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April 23, 2021

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 **Joint Petition for Settlement** (“Joint “Petition”) in the above-captioned proceeding. As evidenced by the Certificate of Service, copies of the Joint Petition are being 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,



Kenneth M. Kulak

KMK/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 **Joint Petition for Settlement** 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

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Dated: April 23, 2021

Counsel for Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : DOCKET NO. P-2020-3021766
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :**

JOINT PETITION FOR SETTLEMENT

April 23, 2021

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Exhibit 3	Joint Proposed Findings of Facts, Conclusions of Law and Ordering Paragraphs
Statement A	Statement in Support of Joint Petition for Settlement of Aqua Pennsylvania, Inc.
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**

PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : **DOCKET NO. P-2020-3021766**
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :

JOINT PETITION FOR SETTLEMENT

TO THE HONORABLE MARTA GUHL, ADMINISTRATIVE LAW JUDGE:

Aqua Pennsylvania, Inc. (“Aqua” or “the Company”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Public Utility Commission (“PUC” or “Commission”) 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 (“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 AND HISTORY OF THE PROCEEDING

1. This proceeding was initiated on September 3, 2020, when Aqua petitioned the Commission to approve its plan to replace customer-owned lead service lines (“COLSLs”) in conjunction with its main replacement projects (the “Replacement Program”) and recover the associated costs as provided in 66 Pa.C.S. § 1311(b)(2).¹ In its Petition, Aqua requested that the

¹ 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 authorizes COLSL replacements that are not performed concurrently with main replacement projects if those replacements are done “under a commission-approved program.”

Commission: (1) approve the tariff revisions set forth in the Supplement to Aqua’s current tariff² that will allow the Company to replace COLSLs at its sole cost;³ 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.

2. 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.”⁴ 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”).⁵ 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.⁶ The tariff supplement must contain a cap on the maximum number of COLSLs to be replaced annually.⁷ Additionally, a COLSL replacement program must allow for a warranty period for the work completed and reimbursement to customers who have

² Aqua Pennsylvania Inc. Tariff-Water PA P.U.C. No. 2 (effective May 24, 2019) (“Tariff No. 2”).

³ These revisions are 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

⁴ 66 Pa.C.S. § 1311(b)(2)(i).

⁵ See 66 Pa.C.S. §§ 1311(b)(2)(ii) and (iii).

⁶ *Id.* at § 1311(b)(2)(v).

⁷ *Id.* at § 1311(b)(2)(vi).

replaced their COLSL within one year of the commencement of a project in accordance with a Commission-approved tariff.⁸

3. The Commission has previously approved COLSL replacement programs for The York Water Company⁹ and Pennsylvania-American Water Company (“PAWC”).¹⁰

4. Under its original proposed Replacement Program, Aqua would 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. Aqua proposed an annual cap on COLSL replacements of 200 per year or a maximum budgetary amount of \$800,000 per year, whichever comes first. Due to ongoing main replacement projects where Aqua is encountering and expects to continue to encounter COLSLs, Aqua requested expedited review and approval for the Company to begin replacement of COLSLs in its Shenango system.¹¹

5. In the Petition, Aqua explained that the Replacement Program 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.¹² Aqua currently complies with

⁸ *Id.* at § 1311(b)(2)(vii).

⁹ *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).

¹⁰ *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 replacement plan was approved after Act 120 became effective. PAWC’s PUC-approved replacement plan conforms to the requirements of Act 120.

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

¹² The relevant background and procedural history of this case are set forth in detail in the Joint Stipulation of Facts attached hereto as Exhibit 1.

the Lead and Copper Rule (“LCR”)¹³ by implementing various measures, including corrosion control treatment of the water it supplies. The Petition also explained that replacing COLSLs in conjunction with the Company’s main replacement program would be a cost-effective way to continue Aqua’s main replacement program while avoiding the health and safety concerns associated with partial lead service line (“LSL”) replacements.

6. The Petition was served on I&E, the OCA and the OSBA. On September 23, 2020, the OCA filed an Answer to the Petition. A Notice of Appearance was filed by I&E on October 5, 2020. On October 19, 2020 the OSBA filed a Notice of Appearance, Notice of Intervention, and a Public Statement.

7. In its Prehearing Conference Memorandum, the Company requested that Administrative Law Judge (“ALJ”) Marta Guhl, to whom this matter was assigned, allow the parties to meet and discuss the issues and positions of I&E, the OCA and OSBA with the goal of reaching a resolution of the Petition that did not require formal litigation. At the telephonic Prehearing Conference held on October 21, 2020, the ALJ granted Aqua’s unopposed request and directed an initial status update by November 20, 2020.

8. On November 20, 2020, Aqua submitted the direct testimony and accompanying exhibits of James. S. Willard (Aqua Statement No. 1) in support of the Company’s request for

¹³ See 40 C.F.R. §§ 141.80 *et seq.*; 25 Pa. Code §§ 109.1101 *et seq.* The 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, including replacement of utility-owned and customer-owned lead piping. The United States Environmental Protection Agency (“EPA”) recently promulgated updates to the LCR that strengthen the requirements for lead service line replacement effective as of March 16, 2021. See National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 Fed. Reg. 4198 (Jan. 15, 2021); *see also* 86 Fed. Reg. 4198 (Mar. 12, 2021) (delaying effective date of the Revised LCR from March 16, 2021 to June 17, 2021).

expedited approval of limited tariff waivers to replace COLSLs in its Shenango Valley water distribution system.

9. Through various telephone conferences and correspondence, the Joint Petitioners engaged in discussions to attempt to achieve a settlement of some or all of the issues raised by I&E, OSBA, and the OCA in this proceeding. On November 20, 2020, December 21, 2020 and January 20, 2021, the Joint Petitioners provided status reports to the ALJ to inform her of the progress of settlement discussions. The Joint Petitioners notified the ALJ that a settlement had been reached on February 19, 2021.

II. TERMS AND CONDITIONS OF SETTLEMENT

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

A. Nature Of Replacement Program And Tariff Revisions

11. Notwithstanding Rules 20, 21 and 25 of Tariff No. 2, Aqua may, at its sole cost, replace COLSLs: (1) encountered as part of Aqua's ongoing main replacement work ("Part 1"); and (2) at a customer's request, subject to certain conditions, including verification of the presence of a COLSL 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 and availability of funds within the budgeted allotment of \$800,000 per year ("Part 2"). The costs Aqua incurs as a result of replacing COLSLs shall be subject to cost recovery as outlined in Section F.

12. Aqua's residential, commercial and industrial customers will be eligible to participate in the Replacement Program.

13. Under both Parts of the Replacement Program, the customer will own and retain responsibility for the maintenance, repair and replacement of its service line after it is replaced by the Company.

14. The Company will not replace a COLSL unless the customer enters into an agreement substantially in the form of Aqua Exhibit JSW-3 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 Aqua, the Company will replace only the Company-owned portion of such LSL and the potential health risks associated with a partial LSL replacement will be outlined in a communication to the homeowner. Aqua agrees to track those customers who choose not to consent to the replacement of a COLSL and the reasons provided by the customer.

15. The Joint Petitioners agree that Aqua shall be permitted to implement Rule 20.2 set forth in the Supplement to Tariff No. 2 attached to the Joint Petition as Exhibit 2.

16. The tariff revisions reflected in Rule 20.2 do not require customers to repair a leaking COLSL prior to the replacement by the Company. However, Aqua may, in its discretion, replace a leaking COLSL prior to reaching the threshold number of requests for different Company operating divisions as discussed in Section B. below.

B. Implementation Of Part 2 Of The Replacement Program

(1) Coordination of Customer-Requested COLSL Replacements

17. Customer requests will be grouped by Aqua's operating divisions:

1. Southeast PA - South
2. Southeast PA - Willow Grove
3. Southeast PA - Great Valley
4. Greater PA - West
5. Greater PA - Honesdale
6. Greater PA - Roaring Creek
7. Greater PA - Whitehaven
8. Greater PA - Susquehanna

18. Replacements will be undertaken when the number of customer requests in a given operating division allows the Company to realize reasonable economies of scale by undertaking those replacements as a single project. Aqua will strive to group requests into one project, but, in the Company's discretion, the Company may replace a COLSL even if the number of requests in an operating division have not met a threshold of two requests for Greater PA divisions or five requests for Southeast PA divisions.

(2) Wait Time for Part 2 Replacements

19. Each year Aqua will complete any outstanding Part 2 COLSL replacements if requests in any operating division have not reached two requests in any Greater PA operating division or five requests in any Southeast PA operating division, thereby no customer will wait for more than one year for a replacement.

20. Aqua will verify whether the property for which a Part 2 replacement was requested has a COLSL, and if so, will provide testing materials to the customer within seven business days of verifying the customer has a LSL. The Company will notify the customer occupying such property within five business days of obtaining the test results.

21. The Company will provide a National Sanitation Foundation-approved water filter for lead (pitcher or tap filter) to 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 Aqua replace a COLSL, provided that:

- a. Aqua has verified that the customer has a LSL; and
- b. 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 EPA's LCR.

(3) Cost of Part 2 Lead Service Pipe Replacements

22. The actual costs of a COLSL replacement reflects a number of site-specific factors, including the length of the service line. Therefore, the Company will proceed with replacements at the actual costs of such replacement up to the budget amount of \$800,000 per year.

23. Aqua will track COLSL replacement costs and will report these costs as part of its DSIC quarterly filings.

C. Warranty

24. The Company agrees to provide a two-year warranty on workmanship and materials for COLSLs that Aqua or its contractor replaces.

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

25. Aqua will offer a sliding scale of reimbursement, at the lower of the actual cost or what the Company would have incurred to replace the COLSL, to customers who paid for their own LSL replacement if the Company commences a main replacement project that would have affected the customer as follows:

a. 100% for work performed within one year of commencement of a main replacement project.

b. 50% for work performed within two years of commencement of a main replacement project.

c. 25% for work performed within three years of commencement of a main replacement project.

This sliding scale reimbursement related to a main replacement project will be applicable until the third anniversary of the effective date of the Replacement Program, after which customers will only be eligible for reimbursement if the customer replaced their COLSL within one year of the commencement of a main replacement project. For acquired systems, the same sliding scale time period will apply from the date of closing the acquired system and will cease after the third anniversary of the acquisition of the system. Thereafter, a customer will only be eligible for reimbursement if the customer replaced their COLSL within one year of the commencement of a main replacement project.

26. Aqua will also provide a reimbursement to customers who have replaced their COLSL within one year prior to the start of the Part 2 replacement program. Aqua will also provide a sliding scale reimbursement to customers, at the lower of the actual cost or what the Company would have incurred to replace the COLSL, as follows:

- a. 100% for work performed within one year of commencement of the Replacement Program.
- b. 50% for work performed within two years of commencement of the Replacement Program.
- c. 25% for work performed within three years of commencement of the Replacement Program.

This reimbursement for Part 2 replacements will cease after the third anniversary of the effective date of the Replacement Program. For acquired systems, the same sliding scale time period will apply from the date of closing the acquired system and will cease after the third anniversary of the acquisition of the system.

27. The reimbursement to a customer (or portion thereof as set forth in Paragraph Nos. 25 and 26) will be at the lower of the customer's actual costs for the replacement of the COLSL, as supported and verified by documentation sufficient for the Company, or the cost the Company would have incurred to replace the customer service line with a similar size and material.

28. A main replacement project will commence on the date the Company begins physical excavation for pipe installation for a main replacement project in the geographic area that includes the customer's site, and a Part 2 program will begin upon Commission approval of Aqua's Petition.

E. Customer Outreach And Communications Plan

29. Aqua agrees to develop an ongoing communications plan for its Replacement Program that will include, but is not limited to, direct mailings to notify potentially affected customers about the program, press releases, bill inserts, and information on the Company's website regarding the health effects of lead and COLSLs, including flushing instructions. In addition to information on COLSLs, this customer outreach and communication will include information for low-income customers on customer assistance programs.

30. The Company will share with the statutory advocates the communications materials to be used in its communication plan and agrees to work with the parties to develop an outreach process for customers who may initially be hesitant to consent to the replacement of a COLSL.

F. Cost Recovery

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

31. Aqua will perform a maximum of 200 COLSL replacements per year within a maximum budgetary amount of approximately \$800,000 per year. If, in any year, the entire budgetary allotment is not expended by Aqua, the remainder of the allotment will be carried forward and added to the budgetary allotment for the next subsequent year, subject to the cap of 200 COLSL replacements per year.

32. COLSL 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. The Company will seek to prioritize Part 2 replacements for low-income customers. Low-income status will be established if the customer's household income is below 150% of the Federal Poverty Income Guidelines as certified by Aqua's community-based organizations or through a customer contact to the Company's call center.

(2) Accounting and Ratemaking Treatment of COLSL Replacement Costs

33. The Company will capitalize COLSL replacement costs and record those costs in Account 333 – Services.

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

35. Consistent with Act 120, Aqua will include its actual COLSL 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

36. COLSL replacement costs will be allocated to all water customers. The Joint Petitioners reserve the right to review and challenge the Company's proposed allocation of COLSL replacement costs in future proceedings.

G. Reporting

37. Aqua shall provide to I&E, OCA, and OSBA an annual report on the number of and location of COLSLs replaced and the cost of replacements. The report will indicate whether the replacements are Part 1 or Part 2 replacements.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

38. Aqua, 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.

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

- ***The Settlement Is Consistent with Act 120.*** The Settlement represents the collaborative effort of the parties to develop an approach to facilitate comprehensive replacement of COLSLs in Aqua's service territory in the Commonwealth consistent with Act 120. The Replacement Program, 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 lines.

- ***Substantial Litigation And Associated Costs Will Be Avoided.*** The Settlement amicably and expeditiously resolves a number of important and contentious issues. The administrative burden and costs to litigate these matters to conclusion would be substantial.
- ***The Settlement Is Consistent With Commission Policies Promoting Negotiated Settlements.*** The Joint Petitioners arrived at the Settlement terms after conducting informal 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

40. 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.

