

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Pennsylvania-American Water :
Company for Approval of a Lead Service Line :
Replacement Program, Related Tariff Changes, : P-2024-3050263
and Modification of a Long-Term Infrastructure :
Improvement Plan :

RECOMMENDED DECISION

Before
Charece Z. Collins
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 (LSLRP) and includes provisions for modifications to the Company’s Long-Term Infrastructure Improvement Plan (LTIIIP) and tariff. The settlement incorporates modifications recommended by the Office of Consumer Advocate and the Office of Small Business Advocate. This decision finds that the settlement is consistent with the Public Utility Code and the Commission’s regulations, and is in the public interest.

HISTORY OF THE PROCEEDINGS

On July 22, 2024, Pennsylvania-American Water Company (PAWC or Company) filed a Petition for Approval of a Lead Service Line Replacement Program,

Related Tariff Changes and Modification of Long-Term Infrastructure Improvement Plan (Petition). This Petition seeks approval of PAWC's plan to replace Company-owned and customer-owned lead service lines and to recover the costs associated with those replacements.

On August 6, 2024, Steven C. Gray, Esquire, filed a Notice of Appearance, Notice of Intervention, Public Statement and Verification on behalf of the Office of Small Business Advocate (OSBA).

On August 21, 2024, Harrison W. Breitman, Esquire and Melanie J. El Atieh, Esquire, filed a Notice of Intervention and Public Statement on behalf of the Office of Consumer Advocate (OCA). On September 25, 2024, the OCA filed an Amended Notice of Intervention and Public Statement in which it requested that the matter be transferred to the Office of Administrative Law Judge.

On October 3, 2024, the Commission served a notice establishing an initial telephonic prehearing conference for this matter for October 15, 2024, and assigning the litigation of the Petition to Administrative Law Judge (ALJ) Arlene Ashton. Also on October 3, 2024, ALJ Ashton served a prehearing conference order setting forth the rules and expectations for the conference.

The October 15, 2024, Prehearing Conference convened as scheduled. The Parties requested time to discuss settlement prior to proceeding with the formal litigation of this matter. Judge Ashton subsequently issued a Prehearing Order, dated October 17, 2024, which directed the Parties to provide a status of their settlement discussions by November 18, 2024.

On November 14, 2024, the Commission served a notice establishing a telephonic prehearing conference for this matter for December 17, 2024, before ALJ Ashton.

On November 18, 2024, the Parties emailed their first status report as directed by the October 17, 2024 Order, indicating that they were still engaging in settlement negotiations.

The December 17, 2024, Prehearing Conference convened as scheduled. The Parties requested an additional 60 days to discuss settlement prior to proceeding with the formal litigation of this matter. ALJ Ashton issued an Order, dated December 18, 2024, in which the Parties were directed to provide a status update of their settlement discussions by January 17, 2025, and indicated that a prehearing conference would be held on February 18, 2025.

On January 23, 2025, the Commission served a Judge Addition Notice, which stated that ALJ Charece Z. Collins would be presiding over the case with ALJ Ashton.

On February 13, 2025, the Commission served a Judge Change-Assignment Notice, which stated that ALJ Collins would solely preside over the case.

On February 14, 2025, the Parties advised that a settlement in principle had been reached and requested forty-five days to file a Joint Petition for the approval of settlement. ALJ Collins granted the Parties' request and directed the Parties to submit a Joint Petition by March 31, 2025.

On March 31, 2025, the PAWC, OCA and OSBA filed a Joint Petition for Approval of Settlement of All Issues (Joint Petition or Settlement). The Joint Petition

included Appendix A (Proposed Findings of Fact), Appendix B (Proposed Conclusions of Law), Appendix C (Proposed Ordering Paragraphs), Appendix D (Revised Lead Service Replacement Plan) (Exhibit A to LSLRP Petition), Appendix E (Revised Pro Forma Tariff) (Exhibit B to LSLRP Petition), Appendix F (Statement in Support of PAWC), Appendix G (Statement in Support of the OCA), and Appendix H (Statement in Support of the OSBA). The record remained open for an additional period of time to ensure all pertinent information was included with the Petition and attachments. The record closed on April 10, 2025.

SETTLEMENT TERMS

The Joint Petitioners agree to the following terms and conditions, which are set forth verbatim:¹

A. Approval of Application

1. The Joint Petitioners agree that the Commission should approve PAWC's LSLRP Petition, subject to approval of all of the following conditions and without modification.

2. A copy of PAWC's revised LSLR Plan is attached to the Settlement as **Appendix D**.

3. A copy of PAWC's revised *pro forma* tariff is attached to the Settlement as **Appendix E**.

¹ See Joint Petition, pp. 4-9. Only the lettering and numbering from the original Settlement were changed to fit the format of this Decision.

