

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Columbia Water Company for :
Approval of a Lead Service Line Replacement :
Program, Related Tariff Changes, Modification : P-2023-3041845
of a Long-Term Infrastructure Improvement :
Plan, and Waiver of Termination Regulations :

RECOMMENDED DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision recommends that the Commission approve a settlement without modification. The settlement modifies a proposed lead service line replacement program and includes provisions for modifications to the Company's LTIIIP, tariff and waives certain termination procedures. The settlement incorporates modifications recommended by the Commission's Bureau of Technical Utility Services, OCA and OSBA.

HISTORY OF THE PROCEEDINGS

On July 21, 2023, Columbia Water Company (Columbia Water or Company) filed a Petition for Approval of a Lead Service Line Replacement Program, Related Tariff Changes, Modification of Long-Term Infrastructure Improvement Plan, and Waiver of Termination Regulations. This Petition seeks approval of Columbia

Water's plan to replace Company-owned and customer-owned lead service lines and to recover the costs associated with those replacements.

On August 10, 2023, Steven C. Gray, Esquire filed a Notice of Appearance and a Notice of Intervention on behalf of the Office of Small Business Advocate (OSBA). Also on August 10, 2023, Harrison W. Breitman, Esquire filed an answer to the Petition on behalf of the Office of Consumer Advocate (OCA).

On September 19, 2023, the Commission served a notice establishing an initial telephonic prehearing conference for this matter for Thursday, October 5, 2023, and assigning the litigation of the Petition to Administrative Law Judges (ALJs) Mary Long and Charece Collins. Also on September 19, 2023, the ALJs served a prehearing conference order setting forth the rules and expectations for the conference.

Allison C. Kaster, Esquire filed a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E) on September 20, 2023.

The October 5, 2023, Prehearing Conference convened as scheduled. The Parties requested 90 days to discuss settlement prior to proceeding with the formal litigation of this matter. The Parties further indicated that they would send monthly status reports for the duration of the settlement period. We granted the Parties' request to continue the case until January 8, 2024, and by order entered October 5, 2023, we set forth a schedule for monthly status reports.

The Parties emailed status reports as directed by the October 5, 2023, Prehearing Order. On January 8, 2024, the Parties advised that they continued to engage in settlement negotiations, and they requested an additional 90 days to discuss settlement prior to proceeding with the formal litigation of this matter. We granted the Parties

request and entered Prehearing Order #2 on January 8, 2024. That order continued the matter until April 8, 2024, and set forth a schedule for additional monthly status reports.

The Parties provided a status report by email dated April 9, 2024, which reported that a settlement offer had been circulated. The Parties requested an additional continuance. We granted the Parties request but entered an order scheduling a further prehearing conference for Thursday June 6, 2024, in the event that the Parties failed to reach an agreement.

On June 5, 2024, Columbia Water filed a Motion for Summary Judgement.

The June 6, 2024, Prehearing Conference convened as scheduled. Counsel for Columbia Water, OCA and OSBA appeared. Columbia Water, OCA and OSBA represented that they had reached an agreement in principle. Accordingly, Columbia Water agreed to withdraw its Motion for Summary Judgement. By order entered June 13, 2024, we granted Columbia Water's request to withdraw its motion and directed the Parties to file a joint petition for settlement no later than July 31, 2024.

On July 31, 2024, the Columbia Water, OSBA and OCA filed a Joint Petition for Settlement (Joint Petition or Settlement). Columbia Water represented that I&E did not oppose the Settlement.¹ The Joint Petition included Exhibits 1 (Proposed Conclusions of Law), Exhibit 2 (Lead Service Line Replacement Plan), Exhibit 3 (Pro Forma Tariff Supplement), Exhibit 4 (Modified Long Term Infrastructure Improvement Plan) and Exhibits 5-7 (Statements in Support of the Company, OCA and OSBA).

¹ See also I&E Prehearing Conference Memorandum (stating that the purpose of its appearance was to monitor the proceeding to determine if it would pursue any issues). I&E did not appear at the June 6, 2024, Prehearing Conference.

Also on July 31, 2024, Columbia Water, I&E, OSBA and OCA (Stipulating Parties) filed a Joint Stipulation of Facts (Stipulation) in the above-captioned proceeding.² By Interim Order entered August 16, 2024, the Stipulation was admitted into the record and the record was closed.³

STIPULATED FACTS

1. Columbia Water Company is a certificated Class A water distribution public utility. Columbia Water provides public water service to approximately 12,154 residential, commercial, public and industrial customers in Columbia, Marietta and Mountville Boroughs, West Hempfield, Manor, and East Donegal Townships, Lancaster County and Hellam Township, York County, Pennsylvania. (Stipulation ¶ 1).

2. Lead is a heavy metal that commonly occurs in the environment. Humans can be exposed to lead through a variety of sources, including dust, soil, or paint chips, as well as through ingestion from drinking water. (Stipulation ¶ 5).

3. Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects. Adults can have increased risks of heart disease, high blood pressure, kidney or nervous system problems. (Stipulation ¶ 6).

