

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Veolia Water Pennsylvania, Inc.	:	
For Approval of a Lead Service Line	:	P-2023-3042107
Replacement Program	:	

RECOMMENDED DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision recommends that the Joint Petition for Approval of Unanimous Settlement of All Issues, executed and submitted at this docket by Veolia Water Pennsylvania, Inc., the Office of Consumer Advocate, and the Office of Small Business Advocate, be approved without modification as it is in the public interest and is consistent with the requirements of the Public Utility Code and the Commission’s regulations.

HISTORY OF THE PROCEEDINGS

On July 21, 2023, Veolia Water Pennsylvania, Inc. f/k/a SUEZ Water Pennsylvania Inc. (Veolia, Company, or VWPA) filed with the Pennsylvania Public Utility Commission (Commission) a Petition seeking approval of a Lead Service Line Replacement Program (LSLRP) and tariff revisions that will allow it to replace customer-owned lead service lines (COLSL), and to recover those costs as provided in Section 1311(b)(2) of the Public Utility Code (Petition), which was added to the Public Utility Code pursuant to Act 120 of 2018. 66 Pa.C.S. § 1311(b)(2). As required by Commission regulations implementing Act 120 of 2018,

52 Pa. Code §§ 65.51- 65.62, the Company attached to its Petition a modified Long-Term Infrastructure Improvement Plan (Modified LTIIIP).

On August 11, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance and Notice of Intervention.

On August 14, 2023, the Office of Consumer Advocate (OCA) filed an Answer to the Petition.

On September 19, 2023, the Commission's Secretary's Bureau issued a Secretarial Letter, serving a data request from the Commission's Bureau of Technical Services (TUS Data Set 1) on the Company. The Secretarial Letter directed that any responses be submitted within ten days of the date of the letter.

On September 27, 2023, the Commission issued a Prehearing Conference Notice, scheduling a prehearing conference for October 18, 2023.

On October 2, 2023, counsel for the Company emailed me requesting a thirty-day continuance of the prehearing conference. He explained that the reason for the request was so that VWPA could answer TUS's data requests and the other parties could review those answers to determine if VWPA adequately addressed the issues they identified in this proceeding. Counsel for VWPA represented that the OCA and the OSBA joined in this request.

Under the circumstances, I granted the request and, after consulting with the parties, I rescheduled the prehearing conference for November 21, 2023.

A Prehearing Conference Notice was issued October 3, 2023.

On November 9, 2023, counsel for the Company, on behalf of all the parties, contacted me by email requesting the prehearing conference again be cancelled. He explained that VWPA filed answers to extensive data requests on November 2, 2023, and OCA and OSBA

were still in the process of reviewing those answers. Counsel requested a 30-day continuance of the prehearing conference so that the parties could attempt to negotiate a resolution. This request was supported by the OCA and the OSBA.

I cancelled the prehearing conference and directed the parties to submit a status report by December 8, 2023.

On December 8, 2023, the parties submitted a joint status report. That status report requested additional time to continue negotiations and asked that another status report be due in approximately 35 days.

On January 2, 2024, I issued an Interim Order directing the parties to file an updated status report by January 12, 2024.

On January 12, 2024, the parties filed an updated status report, explaining their ongoing efforts to settle this matter and requesting that a status conference be held in thirty days.

After consulting with the parties by email, I scheduled a status conference for February 20, 2024. The Commission issued a Notice on January 22, 2024.

The conference convened as scheduled on February 20, 2024. The Company, OCA, and OSBA were present and represented by counsel. The parties advised that the Company and OCA had reached a settlement in principle, and OSBA would either be joining the settlement or not opposing it.

On February 20, 2024, I issued an Interim Order setting deadlines for the filing of a stipulation for the admission of evidence and the filing of a settlement petition and statements in support.

On March 7, 2024, the parties filed their Joint Stipulation of Fact (First Joint Stipulation of Fact), with Appendix A (Stipulated Facts) and Appendix B (Proposed Order

Approving Joint Stipulation). Appendix A contained four Attachments: Attachment 1 (VWPA's Petition), Attachment 2 (answers of VWPA to data requests from the Commission's Bureau of Technical Services (TUS)), Attachment 3 (items required by 52 Pa. Code §§ 53.52(a) and 65.55(b)(3)); and Attachment 4 (VWPA's Answer to OCA Interrogatory Set II Data Request P-2023-3042107). VWPA's Lead Service Line Replacement Plan, as amended on October 31, 2023, (LSLRP) was included in Attachment 2 in response to Data Request P-2E. VWPA's modified Long-Term Infrastructure Improvement Plan, as filed on October 31, 2023, (Modified LTIIIP) was included in Attachment 2 in response to Data Request 4 P-19. VWPA's *pro forma* tariff supplement, as filed on October 31, 2023, was included in Attachment 2 in response to Data Request P-12 (Tariff Supplement).

On March 12, 2024, I issued an Interim Order Approving and Entering into the Record the First Joint Stipulation of Fact, including Appendix A.

On March 22, 2024, VWPA, OCA, and OSBA (collectively, Joint Petitioners) filed a Joint Petition for Approval of Unanimous Settlement of All Issues (Settlement). Attached to the Settlement are Appendices A-E. Appendix A is Proposed Conclusions of Law, and Appendix B is Proposed Ordering Paragraphs. Furthermore, Appendix C is VWPA's Statement in Support of Settlement, Appendix D is OCA's Statement in Support of Settlement, and Appendix E is OSBA's Statement in Support of Settlement.

On May 8, 2024, I issued an Interim Order Closing the Evidentiary Record.

VWPA's 2021 LTIIIP Filing

On August 31, 2021, VWPA, which was then known as SUEZ Water Pennsylvania Inc. (SWPA), filed its Petition for Approval of a Long-Term Infrastructure Improvement Plan 2022-2026 at Docket No. P-2021-3028256. Page 14 of that document states that SWPA intended to replace 12,500 services each year during the period 2022-2026.