B. Translation Services

4. PAWC will add translation service notations the same as those found in PAWC's LSLRP Petition's Exhibit A, Appendix 3 page 10 (relating to English, Spanish, Portuguese, Gujarati, Hindi, Italian, Korean, Polish, Tagalog, Traditional Chinese, German, Arabic, Farsi, and the addition of Russian) to (1) all documents provided as part of the Company's Lead Service Line Replacement Program (LSLRP); and (2) its website related to all Lead Service Line Replacement (LSLR) material. Additionally, PAWC will provide to customers a written instructions page for its chosen pitcher filter product in English and Spanish and with the additional page containing the same translation service notations in all languages listed in the Settlement.

C. Communication Materials

5. In PAWC's LSLRP, if the customer or property-owner's service line is lead (LSL), or galvanized requiring replacement (GRR), when the LSL or GRR is discovered, the Company has committed itself or its contractor to attempt to contact the customer or property-owner and provide them with the consent agreement (See Exhibit A, Appendix 3 to the LSLRP Petition), the lead and galvanized information packet, and a water pitcher. PAWC agrees to use best efforts to provide these materials to the customer at least ten (10) days before a planned LSLR is performed. For emergency LSLRs, the Company will provide the consent agreement, lead and galvanized information packet, and a water pitcher as far in advance of performing the emergency LSLR as practically possible.

6. PAWC will share with the OCA and the OSBA all documents provided as part of the Company's LSLRP promptly after such materials are finalized or updated by the Company and used by the Company in connection with the LSLR Plan.

D. Annual Asset Optimization Plan

7. Following the completion of the Company's LSL projects in a project area set forth in the LSLR Plan, in the event the Company finds lead in a customer owned service line in said completed project area, the Company will provide information detailing the address and zip code, number of customer-owned service pipes, and the replacement date in the Company's next Annual Asset Optimization Plan ("AAOP") that is filed with the Commission and served on the statutory advocates. A copy of the AAOP shall also be served on the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA).

8. Starting in 2026, PAWC's AAOP will report, by zip code, the number of LSLs replaced in the preceding year.

E. Medical Certificate

9. PAWC will provide a customer or occupant of the property three (3) business days to provide a medical certification signed by a licensed physician, nurse practitioner or physician's assistant to the Company by fax, email or mail (providing the contact information) to avoid shutoff of utility service where the property owner who is not the customer is non-responsive to the Company's offer to replace the private side LSL.

F. Service Line Inventory

10. PAWC's Service Line Inventory will prospectively provide zip code information which can be used to identify service lines that have been inventoried and those identified as LSL or GRR.

11. PAWC will utilize the Pennsylvania Department of Environmental Protection's ("DEP") PennEnviroScreen tool to identify environmental justice areas for targeting of inventory and replacement.

G. Financing

12. PAWC will continue its use, and further explore the use, of PENNVEST funding and other sources of low-cost/no cost financing for its LSLRP.

H. Timing of Replacements

13. In accordance with the United States Environmental Protection Agency's ("EPA") Lead and Copper Rule Improvements, PAWC will complete replacement of all lead service lines identified through its Service Line Inventory by December 31, 2037, or such other date as modified by the EPA or the DEP.

I. Tariff

14. In accordance with 52 Pa. Code § 65.58(c)(3), the Company shall include a section in its tariff providing step in rights to address replacement of a customer-owned LSL to avoid termination of service when a property owner who is not the customer is nonresponsive to an entity's offer to replace a customer-owned LSL. The tariff language shall be as follows:

4.9.1.9

A. Step In Rights Defined. In reference to 52 Pa. Code § 65.58(c)(3), Step In Rights means the right of the Company to avoid termination of service when a property owner who is not the customer is nonresponsive to the Company's offer

to replace a Lead Service Pipe which can no longer be used pursuant to Section 4.1.

The Company can utilize Step In Rights in the following circumstances:

1. The Company has attempted to contact the property owner with an offer to replace the Lead Service Pipe in accordance with the Company's Replacement Plan.
2. The Customer or the occupier of the property is not the property owner or the property is vacant or unoccupied.
3. The Company has attempted to get authorization from the property owner to replace the Lead Service Pipe and (1) the property owner cannot be identified, or (2) the property owner has not responded to the Company's offer to replace the Lead Service Pipe.

B. Circumstances Where the Company Must Use Step-In Rights.

1. The Company shall use Step In Rights to replace a Lead Service Pipe when the Customer or occupant of the property provides to the Company a medical certification signed by a licensed physician, nurse practitioner or physician's assistant to the Company by fax, email or mail (providing the contact information).

2. The Company shall use Step In Rights to replace a Lead Service Pipe when the Customer provides to the Company a Final Protection From Abuse (PFA) order.

3. The Company shall use Step In Rights to avoid the termination of water service to the Customer or the occupier of the property in the situations listed above except where in the Company's reasonable judgement replacement would place its

workers or utility property at a safety risk and in such instance, the Company may use Step In Rights at its discretion.

C. When Step In Rights are used by the Company, after the replacement is complete, the Company will restore roadways and public sidewalks, backfill any trenches excavated as part of the replacement process and will fill and seal any wall or floor penetrations in the private home (Company Restoration Work). No other restoration will be conducted for the private side replacement. The Company will not replace any landscaping, interior finishes, paving, seeding, or walkways (Private Side Restoration Work), and all restoration costs for such Private Side Restoration Work shall be borne by the property owner.

