

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

November 22, 2019

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

Re: Implementation of Act 120 of 2018
Docket No. M-2019-3013286

Dear Secretary Chiavetta:

Attached for electronic filing are the Comments of the Office of Consumer Advocate to Directed Questions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Phillip D. Demanchick".

Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. # 324761
E-Mail: PDemanchick@paoca.org

Enclosures:

cc: Paul Diskin, Director of Bureau of Technical Utility Services
Renardo L. Hicks, Chief Counsel Law Bureau
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IMPLEMENTATION OF ACT 120 OF 2018 : Docket No. M-2019-3013286

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE
TO DIRECTED QUESTIONS

Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. #324761
E-Mail: PDemanchick@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: November 22, 2019

I. INTRODUCTION

On October 3, 2019, the Pennsylvania Public Utility Commission adopted a Joint Motion directing the Bureau of Technical Utility Services (TUS) and Law Bureau (LAW) to develop recommendations for additional parameters for programs designed to replace customer-owned lead service lines (LSLs) and damaged wastewater laterals (DWWLs). Through this process, the Commission seeks to develop a framework consistent with the statutory mandate set forth in Act 120 of 2018, which allows utilities to replace customer-owned LSLs and DWWLs and recover the costs associated with that replacement. To that end, the Commission issued a Secretarial Letter that was published in the Pennsylvania Bulletin on November 2, 2019, directing all interested parties to provide comments on certain questions attached to the Secretarial Letter by November 22, 2019. The OCA submits these Comments in accordance with the Secretarial Letter.

On October 24, 2018, Governor Wolf signed into law Act 120 of 2018, which allows public utilities providing water or wastewater service to replace customer-owned LSLs or DWWLs and receive rate base/rate of return recovery of the costs associated with that expense. That is, the public utility is allowed to include in rate base prudent and reasonable costs associated with those replacements, recover a return on the undepreciated balance, and recover the annual depreciation expense associated with that cost. The statute provides for rate base recovery of these costs, even though the utility does not own the customer portion of the LSL or DWWL and will not own the customer portion after replacement.

First, with respect to LSLs, the OCA notes at the outset that it views LSLs as a significant public health issue that needs to be resolved in an expeditious manner. Lead in water service lines creates major safety concerns for customers that can cause a range of health effects including permanent cognitive impairment in infants and children. As an example of the OCA's recognition of the gravity of this issue, the first LSL replacement program in Pennsylvania, for a Commission-

regulated utility, was the result of a settlement reached by the York Water Company, the OCA, and the Bureau of Investigation of Enforcement (I&E) in 2017. The OCA believes the York Water Company settlement presents a workable framework going forward that addresses the issue of replacing customer-owned LSLs in a fair and equitable manner.

That said, the OCA did not support the adoption of House Bill 2075, which became Act 120, out of concern for the ratemaking treatment proposed by the legislation and the expansion to damaged wastewater laterals. As the OCA has previously stated, allowing utilities to recover costs associated with the replacement of customer-owned property as if it were utility-owned property, plant, or equipment is not the most cost-effective means of achieving the goal of replacement and simply turns a customer health risk into a profit center for the utility shareholders at the expense of all other customers. Such recovery mechanism also fails to encourage the water utility to pursue outside grants and funding to support this work.

The OCA understands that the Commission and regulated utilities may adopt the rate base/rate of return approach under Act 120, but we should continue to work toward securing additional funding, designing programs that are as cost-effective as possible, and mitigating the impact on all other customers. To this end, the OCA urges the water utilities to consider the York Water Company approach and other approaches that will reduce the cost of these initiatives.

With respect to DWWLs, the OCA notes that information surrounding this topic is insufficient, thus preventing the OCA from fully evaluating the scope of the problem at this time. While damaged sewer laterals can pose environmental or health risks, as untreated sewage may leak from a break, this impact is often localized and can be remedied by a repair to the damaged area of the lateral. This is a homeowner responsibility that can often be covered by insurance

protection. More information will be needed before beginning the process of developing a program for DWWLs.

The OCA will work with the other interested parties to develop a framework that continues to encourage utilities to minimize costs and the impacts to ratepayers in undertaking plans to remove LSLs from water systems. Accordingly, the OCA's responses to the directed questions listed in the Secretarial Letter reflect that approach. As to DWWLs, the OCA's comments are limited due to insufficient information, but the OCA looks forward to responding to the comments and information provided by other interested parties.