By Opinion and Order entered on December 16, 2021, the Commission approved SWPA's LTIIIP for 2022-2026.

On February 20, 2024, VWPA submitted its Annual Asset Optimization Plan for historic year 2023 and projected year 2024 at Docket No. M-2024-3046637. During that proceeding, it was discovered that Page 14 of VWPA's Commission-approved LTIIIP contains a typographical error – the reference to 12,500 services to be replaced each year should be 1,250 services to be replaced each year.

By Secretarial Letter dated April 19, 2024, TUS directed VWPA to either file a petition for modification of its LTIIIP or file a new LTIIIP.

On May 6, 2024, VWPA filed a Petition to Modify its Approved Long Term Infrastructure Improvement Plan at Docket No. P-2021-3028256. Due to the pending request to modify the same LTIIIP in the instant proceeding, Commission staff asked VWPA to withdraw its Petition to Modify Approved Long Term Infrastructure Improvement Plan 2022-2026. VWPA requested leave to withdraw its pleading, which was granted by Secretarial Letter dated May 21, 2024.

On May 22, 2024, a Secretarial Letter was issued at Docket No. M-2024-3046637, which directed VWPA to address the typographical error in the LTIIIP in the instant proceeding.

Re-Opening the Record and Second Joint Stipulation of Fact

On May 22, counsel for VWPA emailed me, bringing my attention to the Secretarial Letter issued May 22, 2024, and the typographical error in the original LTIIIP.

Counsel advised that VWPA believed that the correction to the LTIIIP could be made by submitting a black-line of one page of the LTIIIP in Appendix A already admitted into the record by the March 12, 2024, Interim Order. I advised the parties that, based on counsel's

representations, I would re-open the record to allow the parties to submit corrected documentation.

On May 23, 2024, I issued an Interim Order reopening the record and directing parties to submit corrected documentation.

On May 30, 2024, the parties filed a Joint Stipulation for the Admission of Evidence (Second Joint Stipulation of Fact), attaching a corrected page of Appendix A, with the typographical error shown in black-line format. The parties stipulated to the veracity of the corrected page of Appendix A, the admission into the record of the corrected page of Appendix A, and the substitution of the corrected page of Appendix A for page 14 of the October 31, 2023, version of the LTIP. The October 31, 2023, version of the LTIP with the corrected page included will hereinafter be referred to as the Modified LTIP.

On June 5, 2024, I issued an Interim Order Adopting and Admitting into the Record the Second Joint Stipulation of Fact and Corrected Page of Appendix A and Re-Closing the Record.

The hearing record consists of the documents admitted into the record by the March 12, 2024, Interim Order, as corrected by the June 5, 2024, Interim Order, as well as the First Joint Stipulation of Fact and Second Joint Stipulation of Fact.

This Recommended Decision recommends the Settlement be adopted without modification as it is in the public interest.

STIPULATED FINDINGS OF FACT

The First Joint Stipulation of Fact, in conjunction with the Settlement, is intended to settle all issues in the above-captioned proceedings.¹ The parties stipulated to the following facts:²

THE PARTIES

1. Veolia Water Pennsylvania, Inc. (“VWPA”) is a regulated public utility corporation (Utility Codes 210013 (water) and 230077 (wastewater)) duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Petition of Veolia Water Pennsylvania, Inc. for Approval of a Lead Service Line Replacement Program (the “Petition”) at ¶¶ 2-3.

2. The Office of Consumer Advocate (“OCA”) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309.

3. The Office of Small Business Advocate (“OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

VWPA’S PLAN AND RELATED DOCUMENTS

4. **Attachment 1** is VWPA’s Petition, as filed on July 24, 2023.

¹ Settlement ¶ 18.

² See, First Joint Stipulation of Fact, Appendix A. These Stipulated Findings of Fact are provided here *verbatim*. The wording and formatting has been preserved for ease of reference.

5. **Attachment 2** are the answers of VWPA to data requests from TUS.
6. VWPA's Lead Service Line Replacement Plan, as filed on October 31, 2023, is included in **Attachment 2** in response to Data Request P-2E.
7. VWPA's modified Long-Term Infrastructure Improvement Plan ("LTIIIP"), as filed on October 31, 2023, is included in **Attachment 2** in response to Data Request P-19.
8. VWPA's LTIIIP is due for periodic review in 2026. Settlement ¶ 26.
9. VWPA's *pro forma* tariff supplement, as filed on October 31, 2023, is included in **Attachment 2** in response to Data Request P-12.
10. Attachment 3 is the items required by 52 Pa. Code §§ 53.52(a) and 65.55(b)(3). It is an updated version of the document filed by VWPA on July 24, 2023. This document has been agreed-to by the Parties.

VWPA'S INVENTORY OF SERVICE LINES

11. VWPA is currently conducting an inventory of its service lines in accordance with 40 CFR 141.1-143.20. VWPA's inventory is expected to be completed during October, 2024. VWPA Answer to TUS Data Request P-1 (in **Attachment 2**).
12. As of December 22, 2023, about 75% of VWPA's company owned service lines, and approximately 54% of customer-owned service lines, had been surveyed. No lead service lines had been found. Answer to OCA Interrogatory Set II No. 1 Data Request P-2023-3042107, included in **Attachment 4**.

CUSTOMER OUTREACH

13. VWPA provides all of its information on LSL and LSLR at the following web link: <https://storymaps.arcgis.com/stories/912f9c10e7344f0f953eaa75accf05b>.

14. VWPA currently provides information on its website about the availability of its consumer confidence reports for those who speak Spanish, Portuguese, Korean, Gujarti or Arabic.

