



November 22, 2019

VIA E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17120

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

Dear Secretary Chiavetta,

Please find the **Joint Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), the Green & Healthy Homes Initiative (GHHI), and Pittsburgh United (UNITED)**, which are respectfully submitted for filing in the above referenced docket. An electronic copy will be provided to Commission Staff, as indicated below.

Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

A handwritten signature in black ink that reads "John W. Sweet". The signature is written in a cursive style with a large, sweeping initial "J" and "S".

John W. Sweet
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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 120 of 2018

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Docket No. M-2019-3013286

JOINT COMMENTS OF

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA,**

GREEN & HEALTHY HOMES INITIATIVE,

AND

PITTSBURGH UNITED

November 22, 2019

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA),¹ the Green & Healthy Homes Initiative (GHHI),² and Pittsburgh UNITED³ (collectively referred to herein as the Joint Commenters) file the following Joint Comments in response to the October 24, 2019 Secretarial Letter issued by the Pennsylvania Public Utility Commission (Commission or PUC) seeking comments from interested stakeholders regarding the implementation of Act 120 of 2018 (Act 120 or the Act) as part of a broader stakeholder process to establish statewide parameters for lead service line (LSL) remediation programming. These comments are preliminary in nature given that the Act 120 Working Group workshop has yet to occur and the process for additional feedback is unclear. Thus, Joint Commenters each reserve the right to supplement and/or modify the suggestions contained herein at the workshop meeting and as the process at this docket progresses.

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

¹ CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

² The Green & Healthy Homes Initiative (GHHI) is a nonprofit organization dedicated to promoting healthy housing and is the nation's leading voice in the efforts to eradicate childhood lead poisoning. GHHI has worked in over 61 cities and over 20 states to pass legislation and implement best practices around lead poisoning prevention and healthy housing. In Pennsylvania, GHHI serves as an advisor to the state childhood lead poisoning prevention program and provides technical assistance to Pittsburgh and Philadelphia to align, braid and coordinate evidence-based healthy, safe and energy efficient housing intervention programs.

³ Pittsburgh UNITED is a coalition of community, labor, faith, and environmental organizations in Pittsburgh, Pennsylvania committed to advancing the vision of a community and economy that work for all people. Its members work collectively to build a community whereby all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development.

lines (LSLs) and damaged wastewater laterals (DWWLs). This new provision of the Public Utility Code establishes a uniform standard under which utilities may seek approval to replace customer-owned LSLs and DWWLs and recover costs associated with replacement through rates.⁴

By Joint Motion adopted on October 3, 2019, the Commission directed its Bureau of Technical Utility Services (TUS) and Law Bureau (LAW) to develop recommendations for additional parameters for customer-owned LSL and DWWL replacement programs.⁵ The Commission further directed TUS and LAW to convene a working group and solicit responses to directed questions in order to gather information and stakeholder input on how to develop uniform procedures to address customer-owned LSL and DWWL replacement issues. On October 24, 2019, a Secretarial Letter was issued soliciting comments to several directed questions and scheduling an Act 120 Working Group Meeting to be held December 19, 2019. The Joint Commenters submit the following Comments in response to the directed questions and offers recommendations that we believe to be the most critical issues arising in this proceeding. The Joint Commenters look forward to participating in the upcoming Working Group to further assist the Commission to develop appropriate parameters for utilities in designing and delivering LSL remediation programming to Pennsylvanians in an effective and equitable manner.

⁴ 66 Pa. C.S. § 1311(b).

⁵ See Joint Motion of Chairman Gladys Brown Dutrieuille and Commissioner John F Coleman, Jr. – Implementation of Act 120 of 2018, at Docket No. M-2019-3013286 (Oct. 3, 2019).

II. COMMENTS

Pennsylvania is facing a lead crisis that poses a serious risk to public health and safety throughout the state.⁶ Low income families and people of color have a higher risk of lead exposure, and are more likely to experience the negative health impacts associated with exposure to lead through drinking water. To help address this lead crisis, Act 120 of 2018 amends the Public Utility Code to permit utilities to propose and seek Commission approval for comprehensive LSL remediation programming.⁷ As the Commission embarks on this statewide inquiry into the appropriate parameters for ratepayer funded LSL remediation programming, it is critical that it establish clear parameters to ensure that LSL remediation programs are appropriately designed to protect Pennsylvania's most vulnerable consumers from lead exposure.