II. RESPONSES TO DIRECTED QUESTIONS

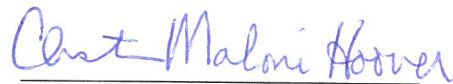
The Secretarial Letter seeks comments on a list of questions surrounding several topic areas, including (1) planning and reporting, (2) communications, (3) replacement, (4) refusals to replace, (5) Section 1311(b) analysis, and (6) rates. In response to these questions, the OCA has included Attachment A, which provides a response to the extent the OCA can answer the question(s) at this time. The issues are developing and the OCA reserves the right to supplement answers. The OCA responses were developed with the assistance of Scott J. Rubin, consultant to OCA in this proceeding.¹ Furthermore, to the extent the OCA does not respond to specific questions or other issues, the OCA will review the comments provided by other stakeholders and participate in the working group discussions to address those issues.

¹ Mr. Rubin is an independent attorney and public utility industry consultant under contract with the OCA who has testified as an expert witness before utility commissions and courts in twenty states, the District of Columbia, and province of Nova Scotia. Since 1994, Mr. Rubin has provided legal and consulting services to a variety of parties interested in public utility regulatory proceedings, including the provision of testimony before the United States House of Representatives (2004) and this Commission (2017) concerning public policy and cost issues associated with the replacement of customer-owned lead service lines. He also has consulted with the Consumer Advocate of Nova Scotia concerning the lead service line program for that province's largest water utility.

III. CONCLUSION

Any plan designed to replace LSLs or DWWLs pursuant to Section 1311(b), 66 Pa. C.S. § 1311(b), should be completed in an expedient manner, while also ensuring that costs are minimized to reduce the impacts to ratepayers. Additionally, any approach should ensure that customers are informed, treated equitably, and provided with safe, adequate and reliable service. The OCA appreciates the opportunity to work with other interested parties to accomplish this goal.

Respectfully submitted,



Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. # 324761
E-Mail: PDemanchick@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Counsel for:
Tanya McCloskey
Acting Consumer Advocate

Dated: November 22, 2019
281144

ATTACHMENT A

**Implementation of Act 120 of 2018
M-2019-3013286**

**Office of Consumer Advocate's
Answers to TUS Directed Questions**

Planning and Reporting

M-1 What information should utilities seeking to replace LSLs and DWWLs provide in a distinct comprehensive replacement plan or as integrated elements within their long-term infrastructure improvement plans (LTIPs)?

If a utility seeks to include costs associated with LSLs and DWWLs in its Distribution System Improvement Charge (DSIC), then the work must be included in the utility's LTIP, and all requirements for inclusion must be met. The requirements are set forth in 66 Pa. C.S. § 1352(a) and 52 Pa. Code § 121.3(a). Further, if the utility seeks to begin LSL or DWWL work prior to the required filing of its next LTIP, the OCA would expect such work (in most cases) to constitute a "major modification" to the LTIP, necessitating a plan revision under 52 Pa. Code § 121.5.

In all cases (even if the utility does not seek to include LSLs and DWWLs in its DSIC, or if the utility does not have a DSIC), the utility is required to file a new tariff or tariff supplement setting forth the terms and conditions under which such replacements will occur. 66 Pa. C.S. § 1311(b)(2)(v). The tariff must include a cap on the maximum number of LSLs or DWWLs that can be replaced each year. 66 Pa. C.S. § 1311(b)(2)(vi).

In order for the Commission to make the required finding that the tariff -- including the annual cap -- is just and reasonable (66 Pa. C.S. § 1308(c)), the utility must provide evidence concerning the estimated number of LSLs or DWWLs, a reasonable annual level of effort to identify and replace such lines given the available workforce, the expected annual cost of such a level of effort, and whether the utility is under any legal constraints (such as a court order or consent agreement) regarding line replacements. Without that type of information, the OCA submits it would not be possible for the Commission to determine whether the statutorily required annual cap is just and reasonable.

M-2 What are the most effective methodologies for completing a thorough study to locate and identify LSLs and DWWLs within a utility's service territory?

At this time, the OCA does not have the information to answer this question but will review the comments provided by other stakeholders and participate in the working group discussions addressing the matter.

M-3 What would be a reasonable timeframe, based upon a concerted effort, for a utility to identify all the LSLs within its service territory via historical records, city permits, direct visual inspections and other such means early in an LSL replacement plan's schedule as part of a utility's LTIP?

