

COMMONWEALTH OF PENNSYLVANIA



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June 2, 2021

Rosemary Chiavetta, Secretary
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400 North Street
Harrisburg, PA 17120

Re: Rulemaking to Implement Act 120 of
2018 at 52 Pa. Code Chapters 65 and 66
Docket No. L-2020-3019521

Dear Secretary Chiavetta:

Attached for electronic filing are the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Certificate of Service

*310138

CERTIFICATE OF SERVICE

Re: Rulemaking to Implement Act 120 of : Docket No. L-2020-3019521
2018 At 52 Pa. Code Chapters 65 and 66 :

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

Dated this 2nd day of June 2021.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Implement Act 120 of 2018 : L-2020-3019521
At 52 Pa. Code Chapters 65 and 66 :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: June 2, 2021

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I. INTRODUCTION

The Pennsylvania Public Utility Commission (Commission) issued a Notice of Proposed Rulemaking by Order entered September 17, 2020, proposing to modify its regulations at Title 52, 52 Pa. Code Sections 1.1, *et seq.* More specifically, the Commission proposes to (1) expand Chapter 65, Water Service, to regulate the replacement of lead service lines (LSL) and (2) create Chapter 66, Wastewater Service, to specifically address wastewater service and in particular the replacement of Damaged Wastewater Service Laterals (DWSL) at Subchapter B. Rulemaking to Implement Act 120 of 2018 at 52 Pa. Code Chapters 65 and 66, Docket No. L-2020-3019521, Notice of Proposed Rulemaking Order at 1 (Pa. PUC entered Sept. 17, 2020) (Notice of Proposed Rulemaking Order). This rulemaking seeks to conform the Commission's regulations to the requirements set forth in Act 120 of 2018. Act of Oct. 24, 2018, 2018 Pa. Laws 120 (amending 66 Pa. C.S. § 1311) (Act 120).

The Notice of Proposed Rulemaking Order was published in the Pennsylvania Bulletin on April 3, 2021. The Pennsylvania Office of Consumer Advocate hereby files these Comments in response to the Notice of Proposed Rulemaking Order setting forth its recommendations in this matter. Generally, the OCA is supportive of these regulations as it understands the important public health risks associated with LSLs and DWSLs. The OCA, however, identifies several areas where the Commission's proposed regulations can be modified to better align with Act 120, provide greater protections for consumers, and ensure that there are clear directives to enact programs to replace LSLs and DWSLs.

The OCA will first address Annex A, which is attached to the Notice of Proposed Rulemaking Order, and then subsequently address Annex B. Accordingly, the OCA sets forth the following Comments.

II. COMMENTS ON PROPOSED LEAD SERVICE LINE REGULATIONS

The OCA is generally supportive of the Commission's proposed regulations, but has several overarching concerns. The OCA submits that Annex A, or the proposed LSL regulations, is extensive, setting forth specific and detailed requirements that utilities must follow. While specificity may be needed for certain requirements, such as the filing requirements, broader regulations can be useful to help craft plans that better align with the specific requirements and circumstances of each utility. For example, the OCA notes that the requirements surrounding the LSLR Plan can create obligations, which would be difficult to achieve. In such instances, it may be better to deal with these issues on a case-by-case basis.

More generally, the regulations should carefully identify the obligations of the utility, the customer-owner of the LSL, and a tenant that takes service from the utility. While a one-size-fits-all approach would certainly be efficient, that sometimes is not possible. The OCA submits that there are certain proposed regulations in Annex A that should provide carve-outs for these unique situations, where appropriate.

The OCA addresses its remaining issues and concerns on a section by section basis below.

A. Section 65.51 – Purpose

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to respond in its Reply Comments. The OCA, however, does have a grammatical correction as indicated in Appendix A attached to these Comments.

B. Section 65.52 – Definitions

The OCA has identified several concerns related to proposed Section 65.52. First, there appears to be overlap between the definition for LSLR Plan and LSLR Program. Those terms are used throughout the proposed regulations and appear to be interchangeable. The OCA proposes to remove the LSLR Plan definition and made an edit to the LSLR Program definition. The OCA's

edit is meant to clear up any confusion that the two terms create in the proposed regulations and to ensure that there is no redundancy in the terminology. See OCA Comments, App. A, § 65.52.

Second, the term ‘customer-owned lead service line’ could be re-written to more clearly state the portion of the service line that is owned by the customer. The proposed definition of an LSL is as follows:

LSL – Lead service line – A service line made of lead that connects the water main to a building inlet and a lead pigtail, gooseneck or other fitting that is connected to the lead line.

Annex A, § 65.52.

To provide more clarity and better align with the definition of LSL, the OCA submits that it may be better to define the ‘customer-owned lead service line’ as ‘the portion of the lead service line, not owned by the Company, extending from the curb or property line of the service address, to the building inlet and a lead pigtail, gooseneck, or other fitting that is connected to the lead line.’ Moreover, this definition follows the same pattern as how other utilities define the customer-owned portion of the service line in their tariffs. For example, PAWC defines the customer-owned service line as follows:

That portion of a water line not owned by the Company which transmits water from the Company-owned water main to the Customer's premise. The water service pipe begins at the Company-owned street service connection and continues into the structure on the premise to be supplied.”

Pennsylvania-American Water, Tariff Water – Supplement No. 2 to Tariff Water Pa. P.U.C. No. 5, Rule 2.16, Pg. 43. Accordingly, the OCA’s suggested revision may provide a better definition that will prevent confusion over time. See OCA Comments, App. A, § 65.52.

