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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held September 17, 2020 |
| Commissioners Present: |  |

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|  Gladys Brown Dutrieuille, Chairman |
|  David W. Sweet, Vice Chairman, Statement |
|  John F. Coleman, Jr. |
|  Ralph V. Yanora |
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| Rulemaking to Implement Act 120 of 2018at 52 Pa. Code Chapters 65 and 66 | Docket No. L-2020-3019521 |

**NOTICE OF PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

Act 120 of 2018 (Act 120) amended the Public Utility Code at 66 Pa. C.S.
§ 1311(b), by addressing the replacement of lead service lines (LSL) and damaged wastewater service laterals (DWSL) and the recovery of associated costs. In order to implement Act 120, the Public Utility Commission (Commission) proposes to modify our regulations at Title 52, 52 Pa Code §§ 1.1, *et seq*. In particular, we propose to expand Chapter 65 and establish a new Chapter 66. First, we will designate the existing regulations addressing water service in Chapter 65 as Subchapter A, “Service Generally,” while we set forth new regulations as Subchapter B, “Lead Service Line Replacements.” Then, we will create a new Chapter 66 addressing wastewater service, which sets aside Subchapter A, “Service Generally,” for future use and establishes new regulations as Subchapter B, “Damaged Wastewater Service Laterals.” The proposed regulations are attached hereto as Annexes A and B. The Commission seeks comments from all interested parties on these Annexes and any other pertinent changes to our regulations.

**BACKGROUND**

On October 24, 2018, Governor Wolf signed Act 120 into law, thereby amending the Public Utility Code at 66 Pa. C.S. § 1311(b) to address the accelerated replacement of customer-owned LSLs and DWSLs. Act 120 sets forth a uniform, minimum standard under which public utilities may seek to replace LSLs and DWSLs and recover the costs associated with replacement.

Prior to the passage of Act 120, the Commission and regulated water and wastewater utilities were actively addressing the replacement of LSLs and DWSLs. On March 8, 2017, for instance, the Commission approved The York Water Company’s (York Water) proposal to replace LSLs in their service territory. *See* *Petition of The York Water Company*, Docket No. P-2019-2577404 (Order entered March 8, 2017). Nonetheless, Act 120 served to clarify certain legal issues that the Commission, water utilities, and wastewater utilities identified during the course of such proceedings.

On December 23, 2018, when Act 120 became effective, the Commission was in the process of adjudicating Pennsylvania American Water Company’s (PAWC) proposal regarding customer-owned LSLs. In response to Act 120, the Commission remanded
the proceeding to the Office of Administrative Law Judge instructing the parties to evaluate the proposal under the new requirements of Act 120 and supplement the record to achieve compliance with 66 Pa. C.S. § 1311(b). *See* *Petition of Pennsylvania American Water Company*, Docket No. P-2017-2606100 (Order entered January 4, 2019). On July 17, 2019, the Parties filed a Joint Petition for Settlement on Remand (Joint Settlement), which addressed many issues in accordance with 66 Pa. C.S. § 1311(b). The parties acknowledged and the Commission determined, however, that several issues implicated by Act 120 remain unresolved and required more generic guidance for future proceedings. *See* Joint Settlement ¶ 23, 41.

Accordingly, on October 3, 2019, Chairman Gladys Brown Dutrieuille and Commissioner John F. Coleman, Jr. issued a Joint Motion directing Commission staff to initiate a further examination of Act 120. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Joint Motion issued October 3, 2019). The Joint Motion instructed the Commission’s Bureau of Technical Utility Services (TUS) and Law Bureau to develop recommendations for additional parameters for the replacement of LSLs and DWSLs, especially as part of the LTIIP and the Distribution System Improvement Charge (DSIC). In particular, the Joint Motion directed (1) the entry of an Order consistent with the Joint Motion, (2) the transmission of directed questions to interested stakeholders within 30 days, (3) the assembly of a working group, and (4) the submission of a written staff recommendation to the Commission by March 31, 2020.

Consistent with the Joint Motion, on October 24, 2019, the Commission sent a Secretarial Letter accompanied by directed questions to interested stakeholders for comment on the replacement of LSLs and DWSLs, including parameters for planning and reporting, communication, replacements, refusals, 66 Pa. C.S. § 1311(b), and rates. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Secretarial Letter issued October 24, 2019). The Secretarial Letter directed the filing of comments by November 22, 2019. [[1]](#footnote-2) The Secretarial Letter also scheduled a working group meeting to convene on December 19, 2019. Notice of the meeting was published in the *Pennsylvania Bulletin* on November 2, 2019. *See* 49 Pa.B. 6652.

On November 1, 2019, the Commission issued an Order in accordance with the Joint Motion. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Order entered November 1, 2019) (*November 1, 2019* *Implementation Order*). The Order reiterated the steps to be taken by staff to conduct a further examination of Act 120.

On November 19, 2020, the County of Northampton (Northampton County)
filed with the Commission comments in response to the October 24, 2019 directed questions. On November 21, 2019, Pennsylvania-American Water Company (PAWC) filed comments. On November 22, 2019, the following stakeholders also filed comments in response to the directed questions: the Coalition for Affordable Utility Service and Energy (CAUSE-PA), Green & Healthy Homes Initiative (GHHI), and Pittsburgh United (UNITED) collectively; the Natural Resources Defense Council (NRDC); the Office of Consumer Advocate (OCA); Aqua Pennsylvania, Inc. (Aqua); Suez Water Pennsylvania, Inc. (SUEZ); the Office of Small Business Advocate (OSBA); Pittsburgh Water and Sewer Authority (PWSA); and Columbia Water Company (Columbia Water).

On December 3, 2019, the Commission issued a Secretarial Letter containing further details regarding the working group meeting and noted that stakeholders may submit reply comments by January 16, 2020. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Secretarial Letter issued December 3, 2019).

The working group meeting convened on December 19, 2019. The following stakeholders attended the meeting: Northampton County; PAWC; CAUSE-PA; GHHI; the NRDC; the OCA; Aqua; SUEZ; the OSBA; PWSA; Columbia Water; PENNVEST; the Public Utility Law Project (PULP); the Bureau of Investigation and Enforcement (BI&E); and York Water. The three-hour working group meeting started with a presentation by TUS staff, including questions for the utilities and other entities in attendance, followed by an open dialogue regarding the replacement of LSLs and DWSLs as it pertains to planning and reporting, communication, replacements, refusals,

66 Pa. C.S. § 1311(b), and rates. TUS staff encouraged the filing of reply comments as a means to further respond to matters raised during the working group meeting. On January 16, 2019, the Commission received reply comments from CAUSE-PA, GHHI, UNITED, and the NRDC collectively; the OSBA; and PWSA.

 On March 31, 2020, in consideration of the comments filed in response to the directed questions, the working group meeting, and the reply comments filed thereafter, TUS and Law Bureau staff submitted to the Commission a confidential Staff Report detailing their recommendations regarding additional parameters for the replacement of LSLs and DWSLs. Pursuant to the Commission’s *November 1, 2019 Implementation Order*, the Staff Report addressed proposed requirements for planning and reporting, communication, replacements, refusals, 66 Pa. C.S. § 1311(b), and rates. The Staff Report also addressed options for implementation such as orders, policy statements,
and rulemakings. Upon consideration of the Staff Report, the Commission hereby proceeds with this Notice of proposed Rulemaking Order and the proposed regulations in Annexes A and B.