² The Stipulation included stipulated facts as well as the LSLR Petition (Attachment 1), and revisions in response to TUS data request (Attachment 2).

³ On August 6, 2024, the Commission entered a notice removing Judge Collins' assignment to this case in anticipation of her reassignment to the staff of Commissioner Zerfuss.

4. Before the adverse effects of lead in drinking water were well-studied or recognized it was common for water service to be provided through lead service lines. (Stipulation ¶ 7).

5. Columbia Water serves its customers through three separate rate districts: (1) Columbia, (2) Marietta, and (3) the former East Donegal Township Municipal Authority (EDTMA). (Stipulation ¶ 20).

6. The Company filed an initial lead service line inventory identifying 12,051 Company-side service lines and 12,050 customer-owned service lines. (Stipulation ¶ 21).

7. While the Company initially estimated approximately a combination of 400 Company-owned and customer-owned lead service lines within its system, with the benefit of additional information collected the Company estimates there are fewer than 200 lead service lines total within the Company's system. (Stipulation ¶ 22).

8. It is estimated that of those 200, less than 50 are customer-owned lead service lines. (Stipulation ¶ 22).

SETTLEMENT TERMS

The Joint Petitioners agree to the following terms and conditions, which are set forth verbatim.

A. Approval of the Lead Service Line Replacement Petition

23. The Joint Petitioners agree that the Commission should approve Columbia Water's LSLR Petition, as

modified by the terms and conditions set forth in this Settlement.

B. Approval of the Lead Service Line Replacement Plan

24. In accordance with 52 Pa. Code §§ 65.55(b)(1) and 65.56, Columbia Water submitted a Lead Service Line Replacement Plan, including Appendices A-N and an Initial Lead Service Line Inventory. The Lead Service Line Replacement Plan, including Appendices A-N, was attached as Exhibit No. 1 to the LSLR Petition. The Initial Lead Service Line Inventory was separately attached as Exhibit No. 2 to the LSLR Petition. The Lead Service Line Replacement Plan and Appendix L were subsequently amended on September 13, 2023, in response to data requests from TUS (as amended, the "LSLR Plan").

25. The Joint Petitioners agree that the Company has modified its LSLR Plan, as shown in Exhibit 2, to reflect that the Company will:

a. Contact customers within an LSLR Project Area at least two times over the six-month period once an LSLR Project Area has been identified, or until the customer responds to the Company, whichever is sooner, to determine whether there are customer-owned lead service lines and to verify the presence of the customer-owned lead service lines. Customers will initially receive a phone call to set up an appointment for an interior inspection of the service line. Door hangers and/or a mailed letter explaining the health effects of lead and documentation explaining the service line program will be used if the customer cannot be contacted via telephone.

b. Provide customer(s) affected by an LSLR with a pitcher filter, six months of replacement cartridges, and use instructions approximately thirty days prior to the scheduled LSLR, but no later than the day of the LSLR. The affected customer(s) will be provided a pitcher filter

hand delivered by the Company. If there isn't a customer home at the time of delivery, the Company will use a door hanger indicating how a pitcher can be obtained. A follow-up phone call will also be made to the customer to determine whether they received the door hanger and that they should either pick their pitcher filter up at our main office of 220 Locust St, Columbia PA 17512, or schedule to have someone deliver the pitcher prior to the LSLR.

c. Offer a new customer applying for water service in a household that previously refused a LSLR replacement the option to have [Columbia Water] replace the customer portion of the LSL to reestablish service. Prior to offering the applicant an LSLR, the Company will verify that the applicant owns the property for which service is requested.

d. Ensure that the Company's LSLR website and all documentation regarding LSLRs will be available in both English and Spanish and, upon request, the Company will provide any/all documentation regarding LSLRs in other languages to customers directly. The Company will also make its translation services available to customers who call the Company's customer service and request translation of the written information into other languages.

e. Mail Appendix M of the LSLR Plan and a letter detailing eligibility for an LSLR reimbursement and instructions on how to obtain the reimbursement to customers within the LSLR Project Area no later than 30 days after LSLR Project Commencement. Any handout necessary for a customer or owner to receive reimbursement shall be mailed physically and electronically mailed to customers and owners, along with the forms remaining available on the company's website, on a reasonable best-efforts basis where the Company has the customer or property owner's email address.

26. The Joint Petitioners agree that the Company will modify Appendix I of the LSLR Plan to include the following statement: “Columbia Water Company will contact you with the sample results. If a sample exceeds 15 ug/L of lead, notification will be no later than 3 calendar days of sample results. If a sample doesn’t exceed 15 ug/L of lead, notification will be no later than 30 days of the sample results.”

27. A redlined version of the Company’s LSLR Plan, as further modified by this Settlement, is attached to this Joint Petition as Exhibit 2.