D. When the Company exercises Step In Rights, the Company's liability shall be limited to the amount in Section 15 for any action brought against the Company, its officers, directors, employees and agents for damages arising from any and all liability, including liability to third parties and the property owner, for personal injury, including death, property damage, or other actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), for personal injury, including death, property damage or other injury, to the extent caused by or arising out of the work performed by the Company or its agents in replacing the Lead Service Pipe and/or the Company Restoration Work that the Company is responsible for under subsection 4.9.1.9 (C) above.

J. Standard Settlement Conditions

15. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the

Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

16. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceedings. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

17. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Petitioner's position with respect to any issues raised in these proceedings. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

18. To the extent possible, the Joint Petitioners shall jointly prepare and submit a Joint Petition for Settlement with Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs.

19. Each Petitioner shall prepare a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest.

20. If the ALJ recommends approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

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.^[2]

In October 2018, Governor Wolf signed into law Act 120 of 2018, which became effective on December 23, 2018.³ 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.⁴ 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

² 40 C.F.R. § 141.85(a)(1)(ii)

³ Act of October 24, 2018, P.L. 738, No. 120 (Act 120 of 2018).

⁴ 66 Pa.C.S. § 1311(b).

property.⁵ 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.⁶ 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.⁷

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 years⁸ and to file a plan for lead service line removal no later than July 23, 2023.⁹

Accordingly, PAWC filed this Petition (LSLRP Petition) for Approval of a Lead Service Line Replacement Program, Related Tariff Changes, and Modification of Long-Term Infrastructure Improvement Plan, an (LSLR Plan), on July 22, 2024.¹⁰

On August 23, 2024, the Commission’s Secretary served a data request from the Commission’s Bureau of Technical Utility Services (TUS). PAWC filed a reply to the data request on September 13, 2024.

Commission policy promotes settlements.¹¹ Settlements lessen the time and expense that the parties must expend to litigate a case and, at the same time, conserve

⁵ 66 Pa.C.S. § 1311(b)(2)(i).
⁶ 66 Pa.C.S. § 1311(b)(2)(vii).
⁷ 66 Pa.C.S. § 1311(b)(2)(i)-(iii).
⁸ 52 Pa. Code § 65.52(a).
⁹ 52 Pa. Code § 65.53.
¹⁰ *See* 52 Pa. Code § 53.52(a).
¹¹ *See* 52 Pa. Code § 5.231.

precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. 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 October 4, 2004); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

Over the course of several settlement discussions, OCA and OSBA made recommendations for modifications to the LSLR Plan. The Settlement modifies PAWC's LSLR Plan in response to the TUS data requests and addresses concerns raised by OCA and OSBA. The Settlement resolves all issues in this proceeding. The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. As set forth in more detail below, I recommend that the Commission approve the Settlement without modification.

In its Statement in Support of the Settlement, PAWC submits that its LSLR Program, as modified by the Settlement, is in the public interest, and should therefore be approved, because it seeks to continue its efforts to replace company-owned and customer-owned LSLs and to comply with the Commission's LSLR Regulations. PAWC further states that its LSLR Program will allow it to address LSLs in its system in an efficient manner to address the recognized health risks posed by lead in drinking water.¹²

Section 65.56 of the Commission's LSLR regulations require PAWC 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

¹² PAWC Statement in Support, p. 3.

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

PAWC included its LSLR Plan in its LSLRP Petition. PAWC's LSLR Plan meets the requirements listed in 52 Pa Code § 65.56. As mandated by 52 Pa. Code § 65.56(a), PAWC's LSLR Plan includes, in its Appendix 1, a service line inventory that complies with EPA regulations at 40 CFR 141.1-143.20, as enforced by the Pennsylvania Department of Environmental Protection ("DEP"). The Company's LSLR Plan identifies the assumptions in its service line inventory in compliance with 52 Pa. Code § 65.56(a)(4). Under the Settlement, PAWC agrees to prospectively provide zip code information in its service line inventory, which can be used to identify service lines that have been inventoried and those identified as LSL or galvanized requiring replacement.¹⁴

Section V of the Company's LSLR Plan includes its projected annual investment in LSLRs, with an explanation of its anticipated sources of financing in compliance with 52 Pa. Code § 65.56(b)(1). Under the Settlement, PAWC will continue to use, and further explore the use of, PENNVEST funding and other sources of low-cost/no cost financing for its LSLR Program.¹⁵

In compliance with 52 Pa. Code § 65.56(b)(2), PAWC's LSLR Plan also provides a projected number of LSLRs per calendar year, an explanation of how the projection was determined and an affirmation that the number is consistent with PAWC's annual cap on LSLRs. In the Settlement, PAWC agreed, in accordance with the EPA's

¹³ 52 Pa. Code § 65.56.

¹⁴ PAWC Statement in Support, p. 4.

