



December 18, 2023

VIA E-File

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: **Petition of Aqua Pennsylvania, Inc. For Approval of its Lead Service Line Replacement Program, P-2023-3044459**

Petition to Intervene and Answer of CAUSE-PA

Dear Secretary Chiavetta:

Please find the attached **Petition to Intervene and Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**, which is respectfully submitted for filing in the above noted proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only unless otherwise noted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John W. Sweet". The signature is written in a cursive style with a horizontal line above the name.

John W. Sweet, Esq.
Counsel for CAUSE-PA

CC: Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Aqua Pennsylvania, Inc. : P-2023-3044459
For Approval of its Lead Service Line :
Replacement Program :

PETITION TO INTERVENE AND ANSWER OF
THE COALITION FOR AFFORDABLE UTILITY SERVICE AND ENERGY EFFICIENCY
IN PENNSYLVANIA (*CAUSE-PA*)

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for CAUSE-PA

John W. Sweet, Esq., PA ID: 320182

Ria M. Pereira, Esq., PA ID: 316771

Elizabeth R. Marx, Esq., PA ID: 309014

Lauren N. Berman, Esq., PA ID: 310116

118 Locust Street

Harrisburg, PA 17101

Tel.: 717-236-9486

Fax: 717-233-4088

PULP@putilitylawproject.org

December 18, 2023

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.61-5.76, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), through its legal counsel at the Pennsylvania Utility Law Project (PULP), hereby petitions the Commission to intervene and files its Answer in the above-captioned proceeding. In support thereof, CAUSE-PA states as follows:

PETITION TO INTERVENE

1. On October 23, 2023, Aqua Pennsylvania, Inc., filed...for Approval of its Third Long-Term Infrastructure Improvement Plan (LTIP) and Lead Service Line Replacement Program (LSLR) at Docket No. P-2023-3043755.

2. On November 22, 2023, CAUSE-PA filed comments in response to Aqua’s petition on the narrow issue of the treatment of tenant consumers who are not the customer of record within the context of Aqua’s proposed LSLR program. CAUSE-PA comments are attached hereto as Appendix A.

Technical Utility Services (TUS) the direction of the Commission’s Bureau of Technical Utility Services (TUS), filed its LSLR as a separate petition at the above captioned docket.

4. Eligibility to intervene in Commission proceedings is governed by 52 Pa. Code § 5.72, which provides in relevant part that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

5. Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to

which the petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code. § 5.72(a)(2).

6. Even though Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members . . . as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action, [i.e., is aggrieved, the organization] has standing.” *Energy Cons. Council of Pa. v. Pa. PUC*, 995 A.2d 465, 476 (Pa. Commw. Ct. 2010) (alteration in original) (citing *Trippls Park v. Pa. PUC*, 415 A.2d 967 (Pa. Commw. Ct. 1980); *Parents United for Better Schools v. School Dist. of Phila.*, 646 A.2d 689 (Pa. Commw. Ct. 1994)).

7. CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain safe and affordable water, electric, heating and telecommunication services.

8. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain safe and affordable access to utility services and achieve economic independence.

9. CAUSE-PA is located, c/o the Pennsylvania Legal Aid Network, at 118 Locust Street, Harrisburg, PA 17101.

10. CAUSE-PA has a significant interest in the impact that Aqua’s proposed LSLR will have on the health and safety of moderate and low income residential tenants who are the end use consumers of Aqua’s water service.

11. Members of CAUSE-PA include Aqua customers and will be directly affected by the outcome of this proceeding.

12. CAUSE-PA has standing to intervene because its members have or will suffer a direct, immediate, and substantial injury to an interest as a result of this proceeding. See Energy Cons. Council of Pa., 995 A.2d at 476.

13. CAUSE-PA is represented in this proceeding by:

John W. Sweet, Esq.,
Ria M. Pereira, Esq.,
Elizabeth R. Marx, Esq.,
Lauren N. Berman, Esq.,

PENNSYLVANIA UTILITY LAW PROJECT

118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
Email: PULP@pautilitylawproject.org

14. Counsel for CAUSE-PA consents to the service of documents by electronic mail to PULP@pautilitylawproject.org as provided in 52 Pa. Code § 1.54(b)(3).