15. VWPA offers translation services to customers, by which documents are orally translated for customers.

DESCRIPTION AND TERMS OF SETTLEMENT

In accordance with Rule 5.231 of the Commission’s Rules of Practice and Procedure, 52 Pa. Code § 5.231, the parties explored the possibility of settlement. As a result of settlement discussions, the parties achieved a settlement in principle under which all issues are resolved. The Settlement, which is fully executed by VWPA, OCA, and OSBA consists of 10 pages. The Settlement contains, as appendices, Proposed Conclusions of Law, Proposed Ordering Paragraphs, and Statements in Support of Settlement from VWPA, OCA, and OSBA.

Joint Petitioners agree to the Settlement terms³ set forth below:

A. Approval of Petition

17. The Joint Petitioners agree that the Commission should approve VWPA’s Petition for Approval of a Lead Service Line Replacement Program (the “Petition”).

³ Settlement, ¶¶ 17-29. These Settlement terms are provided here *verbatim*. The wording and formatting has been preserved for ease of reference.

B. Approval of Plan

18. In accordance with 52 Pa. Code §§ 65.55(b)(1) and 65.56, VWPA submitted a Lead Service Line Replacement Plan, which was amended on October 31, 2023 (as amended, the “Plan), in response to data requests from TUS. The Joint Petitioners agree that the Commission should approve the Plan, as modified by this Settlement.

C. Approval of Modified LTIIIP

19. In accordance with 52 Pa. Code § 65.54(b), VWPA submitted a modified Long-Term Infrastructure Improvement Plan (“LTIIIP”) containing the Plan as a separate and distinct component of the LTIIIP. The modified LTIIIP was amended on October 31, 2023, in response to data requests from TUS (as amended, the “Modified LTIIIP”). The Joint Petitioners agree that the Commission should approve the Modified LTIIIP, as modified by this Settlement.

D. Submission of Tariff Supplement

20. In accordance with 52 Pa. Code § 65.55(b)(2), VWPA submitted a *pro forma* tariff supplement containing the proposed changes necessary to implement the Plan. The *pro forma* tariff supplement was amended on October 31, 2023, in response to data requests from TUS (as amended, the “Tariff Supplement”).
21. The Joint Petitioners agree that the Commission should direct VWPA, pursuant to 52 Pa. Code § 65.55(b)(3), to resubmit the Tariff Supplement, as modified by this Settlement, to the Commission under 66 Pa. C.S. § 1308.

E. Customer Outreach

22. VWPA will share with the OCA and the OSBA the communications materials when developed to be used in connection with the Plan, and will report periodically upon request the effectiveness of such materials.

23. VWPA will make written information about the Plan available on VWPA's website, and documents implementing the Plan will be available in English with a notation in Spanish, Portuguese, Korean, Gujarati, and Arabic as to how to request the documents in a preferred language. VWPA will also make its translation services available to customers who call VWPA's customer service and request translation of the written information into other languages.
24. Following an unsuccessful attempt to obtain acceptance to replace a lead service line, VWPA will:
 - If there is no response within ten days, an opt-in letter will be sent via certified mail to the listed property owner.
 - If there is no response from the property owner within fourteen days, a phone call will be attempted to the property owner.
 - Following unsuccessful attempts to obtain acceptance from the property owner, the Company will make a phone call to the property owner.
 - In cases where the property owner is also the customer, if the call is successful, an in-person meeting can be scheduled at the property to go over the opt-in letter. If there is no answer, a voicemail will be left noting the findings at the owned property and a direct call-back number to a VWPA employee will be left.
 - If there is no response within five (5) days, a second attempt phone call will be made and if unsuccessful, another voicemail will be left.
 - In cases where the property owner is not the customer, the customers will also be notified and used as an avenue to make contact with the owner of the property.

F. Periodic Reviews of the Plan

25. Following Commission approval of the Petition, VWPA will submit lead service line replacement program reports in compliance with 52 Pa. Code § 65.59.
26. Following Commission approval of the Petition, VWPA will periodically update the Plan, in compliance with 52 Pa. Code § 65.57. The Joint Petitioners acknowledge that VWPA's LTIIP is due for periodic review in 2026.
27. In the event the Company finds lead in a Company-owned or customer-owned service line, the Company will provide a report detailing the location, number of affected pipes, and estimated remediation time for the lead service lines to

the Commission, the OSBA and the OCA within 60 days of the discovery of the lead service lines.

28. Upon the completion of the lead service line replacement inventory, the Company will replace all of the existing Company-owned and customer-owned lead service lines within three years of completion of the inventory.

G. Other Necessary Approvals

29. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code for VWPA to carry out the lead service line replacement program contemplated in the Petition in a lawful manner.

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 cases 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 Settlement.⁴

PARTIES’ POSITIONS ON THE SETTLEMENT

VWPA

As an initial matter, VWPA explains it is conducting a service line inventory that complies with U.S. Environmental Protection Agency (EPA) regulations at 40 CFR §§ 141-143.20.⁵ That inventory is expected to be completed during October 2024.⁶ As of December 22, 2023, VWPA had inventoried 75% of its Company-owned service line and 54% of its customer-

⁴ Settlement, ¶¶ 30-36.

⁵ First Joint Stipulation of Fact ¶ 11; VWPA Statement in Support, pg. 4.