¹⁵ *Id.*

Lead and Copper Rule Improvements, to complete replacement of all lead service lines identified through its service line inventory by December 31, 2027, or such other date as modified by the EPA or DEP.¹⁶

PAWC's LSLR Plan includes the prioritization criteria considered by the Company when developing its LSLR schedule, as required by 52 Pa. Code § 65.56(b)(3). In the Settlement, PAWC has agreed to utilize the DEP's PennEnviroScreen tool to identify environmental justice areas for targeting inventory and replacement.¹⁷

PAWC's has also included in section V of its LSLR Plan, processes and procedures to address emergency repairs or replacements which reveal LSLs, as required by 52 Pa Code § 65.56(b)(4). Under the Settlement, for emergency LSLRs, PAWC, will provide to the customer or property owner the consent agreement, lead and galvanized information packet, and water pitcher as far in advance of performing the emergency LSLR as possible.¹⁸

PAWC's processes and procedures to obtain acceptance of a LSLR prior to LSLR project commencement if the customer is or is not the property owner, as required by 52 Pa. Code § 65.56(b)(5), are outlined in Section V of its LSLR Plan. The Settlement will require PAWC to use its best efforts to provide to a customer or property-owner the consent agreement, water pitcher, and lead and galvanized information packet at least ten (10) days before a planned LSLR is performed.¹⁹

Section V of PAWC's LSLR Plan complies with 52 Pa. Code § 65.56(b)(6), as it provides information on the Company's processes and procedures (under normal and

¹⁶ *Id.*

¹⁷ PAWC Statement in Support, p. 5.

¹⁸ *Id.*

¹⁹ *Id.*

atypical conditions) based on acceptance of a LSLR including (a) the consent agreement form by which the customer or property owner will authorize the LSLR; (b) a description of PAWC's process for coordinating with the customer or property owner and the information provided by the Company throughout the LSLR process; and (c) PAWC's process for addressing LSLR completion or closeout.²⁰

The Settlement terms state that, following completion of PAWC's LSL projects in a project area set forth in the LSLR Plan, if the Company finds a customer-owned LSL in that completed project area, the Company will provide information providing the address and zip code, number of customer-owned service pipes, and the replacement date in the Company's next Annual Asset Optimization Plan (AAOP) that is filed with the Commission and served on the statutory advocates. PAWC will, under the Settlement, serve its AAOP on CAUSE-PA. Further, the Settlement requires that PAWC's AAOP, starting in 2026, will report, by zip code, the number of LSLs replaced in the preceding year.²¹

As required by 52 Pa Code §§ 65.56(b)(7)-(9), PAWC's LSLR Plan also includes its lead/material recycling and disposal efforts, industry accepted practices that PAWC uses to replace LSLs, and a detailed description of how PAWC's acquisition of water distribution systems will be integrated into its efforts to complete LSLRs throughout its system.²²

PAWC's LSLR Plan complies with 52 Pa. Code § 65.56(b)(10) because it includes a procedure for documenting refusal of, or failure to accept, the Company's offer to replace an LSL. PAWC's process includes (a) providing the customer or property owner with a complete disclosure of known health hazards from the continued use of a

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

LSL, (b) informing the customer or property owner that failing or refusing to accept the LSLR will require replacement of the customer-owned LSL at the customer or property-owner's expense within one year from the LSLR project commencement to be eligible for reimbursement, and (c) communicating to the customer and property owner that failure to allow PAWC to complete the LSLR or replace the customer-owned LSL concurrent with PAWC replacing the company-side LSL will lead to termination of service under PAWC's tariff.²³

PAWC's LSLR Plan meets the requirements of 52 Pa. Code § 65.56(c)(1) by including copies of all printed and broadcast material to be distributed under the Company's LSLR Program. These materials are included in Appendix 3 to the LSLR Plan. Under the Settlement, PAWC will add translation service notations the same as found in PAWC's LSLRP Petition's Exhibit A, Appendix 3, page 10 to all documents provided as part of PAWC's LSLRP Petition and to its website related to LSLR material. This Settlement term will make these materials available to customers or property owners in English, Spanish, Portuguese, Gujarati, Hindi, Italian, Korean, Polish, Tagalog, Traditional Chinese, German, Arabic, Farsi, and Russian. PAWC will also provide its customers with a written instructions page for its chosen pitcher filter product in English and Spanish, with an additional page containing the same translation service notations referenced above.²⁴

In compliance with 52 Pa. Code § 65.56(v)(2), Section VI of PAWC's LSLR Plan includes a link to the LSLR section of its web site, which contains (a) an online tool describing the replacements schedule by geographic location at least six months into the future, (b) information regarding reimbursement requirements and a secure online tool that provides customers or property owners the ability to determine if

²³ *Id.*

²⁴ PAWC Statement in Support, p. 7.

they may be eligible for reimbursement, (c) information that provides the ability to determine whether the property may have a LSL, and (d) information and resources relating to the health risks associated with lead and LSLs, the status of current efforts to replace LSLs, and community meetings and advisory committees hosted by the Company.²⁵

Under the Settlement, PAWC will share with the OCA and OSBA all documents provided as part of PAWC's LSLR Program promptly after such materials are finalized or updated by the Company and used in connection with PAWC's LSLR Plan.²⁶

As modified by the Settlement, PAWC's LSLR Plan incorporates additional enhancements which promote greater customer outreach, which may in turn lead to greater participation in the LSLR Program. I find these Settlement terms to be in the public interest, as they make information regarding PAWC's LSLR Program more widely available and accessible. Additionally, the Settlement terms promote greater transparency into PAWC's LSLR Program and will aid the statutory advocates in obtaining information regarding PAWC's progress in completing its LSLR Program. For the reasons stated above, PAWC requests, and I recommend, that the Commission approve PAWC's LSLR Plan as modified by the Settlement.