Third, the proposed regulations set the definition of a LSLR Project Area as a one-mile radius surrounding a LSLR Project. This definition is particularly important regarding Sections 65.56(b)(10)(ii) and 65.58(d). This one-mile radius creates an obligation for the utility to replace

all LSLs within a one-mile radius within one year and triggers the reimbursement period for LSLs within that radius. The OCA submits that what constitutes a LSLR Project Area may be better dealt with on a case-by-case basis, as a one-mile radius may be too burdensome for some utilities and not broad enough to protect ratepayers that have replaced their own portion of the LSL. Thus, the OCA recommends replacing the term ‘one-mile’ with ‘certain.’ See OCA Comments, App. A, § 65.52.

Finally, the OCA has also added definitions to this section to tie various terms used in the proposed regulations back to definitions that already exist in the Public Utility Code and regulations. See OCA Comments, App. A, § 65.52. The OCA notes that its revisions tie the definition of “entity” to Section 65.1 which would be consistent with the intent of this change to Chapter 65 of the Commission regulations. However, it should be noted that there is a different definition of “entity” in Section 1329.¹

C. Section 65.53 – Time to replace LSLs

The OCA proposes revised language to this section to have the Class A utility time frame set forth as the first subsection and the time frame for Class B utilities, Class C utilities, and municipal corporations as the second subsection. The OCA submits that this format will clarify the two time frames set forth in the proposed regulation. See OCA Comments, App. A, § 65.53.

D. Section 65.54 – Petitioning the Commission for a LSLR Program

The OCA notes that proposed Section 65.54(b) creates an obligation for the utility to file a modified LTIP at the time of filing a LSLR Program. Section 121.5 of the Commission’s Regulations requires that a utility file a separate Petition for major modifications to an existing LTIP. 52 Pa. Code § 121.5. The OCA proposes that utilities should continue to use the existing

¹ Entity.” A person, partnership or corporation that is acquiring a selling utility and has filed or whose affiliate has filed an application with the commission seeking public utility status pursuant to section 1102. 66 Pa. C.S. § 1329.

procedures in place for LTIP programs at 52 Pa. Code §§ 121.1, *et al.* The OCA would suggest making it clear that this filing does not trigger or inhibit the utility’s existing LTIP review process. See OCA Comments, App. A, § 65.54.

E. Section 65.55 – LSLR Program requirements

Regarding Section 65.55, the OCA agrees that an entity’s LSLR Program should be subject to review during the Company’s base rate proceeding. The OCA proposes an edit to Section 65.57, rather than addressing in this section. See infra. The OCA submits, however, that the last section is not necessary. There may be circumstances where changes may need to be made outside the context of a base rate proceeding. Thus, the OCA proposes deleting this section to avoid any such restrictions. See OCA Comments, App. A, § 65.55. The OCA also deleted (b)(1) to reflect the change to delete the use of LSLR Plan, as discussed above. See OCA Comments, App. A, § 65.55.

F. Section 65.56 – LSLR Plan requirements

The OCA proposes revisions to the numbering of this section by removing the heading and making it a part of the prior section, 65.55.² See OCA Comments, App. A, § 65.56. In addition, the OCA has several concerns with the proposed regulations concerning the absence of the property owner being notified when it is a landlord-tenant situation. Generally, the OCA submits that there should be more specificity around what is required under a landlord-tenant arrangement. Many of these sections discuss the obligations of a customer, but do not have language or exceptions for customers that may not be the property owner or vice versa. See e.g. Annex A, § 65.56. This OCA has proposed edits to those sections. Id. Under proposed Section 65.56(c)(1)(iv), the proposed regulation would require that the utility implement a communications and outreach plan that would notify all “persons that receive drinking water from the entity...”

² Due to this proposed change, subsequent heading numbers change as reflected in Appendix A. For ease of reference, the OCA will retain the original numbering in these written comments.

about the harmful effects of lead. See Annex A. The OCA agrees that there are certain individuals who receive drinking water from the utility that may not necessarily be a bill-paying customer who should be captured in any communications and outreach program. See OCA Comments, App. A, § 65.56(c)(1)(iv). The OCA has also made some edits that combine the requirements for municipal corporations and eliminate separate subsections. See OCA Comments, App. A, § 65.56.

G. Section 65.57 – Periodic review of LSLR Plan

This proposed Section refers to the Commission’s obligation to review the LSLR Plan periodically to ensure that it continues to be sufficient to maintain efficient, safe, adequate, reliable, and reasonable service. The OCA offers two suggestions. First, proposed Section 65.54(b) requires that an entity file a modified LTIP to incorporate the LSLR Program. Thus, incorporating the review of the LSLR Plan into the LTIP review process would be reasonable. Only if the entity does not have an LTIP, should the regulations specifically state that review should occur at least every five years. This will make review of the LSLR Plan more efficient and prevent competing review processes. See OCA Comments, App. A, § 65.57.

Moreover, because proposed Section 65.55 allows for a robust review process of the Company’s LSLR Program within future base rate cases, it should be specified that proposed Section 65.57 does not inhibit the scope of review of the LSLR Program during future base rate cases. Rather both processes should complement each other and provide multiple opportunities to review the LSLR Program. See OCA Comments, App. A, § 65.57.