28. The Joint Petitioners agree that the Commission should approve the LSLR Plan, as modified by this Settlement.

C. Approval of Pro Forma Tariff Supplement

29. In accordance with 52 Pa. Code §§ 65.55(b)(2) and 65.58, Columbia Water submitted a pro forma tariff supplement containing the proposed changes to the Company’s Tariff – Water Pa. P.U.C. No. 7 necessary to implement the LSLR Plan, which was attached as Exhibit No. 3 to the LSLR Petition. The pro forma tariff supplement was amended on September 13, 2023, in response to data requests from TUS (as amended, the "LSLR Tariff Supplement").

30. The Joint Petitioners agree that the Company has modified its LSLR Tariff Supplement to reflect that the Company will:

a. Post a 48-hour notice at the customer’s premises prior to the date of termination for refusal to replace the customer-owned LSL.

b. Provide notice pursuant to the LSLR Tariff Supplement to every resident that lives at a multi-residential building that is affected by a termination as a result of an LSLR refusal.

31. A redlined version of the Company's LSLR Tariff Supplement, as further modified by this Settlement, is attached to this Joint Petition as Exhibit 3.

32. The Joint Petitioners agree that the Commission should direct Columbia Water, pursuant to 52 Pa. Code § 65.55(b)(3), to submit a compliance tariff to the Commission consistent with Exhibit 3 (the LSLR Tariff Supplement, as modified by this Settlement), effective after one day's notice.

D. Approval of the Modified Long-Term Infrastructure Improvement Plan

33. In accordance with 52 Pa. Code § 65.54(b), Columbia Water submitted a modified LTIIIP containing the LSLR Plan as a separate and distinct component of the LTIIIP, which was attached as Exhibit No. 4 to the LSLR Petition. The modified LTIIIP was amended on September 13, 2023, in response to data requests from TUS (as amended, the "Modified LTIIIP").

34. A redlined version of the Company's Modified LTIIIP is attached to this Joint Petition as Exhibit 4.

35. The Joint Petitioners agree that the Commission should approve the Modified LTIIIP.

E. Periodic Reviews of the LSLR Plan

36. Following Commission approval of the Petition, Columbia Water will submit lead service line replacement program reports in compliance with 52 Pa. Code § 65.59.

37. Following Commission approval of the Petition, Columbia Water will periodically update the LSLR Plan, in compliance with 52 Pa. Code § 65.57.

F. Lead Service Line Replacement Rate

38. The Company agrees to complete replacements of all Company-owned and customer-owned LSLs within ten program years if the Lead and Copper Rule Improvements (“LCRI”) rulemaking promulgated by the Environmental Protection Agency is finalized, codified, and becomes law, and requires that water systems complete replacements within ten years. See National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), 88 Fed. Reg. 84878 (proposed Dec. 6, 2023).

G. Other Necessary Approvals

39. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code for Columbia Water to carry out the Lead Service Line Replacement Program contemplated in the LSLR Petition in a lawful manner.

H. Standard Settlement Terms

40. The Commission’s approval of the Settlement shall not be construed as approval of any Petitioner’s position on any issue, but rather as an agreed-to

compromise of the Joint Petitioners' competing positions. It is understood and agreed among the Joint Petitioners that the Settlement terms are the result of compromise and do not necessarily represent the position(s) that would be advanced by any Petitioner in this or any other proceeding, if it were fully litigated. Accordingly, the Settlement terms may not be cited as precedent in any future proceeding, except to the extent required to implement or enforce any Settlement term herein.

41. This Settlement is presented without prejudice to the position any of the Joint Petitioners may advance in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to by the Joint Petitioners in this Settlement.

42. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. In reaching this Settlement, the Joint Petitioners thoroughly considered all issues and give and take of positions. As a result of that consideration, the Joint Petitioners believe that the settlement agreement meaningfully addresses all such issues raised and therefore should be approved without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

43. If the Presiding Officers, in the Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed, without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, to the extent any terms and conditions of the Settlement are modified, or additional matters are proposed by the Presiding Officers in the Recommended Decision, the Joint Petitioners do not waive their rights to file Exceptions in support of the Settlement. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed provided such Replies support the Settlement.

44. The Joint Petitioners agree that this document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners and such counterparts shall be considered as one document.

DISCUSSION

LSLR Program

Lead is a heavy metal that commonly occurs in our environment. Humans can be exposed to lead through a variety of sources, including dust, soil, or paint chips, as well as through ingestion from drinking water. The deleterious health effects of lead are now well-recognized:

Exposure to lead in drinking water can cause serious health effects in all age groups. Infants and children can have decreases in IQ and attention span. Lead exposure can lead to new learning and behavior problems or exacerbate existing learning and behavior problems. The children of women who are exposed to lead before or during pregnancy can have increased risk of these adverse health effects.