⁶ First Joint Stipulation of Fact ¶ 11; VWPA Statement in Support, pg. 4.

owned service lines, and had not yet found any lead service lines anywhere in its system.⁷ Upon completion of the inventory, VWPA is required to: (a) submit the inventory to the Commission,⁸ and (b) incorporate the inventory into VWPA's next LSLRP update.⁹

The Settlement requires that, if the Company finds lead in a Company-owned or customer-owned lead service line, VWPA will (within 60 days of the discovery of the lead service lines) provide a report detailing the location, number of affected pipes, and estimated remediation time to the Commission, the OCA, and the OSBA.¹⁰ Additionally, the Settlement requires the Company to replace all existing residential Company-owned and customer-owned lead service lines within three years of completing the inventory.¹¹ VWPA argues that, considering that the Company has completed a large portion of its inventory and has yet to identify any lead service lines in its system, VWPA does not believe that a prolonged period of time is necessary to replace the lead service lines in its system.¹² Therefore, it avers it is in the public interest that the lead service lines be replaced as expeditiously as practicable.¹³

In the Settlement, the VWPA agrees that, if its inventory finds lead in a Company-owned or customer-owned service line, VWPA will provide a report to the Commission, the OCA and the OSBA within 60 days of discovery of the lead service line.¹⁴ The report required by the Settlement will quickly advise the Commission and all parties to this proceeding if this situation changes.¹⁵ VWPA argues this provision increases transparency,

⁷ *Id.* at ¶ 12.

⁸ 52 Pa. Code § 65.56(a)(1).

⁹ VWPA Statement in Support, pg. 4; *see* 52 Pa. Code § 65.56(a)(6).

¹⁰ Settlement ¶ 26.

¹¹ Settlement ¶ 27.

¹² VWPA Statement in Support, pg. 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

which is in the public interest.¹⁶ VWPA submits that these provisions of the Settlement are in the public interest and should be approved.¹⁷

VWPA notes that the LSLRP includes a planning and replacement section, which explains that the Tariff Supplement provides for a maximum budgeted amount of \$100,000 per year, with unused funds rolling over to the following year.¹⁸ VWPA explains that this amount was determined based on an estimate of replacing 25 customer-owned service lines per year (the cost of replacing each customer-owned lead service line is estimated to be \$3,880).¹⁹ The cap of 20 replacements per year takes into account the estimated cost of replacing Company-owned service lines (the cost of replacing each Company-owned lead service line is estimated to be \$2,725).²⁰ VWPA explains the source of funding will be general corporate funds (*i.e.*, the Company's capital plan).²¹

VWPA commits to prioritizing LSLR projects in the order that lead service lines are identified, except that lead service lines that serve a sensitive population (such as a childcare facility, school or an area with a high concentration of lead service lines) will be given priority over other lead service line replacements.²²

The LSLRP includes procedures to obtain acceptance of the LSLR, whether or not the customer is the property owner.²³ The Settlement modifies the LSLRP to include additional steps where the Company is not successful in its initial effort to obtain acceptance of

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; see LSLRP at 3-4.

²² VWPA Statement in Support, pg. 5; LSLRP at 4-5.

²³ VWPA Statement in Support, pg. 6.

the LSLR.²⁴ VWPA explains that these provisions will be added to the LSLRP when re-printed, if the Settlement is approved.²⁵ VWPA argues these provisions are in the public interest because it is important that the Company obtain acceptance of the LSLRP prior to beginning a replacement project.²⁶ These provisions add greater specificity to the Company's procedures and address a situation that could recur.²⁷

The LSLRP requires VWPA, prior to replacing the lead service line, to provide the customer with a fact sheet about lead service lines and requires VWPA to provide a pitcher water filtration system with a six-month supply of filters.²⁸ The customer or property owner will be required to execute an agreement for the replacement of the customer-owned service line before any work is performed by the Company or its contractor, and the contract will describe the warranty on the work.²⁹

VWPA explains that if the LSLRP is approved by the Commission, it will be re-printed to correct a printing error. 52 Pa. Code § 65.56(b)(10) contains three subparts, but the LSLRP suggests that the regulation contains six subparts.³⁰ When the plan is re-printed, VWPA explains that it will be made clear that Subparts (iv)-(vi) are the Company's responses to subparts (i)-(iii).³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*; see LSLRP at 5-6.

³⁰ VWPA Statement in Support, pg. 7.

³¹ *Id.*

The Commission’s regulations require that the utility’s LSLRP include copies of all printed and broadcast material to be distributed under the utility’s LSLRP.³² The LSLRP includes six exhibits that will be distributed to customers and property owners.³³ These exhibits include a Pennsylvania Department of Environmental Protection fact sheet regarding Risk Mitigation Measures for Water Systems Conducting Lead Service Line Replacement and an American Water Works Association Standard on Replacement and Flushing of Lead Service Lines.³⁴ VWPA has not identified any lead lines in its system to date, and it is still developing additional print and broadcast materials.³⁵

The Settlement provides that VWPA will share the additional communications materials with the OCA and the OSBA when developed, and will report periodically and upon request, about the effectiveness of these materials.³⁶ VWPA argues this provision is in the public interest because it will help ensure that the Company’s communications about the LSLRP are effective.³⁷

Additionally, the Settlement provides that VWPA will make written information about the LSLRP available on its website.³⁸ The documents will be in English, but the website will contain a notation in Spanish, Portuguese, Korean, Gujarati, and Arabic as to how to request the documents in a preferred language.³⁹

³² 52 Pa. Code § 65.56(c).

³³ VWPA Statement in Support, pg. 7.

³⁴ *Id.*

³⁵ *Id.*; LSLRP at 8.

³⁶ VWPA Statement in Support, pg. 7; Settlement at ¶ 21.

³⁷ VWPA Statement in Support, pg. 7.

³⁸ *Id.*

³⁹ Settlement ¶ 22; First Joint Stipulation of Fact ¶ 12.