H. Section 65.58 – Pro forma tariff of tariff supplement requirements

Regarding this proposed section, the OCA notes that under Section 65.58(c)(2) it appears that a customer could require a utility to replace the Company’s portion of the LSL if the customer elects to replace their portion of the LSL sooner. This could create a problem because it could require a utility to replace an LSL in a geographic area where it has yet to develop economies of

scale creating additional costs. It may be more reasonable to have customers provide notice that they desire to replace their LSL, which will then create an obligation for the utility to notify others in the surrounding area to determine if economies of scale can be developed quicker. The utility would then have a fixed period of time, such as six months, to identify other candidates and replace them as necessary. In addition, there could be an emergency situation where a customer-owned LSL would need to be replaced faster than the 90 day minimum reflected in the proposed regulation.³ The regulation should accommodate the possibility of an emergency situation too. The OCA does not offer a specific redline of this section, but notes its general concern.

Additionally, based upon Section 65.58(c)(3) and others, it seems that a utility is allowed to perform the partial LSLR, provided that the customer's service has been terminated. This appears to contradict the requirements set forth in proposed Section 65.62, which prohibits partial LSLRs entirely. See Annex A, § 65.62(b).

With respect to Section 65.58(d), the OCA has made proposed edits to reflect that reimbursements should apply to customers who have moved forward to replace the lead service line prior to the establishment of the water utility's LSLR program. See OCA Comments, App. A, § 65.58 (d). The OCA's proposed edits to the reimbursement sections recognize that it may be either a property owner or customer who would be seeking reimbursement. See OCA Comments, App. A, § 65.58 (d). s its position that setting an LSLR Project Area as a one-mile radius within which to determine whether a customer's replacement should be reimbursed may not be appropriate in some circumstances. It may be best to define Project area on a utility-by-utility basis.

³ For example, a customer's meter is in a meter pit, the service line to the home is leaking, and the customer needs to replace the service line to avoid high bills. If the customer finds that it is a lead service line, it would be inefficient to have the customer replace the line if it would be replaced in 90 days by the water utility.

The OCA also proposes deleting the phrase “licensed to perform LSLR work in the Commonwealth” because it is not aware of any such licensing requirements. See OCA Comments, App. A, § 65.58 (c) and (d).

I. Section 65.59 – LSLR Program Reports

The OCA proposed edits reflect the use of LSLR Program, rather than LSLR Plan. See OCA Comments, App. A, § 65.59. In addition, the OCA has added language in subsection (b) to reflect more specific references to LSLs replaced by municipality, rather than at the county level if the utility provides service to only in one county. This information will be helpful in reviewing the location of replacements done by smaller utilities that do not provide service in more than one county. See OCA Comments, App. A, § 65.59 (b). Finally, the OCA has added the reason for the refusal to proposed reporting requirements. See OCA Comments, App. A, § 65.59 (b)(9). This information is important to understanding the concerns that would lead to a refusal to agree to a replacement. The information may assist the water utility in tailoring its outreach to avoid similar concerns and result in more replacements.

J. Section 65.60 – Accounting and financial

The OCA has added a sentence to Section 65.60(a) to reflect the use of a subaccount that would separately identify the LSLR costs. See OCA Comments, App. A, § 65.60 (a). This provision is consistent with the procedure used by Pennsylvania-American Water as a result of its LSLR program that was previously approved by the Commission.

The OCA has concerns about subsections (b) and (c). These proposed sections would allow a utility to defer (1) income taxes related to no cost and low-cost sources of funding for LSLRs, including applicable income taxes on contributions-in-aid-of construction, and (2) expenses related to service line inventory, LSLR program development, LSLR Plan, LSLR Program Report, and reimbursement requirements. Annex A, § 65.60(b)(1-2). Furthermore, proposed Section

65.60(b)(1) states that prudent and reasonable deferred income taxes must be amortized over a reasonable period of time with a return on the entity's investment. In addition, proposed Section 65.60(b)(2) states that prudent and reasonable deferred income taxes must be amortized over a reasonable period of time without a return on the entity's investment. The proposed Section also states that a utility may be entitled to earn a return on prudent and reasonable deferred expenses if the Commission finds that it is warranted, pursuant to 66 Pa. C.S. § 523.

The OCA first notes that this section goes beyond the requirements of Act 120. Act 120 states that 'the value of the property of a public utility providing water or wastewater service shall include the original cost incurred by the public utility for the replacement of a customer-owned lead water service line...' 66 Pa. C.S. § 1311(b)(2)(i). Act 120 does not authorize utilities to defer income taxes or expenses related to the implementation of these requirements.

Moreover, the OCA would note that it is unusual for the Commission to promulgate regulations that expressly allow public utilities to defer all taxes and expenses associated with the implementation of additional Commission regulations. The use of deferred regulatory accounting has only been used sparingly for expenses that are non-recurring and extraordinary. See e.g. Petition of PPL Electric Utilities Corporation for Authority to Defer for Accounting and Financial Reporting Purposes Certain Losses from Extraordinary Storm Damage and to Amortize Such Losses, Docket No. P-00032069, 2004 Pa. PUC LEXIS 24, at *7 (Jan. 16, 2004). In this instance, these programs will likely be ongoing for a number of years that will become part of the utilities business operations for the foreseeable future. There is no reason these costs cannot be dealt with in the normal course of a base rate proceeding. Moreover, whether or not deferred costs are allowed to be recovered in future proceedings is not predetermined at the time deferred regulatory accounting is granted. See Id. In this instance, the proposed regulation expressly allows the utility

to earn a return on deferred income taxes and dollar for dollar recovery of expenses. This simply goes too far and is unwarranted. See OCA Comments, App. A, § 65.60. The OCA submits that the provision should be deleted. If it is not deleted, then the OCA has proposed to remove the language that would permit a return on the entity's investment. See OCA Comments, App. A, § 65.59 (b) (1).