ANSWER

15. CAUSE-PA has preliminarily reviewed Aqua’s Petition for its LSLR filings and appreciates Aqua’s consideration of tenant consumers in the development of its LSLR program and the steps that it has taken to protect customers from the dangers of partial LSLR replacements. However, while Aqua’s LSLR plan specifically provides specific protections for tenant households where “the customer is not the property owner,”¹ the proposed plan fails to address situations where a tenant occupant is not the customer of record but receives service

¹ See Petition at 11-13.

through a lead service line. This situation occurs in landlord-tenant leases where water is included as a component of rent.

16. Terms, conditions, and rates for water and wastewater service are not just and reasonable if they are not appropriately designed and implemented to ensure that all consumers are able to access safe and affordable water service, consistent with the laws and policies of the Commonwealth.

17. As written, Aqua's proposed LSLR would not provide sufficient protections for tenant occupants who are not the customer of record, yet still face the health and safety risks from lead exposure.

18. Non-customer tenants, as occupants of a residence, are just as susceptible to the health risks associated with lead-contaminated water. Ignoring their inclusion in replacement programs risks perpetuating health disparities, as vulnerable populations residing in rental properties already face elevated health risks without recourse. The impacts of lead service lines disproportionately affect marginalized communities, where a higher percentage of residents are renters.² Excluding non-customer tenants from replacement initiatives places these vulnerable tenants at risk of lead exposure and/or service termination, exacerbating social inequalities and hindering efforts to ensure equal protection from lead exposure.

19. CAUSE-PA asserts that the issues identified above, along with any future modifications presented by intervening parties, must be thoroughly reviewed to ensure that all consumers are able to access safe, affordable utility services within Aqua's service territories.

² See *Act 120 Rulemaking*, L-2020-3019521, Joint Comments of CAUSE-PA, GHHI, and Pgh. United, (Submitted Nov. 22, 2019).

WHEREFORE, CAUSE-PA respectfully requests that the Commission enter an order granting CAUSE-PA full status as an intervener in this proceeding with active party status.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

A handwritten signature in black ink that reads "John Sweet". The signature is written in a cursive style with a horizontal line above the name.

John W. Sweet, Esq., PA ID: 320182
Ria M. Pereira, Esq., PA ID: 316771
Elizabeth R. Marx, Esq., PA ID: 309014
Lauren N. Berman, Esq., PA ID: 310116

118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
Email: PULP@putilitylawproject.org

December 18, 2023

Verification

I, **Elizabeth R. Marx**, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Elizabeth R. Marx, Esq.

*On behalf of the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania*

December 18, 2023

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Aqua Pennsylvania, Inc. : P-2023-3044459
For Approval of its Lead Service Line :
Replacement Program :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the *Petition to Intervene and Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania* (CAUSE-PA) upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

VIA EMAIL

Alexander R. Stahl, Esq.
Aqua Services, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Michael W. Hassell, Esq.
Garrett P. Lent, Esq.
Megan Rulli, Esq.
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
glent@postschell.com
mrulli@postschell.com

Richard Kanaskie, Esq.
Scott B. Granger, Esq.
Carrie Wright, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265
rkanaskie@pa.gov
sgranger@pa.gov
carwright@pa.gov

Steven C. Gray, Esquire
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor Harrisburg, PA 17101
sgray@pa.gov

George A. Bibikos, Esq.
GA BIBIKOS LLC
5901 Jonestown Road, Suite 6330
Harrisburg, PA 17112
gbibikos@gabibikos.com

Adeolu A. Bakare, Esq.
Charis Mincavage, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Abakare@mcneeslaw.com
Cmincavage@mcneeslaw.com

Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street Forum Place, 5th Floor
Harrisburg, PA 17101-1923
egannon@paoca.org
OCAShenandoah@paoca.org

William C. Rhodes, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
rhodes@ballardspahr.com

Francine Weiner
1903 2nd Street
Langhorne, PA 19047
fhwhome@gmail.com

Maria Casey, Esq.
207 Arlene Street
Minersville, PA 17954
Mariacasey7@comcast.net

John Day
614 Runyon Avenue
Piscataway, NJ 08854
john@johnday.us

Robert Rosenthal
R.A. Rosenthal Inc.
524 Strathmore Dr.
Mechanicsburg, PA 17050
ask-rosey@comcast.net

Richard J. Gage
120 Treaty Drive
Wayne, PA 19087
brittagage@aol.com

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720-T
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



John W. Sweet, Esq., PA ID: 320182
118 Locust Street
Harrisburg, PA 17101
717-236-9486
PULP@pautilitylawproject.org