41. 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.

42. 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.

43. 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.

44. 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 Marta Guhl enter a Recommended Decision and the Commission enter an Order approving the Settlement embodied in this Joint Petition, including all terms and conditions thereof without modification.

2. That Administrative Law Judge Marta Guhl admit the Joint Stipulation of Facts attached hereto as Exhibit 1 into the record in this proceeding on the terms and conditions set forth therein.

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

Respectfully submitted,



Alexander R. Stahl
Aqua Pennsylvania, Inc.

Dated: April 23, 2021

Kenneth M. Kulak
Brooke E. McGlenn
Morgan, Lewis & Bockius LLP

Counsel for Aqua Pennsylvania, Inc.

Christine Maloni Hoover

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Counsel for Office of Consumer Advocate

Erin K. Fure

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Gina L. Miller

Gina L. Miller
Bureau of Investigation & Enforcement

*Counsel for Bureau of Investigation &
Enforcement*

EXHIBIT 1

Joint Stipulation of Facts

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : **DOCKET NO. P-2020-3021766**
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :

JOINT STIPULATION OF FACTS

TO THE HONORABLE MARTA GUHL, ADMINISTRATIVE LAW JUDGE:

Aqua Pennsylvania, Inc. (“Aqua” or “the Company”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Public Utility Commission (“PUC” or “Commission”) Bureau of Investigation and Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) (collectively, the “Stipulating Parties”), all parties to the above-captioned proceeding, hereby file this Joint Stipulation of Facts (“Stipulation”). In support of this Stipulation, the Stipulating Parties state as follows:

I. BACKGROUND

1. This proceeding was initiated on September 3, 2020, when Aqua petitioned the Commission to approve its plan to replace customer-owned lead service lines (“COLSLs”) in conjunction with its main replacement projects (the “Replacement Program”) and recover the associated costs as provided in 66 Pa.C.S. § 1311(b)(2).¹ In its Petition, Aqua requested that the

¹ 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 authorizes COLSL replacements that are not performed concurrently with main replacement projects if those replacements are done “under a commission-approved program.”

Commission: (1) approve the tariff revisions set forth in the Supplement to Aqua's current tariff² that will allow the Company to replace COLSLs at its sole cost; 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.

2. Concurrent with this Stipulation, the Stipulating Parties are filing a Joint Petition for Settlement (“Settlement”) that resolves all issues in this proceeding. The Settlement was reached after an investigation of Aqua's Petition, including informal discovery and settlement discussions. The Settlement is the product of compromise between and among the Stipulating Parties concerning their respective positions taken in this proceeding.

3. On November 20, 2020, Aqua submitted the direct testimony of James. S. Willard (Aqua Statement No. 1) and accompanying exhibits in support of the Company's request for expedited approval of limited tariff waivers to replace COLSLs in its Shenango Valley public water system (“Shenango”).³ Because of the efforts of the parties to conserve time and resources through settlement without formal litigation, no other testimony has been served in this proceeding. Accordingly, the Stipulating Parties have agreed to the facts set forth herein.

II. STIPULATION OF FACTS

4. The Stipulating Parties hereby stipulate to the admission of Aqua's Petition, Aqua Exhibit No. 1, and Aqua Statement No. 1 and accompanying Exhibits JSW-1 to JSW-3 into evidence in this proceeding.

² Aqua Pennsylvania Inc. Tariff-Water PA P.U.C. No. 2 (effective May 24, 2019) (“Tariff No. 2”).

³ 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 mains until Spring 2021 because LSLs are likely to remain in service in those portions of the Company's distribution system.

5. Aqua is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory authority of the Commission.

6. As of December 31, 2019, Aqua furnished water service to approximately 443,000 customers across 32 counties within the Commonwealth of Pennsylvania.

7. 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.

8. There are two parts to the service lines that deliver water to a customer's premises. Under Rule 4 of Tariff No. 2, 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.

9. Until around 1950, it was common for water utilities to install lead service lines ("LSLs"). In addition, lead was widely used in on-premises plumbing fixtures and solder until "lead free" plumbing was mandated by amendments to the federal Safe Drinking Water Act enacted in 1986 and the Pennsylvania Plumbing System Lead Ban and Notification Act, enacted in 1991.⁴

⁴ See 42 U.S.C. § 300g-6; 35 P.S. §§ 723.3-723.5.

10. According to Company records, the Company ceased installing LSLs in the 1930's. However, LSLs remain in service in the portions of Aqua's distribution system that predate this change.

11. 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 ("PaDEP"), including the Lead and Copper Rule ("LCR").

12. 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,⁵ 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. The EPA recently promulgated updates to the LCR that, among other things, strengthen the requirements for lead service line replacement effective as of June 17, 2021.⁶

13. The Company does not have records of the material used in all customer service lines that are installed and owned by the customer, and this is not information that Aqua would be able to obtain.

⁵ See 40 C.F.R. §§ 141.80 *et seq.*; 25 Pa. Code §§ 109.1101 *et seq.*

⁶ See *National Primary Drinking Water Regulations: Lead and Copper Rule Revisions*, 86 Fed. Reg. 4198 (Jan. 15, 2021) ("Revised LCR"); *see also* 86 Fed. Reg. 4198 (Mar. 12, 2021) (delaying effective date of the Revised LCR from March 16, 2021 to June 17, 2021).

14. Aqua currently has identified 268 known COLSLs in its system based on the Company’s review of tap cards, water sampling data, and meter exchange and service call information. Aqua identified 57 of those known COLSLs during its main replacement work in Shenango.

15. COLSLs are more likely to still be in service in older neighborhoods, including the Company’s Shenango and Bristol service areas, with populations that face economic constraints that make it more difficult for them to bear the cost of replacing their COLSL.

16. Aqua’s tariff, as currently approved by the Commission, does not allow the replacement of a customer’s service line. Rules 20 and 25 of Tariff No. 2 currently state as follows regarding the responsibility of the customer to maintain its portion of the service line:

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 . .

..

17. Aqua has an ongoing infrastructure rehabilitation program that includes replacing mains and associated service lines. Aqua encountered several COLSLs during its main replacement work in 2020 in the Company’s Shenango service area and expects to find additional COLSLs as main projects occur. Currently, when the Company encounters a LSL on both the customer and Company portion of the line, Aqua will replace the Company LSL and inform and encourage the customer to replace the COLSL.

18. A growing body of research indicates that “partial” replacements of lead services, where only the utility-owned segment is replaced and the customer-owned segment remains, potentially elevates the risk of lead exposure through drinking water.⁷ Two primary factors contribute to this elevated risk.

(a) Removing and replacing the Company LSL and curb box connection may disturb the “scale” or coating that builds up naturally inside of the service line over its years in service. If an insoluble and adherent scale forms, there is a physical barrier that prevents leaching of lead into the water the service line delivers.⁸ This protective barrier, however, may be susceptible to releasing lead and other accumulated material in the scales following physical disturbances related to infrastructure work.

(b) If a Company LSL is replaced with a line made of another metal, the conditions are created for bi-metallic corrosion. The lead in the COLSL is a sacrificial metal that loses electrons to the non-lead material it adjoins. This is the cause of corrosion, which affects the interior wall of the COLSL and accelerates leaching of lead into the water passing through the pipe. While optimal corrosion control techniques can mitigate this risk, it is still a risk that should be avoided given the health and safety concerns associated with lead contamination.

19. Aqua’s proposed Supplement to Tariff No. 2, if approved, will revise the Company’s Rules and Regulations to authorize Aqua to replace COLSLs at its sole cost, within the parameters of the Replacement Program summarized below, while leaving with affected

⁷ See Revised LCR at 61697-61699.

⁸ See *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems*, EPA 816-B-16-003 (Mar. 2016), pp. 9-10.

customers the ownership and responsibility to maintain repair and replace the new service line after it is installed.

20. Aqua's Replacement Program, as modified by the Settlement, consists of two parts. First, Aqua will proactively remove and replace, with the customer's consent, COLSLs encountered as part of the Company's ongoing main replacement work ("Part 1"). Second, Aqua will replace COLSLs at a customer's request, subject to certain conditions, including verification of the presence of a COLSL 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 and availability of funds within the budgeted allotment of \$800,000 per year ("Part 2").

21. Under Part 2 of the Replacement Program, the Company will coordinate customer-requested replacements. Customer requests will be grouped by Aqua's operating divisions:

1. Southeast PA – South
2. Southeast PA – Willow Grove
3. Southeast PA – Great Valley
4. Greater PA – West
5. Greater PA – Honesdale
6. Greater PA – Roaring Creek
7. Greater PA – Whitehaven
8. Greater PA – Susquehanna

22. Part 2 replacements will be undertaken when the number of customer requests in an operating division allows the Company to realize reasonable economies of scale by doing those replacements as a single project. Aqua estimates that it will be able to realize reasonable economies of scale when it receives two Part 2 replacement requests in any Greater PA operating division and five requests in any Southeast PA operating division.

23. Aqua will strive to group requests into one project, but, in the Company's discretion, the Company may replace a COLSL even if the number of requests have not met the threshold. Each year the Company will complete any outstanding Part 2 COLSL replacements if requests in any operating division have not reached two requests in any Greater PA operating division or five requests in any Southeast PA operating division, thereby no customer will wait for more than one year for a replacement.

24. The Company will provide a National Sanitation Foundation ("NSF") approved water filter for lead (pitcher or tap filter) to residential customers waiting for Part 2 replacements, provided that Aqua has verified that the customer has a LSL and testing from the customer's tap shows that the water has a lead level above the action level established by the LCR.

25. Under both Parts of the Replacement Program, the customer will own, and be responsible for, the new service line after the replacement to minimize disparity among customers based on service line composition. Under the proposed tariff changes set forth in Exhibit 2 to the Settlement, prior to the initiation of any COLSL replacement work by Aqua, the affected customer must also enter into an agreement substantially in the form of Aqua Exhibit JSW-3 that, among other things, authorizes Aqua to access the customer's property to undertake the replacement work. If a customer refuses to enter into such an agreement with the Company, Aqua will replace only the Company-owned portion of such customer's LSL and will outline the potential health risks associated with a partial LSL replacement in a communication to the homeowner. Under the Settlement, Aqua agreed to track those customers who choose not to consent to the replacement of a COLSL and the reasons provided by the customer.

26. Customers will not be required to repair a leaking COLSL prior to the replacement by the Company. In addition, Aqua will provide a two-year warranty on workmanship and materials for COLSLs that the Company or its contractor replace.

27. Aqua's ongoing communications plan for the Replacement Program will include direct mailings to notify potentially affected customers about the program, press releases, bill inserts, and information on the Company's website regarding the health effects of lead and LSLs, including flushing instructions. In addition to information on LSLs, this customer outreach and education will include information on low-income customer assistance programs.

28. Aqua is also proposing to set an annual cap on COLSL replacements of 200 per year within a maximum budgetary amount of \$800,000 per year to mitigate the impact of the Replacement Program on customer rates. COLSL 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. The Company will seek to prioritize Part 2 replacements for low-income customers. The low-income customer status will be established if the customer's household income is below 150% of the Federal Poverty Income Guidelines as certified by Aqua's community-based organizations or through customer contact to the Company's call center.

29. If Aqua determines that the proposed \$800,000 annual budget is no longer adequate or appropriate to achieve its goals under the Replacement Program, the Company may seek Commission approval to modify this amount. In that event, the other Stipulating Parties reserve the right to challenge any modification that the Company proposes.

30. Aqua will offer a sliding scale of reimbursement, which is described in Paragraph Nos. 25-28 of the Settlement, to compensate customers who recently replaced COLSLs at their own cost.

31. The actual cost of a COLSL replacement reflects several site-specific factors, including the length of the service line. Aqua has estimated an average cost per COLSL replacement of \$4,000 based on its experience and information from several sources, including discussions with Company field personnel and sample contractor pricing for COLSL replacements ranging from \$3,000 to \$5,000. However, the Company will proceed with replacements at the actual costs of such replacement up to the budget cap of \$800,000 per year.

32. Aqua proposes to record COLSL replacement costs in a separate subaccount of Account 333 – Services. Consistent with Act 120, Aqua will include its actual COLSL replacement costs in the Company’s rate base in a subsequent base rate proceeding and will recover the fixed costs of such investment in property placed in service between base rate cases through its existing Distribution System Improvement Charge.

33. Under the Company’s proposed accounting and ratemaking treatment outlined in the Settlement, Aqua anticipates that COLSL replacement costs would have a negligible effect on customers’ bills for water service (i.e., an incremental increase of 22 cents per year).

34. Aqua’s proposed Replacement Program, as enhanced by the Settlement, is in the public interest for several reasons.

35. 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.”⁹ In addition, current best practices in the water industry indicate that, even with an effective corrosion control program, lead service lines should be replaced, in their entirety, as soon as possible because a partial lead service line replacement may increase the risk of lead exposure through drinking water. For that reason, based on recommendations from the National Drinking Water Advisory Council, the Revised LCR requires comprehensive replacement of both the utility and customer segments of service connections that contain lead.

36. Replacing all the lead components in a service line eliminates a potential source of elevated lead levels in its entirety. Aqua will also continue its existing corrosion control program, which has successfully prevented elevated lead levels in the water entering customers’ homes where existing COLSLs are not impacted by main replacement projects. Aqua’s proposed Replacement Program, together with Aqua’s existing corrosion control program, will assure the Company’s continued compliance with applicable environmental and regulatory requirements and avoid the risk of lead leaching into the water delivered to customers’ homes from COLSLs.

37. The budgetary allotment of \$800,000 per year is reasonably and appropriately tied to accomplishing Aqua’s COLSL replacement goals and mitigating the impact on customer rates.

38. The Company’s proposal is an efficient and cost-effective way to avoid creating a risk of exposing customers to elevated lead levels in their drinking water from Aqua’s extension of its infrastructure rehabilitation program into areas where COLSLs are more likely to exist. The Company will be able to leverage economies of scale to reduce costs and minimize service disruptions related to COLSL replacements. In addition to these efficiencies, Aqua’s ability to

⁹ 66 Pa. C.S. § 1311(b)(2)(i).

coordinate the replacement of Company LSLs and COLSLs will streamline project administration and reduce overall costs.