The OCA is likewise concerned with the Commission's reference to Section 523 of the Public Utility Code, allowing the potential for a utility to earn a return on expenses if it demonstrates that it meets the requirements of that section. See 66 Pa. C.S. § 523. It is not appropriate for the utility to earn a return on operating expenses and is contrary to sound ratemaking principles. See Pa. Electric Co. v. Pa. Pub. Util. Comm'n, 417 A.2d 819, 823 (Pa. Commw. Ct. 1979). This should be removed from the proposed regulations. See OCA Comments, App. A, § 65.60. Act 120 of 2018 already provides a departure from the basic concept that the utility earns a return on and of the plant that it invests in and owns. Subsection (b)(2) further departs from ratemaking by permitting a deferral of expenses, as discussed above. There is no reason to add another departure from ratemaking principles and add to the costs that customers will pay in rates by providing a return on deferred expenses to implement the LSLR Program. See OCA Comments, App. A, § 65.60.

K. Section 65.61 – Preexisting LSLR activities

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

L. Section 65.62 – Prohibition on partial LSLRs

The OCA has a number of substantive issues regarding this proposed Section. First, as identified above, there is some confusion as to when a utility's obligation is triggered to replace a LSL. Under proposed Section 65.62(a), it appears that a utility is required to replace its portion of

the LSL within a certain time period if the customer provides notice to the utility that it will be replacing the customer-owned portion. Annex A, § 65.62(a)(1-2). This proposal seems to be aimed at preventing partial LSLRs. However, this could be problematic if the utility has not yet developed economies of scale in a particular area, or if such requirements would unreasonably burden the utility's prioritized replacements and schedule. As the OCA stated above, perhaps it would be best for such notice to require the utility to identify other replacements within the given Project Area to determine if economies of scale can be developed and, if not, to allow it to assess the priority using its prioritization criteria and the utility's projected replacement schedule.

Moreover, the OCA is also concerned with the absolute prohibition on partial LSLs. As set forth in Section 65.62(b), no utility may install or cause to be installed a partial LSLR. The OCA submits that there should be an exception to the rule for emergencies that would necessitate such a replacement. In such emergency replacements, certain actions can be taken to reduce the potential harm to customers, such as allowing a bill credit for flushing after the partial LSLR to reduce any lead exposure, as well as weekly water testing by the homeowner. Moreover, to prevent abuse of this exception, emergencies can be limited and only allowed through an emergency waiver request by the utility or by the owner of the customer-owned LSL. See OCA Comments, App. A, § 65.62(b).

Moreover, with respect to proposed Section 65.62(c), there is no exception or acknowledgement of a landlord-tenant situation or an issue dealing with tangled title. The latter example is an instance where it is unclear who owns the customer-owned lead service line. The OCA has addressed other areas of these proposed regulations where this may present a problem. This should be address in some manner throughout these regulations, where appropriate.

Proposed Section 65.62(d) states that if a utility becomes aware that a customer is currently taking service under a partial LSL it is to terminate service to a customer. This requirement may go too far and leaves out important details. First, it is unclear how a customer would install a LSL today. OCA witness Scott J. Rubin explained the history of the ban of lead and lead components:

While the use of lead pipe in water utility systems ended in the 1950s or 1960s for most utilities, lead in solder, faucets, and other plumbing fixtures was not banned until the enactment of the Safe Drinking Water Act ("SDWA") in 1986.¹ Even that law, however, did not eliminate all lead from water systems, as piping and certain plumbing fixtures were allowed to have up to 8% lead. That percentage was not reduced to the current level of 0.25% until 2011 when the Reduction of Lead in Drinking Water Act was enacted.² Thus, even today, "lead free" does not mean the complete absence of lead.

¹ Section 1417 of the SDWA, 42 U.S.C. § 300g-6, banned the "use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 1986, in the installation or repair of (i) any public water system; or (ii) any plumbing in a residential or non-residential facility providing water for human consumption, that is not lead free." At that time, "lead free" was defined as solder that contains less than 0.2% lead and pipes that contain less than 8.0% lead. See U.S. Environmental Protection Agency, Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water, <https://www.epa.gov/dwstandardsregulations/use-lead-free-pipes-fittings-fixtures-solder-and-flux-drinking-water> (last accessed 10/11/2017).

²Reduction of Lead in Drinking Water Act, P.L. 111-380, 124 Stat. 4131 (enacted Jan. 4, 2011), amending the definition of "lead free" in Section 1417(d) of the SDWA.

Testimony of Scott J. Rubin, OCA St. No. 1 at 5-6, Petition of Pennsylvania-American Water Company for Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Service Pipes, Docket No. P-2017-2606100.

Second, if a partial LSL that has been installed after the effective date of this proposed regulation is identified, a lead test should be performed to determine if there are actionable levels of lead currently in the water that would necessitate such quick termination. Third, there should be a requirement for the utility to remedy the situation as quickly as possible. For example, if a LSL that has been installed after the effective date of this section is found, the utility should reach a prompt agreement with the customer to replace the existing partial LSL as quickly as possible.

If the partial LSL is on the utility portion of the service line, there should be expedient action on the utility to replace their portion of the line.