In addition, VWPA currently offers translation services to customers - documents are orally translated for customers.⁴⁰ In the Settlement, VWPA agrees to make its translation services available to customers who request translation of the written information about the LSLRP into other languages.⁴¹ VWPA argues these provisions are in the public interest because they facilitate customer understanding of the Company's LSLRP by persons who are not fluent in English.⁴²

Finally, the Commission's regulations require a Class A public utility such as VWPA to develop a LSLRP section of its web site within 12 months after Commission approval of its LSLRP.⁴³ Although the deadline is more than a year away, VWPA notes that its website already contains information describing the health effects of lead and the customer's and the Company's responsibly related to lead service lines.⁴⁴ This web page includes a link to the self-identification survey, explains how lead exposure can occur in the home, and outlines steps a customer can take to reduce lead exposure.⁴⁵ If the LSLRP is approved, the Company expects to add information in the future (*e.g.*, information about eligibility for replacement and any information required by Commission regulations).⁴⁶

In conclusion, VWPA argues the LSLRP is in the public interest and should be approved because it contains all of the elements required by the Commission's regulations. As modified by the Settlement, the LSLRP does more than the minimum required by law.⁴⁷ In the

⁴⁰ First Joint Stipulation of Fact ¶ 13.

⁴¹ Settlement ¶ 22.

⁴² VWPA Statement in Support, pg. 8.

⁴³ 52 Pa. Code § 65.56(c)(2).

⁴⁴ VWPA Statement in Support, pg. 8; *see* <https://mywater.veolia.us/new-york/pennsylvania/water-in-my-area/pa-service-line-information>.

⁴⁵ VWPA Statement in Support, pg. 8.

⁴⁶ *Id.*; LSLRP at 8-9.

⁴⁷ VWPA Statement in Support, pg. 8.

Settlement, VWPA agreed to additional customer outreach measures (e.g., making information available about how to request the documents in languages other than English and making VWPA’s transaction services available to translate the written information into other languages), which are also in the public interest.⁴⁸ For all of these reasons, VWPA respectfully requests that the Commission approve VWPA’s Plan.⁴⁹

With regard to the Modified LTIP, VWPA submitted a revised LTIP on October 31, 2023, in response to a data request from TUS.⁵⁰ TUS asked VWPA to make additional modifications, unrelated to the LSLR program.⁵¹ Specifically, TUS asked VWPA to update the Commission-approved LTIP to reflect the current name of the Company.⁵² Consequently, in addition to the changes shown on the June 24, 2023, version of the LTIP, the October 31, 2023, version of the LTIP changed all references to SUEZ Water Pennsylvania Inc. or SUEZ to Veolia Water Pennsylvania, Inc. or Veolia, respectively.⁵³

VWPA argues the Commission should approve VWPA’s modified LTIP because it complies with the Commission’s regulations. The Company’s LSLRP will be attached to the LTIP as an Exhibit. In addition, the LTIP incorporates LSLR projects as being DSIC-eligible.⁵⁴ VWPA argues this provision is in the public interest because it will help fund LSLR projects more expeditiously.⁵⁵

⁴⁸ VWPA Statement in Support, pg. 8.

⁴⁹ *Id.*

⁵⁰ VWPA Statement in Support, pg. 9.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ VWPA Statement in Support, pg. 10.

⁵⁵ *Id.*

With regard to the Tariff Supplement, VWPA avers it complies with the Commission's regulations.⁵⁶ VWPA argues the Tariff Supplement is in the public interest, is consistent with applicable law, and protects ratepayers by capping the number of customer-owned lead service lines that will be replaced in a year.⁵⁷ It also protects the Company and its customers financially by ensuring that customer-owned lead service lines are replaced pursuant to a written contract (Tariff Supplement Application ¶ A) that includes a two-year warranty.⁵⁸ It also protects customers' health and safety by prohibiting partial replacement of lead service lines.⁵⁹ For all of these reasons, VWPA respectfully requests the Commission direct VWPA, pursuant to 52 Pa. Code § 65.55(b)(3), to resubmit the Tariff Supplement and the items required by 52 Pa. Code § 53.52(a), to the Commission pursuant to 66 Pa.C.S. § 1308.⁶⁰

The Office of Consumer Advocate

OCA avers that, in its Answer to VWPA's Petition, it addressed the following issues: (1) customer outreach; (2) service line inventory; and (3) planning and replacement.⁶¹

Under the Settlement, VWPA will share with OCA and OSBA the communications materials, when developed, to be used in connection with their LSLRP and will report periodically upon request the effectiveness of such materials.⁶² OCA argues VWPA's agreement to this Settlement term helps ensure that the communications are effective.⁶³

⁵⁶ VWPA Statement in Support, pg. 10.

⁵⁷ VWPA Statement in Support, pg. 11.

⁵⁸ *Id.*

⁵⁹ VWPA Statement in Support, pg. 11-12.

⁶⁰ VWPA Statement in Support, pg. 12.

⁶¹ OCA Statement in Support, pg. 2.

⁶² OCA Statement in Support, pg. 3; Settlement ¶ 22.

⁶³ OCA Statement in Support, pg. 3.

Additionally, OCA avers that VWPA's agreement to allow OCA's input into the development of LSLRP communication is in the public interest as it allows oversight regarding important communications concerning public health.⁶⁴

OCA explains that VWPA had originally planned to make the communications materials available in English, including a statement in Spanish describing the importance of the document and that it may be translated upon request.⁶⁵ OCA recommended in its Answer that all written material to be given to customers or owners be available, upon request, in a customer's or owner's preferred language if it is a language other than English or Spanish.⁶⁶ As part of the Settlement, VWPA will make written information about the LSLRP available on VWPA's website, and documents implementing the LSLRP will be available in English with a notation in Spanish, Portuguese, Korean, Gujarati, and Arabic as to how to request the documents in a preferred language.⁶⁷ VWPA will also make its translation services available to customers who call VWPA's customer service and request translation of the written information into other languages.⁶⁸

OCA explains that ensuring that customers can understand all VWPA's material on this important public health issue was a serious concern in negotiating the Settlement.⁶⁹ VWPA's inclusion of notations in the top five non-English native languages is in alignment with the Company's practice of including similar notations regarding their Consumer Confidence

⁶⁴ *Id.*

⁶⁵ OCA Statement in Support, pg. 3; *See* VWPA Response to OCA Set I-2.