December 18, 2023

Appendix A

**Comments of The Coalition for Affordable Utility Services and
Energy Efficiency in Pennsylvania**

In Response to

**Aqua Pennsylvania, Inc. Petition for Approval of Third Long-Term
Infrastructure Improvement Plan and Lead Service Line
Replacement Program, P-2023-3043755**



November 22, 2023

VIA E-FILE

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Aqua Pennsylvania, Inc. Petition for Approval of Third Long-Term Infrastructure Improvement Plan and Lead Service Line Replacement Program, P-2023-3043755

Comments of CAUSE-PA

Dear Secretary Chiavetta:

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its attorneys at the Pennsylvania Utility Law Project, file the following brief comments in response to the October 23, 2023, Petition of Aqua Pennsylvania, Inc. (Aqua) For Approval of its Third Long-Term Infrastructure Improvement Plan (LTIP) and Lead Service Line Replacement (LSLR) Program. Specifically, these comments address the narrow issue of the treatment of tenant consumers who are not the customer of record within the context of Aqua’s proposed LSLR program.

As a preliminary matter, CAUSE-PA appreciates Aqua’s consideration of tenant consumers in the development of its LSLR program and the steps that it has taken to protect customers from the dangers of partial LSLR replacements. However, while Aqua’s LSLR plan specifically provides protections for tenant households where “the customer is not the property owner,”¹ the proposed plan fails to address situations where a tenant occupant is not the customer of record but receives service through a lead service line. This situation occurs in landlord-tenant leases where water is included as a component of rent.

Aqua’s proposed LSLR plan contains provisions that will provide the “customer” with educational materials, water testing, pitcher filters, and flushing instructions.² Aqua also indicates that it will utilize “Step In Rights” to perform lead service line replacements where the “property owner is not the customer” and refuses a LSLR replacement leaving the customer at risk of lead exposure

¹ See Petition at ¶¶ 80-89.

² Petition at ¶ 79, 91; LSLR Plan at 7-9.

due to a partial line replacement.³ However, neither of the provisions provide any protections for tenant occupants who are not the customer of record, yet still face the health and safety risks from lead exposure. We support Aqua's efforts to provide free filters, testing, and educational materials as well as its use of Step In Rights to protect consumers from lead exposure. However, Aqua's proposal should not be limited to situations where the "customer is not the property owner." We recommend that Aqua provide these protections to any situation where a non-customer tenant receives service through a lead service line.

In the Commission's rulemaking process for its regulations governing LSLR programs under Act 120, CAUSE-PA submitted Joint Comments together with Green & Healthy Homes Initiative (GHHI) and Pittsburgh United.⁴ In the comments, we explained that a major impediment to the successful remediation of LSLs through Act 120 implementation is the fact that low income households are more likely to live in rental units.⁵ We further explained that economically vulnerable households rent from landlords who are either inaccessible or unwilling to take the necessary steps to protect the health and wellbeing of their tenants.⁶ We urged the Commission to ensure that tenants are protected from a landlord's refusal to participate in a LSL replacement program and urged the development of a comprehensive plan for outreach and education for tenants that are not direct customers of the utility, but who are the end user of water consumed at the property.⁷

Non-customer tenants, as occupants of a residence, are equally susceptible to the health risks associated with lead-contaminated water. Ignoring their inclusion in replacement programs risks perpetuating health disparity, as vulnerable populations residing in rental properties face elevated health risks without recourse. The burden of lead service lines disproportionately affects marginalized communities, where a higher percentage of residents are renters.⁸ Excluding non-customer tenants from replacement initiatives places these vulnerable tenants at risk of lead exposure and/or service termination, exacerbating social inequalities and hindering efforts to ensure equal protection from lead exposure.

Aqua must clarify its approach to addressing tenants who are served by LSLs but who are not customers of record with the utility and must provide the same protections to non-customer tenants that it provides to tenant customers. We recommend that Aqua, at a minimum, follow similar procedures to those followed by the Pittsburgh Water and Sewer Authority (PWSA). PWSA provides, at no charge, water testing kits and water filters to any resident of a household that receives a LSLR through its program or who may be exposed to lead due to the replacement of a water meter.⁹ PWSA also provides education and lead removing filters to any customer or non-customer tenant who is eligible for its low income programs.¹⁰ PWSA is also authorized by the

³ Petition at ¶ 88.

⁴ See *Act 120 Rulemaking*, L-2020-3019521, Joint Comments of CAUSE-PA, GHHI, and Pgh. United, (Submitted Nov. 22, 2019).

⁵ *Id.* at 8

⁶ *Id.*

⁷ *Id.* at 8-10.