Regarding Section 65.62 (e), the OCA has not proposed any edits, however the intent of this section is not clear. Does this section mean that if the Department of Environmental Protection (DEP) requires replacement of the lines, then the PUC will also require the replacement too? It is possible that DEP-required time frames may be different than the time frames adopted by the Commission. There may be other issues of coordination as well. It may be that a Memorandum of Understanding related to LSLR would be appropriate between the Commission and DEP to resolve these issues and other coordination issues.

III. COMMENTS ON PROPOSED DAMAGED WASTEWATER SERVICE LATERAL REGULATIONS

The OCA is generally supportive of the proposed regulations. The OCA does note, however, that the nature and scope of the statute regarding DWSLs and the proposed regulations are difficult to specify at the moment. For that reason, the OCA's Comments in this area are limited and are more or less consistent with the Comments identified regarding LSLs, where appropriate. The OCA plans to closely review the Comments of other interested stakeholders and respond more fully in its Reply Comments.

A. Section 66.1 – Definitions

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

B. Section 66.31 – Purpose

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

C. Section 66.32 – Definitions

With respect to the definition of ‘customer,’ the OCA submits that this may not fully capture who has the responsibility or ownership over the DWSL. While in many instances the customer of the utility would also be the owner of their portion of the DWSL, there may be landlord/tenant situations or tangled title issues, where that is not the case. The proposed regulations should give some consideration to those issues.

D. Section 66.33 – DWSL Program parameters

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

E. Section 66.34 – Petitioning the Commission for a DWSL Program

Similar to the comments in proposed Section 65.54 of Annex A, this proposed Section 65.34(b) creates an obligation for the utility to file a modified LTIP at the time of filing a LSLR Program. Section 121.5 of the Commission’s Regulations requires that a utility file a separate Petition for major modifications to an existing LTIP. 52 Pa. Code § 121.5. The proposed regulation should conform to the existing procedures in place for LTIP programs at 52 Pa. Code §§ 121.1, *et al.* The OCA would suggest making it clear that this filing does not trigger or inhibit the utility’s existing LTIP review process.

F. Section 66.35 – DWSL Program requirements

With respect to Section 66.35(c), similar to what is stated above regarding Section 65.56, the OCA agrees that an entity’s DWSL Program should be subject to review during the Company’s base rate proceeding. The OCA submits, however, that the last sentence, i.e. “[a]n entity shall submit any modification to the DWSL Program for review with its base rate case,” implies that a Company cannot modify its DWSL Program in between base rate cases. There may be circumstances where changes may need to be made outside the context of a base rate proceeding.

Thus, the OCA would suggest rephrasing this as the utility ‘may’ submit a modification to its DWSL Program for review with its base rate case.

G. Section 66.36 – DWSL Plan requirements

Under Subsection (b)(1)(iii), the proposed regulation would require that the utility implement a communications and outreach plan that would notify all “persons that receive wastewater service from the entity...” about the harmful effects of lead. See Annex B, § 66.36(b)(1)(iii). Mirroring the OCA’s recommendations for the LSLR Program, the OCA submits that property owners should be included in the DWSLR outreach and communications plan. See OCA Comments, App. A, § 65.57.

H. Section 66.37 – Periodic Review of DWSL Plan

This proposed Section refers to the Commission’s obligation to review the DWSL Plan periodically to ensure that it continues to be sufficient to maintain efficient, safe, adequate, reliable, and reasonable service. Similar to its discussion above regarding proposed Section 65.57, the DWSL Plan review process should be incorporated into the LTIP review process, where applicable. Only if the entity does not have an LTIP, should the regulations specifically state that review should occur at least every five years. See OCA Comments, App. A, § 65.57. Secondly, because proposed Section 66.35 allows for a robust review process of the Company’s DWSL Program within future base rate cases, it should be specified that proposed Section 65.37 does not inhibit the scope of review of the LSLR Program during future base rate cases. See OCA Comments, App. A, § 66.37.

I. Section 66.38 – Pro forma tariff or tariff supplement requirements

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

J. Section 66.39 – DWSL Program Reports

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

K. Section 66.40 – Accounting and financial

The OCA reiterates the same concerns noted with respect to proposed Section 65.60. See Annex A, § 65.60. It is unusual and not appropriate to allow the utility to defer income taxes and routine expenses by regulation, nor should the proposed regulation pre-determine that such costs are recoverable. The OCA also submits that it would be inappropriate and against sound ratemaking principles to allow a utility to earn a return on expenses.

L. Section 66.41 – Unpermitted connections

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

M. Section 66.42 – Competitive Advantage

The OCA does not offer any substantive Comments on this section at this time, but reserves the right to address it in its Reply Comments.

IV. CONCLUSION

The Office of Consumer Advocate appreciates the opportunity to provide Comments on the proposed regulations to implement Act 120 of 2018. The OCA respectfully submits the above Comments to ensure that the proposed regulations are designed in a clear and concise manner to effectively implement Act 120.

Respectfully Submitted,

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Dated: June 2, 2021
297825

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
SUBPART C. FIXED SERVICE UTILITIES
CHAPTER 65. WATER SERVICE
SUBCHAPTER A. SERVICE GENERALLY

* * * * *

SUBCHAPTER B. LEAD SERVICE LINE REPLACEMENTS

§ 65.51. Purpose.

The purpose of this subchapter is to implement 66 Pa.C.S. § 1311(b) governing the standard under which jurisdictional water utilities may seek to replace LSLs and recover associated costs. This subchapter establishes the time, manner, form, and content of filings for Commission approval of LSLRs. This subchapter also sets forth the minimum requirements ~~of~~for LSLRs.