⁶⁶ OCA Statement in Support, pg. 3.

⁶⁷ *Id.*; Settlement ¶ 23.

⁶⁸ OCA Statement in Support, pg. 3.

⁶⁹ *Id.*

Reports (CCRs).⁷⁰ As both CCRs and LSLRs concern vital public health information, the inclusion of language notations to enhance customer understanding is in the public interest.⁷¹

Additionally, under the Settlement, VWPA is revising its process for when it experiences an unsuccessful attempt to obtain acceptance to replace a lead service line. Originally, VWPA's process called only for an opt-in letter to be sent via certified mail to the listed property owner if it received no response within ten days, and if no response from the property owner within fourteen days, a VWPA would attempt a phone call to the property owner.⁷²

In its Answer to the Petition, OCA explains it raised concerns regarding the LSLRP's lack of specificity regarding customer contact.⁷³ In the Settlement, VWPA has agreed to a more detailed process.⁷⁴

OCA explains that the terms contained in Settlement go beyond what VWPA originally planned and is responsive to OCA's concerns regarding difficulties obtaining acceptance of an LSLR.⁷⁵ OCA argues these procedures are in the public interest as they increase the likelihood of acceptance of the LSLR and decrease the potential of a disconnection if the property owner is initially unresponsive.⁷⁶

⁷⁰ OCA Statement in Support, pg. 4.

⁷¹ *Id.*

⁷² *See* VWPA Response to TUS DR P-2E Attachment at 5.

⁷³ OCA Statement in Support, pg. 4.

⁷⁴ Settlement ¶ 23.

⁷⁵ OCA Statement in Support, pg. 5.

⁷⁶ *Id.*

OCA notes that VWPA has yet to find lead pipes in its system and has not identified any customer-owned lead service lines.⁷⁷ In its original LSLRP Petition, the Company had planned to offer to replace customer owned lead service lines free of charge to the customer whether or not the associated Company service line is also being replaced.⁷⁸ OCA noted concern that VWPA's LSLRP lacked specificity in setting a timeline to replace any lead service lines that may be found.⁷⁹

Under the Settlement, in the event the Company finds a Company-owned or customer-owned lead service line, the Company will provide a report detailing the location, number of affected pipes, and estimated remediation time for the lead service lines to the Commission, the OSBA and the OCA within 60 days of the discovery of the lead service lines.⁸⁰ Given that VWPA has not yet discovered lead in their system, OCA argues that updating the Commission and the statutory advocates with detailed information regarding lead service lines is in the public interest as it provides transparency.⁸¹

The Settlement further provides that, upon the completion of the lead service line replacement inventory, the Company will replace all the existing residential Company-owned and customer-owned lead service lines within three years of completion of the inventory.⁸² Given the lack of lead service lines identified in the Company's lead service line inventory, this accelerated replacement schedule ensures that any lead that is discovered is promptly removed from the system.⁸³ Replacing lead service lines provides many public health and safety benefits,

⁷⁷ OCA Statement in Support, pg. 5; *see* VWPA LSLRP Petition at 2.

⁷⁸ *Id.*

⁷⁹ OCA Statement in Support, pg. 5; *see* OCA Answer at 4.

⁸⁰ Settlement ¶ 27.

⁸¹ OCA Statement in Support, pgs. 5-6.

⁸² OCA Statement in Support, pg. 6; Settlement ¶ 28.

⁸³ OCA Statement in Support, pg. 6.

and VWPA's active approach to replacing any discovered lead service lines is in the public interest.⁸⁴

In conclusion, OCA argues the Company adopted many of OCA's recommendations for improving their LSLRP, and the adoption of the Settlement results in a LSLRP with enhanced communications, an accelerated replacement schedule, and greater transparency compared to what was originally proposed by the Company.⁸⁵ In consideration of the various elements of the Settlement, OCA finds the Settlement to be in the public interest and in the interest of VWPA's customers.⁸⁶

The Office of Small Business Advocate

OSBA represents it actively participated in the negotiations that led to the proposed settlement and is a signatory to it.⁸⁷ OSBA argues the Settlement addresses all the issues it raised in this proceeding.⁸⁸

OSBA submits the Settlement is in the public interest of VWPA's small business customers. OSBA explains that it, along with the Office of the Office of Administrative Law Judge, and the Commission are aware of the rising costs of utility service for all Commonwealth ratepayers, whether they are residential, small business, or industrial customers.⁸⁹ OSBA notes that its primary focus in this proceeding has been to ensure that LSLRs proceed at a prudent

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ OSBA Statement in Support, pg. 1.

⁸⁸ *Id.*

⁸⁹ OSBA Statement in Support, pg. 2.

pace, so as to limit the rate impact of LSLRs on VWPA's ratepayers, including small business customers.⁹⁰

The Settlement proposes that VWPA will replace all existing Company-owned and customer-owned lead service lines within three years of completion of the Company's lead service line replacement inventory.⁹¹ Although this a significantly accelerated pace of replacement in comparison to what is required by statute, OSBA argues it is a just and reasonable proposal.

OSBA explains that its position is based upon two factors that have been discussed at the various settlement conferences and documented through informal discovery.⁹² First, to date, VWPA has surveyed at least 75% of its service territory.⁹³ Furthermore, to date, Veolia has found zero lead service lines.⁹⁴

Second, VWPA's survey of its service territory will be complete in October 2024, roughly 7 months from the time of its submission of its Statement in Support.⁹⁵ If VWPA were to find lead service lines in that remaining time period, OSBA explains that informal discovery has documented that VWPA has in place a budget for those replacements.⁹⁶ Furthermore, OSBA notes that the informal discovery process has produced evidence that the projected cost of individual replacements is low enough that the Company could replace all reasonably anticipated LSLs within three years, within budget, *i.e.*, without such replacements necessitating that VWPA

⁹⁰ *Id.*

⁹¹ *Id.*; *See* Settlement ¶ 12.