**DISCUSSION**

Given the health hazards associated with lead, the Commission is at a vital juncture to coordinate with jurisdictional water utilities to take significant action to combat and eliminate the adverse effects of lead exposure by requiring the removal of all LSLs. It is well-established that lead is a cumulative poison in humans and is known to cause serious health problems.[[2]](#footnote-3) Injury from lead poisoning is permanent and irreversible. Lead poisoning is a preventable environmental health hazard and, if not addressed, affects customers regardless of race, ethnicity, or socioeconomic status.

The Commission likewise has the opportunity to empower jurisdictional wastewater utilities to replace DWSLs in limited situations where the costs will prudently benefit and improve system reliability, efficiency, and service quality in known problem areas. Wastewater service laterals are typically small-diameter pipes of various material types that convey flow from homes or businesses to a collection system by gravity or by pressure, depending on local site conditions and system characteristics. Service laterals are an integral component of wastewater collection systems and are susceptible to damage by natural material deterioration, tree roots, surface activities, or excavation. DWSLs may create serious environmental and health hazards due to the inherently deleterious composition of wastewater.[[3]](#footnote-4)

In order to address the critical issues presented by LSLs and DWSLs, Act 120 establishes a standard under which public utilities may seek to replace LSLs and DWSLs and recover costs associated with replacement. Act 120 provides for, *inter alia*, the replacement of LSLs and DWSLs under a Commission-approved program and directs the Commission to establish certain standards, processes, and procedures by regulation. *See* 66 Pa.C.S. §§ 1311(b)(2)(i)-(vii).

In addition to the authority conferred upon the Commission by Act 120 to address the removal of LSLs and DWSLs, we note that, pursuant to Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, utilities have an affirmative duty to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as may be necessary or proper for the accommodation, convenience and safety of the utility’s customers and the public.” In this regard, Section 102, 66 Pa. C.S. § 102, broadly defines the term “service” to include a wide range of actions, and this statutory definition has been broadly construed by the Commission and the courts. [*Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995028537&pubNum=0000162&originatingDoc=I68cba70861f811e7b73588f1a9cfce05&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).

Due to the nature of LSLs and DWSLs, the Commission believes that, unlike the replacement of LSLs, the replacement of DWSLs will be an ongoing activity undertaken by jurisdictional wastewater utilities. The replacement of both LSLs and DWSLs, however, will benefit ratepayers, public utilities, and the environment. The proposed regulations set forth in Annexes A and B delineate the components of programs for the replacement of LSLs and DWSLs as described below. The Commission seeks comment on each specific program component as well as the programs as a whole.

**Lead Service Line Replacements**

 First, the Commission proposes to divide Chapter 65, 52 Pa. Code Chapter 65, into two subchapters. Subchapter A, “Service Generally,” will encompass our existing water service regulations at 52 Pa. Code §§ 65.1-65.23. Subchapter B, “Lead Service Line Replacements,” will encompass our proposed regulations addressing the replacement
of LSLs at 52 Pa. Code §§ 65.51-65.62. While the replacement of LSLs is fundamentally related to water service, our existing regulations address a distinct range of issues. Accordingly, it is appropriate to create a separate subchapter for the proposed regulations.

**§ 65.51. Purpose.**

Section 65.51 of the Commission’s proposed regulations sets forth the purpose of Subchapter B, that is, to implement Act 120 governing the standard under which an entity, as defined in Section 65.52, may seek to replace LSLs and recover associated costs. *See* 66 Pa. C.S. § 1311(b). Act 120 provides for the recovery of costs related to lead service line replacements (LSLRs) performed concurrent with a scheduled utility main replacement project or “under a commission-approved program.” 66 Pa. C.S.
§ 1311(b)(2)(i). To facilitate the replacement of LSLs, the Commission proposes establishing a comprehensive program focused on removing all LSLs from an entity’s distribution system. The program will require, *inter alia*, that Class A public utilities[[4]](#footnote-5) and authorities undertake replacement efforts separate from those performed in conjunction with its scheduled main replacement projects to ensure the balanced, yet expeditious removal of LSLs from the public water distribution system. The program will also require Class B public utilities, Class C public utilities, and other entities to group and schedule replacements to optimize the use of financial, technical, and managerial resources. Subchapter B establishes the time, manner, form, and content of filings for Commission approval of the requisite program as well as requirements for the replacement of LSLs.

**§ 65.52. Definitions.**

Section 65.52 of the Commission’s proposed regulations sets forth general definitions pertinent to our regulation of the replacement of LSLs. We define “lead service line” consistent with Act 120 for purposes of continuity. *See* 66 Pa. C.S.
§ 1311(b)(5). We also explain the meaning of a “LSLR” and distinguish a “LSLR Program” from a “LSLR Plan.” A LSLR Program is a program submitted to and approved by the Commission for the replacement of LSLs, while a LSL Plan is one component of the LSLR Program that specifies how the program will be implemented. To clarify the parameters of LSLRs, we define terms like “LSLR Project” and “LSLR Project Area.” We further incorporate by reference terms found in other chapters of our regulations, like “LTIIP” in Chapter 121, to ensure consistency throughout Title 52.

Of particular importance, among the definitions in Section 65.52 is the term “entity,” which helps to establish the scope of Subchapter B. “Entity” refers to (1) a public utility as defined in 66 Pa.C.S. § 102 that provides water service, (2) a municipal corporation as defined in 66 Pa.C.S. § 102 that provides water service beyond its corporate limits, and (3) an authority as defined in 66 Pa.C.S. § 3201. In this regard, we note that both a municipal corporation providing water service outside of its corporate limits and an authority, *i.e*., PWSA, are regulated in the same manner as a public utility pursuant to the provisions of the Public Utility Code. *See* 66 Pa.C.S. § 1102(a)(5), 1301(a), 1501, 3202. The term “entity” is intended to encompass all jurisdictional water utilities.

The Commission welcomes comments regarding its definition of “entity” to include a public utility as well as a municipal corporation and an authority similarly situated to a public utility under the Commission’s jurisdiction. The Commission also seeks comment regarding its additional proposed definitions.

**§ 65.53. Time to replace LSLs.**

Section 65.53 of the Commission’s proposed regulations establishes that the requirement to remove and replace LSLs, whether entity-owned or customer-owned, applies to all entities. Pursuant to Section 65.53, a Class A public utility or an authority is required to replace all LSLs within or connected to its distribution system within 25 years. A Class B or Class C public utility is required to do the same within 30 years. Likewise, a municipal corporation providing water service beyond its corporate limits is required to replace all LSLs within or connected to its distribution system, beyond its corporate limits, within 30 years. Although entities may be capable of conducting replacements on an accelerated schedule, the timeframe of 25 to 30 years is intended to, *inter alia*, avoid customer rate shock that could occur within a shortened timeframe.

The Commission seeks comment regarding whether the proposed timeframes for each entity’s removal and replacement of LSLs are reasonable and appropriate given the various considerations that may impact an entity’s ability to conduct LSLRs.

**§ 65.54. Petitioning the Commission for a LSLR Program.**

Section 65.54 of the Commission’s proposed regulations effectuates the mandate of Act 120 that an entity obtain prior approval from the Commission for LSLRs by filing a new tariff or supplement to its existing tariff under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308(d). *See* 66 Pa. C.S. § 1311(b)(2)(v). Section 65.54 requires all entities to file a LSLR Program petition with the Commission for review and approval.

The LSLR Program petition will vary based on whether the filing entity has a Commission-approved LTIIP. For an entity with an LTIIP, the Commission believes that a LSLR Plan should be a separate and distinct component of an entity’s LTIIP, in part because LSLR Programs are limited in term by nature and entity activities regarding LSLRs, including prioritization, should be transparent. Therefore, if an entity has a Commission-approved LTIIP, the entity must file a LSLR Program petition that includes a modified LTIIP containing a LSLR Plan as a separate and distinct component of the entity’s LTIIP. If an entity does not have an LTIIP, the entity must file a LSLR Program petition that includes a LSLR Plan that independently meets the requirements of 52 Pa. Code § 121.3 (relating to LTIIP).