A utility should be required to develop a reasonable estimate of the number of LSLs in its service territory before filing its LSL tariff. As discussed in question M-1 above, the tariff is required to include a cap on annual replacements and the Commission must be able to find that the cap is just and reasonable. Without an understanding of the full scope of the replacement program, it is not possible for the Commission to determine whether the proposed cap is reasonable. For example, a proposed cap of 1,000 replacements per year might be reasonable if the utility estimates it will need to replace 10,000 lines. That same level of 1,000 replacements per year, however, might be unreasonably high if the utility believes it will need to replace only 1,000 lines in total. Similarly, 1,000 lines per year could be unreasonably low if the utility estimates the backlog is 50,000 lines.

The OCA submits, therefore, that it is not possible for the Commission to determine the just and reasonable annual cap without the Commission having an understanding of the scope of the problem. Thus, the utility should be required to provide (and support) such an estimate as part of its required tariff filing (and also as part of an LTIP filing if one is made).

M-4 What are the best practices and avenues for reporting and/or communicating the results of a thorough study to locate and identify LSLs and DWWLs within a utility's service territory?

The OCA does not know the "best" practices being used in the industry to communicate LSL information to customers, but it believes the Pittsburgh Water and Sewer Authority's map showing completed, in progress, and planned future LSL work is a valuable tool for consumers.² The OCA, however, does not know whether best practices for LSL information will translate to reporting and/or communicating the results of a thorough study to locate and identify DWWLs. The OCA will review the comments provided by other stakeholders and participate in the working group discussions addressing the matter.

M-5 Other than annual asset optimization plans filed pursuant to 66 Pa. C.S. § 1356, what is/are the most effective means of reporting the progress of LSL and DWWL replacement program efforts, including the number of LSL and/or DWWL replacements, the size and length of pipe removed, the cost per service, the location of removal, site conditions, etc.?

The OCA submits that if a utility is including LSL or DWWL costs in its DSIC, then annual reporting through the Annual Asset Optimization (AAO) report is required. If a utility does not have a DSIC, or does not include LSL/DWWL costs in the DSIC, then the Commission should require utilities to file a separate annual report (similar to the annual reliability reports required of electric utilities under 52 Pa. Code § 57.195).

² <http://lead.pgh2o.com/your-water-service-line/planned-water-service-line-replacement-map/>

Whether as part of an AAO filing or a separate filing, each utility should compare its actual activity to projections on parameters such as number of lines replaced or rehabilitated, average cost per line as well as the range of per-line costs, total cost broken down by customer rate category (residential, commercial, industrial), any low cost or no cost funding received, number of instances in which the property owner refused the replacement, any warranty claims made or other customer complaints, and overall progress (for example, providing any updates to the estimated number of lines remaining). The utility also should describe its efforts to identify new DWWLs, since that will be an ongoing process.

Communications

M-6 What information should be provided to customers that are or may be affected by a known or suspected LSL or DWWL (e.g., The utility's replacement schedule, the material type of the company owned service line, etc.)?

Utilities should inform consumers about lead contamination and instruct consumers on how to identify whether their Service Pipe is made of lead. Further, utilities should provide information about the utility's project to replace lead service lines and who to contact to have the utility evaluate whether the customer should be placed on the service line replacement list.

The OCA also recommends that utilities develop a communication program that follows the National Drinking Water Advisory Council (NDWAC) subcommittee's recommendations on consumer education.³ The subcommittee states:

[P]ublic education programs for lead should move away from past practices of one-way communication from "experts" to the "public" toward newer concepts of risk communication that involve sustained, multiple, two-way channels of ongoing communication and partnership with the public...

Communication in languages appropriate to the demographics of the community, in clear terms understandable by the public, and with engaging, reader-friendly graphics, photos, and video all help achieve greater understanding. Outreach programs and materials can be improved by involving people with diverse, and consumer-oriented expertise and perspectives, including consumer-centered risk communication experts, community members with extensive experience with lead in water including individuals not necessarily affiliated with an organization, lead/copper corrosion experts, grassroots public-health workers, and staff of PWSs [public water systems], state and federal regulatory agencies and public health agencies. This information can and should be conveyed in different ways and through different communication channels, tailored to the specific circumstances.