§ 65.52. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

AAO plan—*Annual asset optimization plan*—The term as defined in 52 Pa. Code § 121.2 (relating to definitions).

Authority – An authority as defined in 66 Pa. C.S. § 3201 (relating to definitions).

Customer-owned lead service line – ~~The portion of the lead~~A customer's service line ~~extending from the curb, property line~~(as defined in § 65.1 (relating to definitions)) made of lead or containing lead solder, including a lead pigtail, gooseneck, or other fitting connected to the service ~~or entity connection to an entity's water meter or, if the entity's meter is located outside of the structure or water is not metered by the entity, at the first shutoff valve located within the structure.~~

Entity – A public utility as defined in ~~66 Pa. C.S. § 102~~§ 65.1 (relating to definitions) ~~that provides water service,~~, a municipal corporation as defined in ~~66 Pa. C.S. § 102~~ (relating to definitions) ~~that provides water service beyond its corporate limits, and an authority as defined in 66 Pa. C.S. § 3201~~ (relating to definitions) ~~or an authority.~~

LSL – *Lead service line* – A service line made of lead ~~that connects the water main to a building inlet and~~or containing lead solder, including a lead pigtail, gooseneck or other fitting that is connected to the ~~lead~~service line.

DSIC – Distribution system improvement charge – The term as defined in 52 Pa. Code § 121.2 (relating to definitions).

LSLR – Lead service line replacement – A service line, whether entity-owned or customer-owned, installed to replace a lead service line.

~~LSLR Plan – Lead service line replacement plan – A plan and supporting documents submitted to and approved by the Commission that specify how an entity intends to implement its lead service line replacement program.~~

LSLR Program – Lead service line replacement program – A program and supporting documents submitted to and approved by the Commission for the replacement of lead service lines by an entity.

LSLR Program Report – Lead service line replacement program report – ~~The~~An annual report, including a plan and supporting documents, providing information for lead service line replacements completed by an entity under its lead service line replacement program.

LSLR Project – Lead service line replacement project – An entity-scheduled lead service line replacement activity either in conjunction with main replacements or as part of a lead service line replacement program.

LSLR Project Area – Lead service line project area – The area served by an entity located within a ~~one-mile radius~~ certain distance of a lead service line replacement project.

LTIP – Long-term infrastructure improvement plan – The term as defined in 52 Pa. Code § 121.2 (relating to definitions).

Municipal corporation – A municipal corporation, except an authority, that provides water service to or for the public for compensation beyond its corporate limits.

Partial LSLR - Partial lead service line replacement – A lead service line replacement that does not replace both the entity-owned and customer-owned portions of a lead service line.

~~Service line – The pipe and appurtenances which connect any main to an entity's water meter or, if the entity's water meter is located outside of the structure or the connection is not metered by the entity, at the first shutoff valve located within the structure.~~

Service line – The Company's service line and the customer's service line, as those terms are defined in § 65.1 (relating to definition).

Service Line Inventory – The process of identifying each service line's material.

composition, diameter, and location.

Water distribution system – The service area of an entity in which the entity provides water service to or for the public for compensation subject to regulation by the Commission.

§ 65.53. Time to replace LSLs.

- ~~(a) An entity, other than a municipal corporation,~~ (a) A Class A public utility or authority shall remove and replace all LSLs, whether entity-owned or customer-owned, within or connected to its water distribution systems within 25 years from the effective date of this Section ~~for a Class A public utility or authority, and within 30 years from the effective date of this Section for a Class B public utility or Class C public utility.~~
- (b) A Class B public utility, Class C public utility, or municipal corporation ~~providing water service beyond its corporate limits~~ shall remove and replace all LSLs, ~~within or connected to its distribution systems, beyond its corporate limits,~~ whether ~~municipal corporation~~-entity-owned or customer-owned, within or connected to its water distribution systems, within 30 years from the effective date of this Section.

§ 65.54. Petitioning the Commission for a LSLR Program.

- (a) An entity shall file a LSLR Program petition in accordance with 52 Pa. Code § 65.55(a) with the Commission’s Secretary’s Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and the parties of record in the entity’s most recent base rate case. Service is evidenced by a certificate of service filed with the LSLR Program petition.
- (b) An entity that has a Commission-approved LTIP shall include with its LSLR Program petition a modified LTIP containing a LSLR PlanProgram as a separate and distinct component of the entity’s LTIP. Such modification shall constitute a major modification as defined in 52 Pa. Code § 121.5.
- (c) An entity that does not have a Commission-approved LTIP when filing its LSLR Program petition shall include a LSLR PlanProgram meeting the requirements of 52 Pa. Code § 121.3 (relating to LTIP).

§ 65.55. LSLR Program requirements.

A LSLR Program must comply with the following:

(a) A Class A public utility or authority shall file a LSLR Program within one year of the effective date of this Section. A Class B public utility, Class C public utility, or municipal corporation shall file a LSLR Program within two years of the effective date of this Section.

(b) An entity's LSLR Program must include:

~~(1) — A LSLR Plan as described in 52 Pa. Code § 65.56.~~

~~(2) (1)~~ A pro forma tariff or tariff supplement containing the proposed changes necessary to implement the entity's LSLR Program as described in 52 Pa. Code § 65.58.