The Commission invites stakeholders to comment on this approach. The Commission also seeks comment regarding whether it should direct a shorter notice and protest period than the 60 days provided in 66 Pa. C.S. § 1308(a). Stakeholders are reminded that the Commission, for good cause shown, may allow changes in rates without requiring 60-days’ notice. 66 Pa. C.S. § 1308(a).

**§ 65.55. LSLR Program requirements.**

Section 65.55 of the Commission’s proposed regulations first sets forth the time for establishing and filing a LSLR Program. The Commission will require a Class A public utility or an authority to file a LSLR Program within one year of the effective date of the promulgated regulations, while a Class B or C public utility or a municipal corporation will be required to file a LSLR Program within two years from the effective date of our promulgated regulations. Entities that received prior Commission approval to perform LSLR activities, however, will be treated according to Section 65.61 below.

Section 66.55 also identifies, generally, the components of a LSLR Program:
(1) a LSLR Plan as described in Section 65.56; (2) a *pro forma* tariff or tariff supplement containing proposed changes necessary to implement the entity’s LSLR Program as described in Section 65.58; and (3) other information required by the Commission for filings under 66 Pa.C.S. § 1308, including statements required by 52 Pa. Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies). These requirements are discussed in the sections below.

Section 65.55 further specifies the approval process following submission of a LSLR Program. A final Order by the Commission will direct necessary revisions and resubmission of the entity’s *pro forma* tariff or tariff supplement pursuant to 66 Pa.C.S.
§ 1308 (relating to voluntary changes in rates). After Commission-approval of a LSLR Program, an entity’s LSLR Program will be subject to review in all future base rate cases.

The Commission seeks stakeholder comment on the timeframe for establishing and filing a LSLR Program and the components of a LSLR Program.

**§ 65.56. LSLR Plan requirements.**

 Section 65.56 of the Commission’s proposed regulations outlines the components of a LSLR Plan: service line inventory; planning and replacements; and communications, outreach, and education. The requirements of each component of a LSLR Plan are set forth in Subsections 65.56(a), (b), and (c) respectively. Due to the critical nature of these LSLR Plan components, we discuss each Subsection in detail below.

**§ 65.56(a). Service Line Inventory.**

Subsection 65.56(a) of the Commission’s proposed regulations specifies the timeframe for an entity to complete an inventory identifying the material, composition, diameter, and location of each service line connected to its water distribution systems.  The Commission will require a Class A public utility, an authority, or a municipal corporation to complete a Service Line Inventory within 60 months of the filing date of a LSLR Program, while a Class B or C public utility will be required to complete a Service Line Inventory within 36 months of the filing date of a LSLR Program. For municipal corporations, the Service Line Inventory need only address service lines beyond its corporate limits. The Commission will also require entities that acquire a water distribution system to complete a Service Line Inventory of that system within 36 months of the acquisition.

Additionally, Subsection 65.56(a) sets forth the requirements of a Service Line Inventory, including that the inventory must be grouped by material type and diameter and detail any lead components. A Service Line Inventory must also include a projection of the annual number of service lines an entity will inventory along with the methods by which it will identify material types. We note that various methods may be used, including: review of tap cards; building permit records and other historical information; curb stop inspections with cameras; traditional or hydro excavations; interior pipe inspections upstream of the water meter; customer service line material testing kits; and predictive machine learning modeling.

Further, an entity will report the status of its Service Line Inventory as part of its annual LSLR Program Report, which is required by Section 65.59. After an entity completes its Service Line Inventory, it will add the inventory to its next LSLR Plan update required by Section 65.57.

The Commission seeks comment from interested stakeholders on the timeframes for entities to complete a Service Line Inventory. The Commission also seeks comment regarding the cost of completing the Service Line Inventory. The Commission encourages the submission of cost-related data, research, and other information used in cost analyses for such projects. Additionally, the Commission invites comment on the methods by which entities will identify material type and complete the inventory process.

**§ 65.57(b). Planning and replacements.**

Subsection 65.57(b) of the Commission’s proposed regulations sets forth the minimum requirements for the portion of a LSLR Plan that addresses planning and replacements. This subsection requires an entity to submit with its LSLR Plan information regarding the entity’s LSLR criteria, processes, and procedures. The entity will provide, *inter alia*, its projected annual investment in LSLRs, the anticipated number of LSLRs per year, the criteria used in its LSLR schedule, its lead and material recycling and disposal efforts, and the construction practices to be used in LSLRs. The entity will also address how acquisitions will be integrated into its LSLR efforts with the understanding that it should not re-prioritize existing LSLRs in separate service areas. Further, the entity will detail its procedures for emergency repairs or replacements that reveal LSLs.

Importantly, Subsection 56.56(b) also requires an entity to detail its customer procedures based on acceptance, refusal, or failure to accept, the entity’s offer to conduct a LSLR. As it pertains to customer acceptance, the entity must provide with its LSLR Plan a sample consent agreement form and describe its process for LSLRs under normal and atypical conditions. The entity must also provide coordination with the customer during the LSLR installation, and during the closeout of the LSLR. With regard to customer refusals or failure to accept, the entity must address how it will inform the customers that health hazards are associated with LSLs, that the customer must replace the LSL within one year of commencement of the entity’s LSLR Project to be eligible for reimbursement, and that failure to allow the entity to complete the LSLR, or failure of the customer to replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL, will lead to termination of service in accordance with the entity’s tariff.

The Commission seeks comment regarding the planning and replacement requirements of a LSLR Plan. In particular, the Commission encourages stakeholders to comment on the procedures for customer acceptance or refusal of a LSLR.

**§ 65.56(c). Communications, outreach, and education.**

Subsection 65.56(c) of the Commission’s proposed regulations requires an entity to outline the communications, outreach, and education steps it will take to inform customers of the harmful effects of LSLs and the entity’s plan to remove LSLs. The Commission will require an entity to, *inter alia*, detail how it will prioritize LSLR efforts to target certain higher-risk areas, engage advisory committees, coordinate with officials and the community, provide information on lead to customers, and provide copies of LSLR documents to customers.[[5]](#footnote-6) An entity will provide, with its LSLR Plan, copies of all printed and broadcast material to be distributed to customers.

The Commission also proposes a requirement for a Class A public utility or an authority to develop a LSLR Program section on its website, including a tool describing the replacement schedule, a secure tool providing customers the ability to determine whether their property may be eligible for a reimbursement, and a secure map providing customers the ability to determine whether their property has a LSL. The Commission also proposes that the LSLR Program section of a website include information and resources relating to health risks associated with lead and LSLs, the status of current efforts to replace LSLs, community meetings, and advisory committees.

 The Commission invites comment regarding the communication, outreach, and education requirements of a LSLR Plan. In particular, the Commission seeks comment regarding types of documents that should be provided to customers and whether certain entities should be required to create a LSLR Program section of their website.

 **§ 65.57.** **Periodic review of LSLR Plan.**

Section 65.57 of the Commission’s proposed regulations requires that, after initial approval of a LSLR Plan, an entity must update its LSLR Plan at least once every five years. As an entity better understands the financial and operational requirements of its LSLR Program, and as financial and operational demands change over time, the entity will update its LSLR Plan accordingly. The Commission will review the LSLR Plan of an entity with an LTIIP as part of the typical LTIIP review and renewal process. Other LSLR Plans will undergo a similar periodic review outside of the LTIIP process. Section 65.57 addresses, generally, the focus of the Commission’s review of LSLR Plans. We note that the Commission will use the comment process to aid in our periodic review.