III. TERMS AND CONDITIONS OF THE STIPULATION

39. This Stipulation is presented by the Stipulating Parties in conjunction with the simultaneously filed Joint Petition for Settlement, which is intended to resolve all issues in this proceeding. If the Commission rejects or otherwise modifies the Settlement, the Stipulating Parties reserve their respective rights to object to the admission of the Stipulation, submit additional testimony and exhibits, and cross-examine witnesses at evidentiary hearings.

40. This Stipulation is being presented, in conjunction with the Settlement, only to resolve issues in the above-captioned proceeding. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party, in this or any future proceeding, as a consequence of this Stipulation or any of its terms or conditions.

41. Attached hereto as Exhibit A is a proposed “Order Granting Joint Stipulation of Facts” for consideration by the Presiding Officer.

WHEREFORE, the Stipulating Parties, by their respective counsel, respectfully request that the Honorable Administrative Law Judge Marta Guhl admit the foregoing Joint Stipulation of Facts into the record in this proceeding on the terms and conditions set forth in the Stipulation.

Respectfully submitted,



Alexander R. Stahl
Aqua Pennsylvania, Inc.

Kenneth M. Kulak
Brooke E. McGlinn
Morgan, Lewis & Bockius LLP

Counsel for Aqua Pennsylvania, Inc.

Dated: April 23, 2021



Christine Maloni Hoover
Office of Consumer Advocate

Counsel for Office of Consumer Advocate



Erin K. Fure
Office of Small Business Advocate

Counsel for Office of Small Business Advocate



Gina L. Miller
Bureau of Investigation & Enforcement

Counsel for Bureau of Investigation & Enforcement

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : **DOCKET NO. P-2020-3021766**
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :

ORDER GRANTING JOINT STIPULATION OF FACTS

On April 23, 2021, Aqua Pennsylvania, Inc., the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate (“Stipulating Parties”), all parties to the above-captioned proceeding, filed a Joint Stipulation of Facts (“Stipulation”). Each of the Stipulating Parties stipulated to the veracity and authenticity of the facts set forth in the Stipulation and requested that the Stipulation be admitted into the record of this proceeding on the terms and conditions set forth in the Stipulation. The Stipulation is attached to this Order.

As the request of the Stipulating Parties is reasonable, the request will be granted.

THEREFORE, IT IS ORDERED:

1. That the Stipulation, filed on April 23, 2021, is admitted into the record of this proceeding on the terms and conditions set forth in the Stipulation.

Date: _____

Marta Guhl
Administrative Law Judge

EXHIBIT 2

Aqua Pennsylvania, Inc. Tariff Water-Pa. P.U.C. No. 2 Supplement No. __

AQUA PENNSYLVANIA, INC.
(hereinafter referred to as the "Company")

RATES, RULES, AND REGULATIONS
GOVERNING THE DISTRIBUTION AND SALE OF
WATER SERVICE
IN PORTIONS OF

ADAMS, BERKS, BRADFORD, BUCKS, CARBON, CHESTER, CLARION, CLEARFIELD,
COLUMBIA, CRAWFORD, CUMBERLAND, DELAWARE, FOREST, JUNIATA,
LACKAWANNA, LAWRENCE, LEHIGH, LUZERNE, MERCER, MCKEAN, MONROE,
MONTGOMERY, NORTHHAMPTON, NORTHUMBERLAND, PIKE, SCHUYLKILL,
SUSQUEHANNA, SNYDER, VENANGO, WARREN, WAYNE, AND WYOMING COUNTIES

IN THE COMMONWEALTH OF PENNSYLVANIA

ISSUED: [TBD]

EFFECTIVE: [TBD]

By:

Marc Lucca, President
Aqua Pennsylvania, Inc.
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

NOTICE

THIS TARIFF SUPPLEMENT DEFINES THE COMPANY REPLACEMENT OF
CUSTOMER OWNED LEAD SERVICE LINES.

AQUA PENNSYLVANIA, INC.

Exhibit 2
SUPPLEMENT NO. [TBD]
TARIFF WATER-PA P.U.C. NO. 2
TENTH REVISED PAGE 2
CANCELING NINTH REVISED PAGE 2

LIST OF CHANGES MADE BY THIS TARIFF

Changes: Supplement No. [TBD] to Tariff Water-PA P.U.C. No. 2 defines the Company replacement of Customer Owned Lead Service Lines (“COLSLs”) on tariff page 41.1, as approved by the Pennsylvania Public Utility Commission at Docket No. P-2020-[_____]. Refer to pages 1, 2, 3, 4, 41, 41.1, 41.2 and 41.3.

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RULES AND REGULATIONS

SERVICE CONNECTIONS

19. Company’s Service Lines:

Except for service connections made in accordance with Rule 65, the Company will make all connections to its mains and furnish, install and maintain the Company’s service main to and including the Curb Stop, which under normal circumstances will be placed inside the curb-line. The Company’s service line will be the property of the Company and under its control. The point of delivery and sale for any water service furnished to the Customer shall be at the Curb Stop.

The maximum Company investment per Company service line shall be as follows:

<u>Size of Service</u>	<u>Maximum Investment</u>
1 ½ inch in diameter or less	\$3,000
Greater than 1 ½ inches but not to exceed four inches	\$6,000
Greater than 4 inches	\$12,000

The cost of any Company service line in excess of the applicable maximum Company investment shall be paid by the Customer, plus all applicable taxes including income taxes occasioned by the contract. The Company may require payment of the estimated amount of such excess cost in advance of the installation and will make a partial repayment of the extent the actual cost is determined to be less than the estimate.

Whenever it is necessary to install a service line in advance of the date on which the premises are occupied and a meter is set, a deposit may be required in an amount not to exceed the estimated cost of installation, which deposit will be refunded to the depositor when the service becomes active (i.e., the meter has been set and the premises occupied), provided that event occurs within five years from the date of deposit.

(C) 20.1. Customer Service Line: The Customer’s service line shall extend from the Property to the Curb Stop or curb line or such point as designated by the Company. All connections, service lines and fixtures owned by the Customer shall be maintained by the Customer in good order, and all meters and appurtenances owned by the Company and located on the Property of the Customer shall be protected properly by the Customer. 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.

a. Notwithstanding the terms and conditions set forth in Rules 20.1, 20.2, and 25, the Company is authorized to replace customer-owned lead service lines (“COLSLs”) in Mercer County in accordance with the Pennsylvania Public Utility Commission Order at Docket No. P-2020-3021766 entered on [date].

RULES AND REGULATIONS**SERVICE CONNECTIONS (cont'd)**

20.2. Customer Owned Lead Service Line Replacements: Notwithstanding Rules 20.1, 21, and 25, the Company shall, provided the customer provides consent, replace lead Customer Owned Service Lines ("COLSLs") pursuant to the Company's Lead Service Line Replacement Program ("Replacement Program"). Pursuant to Part 1 of the Company's Replacement Program, the Company will replace COLSLs it encounters when replacing its mains, up to 200 COLSL replacements per year within a maximum budgeted amount of \$800,000 per year. Pursuant to Part 2 of the Company's Replacement Program, the Company will replace a COLSL upon a Customer's request subject to the following requirements: (i) verification that the Customer has a COLSL, (ii) the date that the Company will replace the COLSL will depend on the number of other customer requests in the same operating division, (iii) the annual cap of 200 COLSL replacements, and (iv) availability of funds in the annual budget allotment of \$800,000.

Replacements under Part 1 of the Company's Replacement Program will have priority over replacements under Part 2 of the Company's Replacement Program. For replacements under Part 2 of the Company's Replacement Program, the Company will seek to prioritize replacements for low-income customers. Any portion of the annual budgetary allotment of \$800,000 that is not spent on COLSL replacements in that year will roll over to the next subsequent year, subject to annual cap of 200 COLSL replacements per year. If the Company does not use the excess budgeted amount that carried over from the previous year, that excess budgeted amount will not carry forward into the following year. The Company may petition the Commission to modify its annual budgeted amount and/or the cap on COLSL replacements per year if, in the Company's sole discretion, the Company determines these amounts are not adequate to meet the needs of the Replacement Program. Any petition to modify the budgeted amount or maximum number of COLSLs replaced per year is subject to Commission approval. Costs incurred by the Company under the Replacement Program shall be subject to Act 120 of 2018 (P.L. 738, No. 120) and the accounting and ratemaking treatment approved by the Pennsylvania Public Utility Commission entered [date] at Docket No. P-2020-3021766. After a COLSL is replaced by the Company or the Company's contractor, the Customer shall own and have full responsibility for the repair, replacement, and maintenance of the new Customer Service Line installed, and which, thereafter, Rules 20.1, 21, and 25 shall apply.:

- a. The Customer shall enter into an Agreement for the replacement of the COLSL for either a Part 1 or Part 2 replacement, in a form provided by the Company, prior to the initiation of any work by the Company or its contractors to replace a COLSL. The Company shall provide a two-year warranty on workmanship and materials for any COLSL that the Company or its contractor replaces.
- b. For Customer requests under Part 2 of the Company's Replacement Program, the Company will verify the Customer has a COLSL, and if verified, the Company will provide the Customer with testing materials within seven business days of the verification of the COLSL. The Company will notify the Customer within five business days of the results of the test. Notwithstanding Rule 20.1, a Customer who has a verified COLSL and has requested that the Company replace the COLSL, the Customer will not be responsible for repairing a leaking COLSL prior to the Company's replacement of that Customer's COLSL.

RULES AND REGULATIONS**SERVICE CONNECTIONS (cont'd)****20.2. Customer Owned Lead Service Line Replacements (cont'd):**

c. The Company will provide a National Sanitation Foundation approved water filter (pitcher or tap filter) to residential customers who request (or if the Customer occupies a rental property, the property-owner has made, or authorized the Customer to make, such request) that the Company replace the COLSL provided that:

1. The Company has verified that the Customer has a COLSL; and
2. 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.

The Company will offer a reimbursement under Part 1 of the Company's Replacement Program to a Customer or property owner (as applicable), at the lower of the Customer's or property owner's (as applicable) actual cost or what it would have cost the Company to replace the COLSL, who paid for the replacement of the COLSL if the Company commences a main replacement project that would have affected the Customer or property owner as follows:

- a. 100% for work performed within one year of the commencement of a main replacement project.
- b. 50% for work performed within two years of the commencement of a main replacement project.
- c. 25% for work performed within three years of the commencement of a main replacement project.

The sliding scale reimbursement related to a Part 1 main replacement project will be applicable until the 3rd anniversary of the effective date of Aqua's Lead Service Line replacement program, after which customers will only be eligible for reimbursement if the customer replaced their COLSL within one year of the commencement of a main replacement project. For acquired systems the same sliding scale time period will apply from the date of closing the acquired system and will cease after the 3rd anniversary of the acquisition of the system, and thereafter customer will only be eligible for reimbursement if the customer replaced their COLSL within one year of the commencement of a main replacement project.

RULES AND REGULATIONS**SERVICE CONNECTIONS (cont'd)****20.2. Customer Owned Lead Service Line Replacements (cont'd):**

The Company will also offer a reimbursement under Part 2 of the Company's Replacement Program to a Customer or property owner (as applicable), at the lower of the Customer's or property owner's (as applicable) actual cost or what the Company would have incurred to replace the COLSL, who paid for the replacement of the COLSL within one year prior to the start of Part 2 of the Company's Replacement Program. The Company will also provide a sliding scale reimbursement to customers, at the lower of the actual cost or what the Company would have incurred to replace the COLSL, as follows:

- a. 100% for work performed within one year of the commencement of a main replacement project.
- b. 50% for work performed within two years of the commencement of a main replacement project.
- c. 25% for work performed within three years of the commencement of a main replacement project.

The reimbursement for replacements under Part 2 of the Company's Replacement Program will cease after the 3rd anniversary of the effective date of the Company's COLSL Replacement Program. For acquired systems the same sliding scale time period will apply from the date of closing the acquired system and will cease after the 3rd anniversary of the acquisition of the system.

For any reimbursement under Part 1 or Part 2, the Customer or property owner must provide the Company with a paid invoice, a certification from a certified plumber, and other documentation required by the Company, in its sole discretion, to verify the replacement. The reimbursement (or portion thereof as set forth above) will be at the lower of the customer's actual costs for the replacement of the COLSL as supported and verified by documentation sufficient for the Company or the cost the Company would have incurred to replace the customer service line with a similar size and material.

A main replacement project under Part 1 will commence on the date the Company begins physical excavation for pipe installation for a main replacement project in the project area that includes the Customer or property owner's (as applicable) premise, and a Part 2 program will begin upon the date the Commission issues an order approving the Company's petition at Docket No. P-2020-3021766.

EXHIBIT 3

Joint Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : DOCKET NO. P-2020-3021766
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :**

**JOINT PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS**

April 23, 2021

PROPOSED FINDINGS OF FACT

1. Aqua Pennsylvania Inc. (“Aqua” or the “Company”) is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory authority of the Pennsylvania Public Utility Commission (“Commission”). Joint Stipulation of Facts, ¶ 5.

2. As of December 31, 2019, Aqua furnished water service to approximately 443,000 customers across 32 counties within the Commonwealth of Pennsylvania. *Id.*, 6.

3. 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. Joint Stipulation of Facts, ¶ 7; Aqua St. 1, p. 4.

4. There are two parts to the service lines that deliver water to a customer’s premises. Under Rule 4, set forth at pages 34 to 35 of Aqua Tariff Water-Pa. P.U.C. No. 2 (“Tariff No. 2”), 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. Joint Stipulation of Facts, ¶ 8.