The Settlement also provides for enhanced customer protections and outreach, as advocated by OCA. OCA raised the following issues it was investigating in reviewing PAWC's LSLR Plan: (1) service line inventory; (2) prioritizing lead service line replacements; (3) emergency repairs and replacements; (4) process and procedures to obtain acceptance of a lead service line replacement; (5) publicly accessible website; (6) PAWC's proposed monetary annual cap to limit lead service line replacements; (7)

²⁵ *Id.*

²⁶ *Id.*

reimbursement to customers; (8) customer outreach; and (9) tariff “step-in” rights for non-responsive property owners who are not the customer. In its Statement in Support of the Settlement, OCA submits that the proposed LSLR Program and plan will allow the Company to recover the costs for LSL replacements, both Company-owned and customer-owned, through its base rates and DSIC. 66 Pa.C.S. § 1311(b)(2). For customers, the LSLR Program has the potential to provide both financial and public health benefits.²⁷

OCA noted that Section 1311(b)(2) of the Public Utility Code provides a process to eliminate the individual financial burden for replacing customer-owned lead service lines by recovering those costs over the Company’s entire customer base. If a customer could not have otherwise afforded the replacement of the line, the customer will be able to maintain essential water service. The lead service line also poses a direct health risk to customers. An LSLR Program can protect public health by helping to ensure the timely removal of the customer-owned lead service lines.²⁸

Furthermore, OCA emphasized that PAWC’s LSLR Program initially included translation service notations on some of PAWC’s notices to customers. *See* PAWC Exh. A, App. 3 at 10. Under the Settlement, PAWC will add translation service notations the same as those found in Exhibit A, Appendix 3 page 10 (relating to English, Spanish, Portuguese, Gujarati, Hindi, Italian, Korean, Polish, Tagalog, Traditional Chinese, German, Arabic, Farsi, and the addition of Russian) to (1) all documents provided as part of the Company’s Lead Service Line Replacement Program; and (2) its website related to all LSLR material.²⁹ Additionally, PAWC will provide customers a written instructions page for its chosen pitcher filter product in English and Spanish and with the additional page containing the same translation service notations in all languages

²⁷ OCA Statement in Support.

²⁸ OCA Statement in Support.

²⁹ Settlement ¶ 21.

listed herein.³⁰ It was important to the OCA that the Company's outreach efforts also reached ratepayers who do not understand English. The Settlement's language access provisions enhance the Company's communication efforts regarding this important public health issue.

Furthermore, with respect to a customer or property-owner's service line that is lead or galvanized, OCA said that it intended to ensure that customers receive a consent agreement, a lead and galvanized information packet, and a water pitcher as far in advance of performing an emergency LSLR as practically possible in its settlement negotiations with PAWC given the public health implications involved in emergency LSLR replacement. Making customers and property owners aware that PAWC has identified a lead service line and providing necessary documentation as well as a water pitcher ensures that customers get important resources in a timely fashion.³¹

OCA highlights that the terms of the Settlement require the Company to provide additional data regarding the LSLR Plan in their Annual Asset Optimization Plan (AAOP) and lead service line inventory. Under the Settlement, following the completion of the Company's LSL projects in a project area set forth in the LSLR Plan, in the event the Company finds lead in a customer owned service line in said completed project area, the Company will provide information detailing the address and zip code, number of customer-owned service pipes, and the replacement date in the Company's next AAOP that is filed with the Commission and served on the statutory advocates and CAUSE-PA.³² Starting in 2026, PAWC's AAOP will report, by zip code, the number of LSLs replaced in the preceding year.³³ Providing data regarding LSLRs to the Commission, the statutory advocates, and CAUSE-PA enhances transparency and accountability.

³⁰ *Id.*

³¹ OCA Statement in Support.

³² Settlement ¶ 24.

³³ Settlement ¶ 25.

Enhanced transparency and accountability for vital water service terminations is in the public interest.³⁴

OCA further notes that under the Settlement, PAWC will provide a customer or occupant of the property three business days to provide a medical certification signed by a licensed physician, nurse practitioner or physician's assistant to the Company by fax, email or mail (providing the contact information) to avoid shutoff of utility service where the property owner who is not the customer is nonresponsive to the Company's offer to replace the private side LSL.³⁵ PAWC's initially proposed LSLR plan did not allow for customers to provide a medical certification to avoid termination. The Settlement, however, provides vulnerable customers who reside at a property they do not own an option to continue vital utility service and avoid shutoff in the event an LSLR needs to be performed, but the property owner is non-responsive to PAWC's outreach.³⁶ This Settlement provision is in the public interest.

