

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Implementation of Act 120 of 2018**

**Public Meeting October 3, 2019  
3013286-CMR**

**JOINT MOTION OF CHAIRMAN GLADYS BROWN DUTRIEUILLE AND  
COMMISSIONER JOHN F. COLEMAN, JR.**

On October 24, 2018, Governor Wolf signed into law Act 120 of 2018, which amended the Public Utility Code regarding the accelerated replacement of customer-owned lead water service lines and damaged wastewater laterals. This new provision of the Public Utility Code establishes a uniform standard under which utilities may seek to replace customer owned lead service lines and damaged wastewater laterals and recover costs associated with that replacement.<sup>1</sup> While the Commission and Pennsylvania's regulated water utilities had been active in addressing these matters, Act 120 clarified certain legal issues that had been identified during the course of recent cases.<sup>2</sup>

Act 120 became effective December 23, 2018 while the Commission was evaluating a Petition by Pennsylvania American Water Company (PAWC) regarding customer owned lead service lines. On January 4, 2019, in response to Act 120, the Commission remanded the Petition to the Office of Administrative Law Judge with instructions that PAWC and the Parties evaluate the Petition under the requirements of Act 120 and to supplement the record as necessary to achieve compliance with the amendments to Section 1311 of the Public Utility Code. On July 17, 2019, the Parties filed a Joint Petition for Settlement on Remand (Joint Settlement) advising the ALJ that they revised the Lead Service Pipe Replacement Plan to be consistent with Act 120 and the terms of the January 2019 Order.

The Joint Settlement submitted in response to the January 2019 remand addresses many issues pursuant to 66 Pa. C.S. § 1311(b) and the Parties are to be commended for working through these issues to achieve a settlement. Nevertheless, while it appears that the Settlement is compliant with 66 Pa. C.S. § 1311(b), several issues implicated by Act 120 remain unresolved by the Joint Settlement and may require a more generic form of guidance for their resolution in future proceedings.

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<sup>1</sup> 66 Pa.C.S. §1308(b)

<sup>2</sup> On March 8, 2017, the Commission approved the York Water Company proposal to remove and replace lead water service lines at Docket No. P-2016-2577404.

The parties to the Joint Settlement acknowledged that additional proceedings to refine lead service line replacement programs may be necessary. PAWC is required to provide an annual progress report to ensure that its plan is effective and efficient. Additionally, the Parties also agreed that the settlement should not be cited as binding precedent in future Commission proceedings involving Act 120.<sup>3</sup> Given that the Joint Settlement does not provide for a full resolution of all issues relating to Act 120, we find it appropriate that the Commission initiate a new proceeding at this time.

To that end, we will direct the Bureau of Technical Utility Services and the Law Bureau to develop recommendations for additional parameters for customer-owned lead service line and damaged wastewater lateral replacement programs, especially as a part of the Long Term Infrastructure Improvement Plan (LTIIIP) and Distribution System Improvement Charge (DSIC) of utility water and wastewater service providers that employ the DSIC mechanism. Integrating lead service line and damaged wastewater lateral replacement programs into a uniform regulatory approach, thus enhancing regulatory clarity, will better serve affected customers, utilities, and the Commission. Staff are to convene a working group to gather information and stakeholder input on how the Commission may develop uniform procedures to address customer-owned lead service line and damaged wastewater lateral replacement issues facing regulated utilities throughout the Commonwealth.

Staff should, at a minimum, invite all Class A water utilities including the Pittsburgh Water and Sewer Authority, the Pennsylvania Chapter of the National Association of Water Companies, the Office of Consumer Advocate, Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, and the Pennsylvania Department of Environmental Protection to attend. Other interested parties are permitted to participate and we encourage the use of appropriate public notices of related meetings, e.g., including but not limited to the publication of electronic notices at the Commission's web site. Further, should any contested Act 120 proceedings commence during the pendency of working group activities we remind all active parties to maintain a generic discussion to comply with *ex parte* rules under 66 Pa. §334 (c) of the Public Utility Code.

Issues addressed by stakeholders should include, but are not limited to, the following topics:

- 1) What information should utilities seeking to replace customer owned lead service lines and damaged wastewater laterals provide in a distinct comprehensive replacement plan or as integrated elements within their Long-Term Infrastructure Improvement Programs (LTIIIPs)?

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<sup>3</sup> Joint Settlement, paragraph 44.

- 2) What are the most effective methodologies for completing a thorough study to locate and identify lead service lines and damaged wastewater laterals within a utility's service territory and for communicating these results?
- 3) What information should be provided to customers that are, or may be affected by a real or suspected lead service line or damaged sewer lateral in some material way and how should this information be provided, such as in a website portal and/or printed materials?
- 4) What processes or procedures should utilities follow based upon a customer's acceptance or refusal of a lead service line and/or damaged wastewater lateral replacement?
- 5) If a customer refuses to accept full replacement of a lead service line, what considerations should be addressed to reduce potential liabilities for the utility and its ratepayers?
- 6) What is the applicable depreciation or amortization rate for customer owned lead service line and damaged wastewater lateral replacement costs for DSIC and base rate purposes?
- 7) What is the appropriate definition of a damaged wastewater lateral?
- 8) What benefits do customer owned lead service line and damaged wastewater lateral replacements provide to each customer class?
- 9) What are reasonable standards, processes, and procedures for establishing the maximum number of customer-owned lead service lines and damaged wastewater laterals that can be replaced annually, a reasonable lead service line warranty term, and the amount and means for reimbursing customers that have replaced a lead service line and/or damaged wastewater lateral within one year of a replacement project?
- 10) What is the most effective means of reporting the annual number of customer owned lead service lines and damaged wastewater lateral replacements as well as the progress of the replacement programs?
- 11) What alternative financial support sources exist for the replacement of customer owned lead water service lines, e.g., grants, and how the potential use of such funding sources will be recognized by public utilities for accounting and ratemaking purposes in their respective lead water service line replacement programs?

- 12) Should there be any implications for residential real estate properties where the presence of customer owned lead water service lines 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 customer owned lead water service lines, e.g., filing of notices with appropriate municipal authorities and property registration records whether the customer owned lead water service line and the corresponding company owned lead water service line have been identified and have or have not been replaced?

After the completion of the working group process, staff should prepare a written report with recommendations for our consideration by March 31, 2020. The report should address the issues identified herein, and any others that may be identified. The scope of the recommendation should include options for implementation, including orders, policy statements and rulemakings.

**THEREFORE, WE MOVE, THAT:**

1. The Law Bureau prepare an Order consistent with this Joint Motion.
2. Staff will transmit the above and any additional directed questions to interested stakeholders within 30 days of the entry of this Order.
3. Staff will convene a working group to implement this Order, and will submit a written recommendation to the Commission by March 31, 2020.

Date: October 3, 2019



GLADYS BROWN DUTRIEUILLE  
CHAIRMAN



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JOHN F. COLEMAN, JR.  
COMMISSIONER