The Joint Commenters assert that the following principles are critically important for the Commission to incorporate in its implementation of Act 120: (1) Consumers with the highest risk of lead exposure and the fewest resources must be prioritized for LSL replacements; (2) LSL remediation programming should be provided at no direct cost to consumers; (3) the cost of LSL remediation should be shared across all customer classes; (4) tenants must be protected from a landlord's refusal to participate in a LSL replacement program; (5) all LSL remediation programming should include a comprehensive outreach and education plan; and (6) LSL remediation programming should be coordinated with existing lead remediation efforts at the federal, state, and local level. These overarching principles are fundamental to ensuring that ratepayer funded LSL programming is both effective and equitable.

⁶ General Assembly of the Commonwealth of Pennsylvania, Lead Exposure Risks and Responses in Pennsylvania: Report of the Advisory Committee and Task Force on Lead Exposure (April 2019) (hereinafter Lead Task Force Report).

⁷ See 66 Pa C.S. § 1311.

A. Consumers with the highest risk of lead exposure and the fewest available resources must be prioritized for lead service line remediation programming.⁸

In the implementation of Act 120 programming, it is imperative that the Commission takes steps to ensure that LSL remediation programming prioritizes replacements in communities that are most at risk of negative health impacts associated with lead exposure. Low income communities and communities of color are at higher risk for elevated blood lead levels. This is, *in part*, because individuals and families in these communities are more likely to live in older and often poorly maintained housing that contains residual lead paint and older pipes and plumbing fixtures that are more likely to contain lead.⁹ The risks associated with lead exposure is also especially dangerous for families with young children or women of child-bearing age.¹⁰ The Joint Commenters assert that these vulnerable groups must be prioritized for LSL replacement in any approved lead remediation programs.

To ensure that utilities appropriately prioritize LSL replacements in at risk communities, The Joint Commenters assert that, as part of a proposed LSL replacement program, the Commission should require utilities to develop a prioritization plan for how it intends to identify and target its programming in vulnerable communities across its service territory. The Joint Commenters further recommend that utilities be required to establish a lead advisory committee, made up of representatives from local government, community groups, health professionals, and appropriate agencies, to share information and provide advice and input for how the utility can most effectively identify and engage in priority communities.

⁸ **Responding to Directed Questions M-1, M-11, M-12, M-26, M-27.**

⁹ Allegheny Cty. Lead Task Force, Final Report & Recommendations 5 (2017); see also Nat'l Toxicology Program, U.S. Dep't of Health & Human Servs., Health Effects of Low-Level Lead xxii, 16 (2012), https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf

¹⁰ Lead Exposure Risks and Responses in Pennsylvania at 49, 76.

B. Lead service line programming should be available at no direct cost to consumers.¹¹

To ensure that LSL programming is equally available and accessible to low and moderate income households, the Joint Commenters assert that LSL replacements and other remediation measures (such as the provision of filters)¹² must be offered at no direct cost to consumers. LSL replacement can cost thousands of dollars, an expense that low and moderate income families simply cannot afford. Even less expensive LSL remediation, such as filters and replacement cartridges – which require ongoing expenditures, are often out of reach for low and moderate income households.

Low and moderate income households often struggle just to keep up with their monthly water bills, and many lack access to sufficient or affordable credit that would allow them to make such an investment. Indeed, most families in the United States report that they cannot come up with \$400 to pay for an emergency expense, let alone thousands of dollars to cover the upfront cost of LSL replacement.¹³ Approximately 640,339 Pennsylvania households have an income below the federal poverty level.¹⁴ For a household of 2, the total annual income for these households is no more than \$16,910 for the entire year.¹⁵ Of course, having income above the federal poverty level does not mean that the household has sufficient resources to shoulder the expense of replacing a lead service line. Indeed, more than 1.2 million households cannot afford

¹¹ **Responding to Directed Questions M-1, M-24, M-25, M-26, M-27.**

¹² Lead levels in water may temporarily spike after a LSL replacement, so – in addition to ensuring that filters are available to all consumers pending replacement of an identified lead service line – filters should also be made available to consumers following replacement. Benjamin Trueman et al., Evaluating the Effects of Full and Partial Lead Service Line Replacement on Lead Levels in Drinking Water, 50 *Env'tl Sci. Tech.* 7389-96 (2016); Am. Water Works Ass'n, Communicating About Lead Service Lines, at 7 (2017), available at <https://www.awwa.org/portals/0/files/resources/publicaffairs/pdfs/finaleadservicelinecommguide.pdf>

¹³ See Bd. of Governors of the Fed. Reserve Sys., Report on the Economic Well-Being of U.S. Households in 2017 - May 2018, <https://www.federalreserve.gov/publications/2018-economic-wellbeing-of-us-households-in-2017-dealing-with-unexpected-expenses.htm> (last visited Aug. 12, 2019).

