

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Aqua Pennsylvania, Inc.	:	P-2020-3021766
for Tariff Changes Authorizing	:	
Replacement of Customer-Owned Lead	:	
Service Lines	:	

**RECOMMENDED DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This decision recommends granting a Petition of Aqua Pennsylvania, Inc. for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines (COLSLs) at Docket No. P-2020-3021766 as modified by a Joint Petition for Settlement (Settlement). Approval of the Settlement is recommended because the terms of the Settlement are consistent with Act 120 and are in the public interest. Further, due to the ongoing planned replacement projects, where the Company is encountering and expects to continue to encounter COLSLs, Aqua also requests that there be expedited review and approval for the Company to begin replacement of COLSLs in its West Chester, Shenango, and Bristol systems.

**HISTORY OF THE PROCEEDINGS**

On September 3, 2020, Aqua Pennsylvania, Inc. (Petitioner, Aqua or Company) filed a Petition for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines (Petition) with the Pennsylvania Public Utility Commission (Commission). The Company requests that the Commission approve revisions to its Tariff-Water PA P.U.C. No.

2 that will authorize Aqua to replace customer-owned lead service lines (COLSLs) and recover the associated costs as provided in 66 Pa.C.S. § 1311(b)(2), which was added to the Pennsylvania Public Utility Code (the Code) by the Pennsylvania General Assembly's enactment of Act 120 of 2018 (Act 120). The proposed tariff revisions were attached to the Petition as Aqua Exhibit No. 1.

On September 23, 2020, the Office of Consumer Advocate (OCA) filed an Answer to the Petition.

On October 5, 2020, the Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance for Gina L. Miller, Esquire.

On October 7, 2020, an Initial Call-In Telephonic Prehearing Conference Notice was issued indicating that a telephonic prehearing conference was scheduled for Wednesday, October 21, 2020, at 2:00 p.m. and that the matter was assigned to me.

I issued a Prehearing Conference Order dated October 7, 2020, which laid out the procedures for the prehearing conference.

On October 19, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Notice of Appearance for Erin Fure, Esquire.

Also on October 19, 2020, Aqua, I&E, OCA, and OSBA filed a Prehearing Conference Memorandum in accordance with the October 7, 2020 Prehearing Conference Order.

A telephonic prehearing conference in this matter was held on October 21, 2020. Counsel for Aqua, I&E, OCA, and OSBA participated. I issued Prehearing Order # 1 on October 23, 2020, which memorialized the discussions at the prehearing conference and established a procedural schedule. The parties were to provide a status update by November 20, 2020, concerning the status of settlement discussions. The Company also submitted direct testimony on November 20, 2020.

The parties made multiple requests to hold the procedural schedule in abeyance while they continued settlement negotiations. I granted these requests by electronic mail and directed the parties to provide continued status updates. The parties provided status updates on November 20, 2020, December 21, 2020, January 20, 2021, and February 19, 2021.

In the February 19, 2021 status update, the parties informed me that they had reached a full settlement in the case. I followed up with the parties via email on February 22, 2021, and directed that they provide me a timeline for the settlement documents by February 24, 2021.

On February 22, 2021, the parties provided a timeline for the filing of settlement documents. On March 3, 2021, I issued Prehearing Order # 2 which memorialized the time period for the submission of settlement documents by the parties.

On April 23, 2021, the parties filed a Joint Petition for Settlement and Joint Stipulation of Facts. The Joint Stipulation of Facts is entered into the record through this Recommended Decision. Aqua, I&E, OCA and OSBA all filed Statements in Support. The matter is now ripe for decision.

As noted above, due to the ongoing planned replacement projects, where the Company is encountering and expects to continue to encounter COLSLs, Aqua also requests that there be expedited review and approval for the Company to begin replacement of COLSLs in its West Chester, Shenango, and Bristol systems.

#### FINDINGS OF FACT

1. 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. 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. Joint Stipulation of Facts ¶ 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.

4. 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. 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.<sup>1</sup> Joint Stipulation of Facts ¶ 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.

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

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

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. 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,<sup>2</sup> 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.<sup>3</sup> Joint Stipulation of Facts ¶ 12.

9. 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.

10. 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. Joint Stipulation of Facts ¶ 14.

11. 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.

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

<sup>3</sup> 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).

12. Aqua's tariff, as currently approved by the Commission, does not allow the replacement of a customer's service line. Joint Stipulation of Facts ¶ 16.