5. Until around 1950, it was common for water utilities to install lead service lines (“LSLs”). In addition, lead was widely used in on-premises plumbing fixtures and solder until “lead free” plumbing was mandated by amendments to the federal Safe Drinking Water Act

enacted in 1986 and the Pennsylvania Plumbing System Lead Ban and Notification Act, enacted in 1991.¹ *Id.*, ¶ 9.

6. According to Company records, the Company ceased installing LSLs in the 1930's. However, LSLs remain in service in the portions of Aqua's distribution system that predate this change. Joint Stipulation of Facts, ¶ 10; Aqua St. 1, pp. 4-5

7. 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 ("PaDEP"), including the Lead and Copper Rule ("LCR"). Joint Stipulation of Facts, ¶ 11.

8. Aqua has, thus far, complied with the LCR by implementing several measures, including effective corrosion control treatment of the water it supplies. Joint Stipulation of Facts, ¶ 11; Aqua St. 1, p. 6.

9. 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,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. The EPA recently promulgated updates to the LCR that, among

¹ See 42 U.S.C. § 300g-6; 35 P.S. §§ 723.3-723.5.

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

other things, strengthen the requirements for lead service line replacement effective as of June 17, 2021.³ Joint Stipulation of Facts, ¶ 12; *see also* Aqua St. 1, pp. 5-6.

10. The Company does not have records of the material used in all customer service lines that are installed and owned by the customer, and this is not information that Aqua would be able to obtain. Joint Stipulation of Facts, ¶ 13.

11. Aqua currently has identified 268 known customer-owned lead service lines (“COLSLs”) in its system based on the Company’s review of tap cards, water sampling data, and meter exchange and service call information. Aqua identified 57 of those known COLSLs during its main replacement work in Shenango. Joint Stipulation of Facts, ¶ 14; Aqua St. 1, p. 8.

12. COLSLs are more likely to still be in service in older neighborhoods, including the Company’s Shenango and Bristol service areas, with populations that face economic constraints that make it more difficult for them to bear the cost of replacing their COLSL. Joint Stipulation of Facts, ¶ 15.

13. Aqua’s tariff, as currently approved by the Commission, does not allow the replacement of a customer’s service line. Rules 20 and 25 of Tariff No. 2 currently state as follows regarding the responsibility of the customer to maintain its portion of the service line:

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.

...

³ *See National Primary Drinking Water Regulations: Lead and Copper Rule Revisions*, 86 Fed. Reg. 4198 (Jan. 15, 2021) (“Revised LCR”); *see also* 86 Fed. Reg. 4198 (Mar. 12, 2021) (delaying effective date of the Revised LCR from March 16, 2021 to June 17, 2021).

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 . .

..

Id., ¶ 16.

14. Aqua has an ongoing infrastructure rehabilitation program that includes replacing mains and associated service lines. Aqua encountered several COLSLs during its main replacement work in 2020 in the Company's Shenango service area and expects to find additional COLSLs as main projects occur. Currently, when the Company encounters a LSL on both the customer and Company portion of the line, Aqua will replace the Company LSL and inform and encourage the customer to replace the COLSL. *Id.*, ¶ 17.

15. A growing body of research indicates that "partial" replacements of lead services, where only the utility-owned segment is replaced and the customer-owned segment remains, potentially elevates the risk of lead exposure through drinking water.⁴ Two primary factors contribute to this elevated risk.

(a) Removing and replacing the Company LSL and curb box connection may disturb the "scale" or coating that builds up naturally inside of the service line over its years in service. If an insoluble and adherent scale forms, there is a physical barrier that prevents leaching of lead into the water the service line delivers.⁵ This protective barrier, however, may be susceptible to releasing lead and other accumulated material in the scales following physical disturbances related to infrastructure work.

⁴ See Revised LCR at 61697-61699.

⁵ See *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems*, EPA 816-B-16-003 (Mar. 2016), pp. 9-10.

(b) If a Company LSL is replaced with a line made of another metal, the conditions are created for bi-metallic corrosion. The lead in the COLSL is a sacrificial metal that loses electrons to the non-lead material it adjoins. This is the cause of corrosion, which affects the interior wall of the COLSL and accelerates leaching of lead into the water passing through the pipe. While optimal corrosion control techniques can mitigate this risk, it is still a risk that should be avoided given the health and safety concerns associated with lead contamination.

Joint Stipulation of Facts, ¶ 18; Aqua St. 1, pp. 7-8.

16. This proceeding was initiated on September 3, 2020, when Aqua petitioned the Commission to approve its plan to replace customer-owned lead service lines (“COLSLs”) in conjunction with its main replacement projects (the “Replacement Program”) and recover the associated costs as provided in 66 Pa.C.S. § 1311(b)(2).⁶ In its Petition, Aqua requested that the Commission: (1) approve the tariff revisions set forth in the Supplement to Aqua’s current tariff⁷ that will allow the Company to replace COLSLs at its sole cost; 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.

17. The Petition was served on the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”). On September 23, 2020, the OCA filed an Answer to the Petition. A Notice of Appearance was filed by I&E on October 5, 2020. On October 19, 2020 the OSBA filed a Notice of Appearance, Notice of Intervention, and a Public Statement.

⁶ 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 authorizes COLSL replacements that are not performed concurrently with main replacement projects if those replacements are done “under a commission-approved program.”

⁷ Aqua Pennsylvania Inc. Tariff-Water PA P.U.C. No. 2 (effective May 24, 2019) (“Tariff No. 2”).

18. In its Prehearing Conference Memorandum, the Company requested that Administrative Law Judge (“ALJ”) Marta Guhl, to whom this matter was assigned, allow the parties to meet and discuss the issues and positions of I&E, the OCA and OSBA with the goal of reaching a resolution of the Petition that does not require formal litigation. At the Prehearing Conference held on October 22, 2020, the ALJ granted Aqua’s unopposed request and directed an initial status update by November 20, 2020.

19. On November 20, 2020, Aqua submitted the direct testimony and accompanying exhibits of James. S. Willard (Aqua Statement No. 1) in support of the Company’s request for expedited approval of limited tariff waivers to replace COLSLs in its Shenango Valley water distribution system.

20. Through various telephone conferences and correspondence, the parties engaged in discussions to attempt to achieve a settlement of some or all of the issues raised by I&E, OSBA, and the OCA in this proceeding. On November 20, 2020, December 21, 2020 and January 20, 2021, the Joint Petitioners provided status reports to the ALJ to inform her of the progress of settlement discussions.

21. On February 19, 2021, the parties notified the ALJ that a settlement in principle had been reached to resolve all issues in this proceeding and the settling parties would submit a Joint Petition for Settlement and Statements in Support to memorialize their agreement.

22. On April 23, 2021, Aqua, I&E, the OCA and the OSBA submitted a Joint Petition for Settlement (“Settlement” or “Joint Petition”) and requested that the ALJ approve the Settlement without modification.

23. Under the Settlement, the Joint Petitioners agreed that Aqua's Replacement Program should be implemented as filed, with the enhancements described in the Joint Petition. The Joint Petitioners also agreed that Aqua shall be permitted to file the Supplement to Tariff No. 2, which is attached to the Joint Petition as Exhibit 2, that is necessary to implement the Replacement Program. The principal substantive terms and conditions of the Settlement are set forth in Paragraph Nos. 11-37 of the Joint Petition, which address the issues raised by the other parties in this proceeding.

24. Aqua's Replacement Program, as modified by the Settlement, consists of two parts. First, Aqua will proactively remove and replace, with the customer's consent, COLSLs encountered as part of the Company's ongoing main replacement work ("Part 1"). Second, Aqua will replace COLSLs at a customer's request, subject to certain conditions, including verification of the presence of a COLSL 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 and availability of funds within the budgeted allotment of \$800,000 per year ("Part 2"). Joint Stipulation of Facts, ¶ 20.

25. Under Part 2 of the Replacement Program, the Company will coordinate customer-requested replacements. Customer requests will be grouped by Aqua's operating divisions:

1. Southeast PA – South
2. Southeast PA – Willow Grove
3. Southeast – Great Valley
4. Greater PA – West
5. Greater PA – Honesdale
6. Greater PA – Roaring Creek
7. Greater PA – Whitehaven
8. Greater PA – Susquehanna

Id., ¶ 21.

26. Part 2 replacements will be undertaken when the number of customer requests in an operating division allows the Company to realize reasonable economies of scale by doing those replacements as a single project. Aqua estimates that it will be able to realize reasonable economies of scale when it receives two Part 2 replacement requests in any Greater PA operating division and five requests in any Southeast PA operating division. *Id.*, ¶ 22.

27. Aqua will strive to group requests into one project, but, in the Company's discretion, the Company may replace a COLSL even if the number of requests have not met the threshold. Each year the Company will complete any outstanding Part 2 COLSL replacements if requests in any operating division have not reached two requests in any Greater PA operating division or five requests in any Southeast PA operating division, thereby no customer will wait for more than one year for a replacement. *Id.*, ¶ 23.

28. The Company will provide a National Sanitation Foundation approved water filter for lead (pitcher or tap filter) to residential customers waiting for Part 2 replacements, provided that Aqua has verified that the customer has a LSL and testing from the customer's tap shows that the water has a lead level above the action level established by the LCR. *Id.*, ¶ 24.

29. Under both Parts of the Replacement Program, the customer will own, and be responsible for, the new service line after the replacement to minimize disparity among customers based on service line composition. Under the proposed tariff changes set forth in Exhibit 2 to the Settlement, prior to the initiation of any COLSL replacement work by Aqua, the affected customer must also enter into an agreement substantially in the form of Aqua Exhibit JSW-3 that, among other things, authorizes Aqua to access the customer's property to undertake the replacement work. If a customer refuses to enter into such an agreement with the Company,

Aqua will replace only the Company-owned portion of such customer's LSL and will outline the potential health risks associated with a partial LSL replacement in a communication to the homeowner. Under the Settlement, Aqua agreed to track those customers who choose not to consent to the replacement of a COLSL and the reasons provided by the customer. Joint Stipulation of Facts, ¶ 25.

30. Customers will not be required to repair a leaking COLSL prior to the replacement by the Company. In addition, Aqua will provide a two-year warranty on workmanship and materials for COLSLs that the Company or its contractor replace. *Id.*, ¶ 26.

31. Aqua's ongoing communications plan for the Replacement Program will include direct mailings to notify potentially affected customers about the program, press releases, bill inserts, and information on the Company's website regarding the health effects of lead and LSLs, including flushing instructions. In addition to information on LSLs, this customer outreach and education will include information on low-income customer assistance programs. *Id.*, ¶ 27.

32. Aqua is also proposing to set an annual cap on COLSL replacements of 200 per year within a maximum budgetary amount of \$800,000 per year to mitigate the impact of the Replacement Program on customer rates. COLSL 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. The Company will seek to prioritize Part 2 replacements for low-income customers. The low-income customer status will be established if the customer's household income is below 150% of the Federal Poverty Income Guidelines as certified by Aqua's community-based organizations or through customer contact to the Company's call center. *Id.*, ¶ 28.

33. If Aqua determines that the proposed \$800,000 annual budget is no longer adequate or appropriate to achieve its goals under the Replacement Program, the Company may seek Commission approval to modify this amount. In that event, the other Stipulating Parties reserve the right to challenge any modification that the Company proposes. *Id.*, ¶ 29.

34. Aqua will offer a sliding scale of reimbursement, which is described in Paragraph Nos. 25-28 of the Settlement, to compensate customers who recently replaced COLSLs at their own cost. Joint Stipulation of Facts, ¶ 30.

35. The actual cost of a COLSL replacement reflects several site-specific factors, including the length of the service line. Aqua has estimated an average cost per COLSL replacement of \$4,000 based on its experience and information from several sources, including discussions with Company field personnel and sample contractor pricing for COLSL replacements ranging from \$3,000 to \$5,000. However, the Company will proceed with replacements at the actual costs of such replacement up to the budget cap of \$800,000 per year. *Id.*, ¶ 31.

36. Aqua proposes to record COLSL replacement costs in a separate subaccount of Account 333 – Services. Consistent with Act 120, Aqua will include its actual COLSL replacement costs in the Company’s rate base in a subsequent base rate proceeding and will recover the fixed costs of such investment in property placed in service between base rate cases through its existing Distribution System Improvement Charge (“DSIC”). *Id.*, ¶ 32.

37. Under the Company’s proposed accounting and ratemaking treatment outlined in the Settlement, Aqua anticipates that COLSL replacement costs would have a negligible effect on customers’ bills for water service (i.e., an incremental increase of 22 cents per year). *Id.*, ¶ 33.

38. Aqua's proposed Replacement Program, as enhanced by the Settlement, is in the public interest for several reasons.

(a) 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."⁸ In addition, current best practices in the water industry indicate that, even with an effective corrosion control program, lead service lines should be replaced, in their entirety, as soon as possible because a partial lead service line replacement may increase the risk of lead exposure through drinking water. For that reason, based on recommendations from the National Drinking Water Advisory Council, the Revised LCR requires comprehensive replacement of both the utility and customer segments of service connections that contain lead.

(b) Replacing all the lead components in a service line eliminates a potential source of elevated lead levels in its entirety. Aqua will also continue its existing corrosion control program, which has successfully prevented elevated lead levels in the water entering customers' homes where existing COLSLs are not impacted by main replacement projects. Aqua's proposed Replacement Program, together with Aqua's existing corrosion control program, will assure the Company's continued compliance with applicable environmental and regulatory requirements and avoid the risk of lead leaching into the water delivered to customers' homes from COLSLs.

(c) The budgetary allotment of \$800,000 per year is reasonably and appropriately tied to accomplishing Aqua's COLSL replacement goals and mitigating the impact on customer rates.

⁸ 66 Pa.C.S. § 1311(b)(2)(i).

(d) The Company’s proposal is an efficient and cost-effective way to avoid creating a risk of exposing customers to elevated lead levels in their drinking water from Aqua’s extension of its infrastructure rehabilitation program into areas where COLSLs are more likely to exist. The Company will be able to leverage economies of scale to reduce costs and minimize service disruptions related to COLSL replacements. In addition to these efficiencies, Aqua’s ability to coordinate the replacement of Company LSLs and COLSLs will streamline project administration and reduce overall costs. Joint Stipulation of Facts, ¶¶ 34-38.