Adults can have increased risks of heart disease, high blood pressure, kidney or nervous system problems. ^[4]

In October 2018, Governor Wolf signed into law Act 120 of 2018, which became effective on December 23, 2018.⁵ Act 120 of 2018 amended Section 1311(b) of the Public Utility Code in order to authorize water utilities to pursue comprehensive replacement of lead service lines that remain in service across Pennsylvania subject to Commission approval.⁶ Specifically, Act 120 of 2018 provides that replacing a customer-owned LSL does not make the utility the owner of the new service line on the customer's property.⁷ Act 120 of 2018 also directs the Commission to establish standards to ensure a warranty on the utility's replacement work and reimburse customers who replaced lead service lines at their own cost.⁸ Additionally, Act 120 of 2018 establishes the accounting and ratemaking treatment of lead service line replacement costs by providing that the customer-owned portion of LSLs may be included in a regulated utility's rate base upon which it is authorized to earn a return.⁹

As mandated by Act 120 of 2018, the Commission promulgated regulations at 52 Pa. Code §§ 65.51 – 65.62, which became effective on July 23, 2022. These LSLR regulations require certain water utilities to remove and replace all lead service lines, regardless of whether those lines are customer-owned or utility-owned within 25 years¹⁰ and to file a plan for lead service line removal no later than July 23, 2023.¹¹

4 40 C.F.R. § 141.85(a)(1)(ii)

5 Act of October 24, 2018, P.L. 738, No. 120 (Act 120 of 2018).

6 66 Pa.C.S. § 1311(b).

7 66 Pa.C.S. § 1311(b)(2)(i).

8 66 Pa.C.S. § 1311(b)(2)(vii).

9 66 Pa.C.S. § 1311(b)(2)(i)-(iii).

10 52 Pa. Code § 65.52(a).

11 52 Pa. Code § 65.53.

Accordingly, Columbia Water filed this Petition for Approval of a Lead Service Line Replacement Program, Related Tariff Changes, Modification of Long-Term Infrastructure Improvement Plan, and Waiver of Termination Regulations (Petition), which was accompanied by the Company's Lead Service Line Replacement Plan (LSLR Plan), the Company's modified long-term infrastructure improvement plan (Modified LTIP), a pro forma tariff supplement (LSLR Tariff Supplement) on July 21, 2023.¹²

On August 30, 2023, the Commission's Secretary served a data request from the Commission's Bureau of Technical Utility Services (TUS). Columbia Water filed a reply to the data request on September 13, 2023.

In its Answer to the Petition, OCA made recommendations for the Commission's consideration in reviewing the Petition including the proposed modified LTIP. Specifically, the OCA addressed the following issues: (1) service line inventory; (2) prioritizing lead service line replacements; (3) process and procedures to obtain acceptance of a lead service line replacement; (4) post-replacement procedures; (5) lead service line replacement refusal; (6) publicly accessible website; (7) reimbursement; and (8) customer outreach. OSBA's primary focus in this proceeding has been to ensure that LSLRs proceed at a prudent pace, so as to limit the rate impact of LSLRs on Columbia's ratepayers, including small business customers.

The Settlement modifies Columbia Water's LSLR Plan in response to the TUS data requests and also addresses concerns raised by OCA and OSBA. As set forth in more detail below, I recommend that the Commission approve the Settlement without modification.

¹² See 52 Pa. Code § 53.52(a).

Section 65.56 of the Commission’s LSLR regulations, require Columbia Water to file an LSLR Plan that includes: (1) a service line inventory that complies with United States Environmental Protection Agency (EPA) regulations at 40 CFR 141.1—143.20, and identifies all assumptions; (2) a planning and replacements section explaining, among other things, anticipated sources of financing, the projected number of replacements per year, prioritization criteria, processes and procedures upon acceptance and refusal of an LSLR by a customer or property owner, and the utility’s disposal and recycling efforts; and (3) a communications, outreach, and education section that includes copies of all LSLR documentation and the creation of a website that meets certain regulatory requirements.¹³

Columbia Water explains that the LSLR Plan as filed by the Company largely met the requirements of Section 65.56, including providing an initial service inventory, an extensive planning replacements section, and a communications and outreach section that proposed the creation of a transparent and publicly available LSLR website to enhance customer awareness of the LSLR Program.¹⁴ In response to data requests issued by TUS, the Company further modified its LSLR Plan to clarify the annual cap on the replacement of customer-owned LSLs and to clarify the use of LSLR Project Areas as defined by the LSLR Regulations.¹⁵ The Settlement incorporates these modifications into the LSLR Plan.¹⁶

The Settlement also provides for enhanced customer protections and outreach, as advocated by OCA. OCA recommended that the Company use multiple methods to raise awareness for the customers and contact customers multiple times over the six-month period once designated an LSLR Project Area. The Company has agreed

¹³ 52 Pa. Code § 65.56.

¹⁴ *See* Stipulation, Exh. 1, Att. 1.

¹⁵ *See* Stipulation, Exh. 1, Att. 2.

¹⁶ Settlement ¶ 24.

to modify its LSLR Plan to ensure that it will contact customers within an LSLR Project Area at least two times over the six-month period once an LSLR Project Area has been identified, or until the customer responds to the Company, whichever is sooner, to determine whether there are customer-owned LSLs and to verify the presence of the customer-owned LSLs. Customers will initially receive a phone call to set up an appointment for an interior inspection of the service line. Door hangers and/or a mailed letter explaining the health effects of lead and documentation explaining the service line program will be used if the customer cannot be contacted via telephone.¹⁷ In other words, the Company has agreed to engage in multiple attempts to contact customers once an LSLR Project Area has been identified to identify and locate as many LSLs within a Project Area before it commences construction activities and thereby create economies of scale to the extent possible.