13. 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 an 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. Joint Stipulation of Facts ¶ 17.

14. 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 customers the ownership and responsibility to maintain, repair and replace the new service line after it is installed. Joint Stipulation of Facts ¶ 19.

15. 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 a budgeted allotment of \$800,000 per year ("Part 2"). Joint Stipulation of Facts ¶ 20.

16. Under Part 2 of the Replacement Program, the Company will coordinate customer-requested replacements. Customer requests will be grouped by Aqua's operating divisions: Southeast PA-South; Southeast PA-Willow Grove; Southeast PA-Great Valley; Greater PA-West; Greater PA-Honesdale; Greater PA-Roaring Creek; Greater PA-Whitehaven; and Greater PA-Susquehanna. Joint Stipulation of Facts ¶ 21.

17. 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. Joint Stipulation of Facts ¶ 22.

18. 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. Joint Stipulation of Facts ¶ 23.

19. 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 an LSL and testing from the customer's tap shows that the water has a lead level above the action level established by the LCR. Joint Stipulation of Facts ¶ 24.

20. 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.

21. 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. Joint Stipulation of Facts ¶ 26.

22. 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.

23. 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. Joint Stipulation of Facts ¶ 28.

24. 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. Joint Stipulation of Facts ¶ 29.



25. 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.

26. 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. Joint Stipulation of Facts ¶ 31.

27. 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. Joint Stipulation of Facts ¶ 32.

28. 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). Joint Stipulation of Facts ¶ 33.

#### TERMS AND CONDITIONS OF SETTLEMENT

On April 23, 2021, the parties filed the Joint Petition for Settlement. This Petition includes the terms of the full Settlement. The Settlement also included the following exhibits and statements:

Exhibit 1 Joint Stipulation of Facts

Exhibit 2 Aqua Pennsylvania, Inc. Tariff Water-Pa. P.U.C. No. 2  
Supplement No. \_\_ [TBD]

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

The terms and conditions of the Settlement are set forth fully below, beginning at numbered paragraph 11 through and including paragraph 37 of the Joint Petition for Settlement filed on April 23, 2021. The Settlement also includes the usual “additional terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future proceedings by any particular position taken in this case. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petition itself.

The Joint Petitioners to the Settlement include I&E, OCA, and OSBA. The settlement terms among the Joint Petitioners and Aqua consist of the following terms and conditions, in *verbatim*:

**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:

- d. 100% for work performed within one year of commencement of the Replacement Program.
- e. 50% for work performed within two years of commencement of the Replacement Program.
- f. 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.

**PUBLIC INTEREST**

Aqua, OCA, I&E and OSBA agree 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.

See Settlement at ¶ 39.<sup>4</sup>

### DISCUSSION

The Commission’s policy is to encourage settlements. In the Commission’s judgment, settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code §§ 5.231, 69.401. However, the Commission must review proposed settlements to determine whether the terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Phila. Gas Works*, M-00031768 (January 7, 2004); *Pa. Pub. Util.*

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<sup>4</sup> Additionally, Aqua, OCA, I&E and OSBA submitted separate statements in support of the Settlement on bases on which they believe the Settlement is in the public interest, as discussed below.



*Comm'n. v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Warner v. GTE North, Inc.*, C-00902815 (April 1, 1996); *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); 52 Pa. Code § 69.1201.

A proposed settlement satisfies the “public interest” standard by a preponderance of the evidence of benefits that show a likelihood or probability of public benefits that need not be quantified or guaranteed. *Powpowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 937 A.2d 1040 (2007) (*Popowsky*). The Commission has traditionally defined the public interest as including ratepayers, shareholders, and the regulated community. *Pa. Pub. Util. Comm'n v. Bell Atl. Pa., Inc.*, Docket No. R-00953409 (Order entered September 29, 1995).

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)(2)(i), (ii), (vi-vii).