³ In 2015, the National Drinking Water Advisory Council, a volunteer body that advises the U.S. Environmental Protection Agency (EPA) on drinking water issues, created a subcommittee to study the issue of lead and copper contamination in drinking water. Wendy Krkosek, *Utility Adopts a Complete Lead Service Line Replacement Strategy*, Opflow 42:8:12-15 (Aug. 2016), <http://dx.doi.org/10.5991/OPF.2016.42.0046>.

Report of the Lead and Copper Rule Working Group To the National Drinking Water Advisory Council (Aug. 24, 2015), page 21, <https://www.epa.gov/sites/production/files/2017-01/documents/ndwaclcrwgfinalreportaug2015.pdf> (last accessed 11/20/2019) (NDWAC Report).

M-7 How and when should information be provided to customers that are or may be affected by a known or suspected LSL or DWWL? Discussions may include, but are not limited to, providing information in a website portal and/or printed materials, sending out materials at periodic intervals and/or providing materials when a customer completes an application for service.

The OCA submits that the agreement reached in the Pennsylvania-American Water Company (PAWC) petition proceeding, docketed at P-2017-2606100, is a reasonable approach for how and when information should be provided. As stated in the Settlement approved by the Commission:

PAWC's customer outreach and communications plan for the Replacement Plan will include, but is not limited to, direct mailings to notify potentially affected customers of the Replacement Plan, press releases, bill inserts, information on the Company's website regarding the health effects of lead, and a lead information pamphlet to be distributed to all customers. In addition, PAWC plans to release an educational video about lead and notify customers when lead is encountered on the customer-owned segment of the service line.

*Petition of Pennsylvania-American Water Company for Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Service Pipes, Docket No. P-2017-2606100, Joint Petition for Settlement on Remand at ¶ 33. The OCA also notes that the York Water Company reported that between November 2016 and September 2017, it mailed pamphlets regarding lead and drinking water to all customers, as well as providing multiple copies to known educational providers, health and human services providers, pediatricians and healthcare providers in the community. York distributed a bill insert informing customers about their responsibility for customer-owned service lines and seeking assistance with identifying whether those lines are made of lead. York also reported that it issued a press release regarding the program approved by the PUC. Further, York posted informational materials on its website in both Spanish and English and provided electronic links to those materials for customers receiving electronic bills. *Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Costs of Certain Customer-Owned Service Line Replacements to the Company's Service Account, Docket No. P-2016-2577404, Customer Outreach Efforts Report at 1-2 and App. A-D (Oct. 10, 2017).**

As noted above, it is most important that any form or manner of communication allow for ongoing discussions between the utility and the customer. Ongoing communications ensure that customers are informed and have multiple opportunities to access the information.

M-8 What information, if any, should the utility provide a municipality about the number of known and suspected LSLs within its jurisdictional boundaries and the potential schedule for replacement?

At this time, the OCA does not have the information to answer this question but will review the comments provided by other stakeholders and participate in the working group discussions addressing the matter.

M-9 What processes and procedures should utilities follow based upon a customer's acceptance of an LSL or DWWL replacement?

The OCA submits that there are several important measures a utility should take after acceptance by the customer to replace a LSL or DWWL. First, the utility should receive written consent from the customer indicating that it may enter the customer's property to replace the LSL. *See e.g., Petition of Pennsylvania-American Water Company for Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Service Pipes, Docket No. P-2017-2606100, Joint Petition for Settlement on Remand at ¶ 20.*

Additionally, after the customer has provided written consent, the utility should keep in contact with the customer to indicate when they intend to replace the LSL or DWWL, and what measures the customer must take before and after the replacement. Engaging with the customer in such a way helps ensure that the customer is informed at all stages of replacement.

M-10 What content should be included in notices to utility customers when a utility files a new tariff or tariff supplement pursuant to 66 Pa. C.S. § 1308 to replace LSLs and DWWLs?

The utility's notice to customers of the tariff filing should include a plain language summary of the utility's proposal. This should include a summary of the terms and conditions under which the utility would replace an LSL or DWWL, any proposed limits on the utility's cost for a single replacement, the estimated total cost of the replacement program, the proposed annual cap on expenditures, how the utility proposes to reflect the costs in its rates, and the estimated effect of the program on the utility's rates.

Replacements

M-11 What are the best ways to prioritize LSL replacements outside of scheduled main replacement and relocation projects to allow for a proactive and distinct LSL replacement program in an efficient and effective manner?