OCA next sought clarification as to whether water filters will be provided until the replacement of a customer-owned LSL, as well as the process and means by which customers will be contacted regarding the receipt of their pitcher-filter, as required by EPA regulations.¹⁸ Accordingly, the Settlement requires that the Company provide customer(s) affected by an LSLR with a pitcher filter, six months of replacement cartridges, and use instructions approximately thirty days before the scheduled LSLR, but no later than the day of the LSLR. The affected customer(s) will be provided a pitcher filter hand-delivered by the Company. If there isn't a customer at home at the time of delivery, the Company will use a door hanger indicating how a pitcher can be obtained. The Company will make a follow-up phone call to the customer to determine whether they received the door hanger and provide instructions to either pick their pitcher filter up

¹⁷ Settlement ¶ 25(a).

¹⁸ As set forth in 40 C.F.R. § 141.84(e)(3), the Company must provide the customer with a pitcher filter or point-of-use device certified by an American National Standards Institute accredited certifier to reduce lead, six months of replacement cartridges, and instructions for use before the replaced service line is returned to service. 40 C.F.R. § 141.84(e)(3).

at the Company's main office, or schedule to have someone deliver the pitcher prior to the LSLR.¹⁹ This ensures that the Company complies with EPA requirements, but also provides additional clarity surrounding how it will accomplish this requirement.

OCA also was concerned that when a new applicant applies for water service, the new applicant should be offered the same LSLR options as the previous property owner and should not be bound by a previous owner's refusal to replace the LSL. The Settlement addresses the OCA's concern by modifying the LSLR Plan to ensure that the Company will offer a new customer applying for water service in a household that previously refused a LSLR replacement the option to have Columbia Water replace the customer portion of the LSL. Prior to offering the applicant an LSLR, the Company will verify that the applicant owns the property for which service is requested.²⁰ The Company believes this provision is in the public interest because it will allow the Company to remove LSLs that remain in its system due to a previous property owner's refusal and not penalize new customers for that previous owner's refusal.

OCA requested that the Company should make its LSLR website and any documentation regarding LSLR available in Spanish and other languages, upon request. The Settlement provides that the Company will ensure that the Company's LSLR website and all documentation regarding LSLRs will be available in both English and Spanish and, upon request, the Company will provide any/all documentation regarding LSLRs in other languages to customers directly. The Company will also make its translation services available to customers who call the Company's customer service and request translation of the written information into other languages.²¹ The Company explains in its Statement in Support of the Settlement that there is not a large proportion of non-

¹⁹ Settlement ¶ 25(b).

²⁰ Settlement ¶ 25(c).

²¹ Settlement ¶ 25(d).

English speakers within its service territory, but the Company has agreed to nevertheless make Spanish LSLR documentation available, and additional languages upon request.

Ensuring that Columbia Water's customers can understand all of Columbia Water's material on this important public health issue was a serious concern of the OCA in negotiating this Settlement. Therefore, OCA specifically supports this Settlement provision regarding translation service because the Company's agreement goes beyond Columbia Water's discovery response regarding the Company's outreach to ratepayers who do not understand English. According to OCA, making Columbia Water's translation services available to all of its non-English customers enhances the Company's communication efforts regarding this important public health issue.

OCA also advocated for the development of outreach materials and a plan that will make its customers aware of the reimbursement program, and that any instructions and forms for reimbursement should be mailed physically and electronically to potential eligible customers and owners, along with the forms remaining on the Company's website. The Settlement ensures that the Company will mail Appendix M of the LSLR Plan and a letter detailing eligibility for an LSLR reimbursement and instructions on how to obtain the reimbursement to customers within the LSLR Project Area no later than 30 days after LSLR Project Commencement. Any handout necessary for a customer or owner to receive reimbursement will be mailed physically and electronically transmitted to customers and owners, along with the forms remaining available on the company's website, on a reasonable best-efforts basis where the Company has the customer or property owner's email address.²² This provision is in the public interest as it will ensure additional communication efforts to inform customers of the existence of eligibility for reimbursement through multiple communication pathways.

²² Settlement ¶ 25(e).

OCA explicitly supports this settlement provision in its statement in support of the settlement. Requiring Columbia Water to email customers and property owners on a best-efforts basis increases the likelihood that either the customer or the property owner will receive reimbursements. OCA explains that E-mailing customers and property owners the reimbursement form is not required under Chapter 56 of the Commission’s regulations. As such, the enhanced communication in the Settlement regarding reimbursement forms should be adopted.