⁹² OSBA Statement in Support, pg. 2.

⁹³ OSBA Statement in Support, pg. 3; First Joint Statement of Facts, ¶ 12.

⁹⁴ OSBA Statement in Support, pg. 3; First Joint Statement of Facts, ¶ 12.

⁹⁵ OSBA Statement in Support, pg. 3; First Joint Statement of Facts, ¶ 11.

⁹⁶ OSBA Statement in Support, pg. 3.

accelerate the filing of its next base rates case.⁹⁷ In consideration of the various elements of the Settlement, OSBA finds the Settlement to be in the public interest and in the interest of VWPA's customers.

DISCUSSION

Act 120 of 2018 amended Section 1311(b) of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. § 1311(b) to address lead service line replacement (LSLR) and the recovery of associated costs. The Commission subsequently adopted regulations at 52 Pa. Code §§ 65.51-65.62. *Rulemaking to Implement Act 120 of 2018 at 52 Pa. Code Chapters 65 and 66*, Docket No. L-2020-3019521 (Final Rulemaking Order entered Mar. 14, 2022).

By Secretarial Letter issued on October 31, 2022, at Docket No. L-2020-3019521, the Commission notified utilities such as VWPA (Class A public utilities without Commission-approved preexisting LSLR activities) that a petition for approval of a LSLRP was due on or before July 22, 2023. Since July 22, 2023, was a Saturday, VWPA filed its Petition on Monday, July 24, 2023. As required by 52 Pa. Code § 65.54, the Petition was filed with the Secretary's Bureau and copies were served on the OCA, the OSBA, the Commission's Bureau of Investigation and Enforcement, and all parties of record in VWPA's most recently completed base rate case.

The Petition described the Company's LSLRP, which included all of the elements required by 52 Pa. Code §§ 65.54 and 65.55: a LSLRP, a modified LTIIP containing the LSLRP, a *pro forma* tariff supplement, and the information required by 52 Pa. Code § 53.52(a).

VWPA substantially revised its LSLRP in response to data requests from TUS.⁹⁸ The items required by 52 Pa. Code § 53.52(a) were updated, attached to the Joint Stipulation of Facts as Attachment 3, and moved into the record by Interim Order dated March 12, 2024.

⁹⁷ *Id.*

⁹⁸ Joint Stipulation Attachment 2.

Commission policy promotes settlements.⁹⁹ Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding.¹⁰⁰ Settlements also eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions the parties of interest held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.¹⁰¹

As an initial matter, the fact that the Settlement resolves all issues raised by the parties is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of the Joint Petitioners (the Company, the statutory advocate representing the interests of small business utility consumers and the statutory advocate primarily representing the interests of residential utility consumers). The Settlement was achieved through discovery and negotiations over a period of several months. All the parties represent that the Settlement reflects a carefully balanced compromise of the interests of the parties and satisfies the various requirements of the Code, the Commission’s Orders and Regulations. They all agree the Settlement is in the public interest and should be approved.

⁹⁹ See 52 Pa. Code § 5.231.

¹⁰⁰ See 52 Pa. Code § 69.401.

¹⁰¹ *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. C.S. Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

The Settlement provides that VWPA will replace all Company-owned or customer-owned lead service lines within 60 days of the discovery of the lead service lines. Further, the Settlement requires VWPA to complete replacement of all the existing Company-owned and customer-owned lead service lines within three years of the completion of its inventory. These terms ensures that VWPA customers will receive timely replacements of lead lines, which is necessary for customers' health. Further, if lead lines are found, VWPA will provide a report detailing the location, number of affected pipes, and estimated remediation time for the lead service lines to the Commission, the OCA, and the OSBA. This term ensures VWPA's lead service replacement efforts are transparent and subject to Commission oversight.

The Settlement further provides that the LSLRP and Modified LTIP will be subject to periodic updates and Commission review.

With regard to customer outreach, the Settlement requires VWPA to share its LSLRP materials with OCA and OSBA, increasing transparency and allowing for collaboration. VWPA will be required to make the LSLRP documents available on its website and include notations on its written materials advising customers how to request the documents in languages other than English. These terms will increase VWPA's customers' ability to access and understand information about VWPA's LSLRP.

The Settlement also provides a detailed plan VWPA must follow in the event it experiences an unsuccessful attempt to obtain acceptance to replace a lead service line. Having a detailed procedure for VWPA to follow in these situations is in the public interest because it ensures VWPA must take more steps and put forth greater effort to contact property owners and customers so it can replace lead lines in its system, in the event it finds any.

I recommend the Commission adopt the Joint Petition for Approval of Unanimous Settlement of All Issues and direct VWPA to make the changes to the LSLRP, tariff supplement, and Modified LTIP as modified by the Settlement and resubmit those documents to TUS for final approval.

Accordingly, I recommend that the Commission approve the Settlement because it is in the public interest and is consistent with the requirements set forth in 66 Pa.C.S. § 1311(b) and 52 Pa. Code § 65.54(a).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 1311(b)(2); 52 Pa. Code § 65.54.
2. Veolia Water Pennsylvania, Inc. has the burden of proof in these proceedings. 66 Pa. C.S. § 332(a)
3. Commission policy promotes settlements. 52 Pa. Code § 5.231.
4. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.
5. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).
6. Pursuant to 52 Pa. Code § 65.55(b), a lead service line program must include:
 - a. A lead service line replacement plan as described in 52 Pa. Code § 65.56 (relating to lead service line replacement plan requirements);
 - b. A *pro forma* tariff or tariff supplement containing the proposed changes necessary to implement the entity's lead service line replacement program as described in 52 Pa. Code § 65.58 (relating to *pro forma* tariff or tariff supplement requirements); and

- c. Information required by the Commission for filings under 66 Pa. C.S. § 1308 (relating to voluntary changes in rates), including statements required by § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies)

7. An entity with a Commission-approved long-term infrastructure improvement plan shall include with its lead service line replacement program petition a modified LTIIP containing a lead service line replacement plan as a separate and distinct component of the LTIIP. 52 Pa. Code § 65.54(b).