The Commission invites comment regarding its proposals for the revision and review of an entity’s LSLR Plan.

**§ 65.58. *Pro forma* tariff or tariff supplement requirements.**

Section 65.58 of the Commission’s proposed regulations addresses the minimum requirements, in addition to proposed changes necessary to implement a LSLR Program, that must be contained in an entity’s *pro forma* tariff or tariff supplement. These requirements include: (1) the LSLR Program annual cap; (2) service line demarcation; (3) partial LSLRs; (4) reimbursements; and (5) warranty. These requirements are set forth in detail in Subsections 65.58(a), (b), (c), (d) and (e), respectively. Due to the critical nature of these tariff requirements, we discuss each Subsection in detail below.

**§ 65.58(a). LSLR Program annual cap.**

 Subsection 65.58(a) of the Commission’s proposed regulations effectuates the mandate of Act 120 that “a new tariff or supplement to an existing tariff approved by the commission . . . shall include a cap on the maximum number of customer-owned lead water services lines . . . that can be replaced annually.” 66 Pa. C.S. § 1311(b)(2)(vi). Subsection 65.58(a) requires that an entity’s *pro forma* tariff or tariff supplement set forth a cap on the number of LSLRs completed per year.

 The Commission seeks stakeholder comment regarding the manner in which an entity should develop its LSLR Program annual cap.

**§ 65.58(b). Service line demarcation.**

Subsection 65.58(b) of the Commission’s regulations requires that an entity’s
*pro forma* tariff or tariff supplement distinguish entity-owned and customer-owned LSLs for purposes of completing LSLRs. A customer-owned LSL, as defined in Section 65.52, extends from the curb, property line, or entity connection to the water meter or, if the meter is located outside of the structure or there is no meter, at the first shutoff valve within the structure. The Commission proposes to allow an entity to install a shutoff valve, under the provisions of its tariff, as a point of demarcation between a property’s service line and the interior water distribution piping, if a shutoff valve is not already located along a specific length of pipe within the structure.

Moreover, Act 120 provides that “the customer shall hold legal title to the replacement water service line.” 66 Pa. C.S. § 1311(b)(2)(i). In this regard, we believe that LSLRs should resolve historic ownership ambiguities. An entity should own the portion of the LSLR that is consistent with its tariff. An entity should also use the LSLR process to perfect its ownership of the portion of the service line located within the existing right-of-way. Doing so will ensure that the entity can obtain necessary permits to complete work within the public right-of-way in the future. Further, the requirements of Subsection 65.58(b) will create consistency among all entities’ LSLR Programs.

We invite comment on Subsection 65.58(b). Specifically, the parties should address where the customer-owned portion of a LSL begins and terminates. The parties should also address methods of demarcation other than the placement of a shutoff valve. In addition, the parties should discuss the ownership requirements of Act 120 and how an entity’s tariff will reflect ownership. *See* 66 Pa. C.S. § 1311(b)(2)(i). The parties should comment regarding the use of LSLRs to perfect ownership of service lines within
rights-of-way, including how certain portions of a service line may be transferred from a customer to an entity, if appropriate. Lastly, the parties are invited to discuss customer notification requirements when an entity encounters lead water distribution pipes in internal plumbing during the demarcation of service lines or installation of shutoff valves.

**§ 65.58(c). Partial LSLRs.**

Section 65.58(c) of the Commission’s proposed regulations requires an entity to include in its *pro forma* tariff or tariff supplement provisions to address the issue of partial LSLRs. In this regard, an entity’s tariff will provide that neither a property owner nor a bill paying customer may install a partial LSLR and that notification must be made to an entity prior to replacing the customer-owned LSL so that the entity can concurrently replace the entity-owned LSL. Section 65.68(c) also requires an entity to specify in its tariff that partial LSLRs completed by a property owner or a bill paying customer will lead to termination of service until the entity can replace its LSL. These tariff provisions work in conjunction with Section 65.62, which is discussed in the corresponding section below.

The Commission seeks stakeholder comment regarding these provisions addressing partial LSLRs in conjunction with the provisions in Section 65.62.

**§ 65.58(d). Reimbursements.**

Act 120 requires the Commission to establish standards, processes, and procedures by which an entity will “[p]rovide a reimbursement to a customer who has replaced the customer's lead water service line . . . within one year of commencement of a project in accordance with a commission-approved tariff.” 66 Pa. C.S. § 1311(b)(2)(vii)(B). As such, Subsection 65.58(d) of the Commission’s proposed regulations requires an entity to offer reimbursements to eligible customers who have replaced their LSLs within one year of commencement of the entity’s LSLR Project within a LSLR Project Area.

In particular, Subsection 65.58(d) requires an entity to set forth in its *pro forma* tariff or tariff supplement the method by which the entity will determine whether a customer is eligible for a reimbursement as well as the amount of the reimbursement. The Commission will require an entity to make reasonable efforts to assist customers throughout the reimbursement process and, to the extent possible, make determinations in favor of the customer when the customer provides reasonable evidence of a LSLR, such as a paid invoice or verified statement from a contractor.

The Commission seeks comment on the proposed provisions regarding reimbursements as well as any additional provisions that stakeholders believe may be required to solidify the reimbursement process required by Act 120.

 **§ 65.58(e). Warranty.**

Act 120 requires the Commission to establish standards, processes, and procedures by which to ensure that LSLR work is “is accompanied by a warranty of a term that the commission determines appropriate” and that an entity and its contractor may access the customer’s property during that term. 66 Pa. C.S. § 1311(b)(2)(vii)(A). In this regard, the Commission proposes that an entity provide a warranty term of not less than two years. Subsection 65.58(e) of the Commission’s proposed regulations sets forth several warranty provisions that must be included in an entity’s tariff, including the maximum coverage amount under the warranty. Subsection 65.58(e) also requires an entity to explain any liability that it will have for damages not covered by the warranty.

The Commission invites comment on the proposed warranty term and on whether the suggested warranty provisions will provide appropriate clarity to customers. The parties should also comment on LSLR liability, including actions that can be taken to reduce potential liability for both an entity and a customer. The Commission welcomes additional proposed warranty provisions with supporting rationales.

**§ 65.59. LSLR Program Reports.**

Section 65.59 of the Commission’s proposed regulations requires that each entity with an approved LSLR Program file an annual LSLR Program Report by March 1. If an entity is implementing its LSLR Plan as part of its LTIIP, the entity will include its LSLR Program Report as part of its annual asset optimization plan (AAO Plan). *See* 52 Pa. Code § 121.6(b)(3) (relating to AAO Plan filings). In its LSLR Program Report, an entity will detail its annual activities based on 13 metrics identified by the Commission, including, for example, the number of LSLRs, the average costs of LSLRs, and the efforts to obtain additional funding.

The Commission seeks stakeholder comment on the 13 metrics proposed as part of Section 65.59 and whether this information is sufficient for annual reporting purposes.

**§ 65.60. Accounting and financial.**

Section 65.60 of the Commission’s proposed regulations sets forth uniform standards for the accounting treatment of LSLR costs. LSLR costs include expenditures associated with installing LSLRs, including, but not limited to, design, engineering, and construction costs. The Commission proposes to require an entity to record LSLR costs in compliance with the NARUC uniform system of accounts applicable to the entity, in an intangible asset account. The Commission notes that a LSLR is a tangible asset owned by the customer, while the entity owns an intangible asset with a value equal to the amount of funding it provided.