⁸ See *Act 120 Rulemaking*, L-2020-3019521, Joint Comments of CAUSE-PA, GHHI, and Pgh. United, (Submitted Nov. 22, 2019).

⁹ See *Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, P-2018-3005037, P-2018-3005039, Complete Amended LTIP at 14-17 (Submitted July 7, 2020).

¹⁰ *Id.*

Commission to exercise its Step In Rights to prevent partial LSLR replacements due to uncooperative landlords regardless of whether the tenant occupant is a customer of the utility.¹¹

We urge Aqua to clarify that it will provide the same protections to non-customer tenants as it provides to tenants who are customers of the utility. We recommend that Aqua change the relevant language to include protections and education to “Occupant” or “Resident” rather than just “Customer” to address situations where the end use consumer is *neither the customer nor the property owner* because they pay for water service as a portion of their rent. We further urge the Commission to provide clarifying instructions to other water utilities developing LSLR programs to include protection of non-customer tenants who into consideration in evaluating future LSLR program proposals.

CAUSE-PA appreciates the opportunity to offer these brief comments and urges Aqua and the Commission to take the necessary steps to protect vulnerable tenants from the harmful effects of lead exposure.

Respectfully Submitted,
Pennsylvania Utility Law Project



John W. Sweet, Esq., PA ID: 320182
Elizabeth R. Marx, Esq., PA ID: 309014
Ria M. Pereira, Esq., PA ID: 316771
Lauren N. Berman, Esq., PA ID 310116

Counsel for CAUSE-PA

118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@pautilitylawproject.org

CC: *(Via E-Mail Only)*
cc: Office of Administrative Law Judge (email only: crainey@pa.gov)
Paul Diskin, TUS (email only: pdiskin@pa.gov)
Office of Special Assistants (email only: ra-OSA@pa.gov)
Certificate of Service

¹¹ *Implementation of Chapter 32 of the Public Utility Code RE: Pittsburgh Water and Sewer Authority*; Docket Nos. M-2018-2640802 and M-2018-2640803, Updated Stage 2 Customer Service Compliance Plan at 76 (Submitted Sep. 12, 2022).

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Aqua Pennsylvania, Inc. Petition for Approval of : P-2023-3043755
Third Long-Term Infrastructure Improvement :
Plan and Lead Service Line Replacement :
Program, :

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served copies of the **Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above captioned matter in the manner and upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA EMAIL

Alexander R. Stahl, Esq.
Aqua Services, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Michael W. Hassell, Esq.
Garrett P. Lent, Esq.
Megan Rulli, Esq.
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
glent@postschell.com
mrulli@postschell.com

Richard Kanaskie, Esq.
Scott B. Granger, Esq.
Carrie Wright, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265
rkanaskie@pa.gov
sgranger@pa.gov
carwright@pa.gov

NazAarah Sabree, Esq
Steven C. Gray, Esq.
Sharon E. Webb, Esq.
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
ra-sba@pa.gov
sgray@pa.gov
swebb@pa.gov

George A. Bibikos, Esq.
GA BIBIKOS LLC
5901 Jonestown Road, Suite 6330
Harrisburg, PA 17112
gbibikos@gabibikos.com

Adeolu A. Bakare, Esq.
Charis Mincavage, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Abakare@mcneeslaw.com
Cmincavage@mcneeslaw.com

Christy M. Appleby, Esq.
Harrison W. Breitman, Esq.
David T. Evrard, Esq.
Erin L. Gannon, Esq.
Mackenzie C. Battle, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
cappleby@paoca.org
hbreitman@paoca.org
egannon@paoca.org
mbattle@paoca.org
OCAShenandoah@paoca.org

Francine Weiner
1903 2nd Street
Langhorne, PA 19047
fhwhome@gmail.com

John Day
614 Runyon Avenue
Piscataway, NJ 08854
john@johnday.us

Richard J. Gage
120 Treaty Drive
Wayne, PA 19087
brittagage@aol.com

William C. Rhodes, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
rhodes@ballardspahr.com

Maria Casey, Esq.
207 Arlene Street
Minersville, PA 17954
Mariacasey7@comcast.net

Robert Rosenthal
R.A. Rosenthal Inc.
524 Strathmore Dr.
Mechanicsburg, PA 17050
ask-rosey@comcast.net

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720-T
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Respectfully submitted,



John W. Sweet, Esq., PA ID 320182
Counsel for CAUSE-PA

Dated: November 22, 2023