~~(3) (2)~~ Information required by the Commission for filings under 66 Pa. C.S. § 1308 (relating to voluntary changes in rates), including statements required by 52 Pa. Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies).

(c) A final Commission Order approving an entity's LSLR Program ~~will~~may direct the entity to make any necessary revisions to the pro forma tariff or tariff supplement and resubmit the tariff or tariff supplement pursuant to 66 Pa. C.S. § 1308 (relating to voluntary changes in rates).

(d) Service Line Inventory.

(1) A Class A public utility ~~or~~, authority ~~,~~ or municipal corporation shall complete a Service Line Inventory of its water distribution system within 60 months of the filing date of the ~~public utility or authority's~~entity's LSLR Program.

(2) A Class B public utility or Class C public utility shall complete a Service Line Inventory of its water distribution system within 36 months of the filing date of the public utility's LSLR Program.

~~(2) — A municipal corporation providing water service beyond its corporate limits shall complete a Service Line Inventory beyond its corporate limits within 60 months of the filing date of the municipal corporation's LSLR Program.~~

(3) An entity completing an acquisition of a water distribution system shall complete a Service Line Inventory of the acquired system within 36 months of the date of the acquisition.

(4) An entity's Service Line Inventory must:

- (i) Identify the material type of all entity-owned and customer-owned service lines within and connected to the ~~entity's~~water distribution system.
 - (ii) Be grouped by material type and diameter.
 - (iii) Detail any known or discovered lead components.
 - (iv) Include the entity's projection of the annual number of service lines to be inventoried and the means by which the entity will identify material types. An entity may utilize several methods to properly identify material types.
- (5) Until ~~inventorying~~the inventory is complete, an entity shall provide detailed information regarding the progress of its Service Line Inventory as part of its annual LSLR Program Report under 52 Pa. Code § 65.~~59~~58.
- (6) After an entity's Service Line Inventory is complete, it must be incorporated into the entity's next LSLR ~~Plan~~Program update pursuant to 52 Pa. Code § 65.~~57~~56.
- (~~b~~f) *Planning and replacements.* The Planning and Replacements section of an entity's LSLR ~~Plan~~Program must include:
- (1) The entity's projected annual investment in LSLRs with an explanation of the entity's anticipated sources of financing.
 - (2) The entity's projected number of LSLRs per calendar year with an explanation of how the entity's projection was determined, and a statement that this number is consistent with the entity's annual cap on LSLRs.
 - (3) The prioritization criteria considered by the entity when developing its LSLR schedule.
 - (4) An explanation of the entity's processes and procedures to address emergency repairs or replacements which reveal LSLs.
 - (5) The entity's ~~processes and procedures~~plan to ~~obtain~~address situations where the entity's water customer of record is not the property owner or otherwise lacks the legal authority to agree to a LSLR.

- (6) The entity's processes and procedures to obtain property owner and/or customer acceptance of a LSLR prior to commencement of a LSLR Project.
- (67) The entity's processes and procedures based upon a property owner and/or customer's acceptance of a LSLR, including:
- (i) A consent agreement form by which the property owner and/or customer will authorize the completion of the LSLR.
 - (ii) A brief description of the entity's process for LSLRs under normal conditions and under atypical conditions.
 - (iii) An explanation of the entity's process for coordination with the property owner and/or customer and the information the entity will provide to the property owner and/or customer throughout the LSLR process.
 - (iv) The entity's process for addressing LSLR completion and/or closeout with ~~customers~~ the property owner and/or customer.
- (78) The entity's lead/material recycling and disposal efforts, including a description of what the entity will do with proceeds from recycling and disposal efforts.
- (89) The industry-accepted practices that the entity plans to utilize to replace entity-owned and customer-owned LSLs.
- (910) A detailed explanation of how the entity's acquisition of water distribution systems will be integrated into the entity's efforts to complete LSLRs throughout its water distribution system; and
- (1011) The procedure for documenting a property owner's and/or customer's refusal of, or failure to accept, the offer by the entity to replace a LSL, including the entity's duty to:
- (i) Provide ~~to~~ the property owner and/or customer with a complete disclosure of the known health hazards from the continued use of a LSL.
 - (ii) Inform the property owner and/or customer that refusal or failure to accept will require the property owner and/or customer to replace the customer-owned LSL, at the property owner's and/or customer's expense, within one year of commencement of an entity's LSLR

Project within a LSLR Project Area in order to be eligible for reimbursement.

(iii) Communicate to the ~~property owner and/or~~ customer that failure to allow the entity to complete the LSLR or to replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL ~~will~~may lead to termination of water service pursuant to the provisions of the entity's tariff.

(eg) Communications, outreach, and education. An entity's LSLR ~~Plan~~Program must outline the entity's communication, outreach, and education steps to educate ~~property owners and~~ customers about the harmful effects of lead and the entity's plan to address LSLRs.

(1) An entity's LSLR ~~Plan~~Program must describe, at a minimum, how the entity will:

(i) Prioritize LSLR efforts to target sensitive populations as defined by the Environmental Protection Agency or Pennsylvania Department of Environmental Protection, areas with elevated levels of lead in tap water, areas with high concentrations of LSLs and areas of the entity's distribution system which have elevated corrosion rates.

(ii) Establish, and/or participate in, voluntary lead advisory committees, either individually or on an industry-wide basis.

(iii) Coordinate LSLR Program efforts with state, county and local governments and agencies, community organizations and public works departments.