Additionally, in Section 65.60, the Commission proposes to allow the deferral of certain income taxes that are not recovered through base rates or the DSIC for accounting purposes and the deferral of certain expenses that are not recovered through base rates. We note that prudent and reasonable deferred income taxes will be amortized over a reasonable period of time with a return on an entity’s investment, whereas other expenses will be amortized over a reasonable period of time without a return on an entity’s investment, unless otherwise directed by the Commission.

Further, Act 120 provides that, for purposes of calculating the return of and on an entity’s prudently incurred cost for LSLRs, the Commission will employ the equity return rate in Sections 1357(b)(2) and (3) of the Public Utility Code, 66 Pa. C.S.
§ 1357(b)(2)-(3), which appears to indicate the amortization rate for LSLRs should be the entity’s permitted equity return rate. 66 Pa. C.S. § 1311(b)(2)(iii). The Commission notes, however, that Act 120, simultaneously preserves the full extent of the Commission’s ratemaking authority. 66 Pa. C.S. § 1311(b)(3).

The Commission seeks comment regarding LSLR accounting generally, both prior to and following an entity’s first base rate case where LSLR costs are reviewed. Stakeholders should address the appropriate mechanisms for tracking and recording LSLR costs as well as the capitalization of appropriate costs. Stakeholders should also discuss the applicable rate of return of and on LSLR costs in accordance with accepted utility ratemaking principles and legal precedent, particularly where LSLR costs are recovered through rates prior to an entity’s first base rate case where LSLR costs are reviewed. Lastly, stakeholders may comment on financial incentives for an entity to obtain no cost and low-cost sources of funding, including awarding additional return on equity basis points in certain circumstances.

**§ 65.61. Preexisting LSLR activities.**

The Commission acknowledges that certain entities have already undertaken LSLR activities. The Commission notes, however, that consistency among all entities’ LSLR Programs is important. Therefore, Section 65.61 of the Commission’s proposed regulations requires an entity that is engaged in existing Commission-approved LSLR activities to submit a LSLR Program that, at a minimum, conforms with the requirements set forth in Subchapter B. These LSLR Programs will become effective no later than the filing date of the rates established under the entity’s next base rate case or within two years of the effective date of these regulations, whichever occurs first.

The Commission seeks comments regarding aligning the existing LSLR activities of certain entities with the proposed regulations and the timeframe for doing so.

**§ 65.62. Prohibition on Partial LSLRs.**

The final section of the Commission’s proposed regulations in Chapter 65, Section 65.62, prohibits partial LSLRs due to the known dangers of partial LSLRs to the public health.[[6]](#footnote-7) Partial LSLRs result in permanent negative health effects from lead exposure. *See supra*, n. 6.

Accordingly, Section 65.62 requires a full LSLR in all circumstances, including when the customer elects to replace the customer-owned LSL and when an entity is under a Pennsylvania Department of Environmental Protection (DEP) directive to replace a LSL due to a system’s action level exceedance of 0.015 mg/L. *See* 25 Pa. Code § 109.1103 (relating to monitoring requirements). We note that, in the latter instance, the Commission’s regulations will work in conjunction with DEP’s directives to require a full LSLR. Further, as with Subsection 65.58(c), Section 65.62 provides for the termination of service to a partial LSLR.

Absent a Commission ban on partial LSLRs, a customer could replace the customer-owned LSLR prior to the replacement of the connected entity-owned LSL, resulting in a partial LSLR. Likewise, DEP could direct an entity to replace only the entity-owned portion of a LSL, resulting in a partial LSLR. *See* 25 Pa. Code § 109.1107(d) (relating to system management responsibilities). Thus, prohibiting partial LSLRs is critical. The provisions prohibiting partial LSLRs will, in conjunction with Subsection 65.58(c), ensure that the replacement of customer-owned and entity-owned LSLs occur concurrently and that water service is not provided through partial LSLRs.

The Commission seeks comment regarding the proposal in Section 65.62 to prohibit partial LSLRs, including the hazards associated with partial LSLs.

**Damaged Wastewater Service Laterals**

First, in order to facilitate regulations specific to jurisdictional wastewater utilities, a new chapter addressing wastewater service, Chapter 66, is necessary. In addition to addressing DWSL replacements, the Commission believes that Chapter 66 is timely in conjunction with Act 12 of 2016 which amended Chapter 13 of the Public Utility Code, 66 Pa. C.S. § 1329. Section 1329 enables a public utility or other buyer to utilize fair market valuation when acquiring water and wastewater systems in the Commonwealth that are owned by a municipal corporation or authority. Ultimately, Section 1329 has enabled many jurisdictional water and wastewater utilities to acquire wastewater systems previously outside the Commission’s purview, bringing these systems under our jurisdiction. Thus, the number of wastewater facilities and systems under our jurisdiction is increasing; establishing a separate chapter specific to our regulation of wastewater is necessary and appropriate. Subchapter A is reserved for general wastewater regulation, while Subchapter B will address the distinct set of issues relating to DWSL replacements.

**§ 66.31. Purpose.**

Section 66.31 of the Commission’s regulations sets forth the purpose of Subchapter B, that is, to implement Act 120 governing the standard under which an entity, as defined in Section 66.32, may seek to replace, rehabilitate, or repair DWSLs and recover associated costs. To enable an entity to replace DWSLs either in conjunction with scheduled main replacement projects or as a separate effort to improve system reliability, efficiency, and service quality in known problem areas, the Commission proposes establishing a program outlining optional replacement, rehabilitation and/or repair of DWSLs (DWSL Program). The Commission recognizes that DWSL Programs will likely be an ongoing activity undertaken by entities.

**§ 66.32. Definitions.**

Section 66.32 proposes general definitions for our regulation of wastewater service as well as specific definitions related to optional DWSL Programs. We incorporate, by reference, multiple definitions adopted by the DEP to maintain uniformity and to ensure that any revisions to these definitions are captured, unless the Commission finds an express, agency-specific reason to not adopt changes. We include definitions for terms like “combined sewer system,” “hydraulic design capacity,” “inflow and infiltration,” “monthly average flow,” “sanitary sewer overflow,” and “wastewater facilities,” among others.

Of particular importance among the definitions in Section 66.32 is the term “entity,” which helps to establish the scope of Subchapter B. “Entity” refers to (1) a public utility as defined in 66 Pa.C.S. § 102 that provides wastewater service, (2) a municipal corporation as defined in 66 Pa.C.S. § 102 that provides wastewater service beyond its corporate limits, and (3) an authority as defined in 66 Pa.C.S. § 3201. In this regard, we note that both a municipal corporation providing wastewater service outside of its corporate limits and an authority, *i.e*., PWSA, are regulated in the same manner as a public utility pursuant to the provisions of the Public Utility Code. *See* 66 Pa.C.S. § 1102(a)(5), 1301(a), 1501, 3202. The term “entity” is intended to encompass all jurisdictional wastewater utilities.

The Commission also adopts the definition of “wastewater” from 66 Pa.C.S. Section 102, and definitions for “LTIIP” and “DSIC” from Subsections 1352(a) and Section 1353 of the Public Utility Code, respectively. Moreover, we define “DWSL Program,” “DWSL Plan,” “DWSL Project,” and “DWSL Project Area,” to clarify parameters and requirements of entities’ replacement programs.

