COLSL replacements in its Shenango system, the witness or witnesses Aqua would call will depend in large part upon the issue(s) other parties intend to pursue and the nature and scope of their case-in-chief. With that caveat, if additional written testimony is needed, the Company would expect to present testimony by Joseph G. Thurwanger and Erin M. Feeney to describe the key components of Aqua's plan to facilitate comprehensive replacement of LSLs in Aqua's service territory in the Commonwealth, consistent with Act 120 and as proposed in the Petition. Mr. Thurwanger is employed by Aqua as Vice President – Engineering and Planning. His business address is 762 W. Lancaster Avenue, Bryn Mawr, PA 19010 and his phone number is 610-645-4204. Ms. Feeney is employed by Aqua as Manager of Rates. Her business address is 762 W. Lancaster Avenue, Bryn Mawr, PA 19010 and his phone number is 610-520-6359. While Aqua could foresee calling Mr. Thurwanger and Ms. Feeney as the Company's witnesses, it would not be

able to determine its final list of all witnesses until it obtains and reviews the other parties' direct testimony. Accordingly, in the event written testimony may be required, Aqua reserves the right to supplement its list of witnesses as it determines necessary or appropriate to address issues as they develop over the course of this proceeding.

VII. POSSIBILITY OF SETTLEMENT

Aqua intends to engage in settlement discussions with the other parties in this proceeding with the goal of facilitating an effective resolution of this matter. The Company has proposed scheduled settlement conferences among the parties.

VIII. CONCLUSION

WHEREFORE, Aqua Pennsylvania, Inc. respectfully submits this Prehearing Conference Memorandum.

Respectfully submitted,



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Dated: October 19, 2020

Counsel for Aqua Pennsylvania, Inc.

APPENDIX A

PROPOSED PROTECTIVE ORDER

**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	:	

PROTECTIVE ORDER

This Protective Order is hereby GRANTED with respect to all documents and information, as identified below, produced or presented, or hereafter produced or presented in this proceeding. All persons now or hereafter granted access to such documents and/or information shall use and maintain the same only in strict accordance with this Protective Order.

This Protective Order is being entered to facilitate the orderly production of information and documents during discovery and the presentation of evidence at the hearings in this case and to provide adequate protection of Proprietary Information without prejudicing the rights of parties to have reasonable access to information that becomes part of the evidentiary record.

THEREFORE, IT IS ORDERED THAT:

1. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Such materials are referred to below as "Proprietary

Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

2. For purposes of this Protective Order, there are two categories of Proprietary Information: “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” protected material. The Parties may designate as “CONFIDENTIAL” those materials that are customarily treated by a Party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject Aqua Pennsylvania, Inc. (Aqua) or its customers to the risk of competitive disadvantage or other business injury. The Parties may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of a Party, or of such a private or personal nature that a Party is able to justify a heightened level of confidential protection with respect to those materials. The Parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL” protected material.

3. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a Party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

4. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a Party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
- iii. An outside expert or an employee of an outside expert retained by a Party for the purpose of advising that Party or testifying in this proceeding on behalf of the Party; or
- iv. Employees or other representatives of the Party who have significant responsibility for developing or presenting the Party's positions in this docket.

5. Information deemed "HIGHLY CONFIDENTIAL" protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of "HIGHLY CONFIDENTIAL" protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

- i. An attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a Party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. An outside expert or an employee of an outside expert retained by a Party for the purposes of advising that Party or testifying in this proceeding on behalf of the Party; or
- iv. A person designated as a Reviewing Representative for purposes of "HIGHLY CONFIDENTIAL" protected material pursuant to Paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) a Party may, by objection or motion, seek further protection with respect to "HIGHLY CONFIDENTIAL" protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular Parties.

6. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of Aqua. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of Aqua, or an employee, agent or representative of any competitor of Aqua, if such person’s duties involve (i) marketing or pricing of the competitor’s products or services, or (ii) strategic business decisions and activities in which the use of the Proprietary Information could be reasonably expected to cause competitive harm to Aqua; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of Aqua (including any association of competitors of Aqua), or an employee, agent or representative of any competitor of Aqua, if such person’s duties involve (i) marketing or pricing of the competitor’s products or services, or (ii) strategic business decisions and activities in which the use of the Proprietary Information could be reasonably expected to cause competitive harm to Aqua; (c) an officer, director, stockholder, owner, representative, agent or employee of a competitor of a customer of Aqua or of a competitor of a vendor of Aqua if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; (d) an officer, director, stockholder, owner, representative, agent or employee of an affiliate of a competitor of a customer of Aqua if the Proprietary Information concerns a specific, identifiable customer of Aqua; or (e) an employee, agent or representative of any individual or entity described in subparts (a) through (d) of this paragraph, whose duties include advising and/or counseling any individual or entity described in subparts (a) through (d) of this paragraph; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information. For purposes of this Agreement, stocks, partnership or other ownership interests (excluding mutual funds) valued

at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation.

7. If an expert for a Party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, that expert must: (1) identify for Aqua each Restricted Person and all personnel in or associated with the expert's firm that work on behalf of the Restricted Person; (2) take all reasonable steps to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to Aqua written assurances that the lack of segregation will in no way adversely affect the interests of Aqua or its customers. Aqua retains the right to challenge the adequacy of the written assurances that Aqua's or its customers' interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

8. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss "HIGHLY CONFIDENTIAL" protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with, or permit the client or entity to review or have access to, the "HIGHLY CONFIDENTIAL" protected material. However, counsel for the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate, and the Office of Small Business Advocate may share Proprietary Information with the I&E Director, Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided that these individuals otherwise abide by the terms of this Protective Order.

9. Proprietary Information shall be treated by the Parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 11. Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

10. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of Aqua a commercial advantage. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5 (i) through (iii) above, that Party must first seek agreement to do so from Aqua. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 5 (iv) above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the presiding Administrative Law Judges for resolution.

11. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that

Reviewing Representative; and Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

12. During the effectiveness of the March 20, 2020 Emergency Order of the Pennsylvania Public Utility Commission at Docket No. M-2020-301962, Reviewing Representatives of I&E may use personal electronic devices to view Proprietary Information provided that the Reviewing Representative agrees to treat the material in accordance with the terms of this Protective Order and not to download or save copies of Propriety Information on any personal electronic device.

13. The Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the designating Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information.

14. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 *et seq.*) until such time as the information is found to be non-proprietary.

15. Any public reference to Proprietary Information by a Party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The

Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. Any part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to an order of the Commission.

17. The Parties retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a Party challenges the designation of a document or information as proprietary, the designating party retains the burden of demonstrating that the designation is appropriate.

18. Aqua shall retain the right to object to the production of Proprietary Information on any proper ground, including but not limited to relevance, materiality or undue burden, to refuse to produce Proprietary Information pending the adjudication of the objection, and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order including, but not limited to, further restrictions on the person(s) who may be provided access to HIGHLY CONFIDENTIAL protected material.

19. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the Parties, upon request, shall either destroy or return to Aqua all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, Aqua may specify whether such materials should be destroyed or returned. In the

event that the materials are destroyed instead of returned, the destroying Party shall certify in writing to Aqua that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the returning Party shall certify in writing to Aqua that no copies of materials containing the Proprietary Information have been retained.

IT IS HEREBY ORDERED:

Dated: _____, 2020

Administrative Law Judge Marta Guhl

APPENDIX A

**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 :**

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the receiving party).

The undersigned has read, and understands that, the Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____