OCA also states that under the Settlement, PAWC's Service Line Inventory will prospectively provide zip code information which can be used to identify service lines that have been inventoried and those identified as Lead Service Line (LSL) or Galvanized Requiring Replacement.³⁷ Moreover, PAWC will utilize DEP's PennEnviroScreen tool to identify environmental justice areas for targeting of inventory and replacement.³⁸

OCA opines that these provisions are in the public interest, because providing data regarding LSLRs to the Commission and the statutory advocates enhances

³⁴ OCA Statement in Support.

³⁵ Settlement ¶ 26.

³⁶ OCA Statement in Support

³⁷ Settlement ¶ 27.

³⁸ Settlement ¶ 28; OCA Statement in Support.

transparency and accountability. Importantly, data organized by zip code can identify patterns and assess the effectiveness of LSLR efforts. Moreover, using the PennEnviroScreen tool will help PAWC prioritize LSLRs within vulnerable populations.

OCA also says that under the Settlement, PAWC will continue its use, and further explore the use, of PENNVEST funding and other sources of low-cost/no cost financing for its LSLR Program.³⁹ The OCA submits that this term is in the public interest, as subsidized funding will mitigate ratepayer impact for the LSLRs needed in the system.⁴⁰

OCA points out that on November 30, 2023, the EPA proposed the Lead and Copper Rule Improvements (LCRI), which includes a requirement for water systems to achieve 100% lead pipe replacement within 10 years. Lead service lines pose a direct health risk to customers. An LSLR program can protect public health by helping to ensure the timely removal of the customer-owned LSL. Under the Settlement, in accordance with the EPA's LCRI, PAWC will complete replacement of all lead service lines identified through its Service Line Inventory by December 31, 2037, or such other date as modified by the EPA or the DEP.⁴¹ Replacing lead service lines as soon as practicable is crucial to public safety. Committing PAWC to the EPA's LCRI time period is a step towards ensuring that PAWC replaces its lead service lines within a reasonable time frame.⁴²

With respect to the Parties' agreement on Step-In Rights,⁴³ OCA states that including Step-In Rights in PAWC's tariff for COLSL replacements benefits PAWC, its

³⁹ Settlement ¶ 29.

⁴⁰ OCA Statement in Support.

⁴¹ Settlement ¶ 30.

⁴² OCA Statement in Support.

⁴³ Settlement ¶ 31.

customers, and residents affected by COLSL replacements. For customers and residents, Step-In Rights helps prevent the termination of vital water service, which can be harmful for customers. With the tariff language in the Settlement, if a property owner is nonresponsive, the COLSL replacement can still be performed without termination of water service. Moreover, specific Step-In Rights provisions related to medical certification and Protection From Abuse (PFA) orders helps ensure that vulnerable customers receive continued water service. At the same time, the Step-In Rights in the Settlement provide PAWC the necessary discretion it needs to decide to not step-in and to not perform a replacement where doing the replacement would, in the Company's reasonable judgement, place its workers or utility facilities at a safety risk.⁴⁴

OCA further states that for PAWC, the Settlement specifies clear and limited restoration work responsibilities for both PAWC and property owners and provides clear limitation of liability for PAWC relating to the replacement and restoration work. It serves the public interest to limit PAWC's liability when exercising Step-In Rights so that PAWC can be motivated to complete necessary replacements without exposing the Company to unreasonable litigation risk.⁴⁵

Ultimately, OCA asserted that, given the public health concerns related to lead, the Settlement's Step-In Rights permit PAWC to take proactive measures to replace COLSLs. Ensuring that all customers and residents do not face prolonged exposure to lead, regardless of the responsiveness of the property owner, promotes equity and the operational efficiency of PAWC. The Step-In Rights contained in the Settlement serve the public interest, serve and protect the interests of consumers and the utility alike, and thus should be adopted by the Commission.⁴⁶

⁴⁴ OCA Statement in Support.

⁴⁵ OCA Statement in Support.

⁴⁶ OCA Statement in Support.

In its Statement in Support of the Settlement, the OSBA noted that its primary focus in the proceeding has been to ensure that LSLR's proceed at a prudent pace, so as to limit rate impact of LSLRs on PAWC's ratepayers, including small business customers. The OSBA highlighted that the Settlement proposes that PAWC will replace all existing Company-owned and customer-owned lead service lines by December 31, 2037, or such other date as modified by the EPA or the DEP. Settlement ¶ 30. The OSBA opines that this pace of LSLR is just, reasonable, and will minimize the rate impact upon the Company's small business customers.⁴⁷ OSBA also therefore recommends that the Settlement be adopted by the Commission.