A water utility should not undertake LSL replacements on an ad hoc basis. Rather, such replacements should be performed as part of a replacement plan in a larger geographic area, so that the utility can capture the significant economies of scale associated with such costs as crew or contractor mobilization, paving, sidewalk repair, supervision, inspection, and so on. If an LSL has been identified but is not scheduled for replacement in the near future, then the utility should provide the customer with water filters and other means to control lead exposure in the interim. As

discussed below, there may be some limited exceptions to the geographic approach if replacement would be more cost-effective, or safer, than mitigation measures.

M-12 Should priority LSL replacement scheduling be provided for customers where water is/will likely be consumed by sensitive populations (e.g., children in schools or day-care centers, pregnant women, etc.), what criteria should make a customer eligible for prioritization and how should utilities obtain this information?

The utility should take reasonable, cost-effective actions to control lead exposure to all customers, and especially to vulnerable people such as those listed in the question. If the utility is taking reasonable actions (such as introducing chemicals to control corrosion) such that its water does not exceed the lead action level (even where an LSL is present), the utility may not need to prioritize LSL removals for particular customers. If, however, the utility's treatment plan is not sufficient to control lead exposure to customers with LSLs, then the utility should prioritize LSL removal in higher-risk portions of its service area. The OCA would reiterate that ad hoc (that is, a single customer) LSL replacements should not be performed except in extraordinary circumstances. As the OCA explained above, the utility should provide customers with filters or other on-site mitigation options until the LSL removal can be performed. If filtering is not feasible, as might be the case with an institutional customer (such as a school, hospital, or day care center), then the utility may need to provide bottled water or other mitigation measures until the LSL can be replaced. For these larger customers, an exception to the geographic approach may be warranted if the replacement is more cost-effective or safer than long-term mitigation measures.

M-13 Describe the considerations and replacement procedure of an LSL on a property where the site conditions would be conducive to a standard approach?

At this time, the OCA does not have the information to answer this question but will review the comments provided by other stakeholders and participate in the working group discussions addressing the matter.

M-14 Describe the considerations and replacement procedure of an LSL on a property where the site conditions would require the utility to take unique or extraordinary efforts?

At this time, the OCA does not have the information to answer this question but will review the comments provided by other stakeholders and participate in the working group discussions addressing the matter.

M-15 Should the Commission establish a cap on the amount a utility is permitted to invest in a LSL or DWWL replacement for a customer, what should this amount be and would it be reasonable to establish this cap based on a customer's meter size?

It would be reasonable for the Commission to establish a cap on the utility's cost of an individual LSL or DWWL replacement. There always will be some variance around the utility's average cost -- some replacements will be more costly than average while others will be less costly. The OCA

submits that it would be reasonable to establish a limit on any one replacement of twice the average cost. Any such limit should be specifically set forth in the utility's tariff, as well as in the individual notice and agreement that will be provided to customers. If the cost will exceed the cap, then the utility should provide the customer with the option of paying the additional amount through a bill surcharge over a reasonable period of time. The reasonable period of time could vary depending on the customer's financial circumstances and the amount of the cost in excess of the cap.

Refusals

M-16 What processes or procedures should utilities follow based upon a customer's refusal of a LSL replacement, including:

a. Should there be any implications for residential real estate property where the presence of an LSL is identified but the current property owner refuses to voluntarily and affirmatively collaborate with the public utility in question in the replacement of such identified LSL (e.g., filing of notices with appropriate municipal authorities and property registration records whether the LSL and the corresponding company-owned LSL have been identified and have or have not been replaced)?

b. Should utilities install a backflow prevention device on the company's service line and/or terminate service to the customer if an LSL is not replaced within a reasonable period?

To the best of the OCA's knowledge, it is not illegal to have an LSL in Pennsylvania. Further, the OCA is not aware of any notice requirements concerning the presence of an LSL as part of a real property transaction. In the absence of such requirements, the OCA submits that neither the Commission nor utilities can take actions that would create such an obligation on homeowners where none exists under the law.

Moreover, the presence of an LSL usually does not create a public health hazard to anyone who does not consume water at the customer's premises. Thus, unlike a DWWL (where the defect can cause a public health problem to neighboring properties or on public rights of way), the presence of an LSL does not justify termination of service to the customer. The OCA is not aware of any water utility in Pennsylvania or elsewhere that has a tariff or regulation that authorizes the termination of service for failure to replace an otherwise functioning service line that contains lead.