The Commission recognizes that the term “damaged” can be rather ambiguous and does not, in and of itself, create a standard of measurement or enable a determinable criterion for defining the factors for inoperability. The development of a common understanding and basis for what may be defined as a “damaged wastewater service lateral” is imperative for consistency in DWSL Programs among utilities. Every service lateral will develop some degree of damage or reduced functionality over time, typically due to external means such as subsidence of supporting soil, tree root or other vegetative material hoop pressure, mechanical loading, building structure settlement, chemical damage, etc. Cracks or open joints in service laterals do not necessarily rise to the level of being considered damaged. Service laterals in their entirety may have a range of defects and may still be able to function properly. Therefore, we propose that “damaged wastewater service lateral” be defined as “a single area or a combination of several areas, acting collectively, identified by visual or other means, along a length of lateral which has or have been determined to significantly impair the intended function of a wastewater service lateral to convey wastewater flow to mains and keep inflow and infiltration (I&I) flows, within reason, out of the service lateral.”

Additionally, we note that “damaged wastewater service lateral replacement” is defined broadly to encompass approved methods under an entity’s DWSL Plan to not only replace, but also rehabilitate or repair DWSLs. Stakeholders should be cognizant of this expansive definition of replacements throughout this Order and in Annex B; entities may propose when these alternatives, still within the scope of DWSL Programs, may be prudent or appropriate.

The Commission welcomes comments on its definition of “entity” to include companies and authorities similarly situated to public utilities that are under the Commission’s jurisdiction. We also invite comment on the definition of “DWSL” as well as rationales for proposed alternatives. The Commission also seeks comment about the additional proposed definitions and those defined by the Pennsylvania Department of Environmental Protection and incorporated herein at Section 66.32 of Annex B.

**§ 66.33. DWSL Program parameters.**

Pursuant to the proposed 52 Pa. Code § 66.33, all entities may file a petition with the Commission for approval of a DWSL Program to repair, rehabilitate or replace DWSLs under certain circumstances. Proposed elements of the petition, including the components of an initial DWSL Plan, are discussed below; however, 66 Pa.C.S. § 1311(b)(2)(v) mandates that an entity obtain prior approval from the Commission for the replacement of customer-owned DWSLs by filing a new tariff or supplement to existing tariffs under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

Act 120 appears to be purpose driven and not intended to support broad application of the replacement of any and all DWSLs by an entity, which might abdicate a customer of the responsibility to maintain his or her service lateral in serviceable condition. Thus, the Commission proposes to limit approval of DWSL Programs to instances where the DWSL Programs’ purpose can be specifically linked to an entity’s efforts to address the following two objectives, which are also included in the proposed regulation:

1. Excessive I&I causing, or which is reasonably expected within the next five years to cause, a hydraulically overloaded condition, wastewater overflows, and/or additional flow which is prudent for the entity to avoid; or
2. Other design or construction conditions causing, or which are reasonably expected within the next five years to cause, wastewater overflows.

A Commission-approved DWSL Program is intended to allow entities to prudently invest in repairing, rehabilitating and/or replacing DWSLs as opposed to the more costly investment in upsizing other infrastructure to accommodate the increased flows attributable to I&I. The amount of entity funding generally should not exceed the cost of investments the entity could make in its infrastructure to offset I&I.

The Commission seeks comment on this proposed process for approval of DWSL Programs.

**§ 66.34. Petitioning the Commission for a DWSL Program.**

As noted above, DWSL Programs are optional; however, 66 Pa.C.S. § 1311(b)(2)(v) mandates that an entity obtain prior approval from the Commission for the replacement of customer-owned DWSLs by filing a new tariff or supplement to existing tariffs under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates). Section 66.34 of our proposed regulation describes the process for an entity to petition the Commission for a DWSL Program.

The DWSL Program petition will vary based on whether the filing entity has a Commission-approved LTIIP. An entity with a Commission-approved LTIIP must file a DWSL Program petition that includes a modified LTIIP containing a DWSL Plan as a separate and distinct component of the entity’s LTIIP. An entity that does not have an approved LTIIP must file a DWSL Program Petition that includes a DWSL Plan that independently meets the requirements of 52 Pa. Code Section 121.3 (relating to LTIIP).

The Commission invites stakeholders to comment on this approach as well as whether the Commission should direct a shorter notice and protest period than the 60‑days provided in 66 Pa. C.S. 1308(a). Stakeholders are reminded that the Commission, for good cause shown, may allow changes in rates without requiring the 60 days notice. 66 Pa. C.S. § 1308(a).

**§ 66.35. DWSL Program requirements.**

The Commission’s proposed regulation, at Sections 66.35 identifies, generally, the components of a DWSL Program: (1) a DWSL Plan; (2) a *pro forma* tariff or tariff supplement containing proposed changes necessary to implement the entity’s DWSL Program; and (3) other information required by the Commission for filings under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates), including statements as required by 52 Pa. Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies).

Section 66.35 further specifies the approval process following submission of a DWSL Program. A final Order by the Commission will direct necessary revisions and resubmission of the entity’s *pro forma* tariff or tariff supplement pursuant to 66 Pa.C.S.
§ 1308. After Commission-approval of a DWSL Program, an entity’s DWSL Program will be subject to review in all future base rate cases.

The Commission seeks stakeholder comment on the components of a DWSL Program.

**§ 66.36. DWSL Plan requirements.**

The Commission’s proposed regulation, at Section 66.36 outlines the components of a DWSL Plan: (1) planning and replacements; and (2) communications, outreach and education. Unlike LSLR Plans, an upfront inventory of all service laterals within a wastewater system is not necessary.

**§ 66.36(a). Planning and replacements.**

 Presumably, entities have general knowledge of the condition of their collection system, developed by regular cleaning, inspection, and investigation of customer reporting. The Commission believes this knowledge should be used to create a plan to prioritize and efficiently address DWSL Project Areas, as defined in Section 66.32. As part of the proposed regulation, at Subsection 66.36(a), the Commission includes certain information that entities must provide in the Planning and Replacements portion of their DWSL Plans. Among other things, these minimum requirements include (1) the projected annual investment in DWSL replacements with an explanation of the anticipated sources of financing, (2) the standard to be used to determine whether a customer’s service lateral is damaged and is impacting the entity’s system, (3) the prioritization criteria considered by the entity in developing its DWSL replacement schedule, and (4) the processes and procedures to be followed based upon a customer’s acceptance or refusal of a DWSL replacement.

Under a DWSL Plan, an entity will designate portions of its collection systems as focused areas for DWSL Projects (Project Areas). The Commission proffers that Project Areas will be restricted to areas experiencing wastewater overflows or hydraulic overloading. Entities seeking approval of a DWSL Program will be required to fund DWSL replacements at a level not less than the net present value of the future avoided marginal costs the entity would realize from DWSL replacements.

The Commission seeks comment regarding the planning and replacement requirements of a DWSL Plan. In particular, the Commission encourages stakeholders to comment on the procedures for customer acceptance or refusal of a replacement.

**§ 66.36(b). Communications, outreach, and education.**

Subsection 66.36(b) of the proposed regulations requires an entity to outline the communication, outreach, and education steps it will take to ensure customers are educated about the impact of DWSLs and the entity’s plan to address DWSL replacements. An entity’s DWSL Plan will include, among other things, how it will prioritize DWSL replacement efforts to areas of the entity’s collection system which have known wastewater overflows, basement backups, or I&I issues, coordinate with officials and the community, provide information to customers including the steps consumers can take to find DWSLs, and provide copies of DWSL documents to customers. An entity will provide with its DWSL Plan copies of all printed and broadcast material to be distributed to customers.

The Commission also proposes a requirement for a Class A public utility or an authority to develop a DWSL Program section on their website including tools that provide customers the ability to determine whether their property is eligible for a reimbursement and the ability to determine whether the entity’s records reflect that the customer’s property of record has a DWSL, as well as a copy of any static maps or graphical representation depicting the entity’s Project Areas, and information and resources relating to the health risks associated with DWSLs, the status of current efforts to replace DWSLs, community meetings, and advisory committees.