Lastly, referring to the Company’s post-replacement sampling procedures, OCA recommended that the Company add language to Appendix I of the LSLR Plan confirming the Company’s commitment to provide the results of both samples to residents as soon as practicable but no later than three calendar days after becoming aware of the results if the samples exceed 15 parts per billion (ppb) and within 30 days after receiving the results if none of the follow up 13 samples exceed 15 ppb of lead. The Settlement adopts OCA’s recommendation.²³ This statement was inadvertently omitted from Appendix I of the LSLR Plan and should have been included. The Company agrees to comply with these notification obligations for post-replacement sampling.

The Company also agreed in the Settlement to complete replacements of all Company-owned and customer-owned LSLs within ten program years if the Lead and Copper Rule Improvements (LCRI) rulemaking promulgated by the Environmental Protection Agency is finalized, codified, and becomes law, and requires that water systems complete replacements within ten years.²⁴

²³ Settlement ¶ 26.

²⁴ *See* National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), 88 Fed. Reg. 84878 (proposed Dec. 6, 2023) (LCRI Rulemaking); Settlement ¶ 38.

Currently, the Commission requires that all Class A water utilities replace all LSLs within 25 years.²⁵ However, the EPA is currently considering an update to the Lead and Copper Rule called the Lead and Copper Rule Improvements. As part of the LCRI, EPA has proposed requiring replacements of all LSLs within 10 years, subject to certain exemptions.²⁶ Accordingly, in recognition of this pending rulemaking, the Settlement provides that the Company will comply with the provisions of the LCRI, including replacing all LSLs within ten program years, if the LCRI becomes law and requires that water systems complete replacements within ten years. The Company asserts that this provision is in the public interest because it contemplates this potential change in the law.

OCA and OSBA specifically support this replacement schedule.

According to OCA, this Settlement provision commits Columbia Water to updating its lead service lines replacement schedule to a ten-year time period once the LCRI becomes law. Replacing lead service lines as soon as practicable is crucial to public safety. Committing Columbia Water to a ten-year replacement time frame once the LCRI becomes law is a step towards ensuring that Columbia Water replaces its lead service lines within a reasonable time frame.

OSBA submits that even if the ten-year deadline is implemented, the expected rate impact upon Columbia's small business customers will be *de minimis*. Therefore, OSBA has also concluded that the Settlement has addressed the issue of a prudent replacement rate in a just and reasonable manner.

²⁵ 52 Pa. Code § 65.53(a).

²⁶ LCRI Rulemaking, 88 Fed. Reg. 85064.

LSLR Tariff Supplement and Other Approvals

Pursuant to the Commission's regulations, Columbia Water must file a pro forma tariff supplement that includes tariff rules and regulations addressing, among other things, an annual cap, service line demarcation, partial LSLRs, reimbursements, and warranties.²⁷ The Settlement seeks approval of the Company's LSLR Tariff Supplement but incorporates modifications the Company made in response to TUS data requests and additional modifications to address specific concerns raised by the OCA. Collectively, the LSLR Tariff Supplement, as modified by the Settlement meets the requirements of the LSLR Regulations.

Specifically, the LSLR Tariff Supplement as filed by the Company including terms addressing:

An annual cap on LSLRs,

- B. Service line demarcation, including terms defining a customer-owned LSL, specifying that if a shutoff valve is not located along a specific length of pipe within a structure that the Company may install a shutoff valve, and that the Company shall perfect its ownership of its portion of the service line,
- C. Partial LSLRs, including a prohibition on partial LSLRs and immediate termination if the Company discovers a partial LSLR installed after July 30, 2022,
- D. Procedures for when a customer elects to replace their LSLR and required notices, procedures for where there is a non-occupied owner premise, and the property owner is non-responsive.

²⁷ 52 Pa. Code § 65.58.

- E. Procedures for when an applicant for water service is seeking service at a property where the owner previously refused an LSLR,
- F. Comprehensive procedures for the reimbursement of LSLRs performed at a customer's expense, and
- G. Terms providing for a warranty of two years ensuring that the materials and workmanship of the replacement and restoration of surfaces consistent with the pro forma tariff supplement are covered up to an amount of \$2,500 per customer consistent.

Stipulation, Exh. 1, Att. 1. In response to data requests issued by TUS, the Company further modified its LSLR Tariff Supplement to clarify the annual cap on the replacement of customer-owned lead service lines and correcting a numbering error. The Settlement provides for the incorporation of these modifications into the LSLR Plan.²⁸

Additionally, the Settlement proposes several additional modifications to the LSLR Tariff Supplement to further address the OCA's concerns about implementation. In its Answer, the OCA sought clarification regarding what notice the affected customer and property owners would be given before service is terminated and how many notices they will receive. Under its LSLR Tariff Supplement as filed, the Company proposed that the Company would first document the LSLR refusal, indicate that refusal will result in termination of service, and notify the affected customer of termination at the time of refusal. The Company will then schedule to replace its portion of the LSL. Once the replacement is scheduled, the Company will notify the customer in writing of the partial LSLR no later than ten days prior to the scheduled replacement and terminate water service at those locations the day prior to replacing the Company-owned LSL. The Company will then proceed with termination of water service. The Settlement,

²⁸ Settlement ¶ 29.

however, makes one modification requiring that the Company also post a 48-hour notice at the customer's premises prior to the date of termination for refusal to replace the customer-owned LSL.²⁹ The Company asserts this provision is in the public interest because it provides another opportunity for the customer to be alerted to the imminent termination absent an agreement to replace the customer portion of the LSL.