LSLR Tariff Supplement and Other Approvals

As part of its LSLRP Petition, and revised by the Settlement, PAWC included a *pro forma* tariff supplement to Tariff Water-PA P.U.C. No. 5 ("Pro Forma Tariff"), which sets forth proposed tariff changes in compliance with 52 Pa. Code § 56.58. Section 4.9.1.1 to PAWC's Pro Forma Tariff includes a cap on the number of customer-owned LSLs that can be replaced annually as required by 52 Pa. Code §56.58(a). As required by 52 Pa. Code § 65.58(b)(1), PAWC's effective water tariff includes a definition consistent with 52 Pa. Code § 65.52 for customer-owned LSL for the purposes of PAWC's LSLR Program. As permitted under 52 Pa. Code § 65.58(b)(2), PAWC specifies in Section 4.9.1.8 of its Pro Forma Tariff that if a shutoff valve is not located along a specific length of pipe within a structure, PAWC may install a shutoff valve to serve as a point of demarcation between the property's service line and the property's interior water distribution piping. PAWC's Pro Forma Tariff Section 4.9.1.2 contains the process by which PAWC perfects its ownership of the portion of the service line located within the then-existing right-of-way to ensure PAWC can obtain necessary

⁴⁷ OSBA Statement in Support, p. 2.

permits during the planning phase of a LSLR project, as required by 52 Pa. Code § 65.58(b)(3).⁴⁸

PAWC complies with the requirements of 52 Pa Code § 65.58(c)(1) by including Section 4.9.1.3 of its Pro Forma Tariff, which specifies that neither a customer nor a property owner may install a partial LSLR, and that a partial LSLR will result in termination of service until the time that PAWC can replace the entity-owned LSL under 52 Pa. Code § 65.62.⁴⁹

Section 4.9.1.6 of PAWC's Pro Forma Tariff requires that if a customer or property owner elects to replace the customer-owned LSL, the customer or property owner shall replace the customer-owned LSL concurrent with PAWC replacing the Company-owned LSL, subject to the customer or property owner providing PAWC at least 90 days' notice prior to replacing the customer-owned LSL, which satisfies the requirements of 52 Pa. Code § 65.58(c)(2).⁵⁰

As permitted by 52 Pa. Code § 65.58(c)(3), Section 4.9.1.9 of PAWC's Pro Forma Tariff establishes the process to address replacement of a customer-owned LSL to avoid termination when a property owner, who is not the customer, is non-responsive to PAWC's offer to replace a customer-owned LSL. The Settlement commits PAWC to including a section in its Pro Forma Tariff providing Step In Rights to address replacement of customer-owned LSLs to avoid termination of service when a property owner, who is not the customer, is nonresponsive to PAWC's offer to replace the private-side LSL. Section 4.9.1.9 of PAWC's Pro Forma Tariff contains the language agreed to in the Settlement outlining Step In Rights. The Settlement also includes a term that PAWC will provide a customer or occupant of the property three (3) business days to provide a

⁴⁸ PAWC Statement in Support, p. 8.

⁴⁹ PAWC Statement in Support, p. 9.

⁵⁰ *Id.*

medical certification signed by a licensed physician, nurse practitioner or physician's assistant to the Company by fax, email or mail (providing the contact information) to avoid shutoff of utility service where the property owner who is not the customer is non-responsive to the Company's offer to replace the private-side LSL.⁵¹

As required by 52 Pa Code § 65.58(c)(4), Section 4.9.1.3 of PAWC's Pro Forma Tariff contains provisions that PAWC shall not connect an applicant for water service to a Company-owned service line at a property where a customer or property owner previously refused or failed to accept PAWC's offer of a LSLR until the applicant verifies the replacement of the customer-owned LSL by providing a paid invoice from the licensed contractor where applicable or a verified statement from a licensed contractor attesting to completion of the LSLR.⁵²

PAWC's Pro Forma Tariff complies with the reimbursement requirements under 52 Pa. Code § 65.58(d): Section 4.9.1.5 of PAWC's Pro Forma Tariff addresses reimbursements to eligible customers or property owners who replace their LSL within one year before or from LSLR project commencement. PAWC's Pro Forma Tariff also includes language that explains its reimbursement terms and conditions, and contains (1) an explanation of PAWC's method for determining the amount of reimbursement, (2) an explanation of PAWC's reimbursement methods, and (3) an explanation of PAWC's method for determining eligibility providing that (a) a customer or property owner located within a LSLR project area is eligible for reimbursement of LSLR expenses up to 125% of the average cost the entity would have incurred to perform the replacement of a similarly-sized service line, not to exceed actual cost, and (b) a customer or property owner shall submit to PAWC a detailed estimate or verified statement and paid invoice from a licensed contractor where applicable, verifying the replacement of the customer-

⁵¹ PAWC Statement in Support, pp. 9-10.