M-17 What processes or procedures should utilities follow based upon a customer's refusal of a DWWL replacement?

The OCA recommends that a DWWL be defined as a line that is leaking or causing a backup (see response to M-21, below). Most wastewater utility tariffs appropriately place an obligation on the customer to maintain a properly functioning, non-leaking service lateral. In addition, most wastewater tariffs provide that if a customer fails to fix leaking or malfunctioning wastewater laterals or other facilities, then the utility has the right to terminate service to the customer. See, e.g., Pennsylvania American Water Co. Tariff Wastewater PA P.U.C. No. 16, First Revised page 27, Section D.3 (Customer's Responsibilities) and page 29, Section E.2 (Termination by Company); Aqua Pennsylvania Wastewater Inc. Tariff Sewer Pa P.U.C. No. 2, Original page 24

(Termination and Discontinuance by the Company); The York Water Company, Tariff Wastewater PA P.U.C. No. 1, First Revised Page 12, Section B.3 (Customer's Responsibilities) and First Revised Page 13, Section C.2 (Termination by Company).

The OCA considers it appropriate, therefore, that if a customer refuses to allow the utility to repair or replace a DWWL, then the customer's service should be terminated until the lateral is repaired or replaced.

M-18 If a customer refuses to accept full replacement of a LSL, what considerations should be addressed to reduce potential liabilities for the utility and its ratepayers?

The utility and customer must enter into an agreement concerning the replacement of an LSL (since the line is and remains the customer's property). There should be a section of the agreement form where the customer can refuse to authorize the utility to replace the LSL. That section should release the utility from all legal responsibility and potential liability associated with potential lead exposure.

M-19 Considering health implications associated with partial LSL replacements, should Company-owned LSLs be replaced where a customer refuses to allow replacement of the customer-owned LSL and, if so, what additional procedures should a utility follow than those previously discussed?

In circumstances where the utility has a choice, it would be preferable to avoid a partial LSL replacement. If, however, the utility must replace its portion of the LSL (as is usually the case when the main is being replaced), and the customer does not consent to replacing the customer-owned portion of the line, then there may be no practical way to avoid a partial replacement. As discussed in question M-18 above, if that occurs then the customer should be placed on notice of the potential health risks and should be required to release the utility from all potential liability associated with future lead exposure.

M-20 When a number of LSLs are identified within a municipal boundary, should the utility seek legislative support regarding LSLs from the municipal entity to support a complete LSL replacement effort?

The OCA does not understand the intent of this question. Under Pennsylvania law, municipalities are limited in the powers they can exercise regarding the provision of service by Commission-regulated public utilities. Thus, for example, the OCA does not believe that a municipality could prevent a utility from replacing LSLs or impose conditions on those replacements (other than routine street opening and repair requirements). While a municipality can require certain property owners to connect to a public water line (see, e.g., 53 P.S. § 67603), the OCA does not know if municipalities have the legal authority to order property owners to replace LSLs.

1311(b) Analysis

M-21 What is the appropriate definition of a DWWL?

The OCA recommends that a “damaged wastewater lateral” should be defined as a lateral that is leaking or causing a backup such that the escape of wastewater is apparent (by sight or odor). Unlike other utility services, wastewater is not an individually metered service. As such, a customer has no way of knowing if wastewater is not reaching the main unless the leak can be seen or smelled. Similarly, a customer usually would not know if a wastewater lateral is damaged but not leaking, such that flow might be restricted but not causing any type of backup or leak.

Damage of the magnitude that causes a leak or backup creates a public health concern analogous to the public health concern caused by lead contamination in drinking water. Thus, defining a DWWL as a line that is causing a public health concern (leaking or backing up) is consistent with the purpose of Act 120, and would justify the extraordinary remedy of permitting the utility to repair or replace customer-owned property.

M-22 What are reasonable standards, processes, and procedures for establishing the maximum number of LSLs and DWWLs that can be replaced annually?

The number of LSLs and DWWLs that can be cost-effectively replaced each year would be a function of several factors. These might include the availability of contractors or in-house work crews, the ability to obtain financing, geographic diversity, subsurface conditions, and the overall scope of the replacement program. As a general matter, the OCA would expect most utilities to be able to replace LSLs over a period of five to 10 years, depending on the factors listed above.