Act 120 authorizes public utilities providing water and/or wastewater service to, *inter alia*, replace customer-owned LSPs, 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 customer-owned LSPs. Additionally, Act 120 provides that there shall be a cap on the number of customer-owned LSPs replaced annually, that a reasonable warranty accompany the replacement, and that any customer that previously replaced their LSP within one year of commencement of a Commission-approved project to replace a customer-owned LSP shall be reimbursed. *Id.*

The Petition as modified by the proposed Settlement filed on April 23, 2021, is in compliance with the plain meaning of Section 1311, 66 Pa.C.S. § 1311. 1 Pa.Code § 1.7 (Statutory Construction Act of 1972 applicable). Words and phrases in a statute must be construed according to rules of grammar and their common and approved usage. *Media v. Pa. Dept. of Transp.*, 641 A.2d 630 (Pa. Cmwlth. 1994); *Velazquez v. East Stroudsburg*, 949 A.2d 354, 358-359 (Pa. Cmwlth. 2008). Administrative interpretations of a statute are entitled to some deference, particularly where a statute is technical or complex, but such deference will exist only where the reviewing court is satisfied that the regulation tracks the meaning of the

statute and does not violate the intent of the legislation. *Commonwealth v. Gilmour Mfg. Co.*, 822 A.2d 676, 679 (Pa. Cmwlth. 2003), *order aff'd*, 384 A.2d 1103 (Pa. 2003).

**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 COLSL 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.*

OCA notes that lead in water service lines creates major safety and reliability concerns for customers. OCA states that lead exposure can cause a range of adverse health effects. Joint Stipulation of Facts, ¶ 7. OCA also maintains that while replacing the entire portion of the entire lead service line, including both the Company portion and the customer portion, is the 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. OCA indicates that 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. OCA contends 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. OCA asserts that the Company can replace a leaking COLSL prior to reaching the threshold number of requests. For these reasons, OCA maintains the Company's Replacement Plan and request for limited waivers of its tariff provisions allowing the Company to replace COLSLs are in the public interest and should be adopted. OCA Statement in Support at 3-4.

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. Aqua Statement in Support at 5-6.

I&E fully supports these 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) the Pennsylvania General

Assembly permitted regulated utilities to seek Commission approval to replace customer-owned lead water service lines.<sup>5</sup> I&E Statement in Support at 5.

I&E indicates that it supports Aqua's proactive replacement approach, and it also 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.<sup>6</sup> I&E notes that 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.<sup>7</sup> I&E also contends that Aqua's testimony explained that the risk for lead contamination arises when water passes through lead service lines and premise plumbing.<sup>8</sup> I&E Statement in Support at 6.

While I&E did not submit written testimony in this case, I&E notes that it 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 by the Commission.<sup>9</sup> I&E recognizes that the dangers imposed by lead exposure are not limited by the context of line ownership; therefore, by availing itself 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 Public Utility Code; accordingly, replacing lead service lines is consistent with that obligation. I&E Statement in Support at 6-7.

I&E states that 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

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<sup>5</sup> 66 Pa.C.S. § 1311(b)(2)(v).

<sup>6</sup> Aqua St. No. 1, pp. 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *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).

customers is also an important step toward providing safe service to all customers in its service territory. Furthermore, by mitigating “partial” replacements, I&E maintains that 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.<sup>10</sup> Finally, I&E asserts that 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. I&E Statement in Support at 7.

OSBA argues that Paragraph 12 of the Settlement provides that commercial and industrial customers are eligible to participate in the Replacement Program. OSBA indicates that 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. OSBA argues that this provision guarantees that Aqua’s small business customers are eligible to avail themselves of a program that promotes safer drinking water and healthier communities. OSBA also asserts that 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. OSBA states 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. OSBA notes that 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. OSBA Statement in Support at 3-4.

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<sup>10</sup> *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).

**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 an 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.*

OCA argues that these provisions of the Settlement provide numerous conditions and parameters for the Company as it undertakes Part 2 replacements. OCA asserts that 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, OCA maintains that 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. OCA Statement in Support at 6.

Aqua notes that customer requests will be grouped by its 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 Settlement. The Company indicates that each year it 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, Aqua asserts that no customer will wait for more than one year for a replacement. Aqua Statement in Support at 6.

Under the Settlement, Aqua states that it will verify whether the property for which a Part 2 replacement was requested has a COLSL. The Company also asserts that it 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. The Company also notes it will provide water filters to residential customers who satisfy the criteria in the Settlement. Aqua Statement in Support at 6.

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. While the safety aspect of lead line removal is paramount, I&E maintains that 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, I&E states that Aqua has also committed to ensuring that no customer would be required to wait more than one year for replacement of a COLSL.<sup>11</sup> Under the Settlement, I&E notes that eligible COLSL replacement requests will be honored within a year so as not to compromise health and safety to meet an efficiency threshold. I&E asserts that this provision is in the public interest because it strives to protect customers' health and safety while simultaneously attempting to maximize cost-efficiency and the prudent use of ratepayer funds. I&E Statement in Support at 8.