PROPOSED CONCLUSIONS OF LAW

1. 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 DSIC. 66 Pa.C.S. §§ 1311(b)(2)(ii) and (iii).

2. 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. *Id.* at § 1311(b)(2)(v). The tariff supplement must contain a cap on the maximum number of COLSLs to be replaced annually. 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. *Id.* at § 1311(b)(2)(v)-(vii).

3. The Commission has previously approved COLSL replacement programs for The York Water Company and Pennsylvania-American Water Company (“PAWC”). *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).⁹

4. In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the public interest. *See Pa. P.U.C. v. CS Water & Sewer Ass'n*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. P.U.C. v. Philadelphia Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985).

5. The Commission's policy and precedent embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401 encourage parties to resolve contested proceedings by settlement.

6. In its Policy Statement, the Commission stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate *are often preferable to those achieved at the conclusion of a fully litigated proceeding*” (emphasis added).

7. *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2010-2161575 (Recommended Decision issued November 2, 2010), p. 12, which was approved and adopted by the Commission in its Final Order entered December 21, 2010, summarized the benefits of resolving contested cases by settlement:

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are

⁹ While PAWC's Petition was filed prior to enactment of Act 120, PAWC's replacement plan was approved after Act 120 became effective. PAWC's PUC-approved replacement plan conforms to the requirements of Act 120.

expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

8. The terms and conditions of the Joint Petition are consistent with Act 120 and satisfy all of the Commission's criteria for approval of a settlement.

PROPOSED ORDERING PARAGRAPHS

1. The Joint Petition is granted and the Settlement is approved, without modification.
2. Aqua is permitted to file a Tariff Supplement revising Tariff Water – PA P.U.C. No. 2 incorporating the terms of the Settlement and changes to its rules and regulations as set forth in Exhibit 2 of the Joint Petition to become effective on one day’s notice from the date of the tariff filing.
3. This proceeding shall be marked closed.

STATEMENT A

**Statement in Support of Joint Petition for Settlement
of Aqua Pennsylvania, Inc.**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : DOCKET NO. P-2020-3021766
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :**

**STATEMENT OF AQUA PENNSYLVANIA, INC.
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT**

April 23, 2021

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : **DOCKET NO. P-2020-3021766**
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD :
SERVICE LINES :

**STATEMENT OF AQUA PENNSYLVANIA, INC.
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT ON REMAND**

I. INTRODUCTION

On April 23, 2021, Aqua Pennsylvania, Inc. (“Aqua” or “the Company”), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) (collectively, the “Joint Petitioners”) filed with the Commission a Joint Petition For Settlement (“Joint Petition”) in the above-captioned proceeding.¹ The Joint Petition contains a statement of the factual background and procedural history of this case, which is incorporated herein by reference.² This Statement in Support (the “Statement”) is filed pursuant to Paragraph 38 of the Joint Petition.

The settlement set forth in the Joint Petition (the “Settlement”) was reached after an investigation by the parties of Aqua’s proposal to proactively eliminate customers’ potential risk of exposure to lead from customer-owned lead service lines (“COLSLs”),³ which included

¹ In conjunction with the Joint Petition, the Joint Petitioners filed a Joint Stipulation of Facts and requested that the facts set forth therein be admitted into the record. The Joint Stipulation of Facts was attached to the Joint Petition as Exhibit 1.

² The Joint Petitioners’ Joint Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs are attached to the Joint Petition as Exhibit 3.

³ Under Rule 4, set forth at pages 34 to 35 of Aqua Tariff Water-Pa. P.U.C. No. 2 (“Tariff No. 2”), 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.

substantial informal discovery. In addition, the parties engaged in discussions and negotiations about the terms of the Settlement over an extended period.

Aqua is in full agreement with each of the reasons the Joint Petitioners stated the Settlement is in the public interest. In this Statement, Aqua 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 SERVICE LINES 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 (“LSLs”) in the 1930’s, some lines 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”). Aqua has, thus far, complied with the LCR by implementing several measures, including effective corrosion control treatment of the water it supplies. *See* Joint Stipulation of Facts, ¶¶ 7-11.

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,⁴ 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, physical replacement of the entire lead service line is emerging as a best practice in the water utility industry to improve public health

⁴ *See* 40 C.F.R. §§ 141.80 *et seq.*; 25 Pa. Code §§ 109.1101 *et seq.*

protection from lead in drinking water.⁵ In fact, the EPA recently promulgated updates to the LCR that strengthen the requirements for LSL replacement effective as of June 17, 2021.⁶ However, Rules 20 and 25, set forth at pages 41 and 42 of Tariff No. 2, do not authorize the Company to replace COLSLs. *See* Joint Stipulation of Facts, ¶¶ 12 and 16.

In Act 120 of 2018,⁷ the Pennsylvania General Assembly determined that it is in the public interest for water utilities to replace COLSLs “concurrent[ly] with a scheduled utility main replacement project.”⁸ 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”).⁹ Act 120 also 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.¹⁰ The tariff supplement must contain a cap on the maximum number of COLSLs to be replaced annually.¹¹ Additionally, a COLSL replacement program under Act 120 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.¹² The

⁵ *See 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), pp. 6-7.

⁶ *See National Primary Drinking Water Regulations: Lead and Copper Rule Revisions*, 86 Fed. Reg. 4198 (Jan. 15, 2021) (“Revised LCR”); *see also* 86 Fed. Reg. 4198 (Mar. 12, 2021) (delaying effective date of the Revised LCR from March 16, 2021 to June 17, 2021).

⁷ Act of Oct. 24, 2018, P.L. 738, No. 120.

⁸ 66 Pa.C.S. § 1311(b)(2)(i).

⁹ *See id.* §§ 1311(b)(2)(ii) and (iii).

¹⁰ *Id.* at § 1311(b)(2)(v).

¹¹ *Id.* at § 1311(b)(2)(vi).

¹² *Id.* at § 1311(b)(2)(vii).

Commission has previously approved COLSL replacement programs for The York Water Company¹³ and Pennsylvania-American Water Company (“PAWC”).¹⁴

In its original filing on September 3, 2020 (“Petition”), Aqua proposed tariff changes to replace, at its expense, COLSLs encountered as part of the Company’s ongoing main replacement work. In the Petition, consistent with Act 120, the Company also requested approval to capitalize the COLSL replacement costs for accounting purposes and recover a return on, and a return of, the capital Aqua invests in that property.

Under the Settlement, Aqua’s Replacement Program maintains the core components and objectives originally proposed in the Petition with several enhancements. As described in the Settlement and in this Statement, Aqua’s Replacement Program is consistent with Act 120, will proactively eliminate a source of lead in drinking water, and will help Aqua maintain compliance with important drinking water standards. Key elements of the Settlement are discussed in more detail below.

A. Aqua’s Replacement Program, As Modified By The Settlement, Is A Reasonable And Prudent Approach To Eliminate The Risk of Exposure To Lead In Drinking Water Through COLSLs

No parties to this proceeding have disputed the public health benefits associated with the Company’s originally proposed Replacement Program to address conditions that may increase the risk of exposure to elevated lead levels in customers’ drinking water from Aqua’s extension of its infrastructure rehabilitation program into areas where COLSLs are more likely to exist.

¹³ *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).

¹⁴ *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 replacement plan was approved after Act 120 became effective. PAWC’s PUC-approved replacement plan conforms to the requirements of Act 120.

This risk arises from a “partial” replacement, which physically disturbs, but leaves in place, the customer’s segment of a service connection. *See* Joint Stipulation of Facts, ¶¶ 18, 35-38.

The Settlement adopts the Company’s original proposed parameters for the Replacement Program with the revisions discussed below to address the concerns raised by I&E, the OCA and OSBA in settlement discussions in this proceeding, while preserving the Company’s fundamental goal of reducing customers’ exposure to water-borne sources of lead. Under the Settlement, the Joint Petitioners agree that Aqua shall be permitted to file the Supplement to Tariff No. 2 attached to the Joint Petition as Exhibit 2, which is necessary to implement the Replacement Program as modified by the Settlement.

1. The Settlement Establishes a Reasonable Approach to Remove and Replace COLSLs Outside of Planned Main Replacement Projects

Aqua’s original proposal to replace COLSLs encountered in performing main replacement projects was comparable to Part 1 of the two-part replacement plan the Commission approved for PAWC following the enactment of Act 120. Under Part 2 of PAWC’s replacement plan, PAWC would also replace COLSLs upon customers’ requests outside of planned main replacement projects when a sufficient number of requests were received in a given geographic area to allow the replacements to be done cost-effectively. The OCA expressed a concern that Aqua’s original proposal did not include “upon request” COLSL replacements comparable to Part 2 of the PAWC replacement plan. *See* OCA Answer, pp. 2-3.

The Settlement addresses the OCA’s concern by adding a second part to Aqua’s proposed Replacement Program. First, as originally proposed, Aqua will proactively remove and replace, with the customer’s consent, COLSLs encountered as part of the Company’s ongoing main replacement work (“Part 1”). Aqua will also replace COLSLs at a customer’s request, subject to certain conditions, including verification of the presence of a COLSL. The Company’s determination of when the replacement will occur will be based on various factors such as the

number of customer requests, site conditions, contractor proximity and availability of funds within the budgeted allotment of \$800,000 per year (“Part 2”). Joint Petition, ¶¶ 11-16. Part 2 of the Replacement Program will proactively remove possible risk of lead exposure from COLSLs in areas where the stability of the existing COLSLs will not be disturbed by main replacements. See Joint Stipulation of Facts, ¶ 36.

Under the Settlement, customer requests will be grouped by Aqua’s eight operating divisions, and replacements will be undertaken when the number of customer requests in a given operating division allows the Company to realize reasonable economies of scale by doing those replacements as a single project as described in Paragraph Nos. 17 and 18 of the Joint Petition. Each year Aqua will complete any outstanding Part 2 COLSL replacements if requests in any operating division have not reached two requests in any Greater PA operating division or five requests in any Southeast PA operating division. As a result, no customer will wait for more than one year for a replacement. Joint Petition, ¶ 19.

Under the Settlement, the Company will verify whether the property for which a Part 2 replacement was requested has a COLSL. If so, the Company will provide testing materials to the customer within seven business days of verifying that the customer has a COLSL and will notify the customer of the results within five business days of obtaining the results. *Id.*, ¶ 20. The Company will also provide water filters to residential customers who satisfy the criteria in Paragraph No. 21 of the Joint Petition.

2. The Settlement Provides an Appropriate Warranty For COLSL Replacements

Under the Settlement, Aqua will provide a two-year warranty on workmanship and materials to the customer on the newly installed customer-owned service line. Joint Petition, ¶ 24. Act 120 does not prescribe the length of the warranty that water utilities or their contractors must provide to replace COLSLs concurrent with a scheduled main replacement project or under

a Commission-approved program. Aqua believes that a two-year warranty is appropriate because such commitment is consistent with other routine utility work performed by its contractors.

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

Aqua's ongoing communications plan for the Replacement Program will include direct mailings to notify potentially affected customers about the program, press releases, bill inserts, and information on the Company's website regarding the health effects of lead and LSLs, including flushing instructions. In addition to information on LSLs, this customer outreach and education will include information on low-income customer assistance programs. Joint Stipulation of Facts, ¶ 27.

Under the Settlement, Aqua will share its communications materials to be used in its ongoing customer outreach plan for the Replacement Program with the statutory advocates and will work with them to develop an outreach process for customers who may initially be hesitant to consent to the replacement of a COLSL. Joint Petition, ¶ 29. 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 in its Answer (pp. 5-6).

Under the Settlement the Company also committed to provide to the Joint Petitioners an annual report on the number of and location of COLSLs replaced and the cost of replacements. Joint Petition, ¶ 37. The information provided by the Company in the annual reports will enable the Commission and interested parties to assess the operation of the Replacement Program on an ongoing basis.

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

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). The Settlement adopts Aqua's original proposal to perform a maximum of 200 replacements per year within a maximum budgetary amount of approximately \$800,000 per year. Joint Petition, ¶ 31. Under the Settlement, COLSL replacements under Part 1 will have priority on the use of the annual budgetary allotment to address conditions that pose relatively greater risks of raising lead levels for the affected customers. *Id.*, ¶ 32. The Company will seek to prioritize Part 2 replacements for low-income customers who meet the eligibility requirements set forth in Paragraph No. 32 of the Joint Petition.

Consistent with Act 120, the Settlement provides reimbursement to customers who replaced COLSLs at their own cost within one year of commencement of a main replacement project. In addition, to address the OCA's concerns raised in its Answer (p. 6), Aqua agreed to offer a sliding scale of reimbursement to customers who replaced their own LSL within three years of (1) the commencement of a main replacement project that would have affected the customer or (2) the effective date of the Company's Replacement Program. Subject to the verification requirements outlined in Paragraph 27 of the Joint Petition, the reimbursement to a customer for a replacement (or portion thereof as set forth in Paragraph Nos. 25 and 26 of the Joint Petition) will be at the lower of the customer's actual costs for the replacement of the COLSL or the cost the Company would have incurred to replace the customer service line with a similar size and material. Joint Petition, ¶¶ 25-28.

C. The Accounting and Ratemaking Treatment of the Company's Investments In COLSLs That Are Needed To Protect The Public Health Established By The Settlement Is Consistent With Act 120

In its Petition, Aqua proposed to capitalize COLSL replacement costs up to the annual budget cap of \$800,000 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. Under the Company's proposed accounting and ratemaking treatment, the COLSL costs would have a negligible effect on customers' bills for water service (i.e., an incremental increase of 22 cents per year). Joint Stipulation of Facts, ¶ 33.