As explained above, the OCA defines a DWWL as creating an imminent health hazard. The OCA would expect, therefore, that DWWLs should be replaced or repaired in a relatively short period of time after their discovery. If there is an existing backlog of such lines, then the utility should propose a program that cost-effectively eliminates the health hazard expeditiously. Given the relatively small size of Commission-regulated wastewater utilities, the OCA would not expect there to be many multi-year DWWL programs, though utilities should have an ongoing process to identify and remediate new DWWLs.

M-23 What are reasonable standards, processes, and procedures for establishing a reasonable LSL or DWWL warranty term?

Generally water and wastewater service lines have an expected useful life of 40 years or more. See, for example, the useful life table prepared by the Washington State Department of Commerce (<http://www.commerce.wa.gov/wp-content/uploads/2016/11/hfu-expected-useful-life-2011.pdf>). If a new line were to fail within its first few years, therefore, it likely would be the result of an installation error or a materials defect. The OCA would recommend, therefore, that a warranty period equivalent to at least 10% of the expected useful life, or at least four years, would be reasonable. A shorter time period would be inappropriate because more time may be needed for the newly installed LSL or DWWL to experience sufficient weather disturbances in order to determine whether the line is defective.

M-24 What are reasonable standards, processes, and procedures for establishing the amount and means for reimbursing customers that have replaced a LSL and/or DWWL within one year of commencement of a replacement project?

The OCA notes that Section 1311(b)(2)(vii)(B) requires reimbursement for replacements made up to one year prior to the approval of a Commission-approved replacement plan. Reimbursement would not exceed the actual cost on the invoice. The utility's representative would visit the site and determine that the service line has been replaced, and the customer would provide the utility with a paid invoice, a certification from a certified plumber, and other documentation as determined by the utility. To the extent that the actual cost exceeds the average cost of the replacement for the utility, customers should be permitted to pay any difference as a lump sum, or as an amount added to the customer bill, to be paid over a reasonable period not to exceed one year. If the difference is included on the customer bill, the provisions of 52 Pa. Code § 56.23 should apply, and the utility should not terminate for nonpayment of the amount included on the customer's bill. The utility agrees not to charge interest on any payment period for the difference, other than interest for late payment. If the utility is unable to collect the difference from a customer and the difference or any portion is written off as uncollectible, the utility will be permitted to include the uncollected amount in a regulatory asset account between rate cases. *See e.g., Petition of The York Water Company for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account*, Docket No. P-2016-2577404, Joint Petition for Settlement and Request for Certification at ¶ 16 (Jan. 23, 2017). Providing a reimbursement plan of this nature protects from the inequitable recovery through rates.

M-25 What constitutes customer LSL and DWWL projects as referenced in 66 Pa. C.S. 1311(vii)(B) and how would reimbursements be linked to the referenced project (e.g., proximity or direct impact)?

At this time, the OCA does not have the information to answer this question but will review the comments provided by other stakeholders and participate in the working group discussions addressing the matter.

Rates

M-26 What benefits do LSL and DWWL replacements provide to each customer class, including the public and private fire protection, bulk/wholesale and industrial customer classes?

The OCA respectfully submits that this issue should not be addressed generically, but should be addressed for each utility in an applicable base rate proceeding. There are many facts that will need to be determined in the base rate case, including the design of the program, the mix of replacements, the benefits of replacement and the accounting treatment provided before any consideration of allocation to the customer classes.

If a utility decides to include LSL or DWWL costs in its DSIC, the law requires the DSIC to be "applied equally to all customer classes as a percentage of each customer's billed revenues" 66 Pa. C.S. § 1358(d)(1). The only exceptions recognized in the law are that the DSIC "shall not

be applied to amounts billed for public fire protection service by water utilities and the State tax adjustment surcharge.” 66 Pa. C.S. § 1357(d)(1). Those two categories of revenues also are the only categories of projected revenues excluded from the DSIC calculation. 66 Pa. C.S. § 1357(d)(2).

Thus, for purposes of the DSIC it is not permissible to try to allocate the investments among customer classes or to attempt to exempt certain classes (other than public fire protection) from paying a proportionate share of the costs.

M-27 What benefits do utilities and ratepayers realize from LSL and DWWL replacements apart from a return on and of the utility’s investment?

The major benefit of Act 120 is to reduce public health hazards that may result from the customer-owned portions of LSLs and DWWLs. The costs to replace those lines can run into the thousands of dollars and will be beyond the financial means of a significant number of Pennsylvania households or small businesses.