¹⁴ United Way, ALICE in Pennsylvania: A Financial Hardship Study, at 9 (2019) (hereinafter ALICE in Pennsylvania), available at <https://www.uwp.org/wp-content/uploads/ALICE-Report.pdf>.

¹⁵ US Dep't of Health and Human Services, Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines>.

their basic necessities each month, despite having income above the federal poverty level.¹⁶ According to the United Way's Asset Limited Income Constrained Employed (ALICE) study, approximately 37 percent of Pennsylvania households cannot afford their *basic* living expenses.¹⁷ It is unrealistic – and frankly, unreasonable – to expect these same households to come up with thousands of dollars to make their water safe for consumption. The Joint Commenters assert that it is therefore crucial that consumers not be responsible for paying the direct cost of LSL replacement.

It is important to also note that customer-driven replacement and reimbursement under Act 120 should be limited to pre-program reimbursements. According to Act 120, customers may be reimbursed if they replaced their service line of their own accord within one year prior to the commencement of the program.¹⁸ This is an acceptable means of addressing situations where a consumer replaced their own line prior to the implementation of a given utility's Act 120 program. However, utilities should not, on a forward going basis, require consumers to initiate and pay the upfront cost of lead service line replacement out of pocket, and later seek reimbursement. Indeed, a promise of a future reimbursement is meaningless for those who cannot afford the upfront costs. Such a scheme would foreclose low and moderate households from accessing the program, as they most often lack the resources to pay the up-front cost, even if they are later reimbursed for some or all of the expense.¹⁹ Reliance on customer-driven replacement and reimbursement on a forward going basis would also cause for haphazard replacement, and would not take advantage of economies of scale made possible through utility-run replacement programming.

¹⁶ ALICE in Pennsylvania at 9.

¹⁷ Id. at 9.

¹⁸ 66 Pa. C.S. § 1311(b)(2)(vii)(B).

¹⁹ See ALICE in Pennsylvania at 9.

C. The cost of lead service line remediation programming should be shared across all customer classes.²⁰

LSL remediation programs are public purpose programs, designed to address a public health crisis that was not caused by a particular class of customers. While it may be true that only some consumers receive an immediate financial benefit from participation in lead service line remediation programming, all consumer classes derive specific and tangible benefits from the availability of these programs. As such, the costs for public purpose programs – including PWSA’s low income and LSL programs – are most appropriately shared across all customer classes. Indeed, most service lines underneath private property were installed by a utility – not the customer. For over 100 years, lead was the most common material that utilities used for service lines.²¹ It was not until the 1920s that lead restrictions began to be implemented, though LSLs continued to be installed in some areas until the early 1970s.²² Unless a customer subsequently replaced their service line, the material used is typically a legacy of the water utility’s historical infrastructure material choices – not the choice of an individual homeowner. Thus, the issue of lead service line replacements should be borne by all those who benefit from the system – not just a single class of customers. This includes commercial and industrial customers, which not only enjoy the benefits of the system – but also the benefits of a vibrant, healthy, and economically stable community as a whole.

²⁰ **Responding to Directed Questions M-30, M-31.**

²¹ See Richard Rabin, *The Lead Industry and Lead Water Pipes: “A Modest Campaign,”* 98 Am. J. Pub. Health 1584, 1585 (2008), available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2007.113555> (describing the efforts of Lead Industries Association to encourage use of lead in drinking water pipes and the inclusion of lead as an acceptable material in plumbing codes long after its adverse health effects were well-established).

²² See *id.*

In setting forth parameters for utilities seeking approval of LSL remediation programming, the Commission should set clear expectations that the utilities come forward with a proposal for cost recovery that will distribute program costs equitably across all rate classes.

D. Lead service line remediation programming must be designed to protect tenants if a landlord refuses to replace a lead service line at the rental property.²³

Another major impediment to the successful remediation of LSLs through Act 120 implementation is the fact that low income households are more likely to live in rental units.²⁴ Additional steps must be taken to protect tenants living in housing with private side lead lines. In all too many instances, economically vulnerable households rent from landlords who are either inaccessible or unwilling to take the necessary steps to protect the health and wellbeing of their tenants.²⁵

Lead contaminated water is a matter of public safety and consumers who live in poorly maintained rental housing are especially susceptible to the health risks associated with lead. The Commission should therefore take decisive steps to ensure that tenants have equitable access to LSL programming— even if a landlord is not responsive to outreach efforts or is unwilling to accept LSL remediation programming. The Joint Commenters assert that the Commission should establish clear parameters for utilities to adhere to in providing remediation services to tenant-occupied properties to ensure that tenants are equally able to access lead remediation programming. Indeed, the disclosure of the presence of lead is insufficient to protect tenants from lead exposure.