Act 120 establishes a clear mandate for the accounting and ratemaking treatment of COLSL 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 Aqua's original proposed accounting and ratemaking treatment for COLSL replacement costs and provides that Aqua will record those costs in a separate subaccount in Account 333 - Services. Joint Petition, ¶¶ 33-35. In addition, consistent

with Act 120, the Company will allocate COLSL replacement costs to all water customers. Joint Petition, ¶ 36.

III. CONCLUSION

For the reasons set forth above and in the Joint Petition, the Replacement Program, 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 lead service lines 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 parties in this case without the need for costly formal litigation. Accordingly, the Settlement is in the public interest and should be approved without modification.

Respectfully submitted,



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Dated: April 23, 2021

Counsel for Aqua Pennsylvania, Inc.

STATEMENT B

**Statement in Support of Joint Petition for Settlement
of the Office of Consumer Advocate**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF AQUA :
PENNSYLVANIA, INC. FOR :
APPROVAL OF TARIFF CHANGES : Docket No. P-2020-3021766
AUTHORIZING REPLACEMENT OF :
CUSTOMER-OWNED LEAD SERVICE :
LINES :

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

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Settlement (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 September 3, 2020, Aqua Pennsylvania, Inc. (Aqua or the Company) filed its Petition for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines (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 lines (COLSLs) and recover the associated costs pursuant to 66 Pa. C.S. § 1311(b)(2). Petition at 1. Specifically, the Company proposed to capitalize the costs incurred and record those costs in Account No. 333 – Services for accounting purposes. The Petition also sought expedited approval for replacements in the Shenango Valley portion of Aqua’s service territory.

On September 23, 2020, the OCA filed an Answer to the Petition. The Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance and the Office of Small Business Advocate (OSBA) filed a Notice of Intervention.

In its prehearing memorandum Aqua asked Administrative Law Judge (ALJ) Guhl to allow time for the parties to meet and discuss the issues in the proceeding and to try to resolve those issues. ALJ Guhl granted Aqua's request at the prehearing conference on October 21, 2020, and required ongoing status reports. Aqua submitted the direct testimony and exhibits of James S. Willard as Aqua Statement 1 on November 20, 2020. The parties were able resolve issues through a series of discussions and notified the ALJ that a full and complete settlement had been reached by all parties on February 19, 2021.

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:

§ 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 lead service lines, 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 COLSLs. As discussed below, the OCA submits that the Settlement comports with Section 1311(b) and is in the public interest.

II. TERMS AND CONDITIONS OF SETTLEMENT

A. Nature of Replacement Plan and Tariff Revisions (Settlement ¶¶ 11-16)

The Settlement provides that, upon Commission approval, the Company will be allowed to replace COLSLs when encountered as part of ongoing main replacement work (Part 1) or at a customer's request, subject to certain conditions and requirements (Part 2) as discussed below. Settlement ¶ 11. Cost recovery for the replaced COLSLs is addressed below. Residential, commercial and industrial customers are eligible to participate in the Replacement Program. Settlement ¶ 12.

The Settlement also provides that under either Part 1 or Part 2, the Customer will retain ownership of the new service line and responsibility for maintenance, repair and replacement after the Company replaces the COLSL. Settlement ¶ 13. Additionally, the Settlement states that the

Customer must enter into an agreement (Aqua Exh. JSW-3) granting the Company permission to replace the customer-owned LSP. Settlement ¶ 14. If a customer refuses to enter into an agreement, Aqua 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. For example, lead exposure can cause a range of adverse health effects. Joint Stipulation of Facts, ¶7. 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, a growing body of research indicates that "partial" replacements of lead services, where only the utility-owned segment is replaced and the customer-owned segment remains, potentially elevates the risk of lead exposure through drinking water. Joint Stipulation of Facts, ¶ 18. By providing the necessary waivers of the Company's tariff to permit the Company to replace COLSLs, along with other provisions of the Settlement, the goal is to limit partial lead service line replacements thereby protecting customers from significant lead exposure. Also, the tariff revisions reflected in Exhibit 2, Rule 20.2 do not require a customer to repair a leaking COLSL prior to replacement by the Company. Settlement ¶ 16. In addition, the Company can, at its discretion, replace a leaking COLSL prior to reaching the threshold number of requests as discussed below. Id. 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 COLSLs.

B. Implementation of Part 2 of the Replacement Plan (Settlement ¶¶ 17-23)

Part 2 of the Replacement Plan addresses remaining COLSLs that the Company does not encounter during its ongoing main and service line replacement program. Settlement ¶ 17. For Part 2 replacements, customer requests will be grouped by Aqua's operating divisions:

1. Southeast PA - South
2. Southeast PA - Willow Grove
3. Southeast PA - Great Valley
4. Greater PA - West
5. Greater PA - Honesdale
6. Greater PA - Roaring Creek
7. Greater PA - Whitehaven
8. Greater PA - Susquehanna

Id. Aqua will replace the COLSLs when the number of requests in an operating division will permit reasonable economies of scale by replacing the requests as a single project. Settlement ¶ 18. However, at its discretion, Aqua may replace a COLSL even if it does not have a minimum of two requests for the Greater PA divisions or five requests for Southeast PA divisions. Id.

Each year, Aqua will complete any Part 2 replacement in each division even if the requests in that division have not met the divisions' minimum threshold of requests, which means that no customer will wait for more than one year for a replacement. Settlement ¶ 19. When a customer requests a COLSL replacement, Aqua will verify whether the customer has a COLSL and will provide testing materials, within seven business days of verification, for the customer to test the water. Settlement ¶ 20. Aqua will notify the customer occupying the property within five business days of obtaining the test results. Id.

Lastly, the Company will provide a National Sanitation Foundation-approved water filter for lead (either a pitcher or tap filter) to residential customers who request a COLSL replacement and after Aqua has verified that the customer has a LSL and the testing shows that the water has a lead level above the action level established by the lead and copper rule. See Settlement ¶ 21. If

a residential customer occupies a rental property and the property-owner has made or authorized the customer to make a request for a COLSL replacement, Aqua will provide a National Sanitation Foundation-approved water filter for lead (either a pitcher or tap filter) under the same conditions described above. Id.

These provisions provide numerous conditions and parameters for the Company as it undertakes Part 2 replacements. The additional conditions serve to protect customers during the time the Company requires to reach economies of scale for Part 2 replacements and ensure that no customer will wait more than one year for a COLSL replacement. Additionally, the provision of a water filter for customers whose water exceeds the action level under the Lead and Copper Rule recognizes the public health concerns while the customer waits for the replacement of the COLSL.

C. Warranty (Settlement ¶ 24)

The Settlement states that the Company will provide a two-year warranty on workmanship and materials for COLSLs that it or its contractor replaces. Settlement ¶ 24. This warranty period 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 ¶ 25-28)

The Settlement also requires the Company to provide reimbursements for customers who have recently replaced their COLSL at their own expense. Settlement ¶ 25. Specifically, the Settlement provides for a sliding scale of reimbursements dependent on when the replacement was done by the customer. Id. Specifically, the sliding scale reimbursement is as follows:

- 100% for work performed within one year of commencement of a main replacement project.
- 50% for work performed within two years of commencement of a main replacement project.
- 25% for work performed within three years of commencement of a main replacement project.

Settlement ¶ 26. The time period is tied to the commencement of a main replacement project that would have included the customer's site or for Part 2 replacements, upon Commission approval of Aqua's Petition. Settlement ¶¶ 26, 28. The sliding scale reimbursement program will be in effect until the third anniversary of the effective date of Aqua's Replacement Program. Settlement ¶ 26. After that date, customers will be eligible for reimbursement if the customer replaced their COLSL within one year of the commencement of a main replacement project in their area. Id. For customers of an acquired system, the same three year time period for the sliding scale reimbursement process will apply from the date of closing on the acquired system and will end after the third anniversary of the closing on the system. Id.

Reimbursement to a customer (as described in paragraphs 25 and 26) will be the lower of the customer's actual costs for the replacement of the COLSL or the cost the Company would have incurred to replace the COLSL with a similar size and material. Settlement ¶ 27.

These reimbursement provisions are important 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. These provisions also meet the requirement contained in Act 120:

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). These reimbursements address the OCA's equity concerns and provides a meaningful approach to ensure that more customers who had COLSLs can benefit from this program.

E. Customer Outreach and Communications Plan (Settlement ¶¶ 29-30)

The Settlement provides that the Company will perform customer outreach and implement a communication plan that will include but is not limited to direct mailings to notify potentially affected customers, press releases, bill inserts, and information on the Company's website. Settlement ¶ 29. The information provided by the Company will cover the health effects of lead and COLSLs, and flushing instructions for the customer's premise plumbing. Id. Additionally, the Company has agreed to share its communications with the statutory advocates and work with the parties to develop an outreach process for customers who may initially be hesitant to consent to the replacement of a COLSL. Settlement ¶ 30.

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 ¶¶ 31-36)

The following provisions of the Settlement deal with several issues related to cost recovery and limits on the Company's annual replacements.

1. Annual Cap, Budgetary Allotment and Priority of Expenditures (Settlement ¶¶ 31-32)

The Settlement provides that the Company will perform a maximum of 200 COLSL replacements per year within a maximum budgetary allotment of approximately \$800,000 per year. Settlement ¶ 31. 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). If the annual budgetary allotment is not expended in any year, the remainder of the allotment will be carried forward and added to the next year's budgetary allotment, subject to cap of 200 COLSL replacements per year. Settlement ¶ 32.

The Settlement also states that replacements under Part 1 (replacing COLSLs as part of a main replacement project) will have priority on the use of the annual budgetary allotment. Settlement ¶ 32. 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 under this program 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.

The Company will seek to prioritize Part 2 replacements (those requested by a customer) of low-income customers (defined as a customer's household income that is below 150% of the Federal poverty Income Guidelines and certified by Aqua's community based organizations or through a customer contact to the Company's call center.) Settlement ¶ 32.

2. Accounting and Ratemaking Treatment of Lead Service Line Replacement Costs (Settlement ¶¶ 33-36)

The following Settlement provisions set forth the recovery of costs the Company incurs to replace COLSLs. 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 lines and accessories leading to the customer's premises). Settlement ¶ 33-34. The Settlement, in accordance with Act 120, also allows the Company to include the actual costs of replacing COLSLs 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 ¶ 35. 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.

These provisions are in accordance with Section 1311(b)(2) and will permit the parties to easily identify the costs related to the replacement of COLSLs included in future rate proceedings.

3. Cost Allocation (Settlement ¶ 36)

The Settlement provides that the costs to replace COLSLs shall be allocated to all water customers. Settlement ¶ 36. The OCA submits that this is a reasonable allocation of the costs as all water customers, regardless of rate class, will be able to benefit from this program. However, the Joint Petitions reserve the right to review and challenge the Company's proposed allocation in future proceedings. Id.

G. Reporting (Settlement ¶ 37)

The Settlement provides that the Company shall provide to the statutory advocates an annual report on the number and location of COLSLs replaced and the costs of those replacements, and indicate whether the replacements are under Part 1 and Part 2. Settlement ¶ 37. This provision is helpful for the parties to continue to monitor the program and ensure that it is operating effectively and efficiently.

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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DATE: April 23, 2021
307489

STATEMENT C

**Statement in Support of Joint Petition for Settlement
of the Bureau of Investigation and Enforcement**

**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 :

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

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Gina L. Miller hereby respectfully submits that the terms and conditions of the foregoing *Joint Petition for Settlement of Aqua Pennsylvania, Inc.’s Petition for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines* (“Joint Petition” or “Settlement”) are in the public interest and represent a fair, just, reasonable and equitable balance of the interest of Aqua Pennsylvania, Inc., and its customers. In support of this position, I&E offers the following information and analysis:

I. INTRODUCTION AND BACKGROUND

1. I&E is charged with the representation of the public interest in proceedings relating to rates, rate-related services and proceedings affecting the public interest held before the Commission.¹ Consequently, in all contested proceedings, including those

¹ 66 Pa. C.S. §308.2(a)(11); Docket No. M-2008-2071852, Final Procedural Order entered on August 11, 2011, p. 10.

resolved through negotiated settlements, it is incumbent upon I&E to ensure that the public interest is served and to comment on how the amicable resolution of any such proceeding will benefit the public interest. The request for approval of this Joint Petition is based on I&E's determination that the Settlement meets all the legal and regulatory standards necessary for approval. "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."² I&E concludes that the Joint Petition meets this standard.

2. 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 to recover the associated costs as pursuant to Section 1311(b)(2) of the Public Utility Code. Aqua's Petition requested that the Commission: (1) approve the tariff revisions set forth in the Supplement to Aqua's current tariff that would allow it to replace COLSLs at its sole cost; and (2) authorize Aqua 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.

3. 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. On October 19, 2020, the Office of Small Business Advocate ("OSBA") filed a Notice of Appearance and Public Statement in this case.

² *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

4. 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.

5. ALJ Guhl presided over a telephonic Prehearing Conference held on October 21, 2020, and I&E, Aqua, OCA, and the OSBA (collectively, the "parties" or "Joint Petitioners") participated. At the Prehearing Conference, a procedural schedule, and the procedures applicable to this proceeding were established and subsequently memorialized in a Prehearing Order #1 issued on October 23, 2020.

6. The ALJ's Prehearing Order #1 also granted the parties' request to hold the established litigation schedule in abeyance until Friday, November 20, 2020, for the parties to hold settlement discussions.

7. After the Prehearing Conference, the Joint Petitioners engaged in multiple substantive conversations to discuss identified issues and potential resolutions. The Joint Petitioners provided the ALJ with monthly status reports, beginning on November 20, 2020, to keep her informed of their progress and their continued request to hold the litigation schedule in abeyance while settlement discussions progressed. The ALJ permitted the Joint Petitioners to continue their settlement discussions.

8. On February 19, 2021, having successfully resolved all issues, the Joint Petitioners notified the ALJ that a global settlement of all issues had been achieved.