I&E also argues that these terms are in the public interest for several reasons. First, I&E notes that 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. Additionally, I&E contends that 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. I&E indicates that 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. I&E Statement in Support at 9-10.

Again, 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. I&E indicates that Aqua's replacement goal of 200 COLSLs annually would significantly remediate the known 268 COLSLs it has currently identified in its system,<sup>12</sup> while also providing for replacement of later-discovered COLSLs in a cost-conscious and timely manner. I&E Statement in Support at 10.

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<sup>11</sup> Settlement ¶ 18.

<sup>12</sup> *Id.* at ¶ 14.

Finally, I&E also argues that 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,”<sup>13</sup> and COLSLs do present such concerns. By way of its agreement to track and reflect the replacement costs in its quarterly DSIC filing, I&E maintains that Aqua has ensured that the 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. I&E Statement in Support at 10.

OSBA notes that Paragraph 18 of the Settlement guarantees that replacements will be undertaken when the number of customer requests in a given operating division allows Aqua to realize reasonable economies of scale by undertaking those replacements as a single project. OSBA asserts that this limitation will ensure that the costs of the Replacement Program remain reasonable and are prudently incurred. OSBA Statement in Support at 4.

**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.

OCA argues that 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. OCA Statement in Support at 6.

Aqua notes that 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 states that a two-year

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<sup>13</sup> 66 Pa. C.S. §§ 1351(3)(iii), (4)(iii).

warranty is appropriate because such commitment is consistent with other routine utility work performed by its contractors. Aqua Statement in Support at 6-7.

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 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. I&E Statement in Support at 11-12.

**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.

OCA asserts that these reimbursement provisions are important because failure to provide reimbursements would lead to equity concerns, considering that these customers had replaced their own lead service line at their expense, but would now be expected to pay the costs to replace other COLSLs. Further, OCA asserts that these reimbursements address its equity concerns and provides a meaningful approach to ensure that more customers who had COLSLs can benefit from this program. OCA Statement in Support at 7.

Aqua notes that to address the OCA's concerns raised in its Answer, it 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. Aqua Statement in Support at 8.

I&E maintains that the Settlement is in accordance with Section 1311(b) of the Public Utility Code which specifically requires reimbursement by directing the Commission to establish standards, processes, and procedures. 66 Pa. C.S. § 1311(b)(2)(vii)(B). 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. I&E Statement in Support at 13.

I&E also asserts that several safeguards are in place to ensure that Aqua and its ratepayers are not overburdened by providing excessive or untimely reimbursement. I&E states

that by gradually stepping down the reimbursement amount, Aqua can provide eligible customers with some compensation, but in a controlled and cost-effective manner that will ensure that Aqua and its ratepayers are not encumbered by reimbursement obligations without any parameters. I&E Statement in Support at 13-14.

I&E also argues that 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. I&E maintains that by 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 notes 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. I&E Statement in Support at 14.

**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.

OCA argues that 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. OCA Statement in Support at 8.

Aqua asserts that it 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. Settlement ¶ 29. Aqua argues that this commitment ensures that the Company will collaborate with the statutory advocates to develop a robust outreach and communications plan as recommended by OCA in its Answer. Aqua Statement in Support at 7.

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. I&E Statement in Support at 15.<sup>14</sup>

**F. Cost Recovery (Settlement ¶¶ 31-36)**

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.

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.

The Settlement 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 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

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<sup>14</sup> OSBA did not address these provisions of the Settlement in its Statement in Support.

allowed to recover the fixed costs of those replacements placed in service between base rate cases through the Company's existing DSIC. *Id.*

The Settlement provides that the costs to replace COLSLs shall be allocated to all water customers. Settlement ¶ 36.

Aqua notes that the Settlement adopts its original proposed accounting and ratemaking treatment for COLSL replacement costs and provides that the Company will record those costs in a separate subaccount in Account 333 - Services. Joint Petition, ¶¶ 33-35. In addition, Aqua argues that the provisions are consistent with Act 120. *See* Aqua Statement in Support at 9-10.

OCA contends that these provisions are a reasonable allocation of the costs as all water customers, regardless of rate class, will be able to benefit from this program. However, OCA notes that the Joint Petitions reserve the right to review and challenge the Company's proposed allocation in future proceedings. Further, OCA maintains that 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. OCA argues that these provisions ensure 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. OCA asserts that if funds were not available, that would result in either 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. OCA Statement in Support at 8-10.