8. A lead service line replacement plan must include a service line inventory, a planning and replacements section, and a communications, outreach and education section. 52 Pa. Code § 65.56 (relating to lead service line replacement plan requirements).

9. The Commission's regulations at 52 Pa. Code § 65.58 (relating to *pro forma* tariff or tariff supplement requirements), provide that a *pro forma* tariff or tariff supplement must contain proposed changes necessary to implement the entity's lead service line replacement program, including, at a minimum:

- a. A lead service line program annual cap;
- b. A service line demarcation;
- c. Provisions concerning partial lead service lines;
- d. Provisions concerning reimbursements; and
- e. Provisions concerning a warranty.

10. After initial Commission-approval of an entity's lead service line replacement plan, the entity shall update the plan for Commission review at least once every five years. To the extent possible, the Commission will coordinate the review of the updated lead service line review plan with the period review of the entity's LTIIP. 52 Pa. Code § 65.57

11. An entity with an approved lead service line replacement program shall file with the Commission a lead service line replacement program report by March 1 of each

year. If the entity is implementing the lead service line as part of its Commission-approved LTIP, the entity is to include the lead service line replacement program report as part of the entity's annual asset optimization plan. 52 Pa. Code § 65.59.

12. The Joint Petition for Approval of Unanimous Settlement of All Issues executed and submitted at this docket by Veolia Water Pennsylvania, Inc., the Office of Consumer Advocate, and the Office of Small Business Advocate and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification. *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Unanimous Settlement of All Issues filed on March 22, 2024, and executed by Veolia Water Pennsylvania, Inc., the Office of Consumer Advocate, and the Office of Small Business Advocate, be approved without modification.

2. That, consistent with the terms of the Settlement, Veolia Water Pennsylvania, Inc. be directed to share with the Office of Consumer Advocate and the Office of Small Business Advocate its communications materials, when developed, to be used in connection with the Lead Service Line Replacement Plan, and to report the effectiveness of such materials periodically upon request of the parties.

3. That, consistent with the terms of the Settlement, Veolia Water Pennsylvania, Inc. be directed to make written information about the Lead Service Line Replacement Plan available on its website.

4. That, consistent with the terms of the Settlement, Veolia Water Pennsylvania, Inc. be directed to make all documents implementing the Lead Service Line Replacement Plan available in English with a notation in Spanish, Portuguese, Korean, Gujarati, and Arabic as to how to request the documents in a preferred language.

5. That, consistent with the terms of the Settlement, Veolia Water Pennsylvania, Inc. be directed to make its translation services available to customers who call its customer service line and request translation of the written information into other languages.

6. That, consistent with the terms of the Settlement, Veolia Water Pennsylvania, Inc. be directed to follow the following protocol following an unsuccessful attempt to obtain acceptance to replace a lead service line:

- a. If there is no response within ten days, an opt-in letter will be sent via certified mail to the listed property owner.
- b. If there is no response from the property owner within fourteen days, a phone call will be attempted to the property owner.
- c. Following unsuccessful attempts to obtain acceptance from the property owner, the Company will make a phone call to the property owner.
- d. In cases where the property owner is also the customer, if the call is successful, an in-person meeting can be scheduled at the property to go over the opt-in letter. If there is no answer, a voicemail will be left noting the findings at the owned property and a direct call-back number to a VWPA employee will be left.
- e. If there is no response within five days, a second attempt phone call will be made and if unsuccessful, another voicemail will be left.
- f. In cases where the property owner is not the customer, the customers will also be notified and used as an avenue to make contact with the owner of the property.

7. That Veolia Water Pennsylvania, Inc. be directed to submit lead service line program reports in compliance with 52 Pa. Code § 65.59.

8. That Veolia Water Pennsylvania, Inc. be directed to periodically update the Plan, in compliance with 52 Pa. Code § 65.57.

9. That, consistent with the terms of the Settlement, VWPA be directed that, in the event the Company finds lead in a Company-owned or customer-owned service line, the Company will provide a report detailing the location, number of affected pipes, and estimated remediation time for the lead service lines to the Commission, the OCA and the OSBA within 60 days of the discovery of the lead service line.

10. That, consistent with the terms of the Settlement, VWPA be directed to replace all existing Company-owned and customer-owned lead service lines within three years of completion of the lead service line replacement inventory.

11. That the Commission issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code for Veolia Water Pennsylvania, Inc. to carry out the lead service line replacement program, consistent with the terms of the Settlement, in a lawful manner.

12. That, within thirty days of the entry date of the Commission's Final Order in this matter, Veolia Water Pennsylvania, Inc. shall file an amended Lead Service Line Replacement Plan, modified Long-Term Infrastructure Improvement Plan, and tariff supplement at Docket No. P-2023-3042107, that incorporates any modifications thereto consistent with these proceedings and findings herein with the Secretary's Bureau, and serve a copy upon the Bureau of Technical Utility Services and all active Parties in this proceeding.

13. That the Bureau of Technical Utility Services shall complete its review of the amended Lead Service Line Replacement Plan, modified Long-Term Infrastructure Improvement Plan, and tariff supplement subject to the schedule in place at the time the

proceeding was assigned to the Office of Administrative Law Judge for hearings in this matter and submit an order for Commission consideration.

14. That, the proceeding at Docket No. P-2023-3042107 shall remain open pending completion of the Bureau of Technical Utility Services review as ordered in Ordering Paragraph No. 13 above.

Date: July 2, 2024

_____/s/_____
Emily I. DeVoe
Administrative Law Judge