9. I&E submits that the Settlement, which resolves all the issues it identified in this case,³ is in the public interest and should be approved by the ALJ and the Commission, without modification, for the following reasons:⁴

II. TERMS AND CONDITIONS OF SETTLEMENT

A. Nature of Replacement Program and Tariff Revisions (Joint Petition, ¶11-16).

10. Paragraphs 11-16 of the Joint Petition memorialize Aqua's commitment to replace, at its cost, certain COLSLs that would not otherwise be eligible for such treatment under its existing tariff rules. Specifically, consistent with Rule 20.2 in the proposed Supplement to Tariff No. 2, and subject to a budget of \$800,000 per year, Aqua proposes to replace COLSLs under the following circumstances: (1) those it encounters in conjunction with ongoing main replacement work, or (2) as per customers' requests, provided that Aqua verifies the presence of a COLSL, and subject to the number of requests, site conditions, contractor proximity, and budgetary constraints. Importantly, under the parameters of this Settlement, the COLSL opportunity will be available to residential, commercial, and small industrial customers, upon their entry into an agreement provided by Aqua,⁵ and their assumption of the responsibility to own and retain responsibility for the maintenance, repair, and replacement of the service line after it is replaced.

³ Although I&E did not submit written testimony in this case, it identified, pursued, and attained the resolution of multiple issues as deemed necessary to protect the public interest and ensure compliance.

⁴ I&E notes that Paragraph 39 of the Joint Petition contains a list of overarching reasons why the Settlement is in the public interest. As a signatory, I&E concurs in that reasoning, but offers comments on the individual terms of the Settlement to support their merit more fully and specifically.

⁵ As reflected in Paragraph 14 of the Joint Petition, the agreement is contained in Aqua Exhibit JSW-3, but it may be slightly modified to account for individual customer detail.

I&E fully supports the above Settlement terms because they are consistent with the Pennsylvania General Assembly’s intent to enable jurisdictional utilities to proactively replace lead service lines, even if they are customer-owned, and consistent with protecting public health and safety. Specifically, through enactment of 66 Pa. C.S. § 1311(b)⁶ the Pennsylvania General Assembly permitted regulated utilities to seek Commission approval to replace customer-owned lead water service lines.⁷ By way of further context, in a Pennsylvania House of Representatives Sponsorship Memoranda, which culminated in the amendment of 1311(b) to its operative form, Representative Alexander T. Charlton addressed the purpose of such legislation as follows:

As you know, our nation’s infrastructure is crumbling. We cannot travel to our districts without observing roads and bridges that are in desperate need of repair. What’s often overlooked is our critical water and wastewater infrastructure. The American Society for Civil Engineers recently gave a grade of D and D- for Pennsylvania’s water and wastewater systems. That is simply unacceptable.

In an effort to curb this problem, a bi-partisan group of legislators wrote language into this year’s Fiscal Code allowing municipal authorities and municipal governments to replace homeowner’s water and sewer laterals when there is a public health concern such as lead. Unfortunately, left out of that was Pennsylvania’s regulated water and wastewater utilities who serve much of my district.

To that end, I intend to introduce legislation allowing regulated water and wastewater utilities to replace water laterals in communities that still have lead distribution pipe coming into their homes and sewer laterals that pose environmental hazards. **This will allow these utilities to proactively be part of the solution to a growing public health issue.**⁸

⁶ “Section 1311(b).”

⁷ 66 Pa. C.S. § 1311(b)(2)(v).

⁸ House Co-Sponsorship Memoranda for HB 2075, PA House of Representatives, Session of 2017-2018 Regular Session, February 1, 2018 (emphasis added).

Here, Aqua is availing itself of the legislatively afforded opportunity to mitigate the health and safety issues imposed by customer-owned lead lines and the known, hazardous impact that “partial replacement” of only the utility-owned segment of the line can present. I&E fully supports Aqua’s proactive replacement approach, and I&E submits that it is consistent with protecting the public interest. From a health and safety perspective, Aqua presented testimony that lead exposure is dangerous and can pose adverse health effects if inhaled or swallowed.⁹ The dangers of lead exposure could include, but are not limited to, developmental delays in babies and toddlers, hypertension, cardiovascular disease and decreased kidney function in adults.¹⁰ Aqua’s testimony also explained that the risk for lead contamination arises when water passes through lead service lines and premise plumbing.¹¹ Additionally, “partial” lead line replacement, whereby replacement of only the utility-owned portion is made, leaving in place the customer’s lead segment of a service connection “potentially elevates the risk of lead exposure through drinking water after the replacement occurs.”¹²

While I&E did not submit written testimony in this case, it nonetheless conducted a thorough investigation of Aqua’s Petition and the claims made in Aqua’s testimony. I&E concurs with Aqua’s assessment of the dangers of lead exposure, which have also been previously recognized the by the Commission.¹³ I&E recognizes that the dangers imposed by lead exposure are not limited by the context of line ownership; therefore, by availing itself

⁹⁹ Aqua St. No. 1, pp. 3-4.

¹⁰ Id.

¹¹ Id. at p. 4.

¹² Id. at p. 7.

¹³ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority- Stage 1*, M-2018-2640802 et al., Opinion and Order, pp. 116-119 (Order entered on March 26, 2020).

of the opportunity to replace COLSLs, Aqua is taking an important step towards providing safer service. I&E notes that as a jurisdictional utility, Aqua has an obligation to furnish and maintain adequate, efficient, safe, and reasonable service as required by Section 1501 of the Code; accordingly, replacing lead service lines is consistent with that obligation.

Because the health hazards of lead ingestion are not just limited to residential customers, Aqua's agreement to also extend eligibility to commercial and industrial customers is also an important step toward providing safe service to all customers in its service territory. Furthermore, by mitigating "partial" replacements, Aqua's proposal is consistent with the Commission's prior recognition that partial lead line replacements result can elevated lead levels that endanger public health.¹⁴ Finally, and as explained more thoroughly below, replacement of COLSLs as provided for in the Settlement, is not only consistent with health and safety goals, but the replacement is subject to terms and conditions that will further replacement goals in a cost-effective and efficient manner. For these reasons, I&E submits that the nature of Aqua's proposed COLSL replacement program and tariff revisions are in the public interest and they should be approved without modification.

**B. Implementation of Part 2 of the Replacement Program
(Joint Petition, ¶¶17-23)**

Paragraphs 17 through 23 of the Joint Petition identify the parameters for Aqua's coordination of customer requested COLSL replacement. Specifically, the Joint Petition identifies the grouping of how customer requests will be grouped by Aqua's operating divisions, and it outlines Aqua's intent to undertake replacements in an operating division when

¹⁴ Id. at p. 119, footnote 40; See also *Rulemaking to Implement Act 120 of 2018 at 52 PA. Code Chapter 65 and 66*, Docket No. L-2020-3019521, Notice of Proposed Rulemaking Order, p. 21. (Order entered September 17, 2020).

it will be able to realize economies of scale. Although Aqua expresses a goal of grouping requests into one project, and it will strive to achieve a threshold of two requests for its Greater PA divisions or five requests for its Southeast PA divisions, it will ensure that no customer will wait for more than one year for a replacement.

I&E supports Aqua's goal of achieving cost-efficiency by striving to group replacements in a manner that will result in efficiencies of scale. Here, Aqua has determined that a threshold number of replacements, two requests for its Greater PA divisions or five requests for its Southeast PA divisions, would achieve economies of scale.¹⁵ While the safety aspect of lead line removal is paramount, since Aqua's ratepayers must ultimately bear the cost of replacement, it is in the public interest to ensure that ratepayer funds are spent prudently and efficiently. At the same time, while aiming to maximize cost efficiency, Aqua has also committed to ensuring that no customer would be required to wait more than one year for replacement of a COLSL.¹⁶ As referenced above, there are adverse health and safety consequences that may result from lead service lines; accordingly, while ensuring cost efficiency is an important part of Aqua's proposal, it is also essential that customers' health and safety are not compromised by waiting a long period of time for replacement simply to meet a critical mass of replacement requests. Under the Settlement, eligible COLSL replacement requests will be honored within a year so as not to compromise health and safety to meet an efficiency threshold. Because this provision strives to protect customers' health and safety while simultaneously attempting to maximize cost-efficiency and the prudent use of ratepayer funds, I&E submits that it is in the public interest.

¹⁵ Joint Petition, ¶18.

¹⁶ Joint Petition, ¶18.

Additionally, as a precursor to replacement, Aqua will verify that the property subject to the request has a COLSL, and it will provide testing materials to the customer at the property within seven business days of verifying the LSL. Afterward, Aqua will notify the customer of the test results within five business days. If the testing reveals a lead level above the action level under the EPA's Lead and Copper Rule, Aqua will provide a National Sanitation Foundation-approved water filter for lead (pitcher or tap filter) to residential customers who request it. Furthermore, while the Joint Petition recognizes that the cost of COLSL replacements will be influenced by site-specific factors, which include the length of the service line to be replaced, Aqua has committed to performing the replacements at their actual cost, up to the budgeted amount of \$800,000 per year. Finally, Aqua has committed to tracking the replacement costs and reporting them as part of its quarterly DSIC filings.

I&E submits that the above terms are in the public interest for several reasons. First, I&E supports Aqua's commitment to verifying the existence of a COLSL before initiating any replacement because it ensures that the devoted funds will, in fact, be used to replace lead lines. Not only does 1311(b) speak specifically to lead line replacement, making ensuring the existence of lead as a condition of eligibility essential, but verifying lead composition will ensure that dollars spent will mitigate potential health and safety hazards associated with lead. Additionally, Aqua's commitment to providing lead testing kits to requesting customers with verified LSLs is integral to ensuring that customers are informed of the lead levels in their water and are therefore empowered to make informed decisions about their ingestion of water based on the results of the test. To that end, Aqua has agreed that if such testing reveals a lead level above the action level under the EPA's Lead and Copper Rule, it will provide a National Sanitation Foundation-approved water filter for lead (pitcher

or tap filter) to residential customers who request it. I&E supports Aqua's commitment to provide the water filters when testing produces a result that reveals a lead level above the EPA's established action level because it is in the public interest to ensure that impacted customers have access to water filters to avoid the health and safety issues of lead ingestion.

Furthermore, Aqua's commitment to replacing COLSL at its actual cost up to \$800,000 with an average service cost of \$4,000 per line,¹⁷ would enable Aqua to complete an estimated replacement of 200 COLSLs each year. While I&E did not submit testimony in this case, it nonetheless conducted a thorough investigation of Aqua's proposal and determined that the estimated 200 replacements per year was an appropriate goal that Aqua could prudently achieve. Importantly, Aqua's replacement goal of 200 COLSLs annually would significantly remediate the known 268 COLSLs it has currently identified in its system,¹⁸ while also providing for replacement of later-discovered COLSLs in a cost-conscious and timely manner.

Finally, Aqua's commitment to track and reflect replacements costs in its quarterly DSIC filings is in the public interest because the Public Utility Code specifically provides for DSIC recovery for eligible water and wastewater utilities' infrastructure replacement of mains that present a "significant health and safety concern,"¹⁹ and COLSLs do present such concerns. By way of its agreement to track and reflect the replacement costs in its quarterly DSIC filing, Aqua has ensured that parties and the Commission can verify the costs and ensure compliance. For these reasons, I&E avers the above Settlement terms are in the public interest and they should be approved without modification.

¹⁷ Joint Petition, ¶31.

¹⁸ Id. at ¶14.

¹⁹ 66 PA. C.S. §1351(3)- 66 PA. C.S. §1351(4).

C. Warranty (Joint Petition, ¶24)

As a condition of the Settlement, Aqua has agreed to provide a two-year warranty on workmanship and materials for COLSLs that Aqua or its contractor replace. At the outset, I&E notes that Section 1311(b) speaks specifically to the warranty standard by directing the Commission to establish standards, processes, and procedures to do the following:

[e]nsure 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.²⁰

The above statutory requirement clarifies that the General Assembly has charged the Commission with developing a process to ensure that a public utility's replacement of COLSLs is warranted for a term deemed appropriate. While the Commission has not finalized its regulations for implementation, and a proposed rulemaking is pending, the Commission has proposed a warranty term of not less than two years.²¹

In this case, Aqua has committed to providing a warranty term of two years, and therefore, it is within the parameters proposed by the Commission. I&E also notes that while no parties other than Aqua submitted testimony in this case, the two-year warranty term was agreed upon after significant negotiation and it represents a compromise among the parties. I&E avers that the two-year warranty term will ensure that customers have a defined period of protection for the workmanship and materials for COLSLs that Aqua or its contractor

²⁰ 66 Pa. C.S. § 1311(b)(2)(vii)(A).

²¹ *Rulemaking to Implement Act 120 of 2018 at 52 PA. Code Chapter 65 and 66*, Docket No. L-2020-3019521, Notice of Proposed Rulemaking Order, pp. 18-19 (Order entered September 17, 2020).

replaces. For these reasons, I&E submits that the warranty provision of the Settlement is in the public interest and it should be approved without modification.

D. Reimbursement to Customers Who Recently Paid for their Own Lead Service Pipe Replacement (Joint Petition, ¶¶25-28)

Under the terms of the Settlement, Aqua has committed to offering a sliding scale of reimbursement to customers who paid for their own LSL replacement if Aqua commences a main replacement project that would have affected the customer under the following tiers of reimbursement: (1) 100% for work performed within one year of commencement of a main replacement project; (2) 50% for work performed within two years of commencement of a main replacement project; and (3) 25% for work performed within three years of commencement of a main replacement project. For purposes of calculating the reimbursable timeframe, a Part 1 main replacement project will commence on the date the Company begins physical excavation for pipe installation for a main replacement project in the geographic area that includes the customer's site, and a Part 2 program will begin upon Commission approval of Aqua's Petition.

Additionally, Aqua's reimbursement will be at the lower of the customer's actual costs for the replacement of the COLSL, as supported and verified by documentation sufficient for Aqua, or the cost that Aqua would have incurred to replace the customer service line with a similar size and material. With respect to acquired systems, Aqua has agreed that the same sliding scale of reimbursement set forth above will apply, except that it will commence at the date of closing of the acquired system and cease after the third anniversary of the acquisition of the system.