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. I&E asserts that 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 Statement in Support at 16.

I&E also contends 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. I&E notes 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, I&E states that COLSLs are more likely to be in service in older neighborhoods with populations facing economic challenges,<sup>15</sup> 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.<sup>16</sup> I&E Statement in Support at 16-17.

I&E argues that 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.<sup>17</sup> I&E notes that 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, I&E asserts that 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

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<sup>15</sup> Stipulation of Facts, ¶ 15.

<sup>16</sup> 66 Pa.C.S. § 1501.

<sup>17</sup> *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).

that the cost recovery terms of the Settlement are in the public interest and they should be approved without modification. I&E Statement in Support at 17.

OSBA notes that 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. 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. OSBA Statement in Support at 4.

**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. The parties indicate that this provision is helpful for the parties to continue to monitor the program and ensure that it is operating effectively and efficiently. *See* OCA Statement in Support at 10 and I&E Statement in Support at 17-18

**CONCLUSION**

I find that the proposed Settlement filed on April 23, 2021, is in compliance with Section 1311, 66 Pa.C.S. § 1311. The Settlement sets forth a comprehensive list of issues which were resolved through the negotiation process. Specifically, the Joint Petition for Settlement sets the annual program budgeted allotment of \$800,000 per year. Further, 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. The instant proposed settlement satisfies the "public interest" standard by a preponderance of the evidence of benefits that show a likelihood or probability of public benefits that need not be quantified or guaranteed.

Aqua's customers will likely benefit from the Replacement Plan, as enhanced by the Settlement, as the risk of lead exposure at the customer's tap from service lines will be reduced through implementation of the Replacement Plan consistent with Act 120. Moreover, the Settlement terms resolved the issues and concerns of Statutory Advocates that were raised in this case without the need for additional costly litigation. The annual reporting requirements, coupled with Aqua's proposed maximum budgetary cap of \$800,000 per year, should help mitigate against the Company incurring excessive costs in connection with its Part 2 replacement plan in any given year. The capitalization of the replacement costs to be recorded in a subaccount under Account 333-Services, will enable I&E to determine which portion of Account 333-Services is related to lead service line replacement for easier review. I&E avers the settlement groups customers into geographical locations for project specifications. This will be more cost-effective and may lower a customer's wait-time for line replacement.

The terms and conditions of the proposed Settlement, taken as a whole, represent a fair and reasonable resolution of the issues raised by OCA, I&E, and OSBA in this matter. Therefore, I recommend the Petition as modified by the Joint Settlement Petition be approved by the Commission, with the additional reporting requirement discussed above, as being in the public interest. I further recommend that the Commission grant Aqua leave to file its proposed Tariff Supplement in Exhibit 2 attached to the Joint Settlement Petition effective in at least one day's notice from the filing.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 1301 *et seq.*

2. 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).

3. 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. 66 Pa.C.S. § 1311(b)(2)(v).

4. The tariff supplement must contain a cap on the maximum number of COLSLs to be replaced annually, 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. 66 Pa.C.S. § 1311(b)(2)(v)-(vii).

5. The Commission has previously approved COLSL replacement programs for The York Water Company and Pennsylvania-American Water Company. *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).

6. 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. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985).

7. 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.

8. 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.” 52 Pa.Code § 69.401.

9. 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.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Stipulation of Facts filed by the parties on April 23, 2021 is entered into the record at Docket No. P-2020-3021766 through this Recommended Decision.
2. That the Petition of Aqua Pennsylvania, Inc. filed on September 3, 2020 at P-2020-3021766 as modified by a Joint Petition for Settlement filed on April 23, 2021, be granted consistent with the body of this Recommended Decision and the Ordering Paragraphs below.
3. That approval of the Joint Settlement Replacement Plan as set forth in the Joint Petition for Settlement be granted.
4. That Aqua Pennsylvania Inc. 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 at least one day’s notice from the date of the tariff filing.
5. That the Bureau of Technical Utility Services be directed to monitor Aqua Pennsylvania Inc. annual reporting in conjunction with the Commission’s final Order.

6. That Docket No. P-2020-3021766 be marked closed.

Date: May 27, 2021

\_\_\_\_\_/s/\_\_\_\_\_  
Marta Guhl  
Administrative Law Judge