Additionally, OCA recommended the Company clarify that in multi-resident buildings, each resident will be sent notice of any impending terminations due to LSLR refusal. The Settlement provides that the Company will modify its LSLR Tariff Supplement requiring it to provide notice pursuant to the LSLR Tariff Supplement to every resident that lives at a multi-residential building that is affected by a termination as a result of an LSLR refusal.³⁰ Providing notice to each resident of a multi-residential building is appropriate to ensure greater awareness of immediate terminations for a property owner's refusal to replace an LSL.

The Company's LSLR Tariff Supplement, modified in response to TUS data requests and as further modified by this Settlement, is attached as Exhibit 3 to the Joint Petition. The LSLR Tariff Supplement is in the public interest and complies with the LSLR Regulations. It provides for clear rules and regulations surrounding the replacement of LSLs within the Company's service territory, it protects ratepayers by reasonably capping the number of customer-owned lead service lines that will be replaced in a year, protects the Company and its customers financially by ensuring that customer-owned lead service lines are replaced pursuant to a written contract that includes a two-year warranty, and protects customers' health and safety by prohibiting partial replacement of lead service lines.

²⁹ Settlement ¶ 30(a).

³⁰ Settlement ¶ 30(b).

Modified Long-Term Infrastructure Improvement Plan

Pursuant to the Commission's LSLR Regulations, an applicable entity that has a Commission-approved LTIIIP shall include with its Petition a modified LTIIIP containing a LSLR plan as a separate and distinct component of the entity's LTIIIP.³¹ Section 121.3 of the Commissions regulations³² requires that a LTIIIP must include:

1. Identification of types and age of eligible property owned and operated by the utility for which it is seeking DSIC recovery.
2. An initial schedule for planned repair and replacement of eligible property.
3. A general description of location of eligible property.
4. A reasonable estimate of quantity of eligible property to be improved or repaired.
5. Projected annual expenditures and means to finance the expenditures.
6. A description of the manner in which infrastructure replacement will be accelerated and how repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.
7. A workforce management and training program designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner.
8. A description of a utility's outreach and coordination activities with other utilities, Department of Transportation and local governments regarding the planned maintenance/

³¹ 52 Pa. Code § 65.54(b).

³² 52 Pa. Code § 121.3

construction projects and roadways that may be impacted by the LTIIIP.^[33]

As part of its LSLR Petition, the Company filed a Modified LTIIIP revising its existing LTIIIP to incorporate the proposed LSLR Program.³⁴ The Company also addressed each element required under 52 Pa. Code § 121.3. Columbia Water did not propose any other changes to its Commission-approved LTIIIP. In response to a TUS data request, however, the Company revised its LTIIIP to better incorporate the LSLR Program into its existing LTIIIP.

The Settlement memorializes the modifications recommended by TUS.³⁵ Specifically, the Modified LTIIIP properly addresses the type and age of the eligible LSLs to be replaced, an initial schedule of replacement and repair of LSLs, the location of the property to be replaced, estimates of quantity of LSLs and projected expenditures for replacements, how such LSLs will be replaced, describing the qualifications of the workforce that will be used to replace LSLs, and the Company's outreach efforts to other local government entities. Accordingly, the Company's Modified LTIIIP should be approved by the Commission, without modification. No Joint Petitioner raised any concerns with the Company's revised Modified LTIIIP.

Other Provisions Addressed by the Settlement

The Settlement also provides that the Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code for Columbia Water to carry out the LSLR Program contemplated in the LSLR Petition in a lawful manner.³⁶

³³ 52 Pa. Code § 121.3(a).

³⁴ Stipulation, Exh. 1, Att. 1.

³⁵ Exhibit 4 to the Joint Petition. Settlement ¶¶ 35

³⁶ Settlement ¶¶ 39.

As part of its Petition, the Company requested waiver of certain termination regulations, if necessary, because it will allow the Company to expedite termination where (1) a customer or property owner refuses Columbia Water’s offer to replace the customer-owned LSL, (2) where a neighboring property refuses to allow the Company to access their property to allow the work necessary to replace a customer-owned LSL, and (3) where the Company has reasonable evidence to indicate that a property is being served by a partial LSLR installed after July 23, 2022.³⁷ These situations warrant expedited termination because the Commission has already concluded that service through a partial LSL endangers the health and safety of the people that may drink water delivered through the partial LSL. While the Company believes it already has the necessary authority to expedite its termination process as proposed in its LSLR Tariff Supplement, it seeks waiver of termination regulations to implement the expedited termination procedures contemplated under its pro forma tariff supplement, if necessary.