I&E fully supports the reimbursement provisions of the Settlement for several reasons. First, I&E notes that Section 1311(b) speaks specifically to requiring reimbursement by directing the Commission to establish standards, processes, and procedures to do the following:

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.²²

Here, Aqua has proposed a reimbursement period of up to three years, albeit with diminishing compensation over the passage of time; nevertheless, the Settlement's reimbursement policy extends two years beyond what is statutorily required. I&E submits that extension of the reimbursement will help to eliminate circumstances where customers who have proactively engaged in replacement of their own service lines are not arbitrarily denied an opportunity for compensation simply because they fell outside of a timeline they were powerless to anticipate. Additionally, ensuring a greater reimbursable timeframe for replacement may encourage customers who are willing and able to proactively replace COLSLs to do so, and I&E avers that such a result is also in the public interest.

Although I&E supports the reimbursable timeframe Aqua has committed to under the Settlement, I&E also notes that several safeguards are in place to ensure that Aqua and its ratepayers are not overburdened by providing excessive or untimely reimbursement. First, the stepped-down reimbursement period gradually reduces reimbursement from 100%, 50%, and 25% for eligibility years 1-3, respectively. By gradually stepping down the reimbursement amount, Aqua can provide eligible customers with some compensation, but in a controlled and

²² 66 Pa. C.S. § 1311(b)(2)(vii)(B).

cost-effective manner that will ensure that Aqua and its ratepayers are not encumbered by reimbursement obligations without any parameters.

Finally, the Settlement only obligates Aqua to reimburse the lower of costs actual costs for the eligible replacement of the COLSL, as supported and verified by documentation sufficient for Aqua, or at the cost that Aqua would have incurred to replace the customer service line with a similar size and material. By clearly establishing that Aqua will not reimburse more than the costs it would have paid for replacement, Aqua can maximize its annual \$800,000 replacement budget by avoiding escalated replacement costs and avoiding subjecting all ratepayers to paying for replacements that are not cost-effective. I&E submits that it is in the public interest to deny reimbursement of exorbitant replacement costs that Aqua is powerless to control, and which may unnecessarily dilute replacement opportunities that would have otherwise been available for more customers. Accordingly, I&E submits that the reimbursement terms of the Settlement protect Aqua and its customers; therefore, they should be approved without modification.

**E. Customer Outreach and Communications Plan
(Joint Petition, ¶¶29-30)**

A critical component of the Settlement is Aqua's agreement to develop an ongoing communications plan for its COLSL replacement program. As part of the communications plan, Aqua has agreed to do the following: make direct mailings to notify potentially affected customers about the program, issue press releases, provide bill inserts, and include information on the Company's website regarding the health effects of lead and COLSLs, including flushing instructions. Additionally, Aqua has committed to engaging in further customer outreach and communication to include information for low-income customers on

customer assistance programs. In order to develop communications materials, Aqua will share the proposed materials with statutory advocates and to work with the parties to develop an outreach process for customers who may initially be hesitant to consent to the replacement of a COLSL.

I&E submits that the above terms are critical to ensuring the success of Aqua's COLSL replacement program. Absent Aqua's commitment to informing customers about the potential existence and hazards of COLSLs, customers may not have the knowledge necessary to determine that they are impacted or that replacement is necessary for their health and safety. Knowledge is power, and absent the knowledge that replacement of a lead service line is necessary, available, and can be funded by Aqua, customers may not be aware that they are served by a lead line or that the line may be eligible for a replacement by Aqua. I&E recognizes that while there may be customers who may be hesitant to take advantage of the COLSL replacement opportunity for any number of reasons, the best way to combat that hesitancy is through the provision of accurate and comprehensible information to educate eligible customers about the hazards of lead, the terms of available replacement, and the opportunity for Aqua to fund the replacement. Accordingly, I&E avers that ensuring that Aqua customers are accurately informed about the opportunity for COLSLs, and that customers are provided with informational materials that enable them to fully understand the terms of replacement, is in the public interest. Accordingly, Aqua's commitment to work with parties to develop informational materials and to make information available on its website is in the public interest; therefore, the customer outreach and communications terms of the Settlement should be approved without modification.

F. Cost Recovery (Joint Petition, ¶¶31-35)

The Joint Petition establishes a maximum replacement budget for eligible COLSLs of \$800,000 per year, with Aqua committing to carry forward any portion of the annual budget that is not expended. Additionally, Aqua has agreed to prioritize Part 1 replacements because it has determined that they pose the greatest risk of raising lead levels for affected customers. Aqua will attempt to target Part 2 replacements to low-income customers whose household income is at or below 150% of the FPL. Finally, Aqua will capitalize replacement costs and record them in account 333-Services.

As indicated above, I&E supports Aqua's \$800,000 annual budget because its investigation revealed that adoption of that budget would enable Aqua to complete an estimated replacement of 200 COLSLs each year. I&E's investigation concluded with the determination that the estimated 200 replacements per year was an appropriate goal that Aqua could prudently and cost-effectively achieve. I&E also supports Aqua's commitment to carry forward unspent funds into the next year so that replacement dollars are not forfeited if circumstances do not permit Aqua to use all budget funds in any particular year. It is in the public interest for Aqua to use the funds allocated for replacement of COLSLs as intended, which is for the timely replacement of lead service lines to avoid the health and safety issues that result from ingestion of lead, so no funds should be arbitrarily forfeited over a timing issue.

I&E also submits that Aqua's commitment to try to prioritize Part 2 replacements for low-income customers whose household income is at or below 150% of the Federal Poverty Guidelines is in the public interest. Noting that the customers who will fall within the low-income threshold will be unlikely to have the resources available to pay for replacement of

their lead lines at an average cost of \$4,000, prioritizing these customers for COLSL replacement is integral to ensuring that they have an opportunity for the replacement that they would not otherwise be able to obtain. Additionally, COLSLs are more likely to be in service in older neighborhoods with populations facing economic challenges,²³ highlighting the importance of Aqua's commitment to attempt to prioritize low-income replacement. I&E submits that ensuring that all customers have access to safe utility service is not only in the public interest, but it is also consistent with Aqua's obligations under the Code.²⁴

Finally, Aqua's commitment to capitalize COLSL replacement costs and record those costs in Account 333 – Services is consistent with the Commission's proposed requirement for an entity to record LSLR costs in compliance with the NARUC uniform system of accounts applicable to the entity.²⁵ Aqua's commitment to appropriately treat and record costs is integral to ensuring that the costs it claims are appropriate for recovery and can be accurately tracked for accounting purposes. Additionally, Aqua's appropriate recognition and tracking of replacement costs will assist the parties' and the Commission's review of the costs when Aqua seeks recovery. For these reasons, I&E submits that the cost recovery terms of the Settlement are in the public interest and they should be approved without modification.

G. Reporting (Joint Petition, ¶37)

Through the Joint Petition, Aqua has agreed to provide to I&E, OCA, and OSBA an annual report on the number of and location of COLSLs replaced and the cost of

²³ Stipulation of Facts, ¶15.

²⁴ 66 Pa. C.S. §1501.

²⁵ *Rulemaking to Implement Act 120 of 2018 at 52 PA. Code Chapter 65 and 66*, Docket No. L-2020-3019521, Notice of Proposed Rulemaking Order, p. 20 (Order entered September 17, 2020).

replacements. The report will indicate whether the replacements are Part 1 or Part 2 replacements. I&E notes that it strongly advocated for this level of reporting so that the parties and the Commission can gain a better understanding of whether and how the location of replacements impacts cost. In this case, Aqua has estimated an average cost per COLSL replacement of \$4,000 based on its experience and information from several sources, including discussions with Company field personnel and sample contractor pricing for COLSL replacements ranging from \$3,000 to \$5,000.²⁶ To that end, I&E believes that collecting data on any impacts that location has upon Aqua's replacement costs will be helpful in informing any future replacement of COLSLs that Aqua may identify in the future. Having a baseline understanding of factors that may impact Aqua's replacement costs is necessary to ensure that the costs and benefits of COLSL replacement can be gauged and considered to inform future decision making and budgeting. Accordingly, I&E submits that this term is in the public interest and it should be approved without modification.

III. CONCLUSION

11. The Joint Petitioners are, apparently, in agreement that Aqua's Petition, as modified by the Joint Petition, provides reasonable protections for ratepayers, and enables Aqua to adhere to the regulatory requirements in serving its customers.

12. I&E avers that, outside of the litigated issues in this proceeding, all other issues have been satisfactorily resolved through discovery and discussions with Aqua and are incorporated in the settlement. Line by line identification of the ultimate resolution of every averment is not necessary, as I&E represents that the Settlement maintains the proper balance

²⁶ Joint Stipulation of Facts, ¶31.

of the interests of all parties. I&E is satisfied that no further action is necessary and considers its investigation of this filing complete.

13. Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest because the provisions adequately protect the interests of all affected parties, including the signatories to this Joint Petition.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the *Joint Petition for Settlement of Aqua Pennsylvania, Inc.'s Petition for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines* as being in the public interest and respectfully requests that Administrative Law Judge Marta Guhl recommend, and the Commission subsequently approve, the foregoing Settlement, including all terms and conditions contained therein, without modification.

Respectfully submitted,



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Dated April 23, 2021

STATEMENT D

**Statement in Support of Joint Petition for Settlement
of the Office of Small Business Advocate**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF AQUA PENNSYLVANIA, INC. FOR APPROVAL OF TARIFF CHANGES AUTHORIZING REPLACEMENT OF CUSTOMER-OWNED LEAD SERVICE LINES :
:
: **DOCKET NO. P-2020-3021766**
:
:

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

I. INTRODUCTION

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) is participating as a party to this proceeding to ensure that the interests of the small commercial and industrial (“Small C&I”) customers of Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) are adequately represented and protected.

II. PROCEDURAL BACKGROUND

On September 3, 2020, Aqua filed a Petition (“*Petition*”) with the Commission seeking approval of its plan to replace customer-owned lead service lines (“COLSLs”) in conjunction with its main replacement projects (“Replacement Program”) and recover the associated costs.

On September 23, 2020, the Office of Consumer Advocate (“OCA”) filed an Answer to the *Petition*. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) on October 5, 2020. On October 19, 2020 the OSBA filed a Notice of Appearance, Notice of Intervention, and a Public Statement.

By Order dated October 7, 2020, a prehearing conference was scheduled for October 21, 2020 before Administrative Law Judge (“ALJ”) Marta Guhl.

At the telephonic Prehearing Conference held on October 21, 2020, ALJ Guhl granted Aqua’s unopposed request to delay entering into a formal litigation schedule in order to allow the parties to discuss the issues raised by the Petition and attempt to reach a resolution without proceeding with formal litigation. ALJ Guhl also directed the parties to submit an initial status update by November 20, 2020.

On November 20, 2020, Aqua submitted its direct testimony.

The parties engaged in numerous discussions to attempt to achieve a settlement of some or all of the issues raised in this proceeding. On November 20, 2020, December 21, 2020 and January 20, 2021, status reports were provided to ALJ Guhl to provide updates regarding the progress of settlement discussions.

On February 19, 2021, the parties notified ALJ Guhl that a settlement had been reached.

The OSBA did not submit any testimony in these proceedings.

The OSBA actively participated in the negotiations that led to the proposed settlement, and is a signatory to the Joint Petition For Settlement (“*Settlement*”). The OSBA submits this statement in support of the *Settlement*.

III. STATEMENT IN SUPPORT OF SETTLEMENT

In the OSBA's prehearing memorandum, OSBA indicated it would particularly focus on issues in this proceeding where the impact upon the interests of Aqua's small business customers would be unjustifiably different from or disproportionate to the impact on other classes of customers, or is otherwise lacking in reasonableness or basic fairness.

Paragraph 12 of the *Settlement* provides that commercial and industrial customers are eligible to participate in the Replacement Program. The Replacement Program is designed to help eliminate conditions that could expose customers to lead in their drinking water. By being eligible participants in the Replacement Program, small commercial and industrial customers can request to have their COLSLs replaced by Aqua, have their COLSLs replaced when encountered as part of Aqua's ongoing main replacement work, or seek reimbursement for LSLs that the customer paid to replace, in certain circumstances. (*Settlement*, ¶¶ 11, 28). Paragraph 12 guarantees that Aqua's small business customers are eligible to avail themselves of a program that promotes safer drinking water and healthier communities.

Paragraph 14 of the *Settlement* protects the interests of small commercial and industrial customers by guaranteeing that Aqua will not replace a COLSL unless the customer enters into an agreement substantially in the form of Aqua Exhibit JSW-3. The protection of such agreements are vital to small business customers as they ensure that the customers (1) own the property and (2) explicitly consent to having potentially disruptive work done. Some small business customers rely on foot traffic for their

customer base, which makes it crucial to empower the ratepayer to make the final decision (by entering into the agreement) as to whether to replace a COLSL.

Paragraph 18 of the *Settlement* guarantees that replacements will be undertaken when the number of customer requests in a given operating division allows the Aqua to realize reasonable economies of scale by undertaking those replacements as a single project. This limitation will ensure that the costs of the Replacement Program remain reasonable and are prudently incurred.

Paragraph 36 of the *Settlement* provides that replacement costs for COLSLs will be allocated to all water customers, while the parties in this proceeding reserve their right to challenge Aqua's proposed allocation of these costs in future proceedings. The OSBA agrees that such procedure is proper at this point in time and that further cost allocation discussions properly will occur within the context of a base rate proceeding.

IV. CONCLUSION

Settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Such costs are borne not only by the parties, but ultimately by the Companies' customers as well. Avoiding further litigation of this matter will serve judicial efficiency, and will allow the OSBA to more efficiently employ its resources in other areas.

For the reasons set forth in the *Settlement*, as well as the additional factors enumerated in this statement, the OSBA supports the proposed *Settlement* and respectfully requests that ALJ Guhl and the Commission approve the *Settlement* in its entirety without modification.

Respectfully submitted,

Erin K. Fure

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For:

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Dated: April 23, 2021