M-28 What is the applicable depreciation or amortization rate for LSL and DWWL replacement costs for DSIC purposes and would this change over the life of the investment?

As discussed above, it appears that the expected useful life of a water or wastewater service line is approximately 40 years. This would imply a straight-line depreciation rate of 2.5% per year, unless the utility has an approved depreciation study that sets a different rate for investment in services.

M-29 What is the applicable depreciation or amortization rate for LSL and DWWL replacement costs for base rate purposes and would this change over the life of the investment?

As discussed above, it appears that the expected useful life of a water or wastewater service line is approximately 40 years. This would imply a straight-line depreciation rate of 2.5% per year, unless the utility has an approved depreciation study that sets a different rate for investment in services.

M-30 When allocating LSL and DWWL replacement costs between customer classes, what guidelines should balance cost causation, benefits received and LSL/DWWL replacement program participation while ensuring just and reasonable rates?

The OCA submits that this issue should not be addressed generically, as explained in response to question M-26. More facts, including the specific program design, will need to be developed before considering cost causation, benefits, and just and reasonable rates.

M-31 When allocating LSL and DWWL replacement costs within a customer class, should customers with larger meters and greater consumption than the average member of their customer class have a lesser, equal or greater proportionate financial responsibility for LSL and DWWL replacement costs and should this responsibility be capped at a fixed amount for customers with meters larger than a certain size?

See the responses to questions M-26 and M-30. In addition, see response to M-15 regarding average cost of replacement.

M-32 What alternative financial support sources exist for the replacement of LSLs and DWWLs, e.g., grants, and how should the potential and actual use of such funding sources be recognized by public utilities for accounting and ratemaking purposes in their respective LSL and DWWL replacement programs?

Grants or low-interest loans to fund LSL or DWWL work may be available from the Pennsylvania Infrastructure Investment Authority, the federal Rural Utilities Service, the federal Department of Housing and Urban Development, local economic development agencies, or other sources. The OCA would encourage each utility to pursue sources of lower-cost financing for these programs. Any such lower-cost funding should be reflected in the utility's incremental capital costs in a DSIC calculation. In a base rate proceeding, any grants would be reflected as contributed capital and low-interest loans would generally be included in the capital structure and affect the overall calculation of the authorized rate of return.

M-33 Should utilities be required to continually seek out alternative financial support sources to fund the replacement of LSL and DWWLs and how should these efforts be documented and/or reported?

Yes, see the response to question M-32.

M-34 Should utilities be required to submit and receive approval of a new tariff or a tariff supplement pursuant to 66 Pa. C.S. § 1311(b)(v) before LSL and DWWL replacement costs are incorporated into a utility's LTIP?

In the interests of administrative efficiency, the OCA believes it would be reasonable to file a proposed tariff and LTIP revision at the same time. The OCA recognizes, however, that the typical time period to review a proposed tariff change under 66 Pa. C.S. § 1308 is longer than the time period to review an LTIP revision under 52 Pa. Code § 121.4 of the Commission's regulations. Both provisions, however, provide for longer review periods when complaints are filed or if there are material questions of fact. The OCA believes it is feasible, therefore, to have the Commission review and rule upon the tariff change and LTIP revision in the same proceeding.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 120 of 2018 : Docket No. M-2019-3013286

VERIFICATION

I, Scott J. Rubin, hereby state that the facts set forth in the attachment accompanying the Office of Consumer Advocate's Comments to the Directed Questions stated in the Secretarial Letter dated October 24, 2019, are true and correct and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Signature:


Scott J. Rubin

Consultant Address: Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815

DATED: November 22, 2019
*281079

CERTIFICATE OF SERVICE

Re: Implementation of Act 120 of 2018 : Docket No. M-2019-3013286

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments to Directed Questions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 22nd day of November 2019.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

John R. Evans, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Alexander R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Susan Simms Marsh, Esquire
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

David P. Zambito, Esquire
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

Jeffrey R. Hines, P.E.
President and Chief Executive Officer
The York Water Company
130 East Market Street
York, PA 17401

Michael D. Klein, Counsel
National Association of Water Companies- PA
777 6th Street NW
11th Floor
Washington, DC 20001



Phillip D. Demanchick
Assistant Consumer Advocate
PA Attorney I.D. # 324761
E-Mail: PDemanchick@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 22, 2019
*281078