Given the grave health effects associated with lead in drinking water, the Company submits that its expedited termination procedures are in the public interest, and it be granted any waiver of the Commission’s termination regulations to the extent the Commission deems necessary. Moreover, the Company has addressed the OCA’s concerns surrounding termination upon LSLR Refusal because it has agreed to post a 48-hour notice at the customer’s premises when a customer refuses to replace an LSL, as well as provide the required notices to all customers within a multi-residential building.³⁸

³⁷ Petition ¶ 81.

³⁸ Settlement ¶ 30.

Recommendation

The Commission encourages parties in contested on-the-record proceedings to settle cases.³⁹ The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.⁴⁰ To approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.⁴¹ The Commission has concluded that settlements 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. For a unanimous settlement, the Joint Petitioners share the burden of proving that the terms and conditions of the Settlement are supported by substantial evidence and are in the public interest.⁴²

The threat to human health posed by lead exposure is well-known. LSLR Programs are a relatively new Commission mandate which recognizes the need to remove exposure to lead in lead service lines for drinking water. After extensive review and consideration of Columbia Water's proposed LSLR and associated filing modifications, the Joint Petitioners assert that the revised plan as modified by the Settlement represents a sensible approach to the replacement of both Company-owned and customer-owned lead service lines. The plan as modified by the Settlement will allow the Company to recover

³⁹ See 52 Pa. Code § 5.231.

⁴⁰ *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

⁴¹ *Pa. Pub. Util. Comm'n, et al. v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2015-2518438 (Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

⁴² *Pa. Publ. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021).

costs for lead service line replacement, replace lines at a reasonable pace and will provide both financial and public health benefits. I also find that the waiver of certain regulations regarding termination along with the procedures set forth in the Settlement are also in the public interest. Accordingly, I recommend that the Commission approve the Settlement without modification.

CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission has jurisdiction over the subject matter of, and the parties to, this proceeding. 66 Pa.C.S. § 1311(b)(2); 52 Pa. Code § 65.54.
2. Columbia Water Company has the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).
3. The Commission may waive its regulations if waiver is in the public interest under the Commission's statutory authority to rescind or modify regulations or orders. 52 Pa. Code § 5.43.
4. Commission policy promotes settlements. 52 Pa. Code § 5.231.
5. The joint petitioners have the burden to prove that the Settlement is in the public interest. *Pa. Publ. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021).
6. 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. UGI Utils., Inc. – Gas Div.*, Docket No. R-2015-2518438 (Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

7. The Settlement and its proposed terms and conditions are in the public interest.
8. The Company's Lead Service Line Replacement Plan, as modified by the Settlement complies with 52 Pa. Code § 65.56.
9. The Company's Modified Long-Term Infrastructure Improvement Plan, as modified in response to data requests issued by TUS, which incorporates the LSLR Plan as a separate and distinct component of the LTIIIP, complies with 52 Pa. Code § 65.54(b)
10. The Modified LTIIIP further complies with the requirements set forth in 52 Pa. Code Chapter 121. 52 Pa. Code §§ 121.1–121.8.
11. The Company's proposed waiver of 52 Pa. Code §§ 55.2, 56.91, 56.92, 56.93, 56.94, 56.95, 56.96, 56.97(a)(3)-(4) and (b), 56.100, 56.111, 56.112, 56.114, 56.140, 56.141, 56.151, 56.331, 56.332, 56.333, 56.334, 56.335, 56.336, 56.337(a)(3)-(4) and (b), 56.340, 56.351, 56.352, 56.354, 56.371, 56.372, and 56.381 is in the public interest because the Company's expedited termination process will allow the Company to quickly and concisely address any issues with customers or property owners refusing lead service line replacements or where there is evidence that a customer is being served by a partial lead service line installed after July 23, 2022.

ORDER

THEREFORE,

IT IS RECOMMENDED THAT:

1. That the Joint Petition for Unanimous Settlement of All Issues filed on July 31, 2024 by Columbia Water, Office of Consumer Advocate and Office of Small Business Advocate be approved as submitted, including all terms and conditions thereof, without modification.

2. That Columbia Water Company's Lead Service Line Replacement Plan, as modified by the Settlement, be approved.

3. That Columbia Water's Modified Long-Term Infrastructure Improvement Plan, as modified by the Settlement, be approved.

4. That Columbia Water be directed to submit a compliance tariff to the Commission consistent with the Pro Forma Tariff Supplement, as modified in response to data requests issued by TUS and as further modified by the Settlement (as amended, "LSLR Tariff Supplement"), effective after one day's notice.

5. That Columbia Water's proposed waiver of 52 Pa. Code §§ 55.2, 56.91, 56.92, 56.93, 56.94, 56.95, 56.96, 56.97(a)(3)-(4) and (b), 56.100, 56.111, 56.112, 56.114, 56.140, 56.141, 56.151, 56.331, 56.332, 56.333, 56.334, 56.335, 56.336, 56.337(a)(3)-(4) and (b), 56.340, 56.351, 56.352, 56.354, 56.371, 56.372, and 56.381 for