The Commission invites comment regarding communication, outreach, and education requirements of a DWSL Plan. Specifically, the Commission seeks stakeholder comment regarding the types of documents that should be provided to customers and whether a Class A public utility or an authority should be required to develop an easily discoverable, distinct DWSL Program section on their website.

**§ 66.37. Periodic review of DWSL Plans.**

Section 66.37 of the Commission’s proposed regulations requires that, after initial approval of a DWSL Plan, an entity must update its DWSL Plan at least once every five years. As an entity better understands the financial and operational requirements of its DWSL Program, and as financial and operational demands change over time, the entity will update its DWSL Plan accordingly. The Commission will review the DWSL Plan of an entity with an LTIIP as part of the typical LTIIP review and renewal process. Other DWSL Plans will undergo a similar periodic review outside of the LTIIP process. Section 66.37 addresses, generally, the focus of the Commission’s review of DWSL Plans. Additionally, in Subsection 66.37(b), we outline service requirements as well as how we will permit comments to aid in our periodic review.

The Commission invites comment regarding its proposals for the revision and review of an entity’s DWSL Plan.

**§ 66.38. *Pro forma* tariff or tariff supplement requirements.**

Section 66.38 of our proposed regulation addresses elements that must be contained, including proposed changes necessary to implement a DWSL Program, in an entity’s *pro forma* tariff or tariff supplement. At a minimum, these elements include:
(1) a DWSL Program annual cap; (2) service line demarcation; (3) Frequency of DWSL replacements; (4) reimbursement, and (5) warranty. These requirements are set forth in detail in Subsections 66.38(a), (b), (c), (d) and (e), respectively. Due to the critical nature of these tariff requirements, we discuss each Subsection in detail below.

**§ 66.38(a).** **DWSL Program** **annual cap.**

Pursuant to 66 Pa.C.S. § 1311(b)(2)(vi), an entity’s *pro forma* tariff or tariff supplement must include a cap on the maximum number of customer-owned DWSLs that can be replaced annually.

We seek comment on how entities might develop this cap as part of their DWSL Program and include this information in a *pro forma* tariff or tariff supplement.

**§ 66.38(b). Service line demarcation.**

The Commission directs entities to provide clear demarcation between
customer-owned and company-owned service laterals as well as to require entities to use the replacement process to perfect their ownership of the portion of service laterals located within the existing public right-of-way to ensure utilities can obtain necessary permits to complete work within the public right-of-way in the future. These measures will create consistency across utilities’ DWSL programs. The Commission proposes to require each utility to include in its petition for a DWSL Program *pro forma* tariff or tariff supplement a definition that clarifies where the customer-owned portion of a service lateral begins and terminates. Also, the Commission is proposing to take steps to ensure that utilities use approved DWSL programs to resolve historic ownership ambiguities.

We invite comment on our proposed regulation at Subsection 66.38(b) and comment on an entity’s use of the DWSL replacement process to perfect ownership of service laterals within the public right-of-way. The parties should discuss 66 Pa. C.S.
§ 1311(b)(2)(i) (relating to method of valuation). Stakeholders should also be mindful of where existing utility rights-of-way are located. The parties should further address how entities’ tariffs will reflect ownership.

**§ 66.38(c). Frequency of DWSL replacements.**

To meet the objective of limiting DWSL replacements to circumstances where the costs will reasonably and prudently benefit and improve system reliability, efficiency, and service quality in specifically identified problem areas, the Commission proposes to limit the frequency of DWSL replacements as prescribed in the proposed regulation at Subsection 66.38(c).

The Commission welcomes comment on its proposal regarding the frequency of DWSL replacements.

**§ 66.38(d). Reimbursements.**

Act 120 requires the Commission to establish standards, processes, and procedures by which an entity will “[p]rovide a reimbursement to a customer who has replaced the customer's lead water service line . . . within one year of commencement of a project in accordance with a commission-approved tariff.” 66 Pa. C.S. § 1311(b)(2)(vii)(B). As such, Subsection 66.38(d) of the Commission’s proposed regulations requires an entity to offer reimbursements to eligible customers who have replaced, rehabilitated, or repaired DWSLs within one year of commencement of the entity’s DWSL Project within a DWSL Project Area.

In particular, Subsection 66.38(d) requires an entity to set forth in its *pro forma* tariff or tariff supplement the method by which the entity will determine whether a customer is eligible for a reimbursement as well as the amount of the reimbursement. The Commission will require an entity to make reasonable efforts to assist customers throughout the reimbursement process and, to the extent possible, make determinations in favor of the customer when the customer provides reasonable evidence of a DWSL replacement, such as a paid invoice or verified statement from a contractor.

The Commission seeks comment on the proposed provisions regarding reimbursements as well as any additional provisions that stakeholders believe may be required to solidify the reimbursement process required by Act 120.

**§ 66.38(e). Warranty.**

Act 120 requires the Commission to establish standards, processes, and procedures to ensure that DWSL replacement work is “accompanied by a warranty of a term that the commission determines appropriate” and that an entity and its contractor may access the customer’s property during that term. 66 Pa. C.S. § 1311(b)(2)(vii)(A). In this regard, the Commission proposes that an entity provide a warranty term of not less than two years. Subsection 66.38(e) of the Commission’s proposed regulations sets forth several warranty provisions that must be included in an entity’s tariff, including the maximum coverage amount under the warranty. Subsection 66.38(e) also requires an entity to explain any liability that it will have for damages not covered by the warranty.

The Commission invites comment on the proposed warranty term and on whether the suggested warranty provisions will provide appropriate clarity to customers. The parties should also comment on DWSL replacement liability, including actions that can be taken to reduce potential liability for both an entity and a customer. The Commission welcomes additional proposed warranty provisions with supporting rationales.

**§ 66.39. DWSL Program Reports.**

Section 66.39 of the Commission’s proposed regulations requires that each entity with an approved DWSL Program file an annual DWSL Program Report by March 1, either on its own or as a distinct element of its AAO Plan, for the preceding year’s activities, including supporting spreadsheets. The Commission requires, among other things, the number of DWSLs replaced, the length of DWSLs removed by pipe diameter, and a breakdown of actual cost of each DWSL replacement.

The Commission seeks stakeholder comment on the proposed sixteen metrics and whether this information is sufficient for annual reporting purposes.

**§ 66.40. Accounting and financial.**

Section 66.40 of the Commission’s proposed regulations sets forth uniform standards for the accounting treatment of DWSL replacement costs. DWSL replacement costs include expenditures associated with installing DWSL replacements, including, but not limited to, design, engineering, and construction costs. The Commission proposes to require an entity to record DWSL replacement costs in compliance with the NARUC uniform system of accounts applicable to the entity, in an intangible asset account. The Commission notes that a DWSL replacement is a tangible asset owned by the customer, while the entity owns an intangible asset with a value equal to the amount of funding the entity provided to replace the DWSL.

Additionally, in Section 66.40, the Commission proposes to allow the deferral of certain income taxes that are not recovered through base rates or the DSIC for accounting purposes and to allow the deferral of certain expenses that are not recovered through base rates. We note that prudent and reasonable deferred income taxes will be amortized over a reasonable period of time with a return on an entity’s investment, whereas other expenses will be amortized over a reasonable period of time without a return on an entity’s investment, unless otherwise directed by the Commission.