⁵² *Id.*

owned LSL. Section 4.9.1.5 of PAWC's Pro Forma Tariff additionally explains that if the reimbursement causes PAWC to exceed its annual cap, PAWC will increase its current annual cap by the amount of the reimbursement and decrease its next annual cap by this amount.⁵³

PAWC's Pro Forma Tariff complies with the warranty requirements under 52 Pa. Code § 65.58(e). Section 4.9.1.2 of PAWC's Pro Forma Tariff provides a warranty on LSLR work performed by PAWC or its contractor for a term of not less than 2 years. PAWC's warranty provisions (1) define the start of the two-year period, (2) ensure the materials and workmanship of the replacement and restoration are covered, (3) define the maximum coverage amounts under the warranty, (4) explain any liability PAWC will have for damages not covered by the warranty, and (5) ensure PAWC access to the property to correct any deficiencies.⁵⁴

In its Exhibit D, PAWC's LSLRP Petition also included the supporting data required by 52 Pa. Code § 53.52(a), which meets the requirements of 52 Pa. Code § 65.55(b)(3).⁵⁵

PAWC's Pro Forma Tariff, as modified by the Settlement, is in the public interest. It meets all of the requirements of the LSLR Regulations. The Step In Rights provisions agreed to in the Settlement reflect a balance of the interests of the Company

⁵³ PAWC Statement in Support, p. 10.

⁵⁴ PAWC Statement in Support, p. 11.

⁵⁵ *Id.*

and its customers, and permits LSLRs to occur in instances when the customer, without fault, is unable to provide the consent for a LSLR.⁵⁶

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.

Modified Long-Term Infrastructure Improvement Plan

Pursuant to the Commission's LSLR Regulations, an applicable entity that has a Commission-approved LTIP shall include with its Petition a modified LTIP containing a LSLR plan as a separate and distinct component of the entity's LTIP.⁵⁷ Section 121.3 of the Commission's regulations⁵⁸ requires that a LTIP 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.

⁵⁶ *Id.*

⁵⁷ 52 Pa. Code § 65.54(b).

⁵⁸ 52 Pa. Code § 121.3.

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/ construction projects and roadways that may be impacted by the LTIP.^[59]

As part of its LSLR Petition, in response to a TUS data request, the Company filed a Modified LTIP revising its existing LTIP to incorporate the proposed LSLR Program.⁶⁰

Additional Provision 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

⁵⁹ 52 Pa. Code § 121.3(a).

⁶⁰ Exhibit E to the Joint Petition.

Code for PAWC to carry out the LSLR Program contemplated in the LSLR Petition in a lawful manner.⁶¹ I find this provision to be reasonable.

Recommendation

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁶² 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.⁶³ To approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.⁶⁴ 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.⁶⁵

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all issues in the proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the LSLRP Petition, discovery responses, and extensive settlement negotiations. As noted by

⁶¹ Settlement, p. 10.

⁶² See 52 Pa. Code § 5.231.

⁶³ *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

⁶⁴ *Pa. Pub. Util. Comm'n v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2015-2518438 (Opinion and Order entered Oct. 14, 2016); *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

⁶⁵ *Pa. Pub. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021).

the OCA, the adoption of the Settlement results in an LSLR Plan with enhanced communications, greater transparency, and a clearer delineation of responsibilities compared to the plan originally proposed by PAWC. In consideration of the various elements of the Settlement, the OCA finds the Settlement to be in the public interest and in the interest of PAWC's customers. The OSBA also actively participated in the negotiations that led to the proposed Settlement and finds the Settlement to be in the public interest. Both the OCA and the OSBA are signatories to the Settlement.

After an extensive review and consideration of PAWC's proposed LSLR and associated filing modifications, I agree with the Joint Petitioners 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. I find that a fair and reasonable compromise has been achieved by the Parties in this case. 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. The plan as modified by the Settlement will allow the Company to recover costs for lead service line replacement, replace lines at a reasonable pace and will provide both financial and public health benefits.

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. Pennsylvania-American Water Company has the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

3. Commission policy promotes settlements. 52 Pa. Code § 5.231.

4. 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).

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

6. The Settlement and its proposed terms and conditions are in the public interest.

7. The Company's Lead Service Line Replacement Plan, as modified by the Settlement complies with 52 Pa. Code § 65.56.

8. An entity that has 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).

9. PAWC'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 LTIIP, complies with 52 Pa. Code § 65.54(b).

10. The Modified LTIIP further complies with the requirements set forth in 52 Pa. Code Chapter 121. 52 Pa. Code §§ 121.1–121.8.

11. PAWC’s Lead Service Line Replacement Program, as modified by the Settlement, complies with 66 Pa. Code § 1311(b), 52 Pa. Code § 53.52(a) and 52 Pa. Code § 65.51 *et seq.*

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Settlement of All Issues filed on March 31, 2024, and executed by Pennsylvania-American Water Company, the Office of Consumer Advocate and the Office of Small Business Advocate be approved as submitted, including all terms and conditions thereof, without modification.

2. That Pennsylvania-American Water Company’s Lead Service Line Replacement Plan, as modified by the Settlement, be approved.

3. That PAWC’s Modified Long-Term Infrastructure Improvement Plan, as modified by the Settlement, be approved.

4. That the parties shall comply with the terms of the Joint Petition for Settlement submitted in this proceeding as though each term therein were the subject of an individual ordering paragraph.