²³ **Responding to Directed Questions M-1, M-9, M-16, M-18, M-19.**

²⁴ ALICE in Pennsylvania at 65.

²⁵ See Irene Lew, Housing Inadequacy Remains a Problem for the Lowest-Income Renters, Joint Centers for Housing Studies of Harvard University (May 19, 2019), available at <https://www.jchs.harvard.edu/blog/housing-inadequacy-remains-a-problem-for-the-lowest-income-renters/>.

As explored in greater depth in the next section, utilities should be required to develop a comprehensive plan for outreach and education for tenants, specifically, as well as a plan for outreach with reluctant or absentee landlords. In situations where LSL replacement is truly not an option, utilities should be required to offer tenants alternative lead remediation programming, such as free testing kits, filters, and replacement cartridges; free filter installation and maintenance assistance; and educational materials, with information about the effects of lead exposure to help provide some protection for tenants. As explained below, this information should be in plain language and should provide information in multiple languages about available translation or interpretation services. Lead lines are a public health and safety issue and, and such, should be available to all consumers who are at risk of lead exposure – including tenants.

E. Lead service line remediation programs should be required to include a comprehensive outreach and education plan.²⁶

It is critical that utilities develop a comprehensive outreach and education plan as part of its LSL remediation programming to help ensure that consumers are provided the tools to protect themselves from exposure throughout the process of identifying and replacing lead service lines.

First, all outreach and education materials should be required to use plain and accessible language. Consumers often do not understand the technical jargon used in relation to lead remediation and the risk of lead exposure, which creates a barrier to participation in available programming. Language may also be a significant barrier for those with limited English proficiency. To ensure that residents with identified LSLs are adequately informed about the risk of lead exposure and the steps they may need to take to protect themselves from harm, all communications should be provided in plain language, with information in multiple languages

²⁶ **Responding to Directed Questions M-1, M-4, M-6, M-7, M-10.**

about how a consumer can access translation or interpretation services. The Joint Commenters suggest that utilities be instructed to work with interested stakeholders – perhaps through a lead advisory committee, recommended above – to develop its outreach and education plan and materials, as this will help ensure that the materials are accessible and easy to understand. As discussed in the next section, this will also ensure that LSL replacement programming appropriately leverages state and local lead remediation efforts to provide holistic services to at risk populations.

Importantly, a comprehensive outreach and education plan should include plans for communications at all stages of replacement – from identification of the lines to post-service line replacement. The level of risk and the methods a consumer can take to protect themselves from lead exposure at different stages of the process are not always intuitive. For example, if a household has a lead service line, they may not know what type of filter to use to remove lead from their water – or how to properly use the filter. If there is a boil water advisory, they may not realize that boiling the water – without filtering the water first – could concentrate lead levels. Likewise, most consumers likely do not know that lead levels may spike for a short period of time after an LSL replacement is complete.²⁷ If a consumer is provided all of this information at once, at the start of the process, it could be overwhelming for the consumer – leading many to forget vitally important information as the process continues. Thus, it is important for the Commission to set clear requirements that the water utilities provide consumers with targeted education and outreach at all stages in the lead remediation process.

²⁷ See *supra* fn 12.

*F. Lead service line remediation programming should be coordinated with existing lead remediation efforts at the federal, state, and local level.*²⁸

To avoid redundancy and utilize economies of scale, where feasible, LSL remediation programming should be coordinated with existing lead remediation efforts in the communities that the utility serves. Many of Pennsylvania's cities and municipalities have already begun laying the groundwork for identifying communities at risk of lead exposure and some have already begun implementing remediation efforts.²⁹ For example, Lancaster, Johnstown, Harrisburg, Erie, Williamsport, and Wilkes-Barre all have programs that help pay for lead abatement.³⁰ The City of Allentown and Northampton County each recently received large grants under the Department of Housing and Urban Development's Lead-Based Paint Hazard Control Grant program to help low and moderate income homeowners with lead abatement in their homes.³¹ Each of these programs provides a unique opportunity to utilize existing resources and coordinate programming with agencies that have familiarity with local needs and infrastructure. To the extent possible, utilities should utilize this local expertise.

²⁸ **Responding to Directed Questions M-1, M-8, M-20, M-32, M-33.**

²⁹ See Lead Task Force Report at 86-94.

³⁰ Id. at 86-87

³¹ Id.

III. CONCLUSION

The Joint Commenters appreciate the opportunity to submit written comments in advance of the Act 120 Working Group workshop on December 19, 2019, and urge the Commission to focus its Act 120 implementation efforts on developing appropriate program parameters capable of ensuring that consumers who are most at risk of lead exposure have access to effective LSL remediation programming.

Respectfully submitted,

On Behalf of CAUSE-PA



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