Further, Act 120 provides that, for purposes of calculating the return of and on an entity’s prudently incurred cost for DWSL replacements, the Commission will employ the equity return rate in Subsections 1357(b)(2) and (3) of the Public Utility Code, 66 Pa. C.S. § 1357(b)(2)-(3) (relating to computation of charge, depreciation calculation), which appears to indicate the amortization rate for DWSL replacements should be the entity’s permitted equity return rate. 66 Pa. C.S. § 1311(b)(2)(iii). The Commission notes, however, that Act 120, simultaneously preserves the full extent of the Commission’s ratemaking authority. 66 Pa. C.S. § 1311(b)(3).

The Commission seeks comment regarding DWSL replacement accounting generally, both prior to and following an entity’s first base rate case where DWSL replacement costs are reviewed. Stakeholders should address the appropriate mechanisms for tracking and recording DWSL replacement costs as well as the capitalization of appropriate costs. Stakeholders should also discuss the applicable rate of return of and on DWSL costs in accordance with accepted utility ratemaking principles and legal precedent, particularly where DWSL costs are recovered through rates prior to an entity’s first base rate case where DWSL costs are reviewed. Lastly, stakeholders may comment on financial incentives for an entity to obtain no cost and low-cost sources of funding, including awarding additional return on equity basis points in certain circumstances.

**§ 66.41. Unpermitted connections.**

The Commission recommends that DWSL program eligibility be conditioned upon the elimination of any existing unpermitted connections in compliance with its tariff provisions. As an example, entities often have tariff provisions that prohibit customers from connecting roof drains to a service lateral; however, customers may install such connections without the entity’s consent or knowledge. Subsection 66.41(b) does allow for the continued use of previously unpermitted connections where other applicable laws, including the entity’s tariff, makes it permissible and both the entity’s permission and the existence of the connection are documented.

The Commission invites comment on its proposal to authorize entities to disconnect unpermitted connections as prescribed in Section 66.41 and seeks input on how entities should be required to document connections they allow to remain. Also, the Commission seeks comments regarding whether additional permitted connections should impact the rate a customer pays for wastewater service.

**§ 66.42. Competitive advantage.**

As stated above, Act 120 appears to be purpose driven and not intended to be broadly applied to replace any and all DWSLs by an entity. The Act is not intended to waive a customer’s responsibility to maintain his or her service lateral in serviceable condition. The Commission recognizes that DWSL Programs may compete with existing optional insurance and warranty products that cover DWSL repair, replacement and/or rehabilitation. Unlike these products, however, customers will likely be required to subsidize DWSL Programs through wastewater rates. Thus, the Commission proposes that entities be required to make good faith efforts in structuring DWSL Programs to prevent competition with these products. DWSL Programs should not disincentivize the personal accountability of customers. This potential competitive advantage reinforces the limited scope of circumstances the Commission will use to approve DWSL plans.

The Commission seeks comment on its proposed regulation regarding the potential for competitive advantage at Section 66.42.

**CONCLUSION**

For the reasons set forth above, the Commission commences the rulemaking process. The Commission seeks comments from all interested parties regarding the proposed regulations in Annexes A and B to this Notice of Proposed Rulemaking as well as regarding the need for any additional provisions addressing the replacement of LSLs or DWSLs to implement Act 120.

Accordingly, under Sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240,
45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we are considering adopting the proposed regulations set forth in Annexes A and B, attached hereto; **THEREFORE,**

 **IT IS ORDERED:**

1. That a proposed rulemaking be opened to consider the regulations set forth in Annexes A and B.

2. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and Annexes A and B to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review for fiscal impact.

3. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and Annexes A and B for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.

4. That the Law Bureau shall deposit this Notice of Proposed Rulemaking Order and Annexes A and B with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That interested parties may submit written comments, via the Commission’s electronic filing system, referencing Docket No. L-2020-3019521 within sixty (60) days from the date the Notice of Proposed Rulemaking Order is published in the *Pennsylvania Bulletin*, and reply comments thirty (30) days thereafter*.* Comments shall be filed consistent with the Commission’s July 27, 2020 Secretarial Letter . *Modification to Filing and Service Requirements Emergency Order*, Docket No. M-2020-3019262 (Secretarial Letter issued July 27, 2020). Pursuant to this Secretarial Letter, all filings are to be made by e-filing or by electronic mail. This information can be found on the Commission’s website at [www.puc.state.pa.us/efiling/default.aspx](http://www.puc.state.pa.us/efiling/default.aspx).

6. That the Secretary shall serve this Notice of Proposed Rulemaking Order upon all jurisdictional water and wastewater utilities and the Pennsylvania Chapter of the National Association of Water Companies; the Office of Consumer Advocate; the Office of Small Business Advocate; the Commission’s Bureau of Investigation and Enforcement; and the Department of Environmental Protection.

7. The contact persons for this matter are Assistant Counsel Colin W. Scott, (717) 783-5949, colinscott@pa.gov; Hayley E. Dunn, (717) 214-9594, haydunn@pa.gov; and Rhonda L. Daviston, (717) 787-6166, rdaviston@pa.gov in the Law Bureau, and Fixed Utility Valuation Engineer Matthew T. Lamb, (717) 783-1001, mlamb@pa.gov in the Bureau of Technical Utility Services.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 17, 2020

ORDER ENTERED: September 17, 2020

1. On November 15, 2019, Aqua Pennsylvania Water, Inc. (Aqua) requested that the Commission extend the period for comments in response to the directed questions to December 9, 2019. Suez Water Pennsylvania, Inc. (Suez) and the Office of Consumer Advocate (OCA) filed letters in support of Aqua’s request on November 15, 2019, and November 18, 2019, respectively. On November 19, 2019, the Commission denied Aqua’s request in light of the impending December 19, 2019 working group meeting. [↑](#footnote-ref-2)
2. Salvato, P.E., DEE, Joseph A., *Environmental Engineering and Sanitation*, Fourth Edition, p. 46,
New York: John Wiley & Sons, Inc., 1992. [↑](#footnote-ref-3)
3. DWSLs may cause wastewater to backup into a customer’s home or discharge into the environment and may become a source of I&I, contributing to hydraulically overloaded conditions within portions of a wastewater collection system or at a wastewater treatment plant (WWTP). I&I adds to the flow entering the collection system and being treated at the WWTP, reducing capacity and, in extreme cases, may be the largest contributing factor to hazardous overflows. [↑](#footnote-ref-4)
4. Notwithstanding the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts, utility classes are determined, consistent with Commission regulations, based upon the average annual operating revenue over the last three consecutive years. Class A public utilities have an average operating revenue of $750,000 or more. Class B public utilities have an average annual operating revenue of $150,000 or more, but less than $750,000. Class C public utilities have an average operating revenue of less than $150,000*. See* 52 Pa. Code § 65.16. [↑](#footnote-ref-5)
5. The Commission notes that entities will receive design and permit documents regarding replacements through the LSLR process. We believe that entities must make a good faith effort to provide customers with relevant LSLR documents. At the same time, however, the Commission recognizes that entities are not required to share with customers information that constitutes a security risk to utility infrastructure. [↑](#footnote-ref-6)
6. Recently, in *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket No. M-2018-2640802 (Order entered June 18, 2020), the Commission determined that partial LSLRs are *not* in the public interest and are *not* consistent with the statutory requirements of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501.  *Id*. at 93-94. The Commission noted that “[t]he negative effects of partial service line replacements are well documented in scientific literature” and that “[t]he permanent negative health effects from lead exposure, especially to uniquely vulnerable populations of developing fetuses, infants and children, is explained in theunrebutted testimony of [UNITED’s expert witness] Dr. Lanphear.” *Id*. at 92 (citing *March 2020 Order* at 117). [↑](#footnote-ref-7)