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October 23, 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 **Aqua Pennsylvania, Inc.'s Motion for Protective Order**, 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 **Aqua Pennsylvania, Inc.’s Motion for Protective Order**, 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
Pennsylvania Public Utility Commission
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Dated: October 23, 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
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OWNED LEAD SERVICE LINES :**

MOTION FOR PROTECTIVE ORDER

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Aqua Pennsylvania, Inc. (“Aqua”), hereby requests that the Honorable Administrative Law Judge Marta Guhl enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a). In support of this Motion, the Company represent as follows:

1. On September 3, 2020, Aqua filed with the Pennsylvania Public Utility Commission (“Commission”) the above-captioned Petition requesting approval of its plan to proactively replace customer-owned service lines (“COLSLs”) in conjunction with its main replacement projects and recover the associated costs consistent with Act 120 of 2018. 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 performed by the Company’s contractors, incorporates a customer outreach plan, and provides reimbursement to customers who recently replaced their own lead service line. Due to ongoing main replacement projects where Aqua is encountering COLSLs, Aqua requests expedited review and approval for the Company to begin replacement of COLSLs in its Shenango system.

2. It is possible that, in the course of this proceeding, proprietary information within the definition of 52 Pa. Code § 5.365 may be presented or requested that justifies the issuance of a protective order. Some of that information may be of a highly confidential nature. Treatment of such information as set forth in the proposed Protective Order, attached as Exhibit A, is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

3. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others and used in similar activities; and the potential value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1)-(3).

4. The attached proposed Protective Order defines two categories of protected information. The first is "CONFIDENTIAL," which is defined in Paragraph 2 of Exhibit A as "those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury." The second is "HIGHLY CONFIDENTIAL" protected material, which is also defined in Paragraph 2 of Exhibit A as "those materials that are of such a commercially sensitive nature relative to the business interests of a Party or of such a private, personal nature that a Party is able to justify a heightened level of

confidential protection with respect to those materials.”

5. Paragraph 17 of the proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material.

6. Limitation on the disclosure of information deemed CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material will not prejudice the rights of the parties, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

7. The attached Protected Order sought by Aqua will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

8. Aqua has consulted with all other parties to this proceeding including the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate. No parties are opposing the proposed Protective Order.

WHEREFORE, for all of the foregoing reasons, Aqua Pennsylvania Inc. respectfully requests that Your Honor grant this Motion and issue a Protective Order in the form attached hereto as Exhibit A.

Respectfully submitted,



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Dated: October 23, 2020

Counsel for Aqua Pennsylvania, Inc.

EXHIBIT A

FORM OF 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, paralegal, or other employee associated for purposes of this 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. 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, :
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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: _____