(iv) Ensure that relevant information will be provided to all ~~property owners, bill-paying customers, and other~~ persons that receive drinking water from the entity, in plain language that can be understood by the general public, including:

(A) An explanation of the health effects of lead ~~in accordance with~~using the language established by the U.S. Environmental Protection Agency under 40 CFR 141.85(a)(1)(ii) (relating to health effects of lead).

(B) A notice explaining sources of lead, ~~following~~using the language established by the U.S. Environmental Protection Agency under 40 CFR 141.85(a)(1)(iii) (relating to sources of lead).

- (C) A description of steps the consumer may take to reduce lead exposure, ~~following~~using the language established by the U.S. Environmental Protection Agency under 40 CFR 141.85(a)(1)(iv) (relating to reducing lead exposure).
- (v) Provide ~~property owners and/or~~ customers with copies of as-built drawings or similar depictions that indicate the location of the LSLR on the property between the ~~customer's structure~~water main and the ~~curb stop~~end of the service line. An entity shall make a good faith effort to provide customers with relevant documents associated with the LSLR.
- (2) The entity's LSLR ~~Plan~~Program must include copies of all printed, ~~electronic~~, and broadcast material to be distributed under the entity's LSLR Program.
- (3) A Class A public utility or an authority shall develop a LSLR section of the public utility or authority's website within 12 months of Commission approval of its LSLR Program. The website must contain, at a minimum:
- (i) An online tool describing the replacement schedule by geographic location, at least six months into the future.
 - (ii) Information regarding the reimbursement requirements and a secure online tool that provides customers the ability to determine whether they may be eligible for a reimbursement.
 - (iii) ~~A secure~~An online map that provides customers the ability to determine whether records reflect that the property has a LSL, delineating the known or reasonably anticipated material types for the utility-owned and customer-owned portions of the service line.
 - (iv) Information and resources relating to health risks associated with lead and LSLs, the status of current efforts to replace LSLs, community meeting, and advisory committees.

§ 65.5756. Periodic review of LSLR ~~Plan~~Program.

After initial Commission-approval of an entity's LSLR Plan, the entity shall update the LSLR ~~Plan~~Program for Commission review at least once every five years. The Commission will, to the extent possible, coordinate the review of the updated LSLR ~~Plan~~Program with the periodic review of an entity's LTIP pursuant to 52 Pa. Code § 121.7 (relating to periodic review of an LTIP). ~~This periodic review does not preclude~~

the Commission and the parties from reviewing the LSLR Program as part of a base rate proceeding under 66 Pa. C.S. § 1308.

(a) The Commission's review will determine:

(1) If the entity has adhered to its LSLR ~~Plan~~ Program; and

(2) If changes to the entity's LSLR ~~Plan~~ Program are necessary to maintain and improve the efficiency, safety, adequacy, and reliability of its LSLR Program; and.

~~(3) If the updated LSLR Plan is consistent with the parameters of the entity's LSLR Program.~~

(b) The update to the LSLR Program may be filed:

(1) As part of a base rate case filing under 66 Pa. C.S. § 1308;

(2) As an LTIP modification. Service must be made consistent with 52 Pa. Code § 121.4(a) (relating to Filing and Commission review procedures); or

(3) As a separate filing if the entity does not have an LTIP. Service of the updated LSLR ~~Plan~~ Program must be made consistent with the requirements of 52 Pa. Code § 65.54(a). The Commission will issue a Secretarial Letter establishing a schedule for the submission of comments and reply comments to aid in its periodic review.

(c) If the Commission determines that the entity's approved LSLR ~~Plan~~ Program is no longer sufficient to ensure and maintain efficient, safe, adequate, reliable, and reasonable service, the Commission will direct the entity to revise, update, or resubmit its LSLR ~~Plan~~ Program as appropriate.

§ 65.5857. Pro forma tariff or tariff supplement requirements.

An entity's pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity's LSLR Program must address, at a minimum:

(a) LSLR Program annual cap.

(1) An entity's pro forma tariff or tariff supplement must include a cap- on the maximum number of customer-owned LSLs that can be replaced annually.

(b) Service line demarcation.

- (1) An entity's *pro forma* tariff or tariff supplement must include a definition for customer-owned lead service line consistent with 52 Pa. Code § 65.52.
 - (2) An entity may specify in its tariff or tariff supplement that, if a shutoff valve is not located along a specific length of pipe within a structure, the entity may install a shutoff valve to serve as a point of demarcation between the property's service line and the property's interior water distribution piping.
 - (3) An entity shall use the LSLR process to perfect the entity's ownership of the portion of the service line located within the then-existing right-of-way to ensure that the entity can obtain necessary permits.
- (c) *Partial LSLRs.* An entity shall specify as follows in its *pro forma* tariff or tariff supplement:
- (1) Neither a property owner nor a ~~bill-paying~~ customer may install a partial LSLR. A partial LSLR ~~must~~may result in termination of service until such time as the entity can replace the entity-owned LSL pursuant to subsection 65.62.
 - (2) Where a customer elects to replace the customer-owned LSL, the customer shall replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL, subject to the following:

 - (i) For a Class A public utility or an authority, the customer shall provide the public utility or authority at least 90 days' notice prior to replacing the customer-owned LSL.
 - (ii) For a Class B or Class C public utility or a municipal corporation, the customer shall provide the public utility or municipal corporation at least 180 days' notice prior to replacing the customer-owned LSLs.
 - (3) Applicants for water service at a property where a customer previously refused, or failed to accept, an entity's offer of a LSLR may not be permitted to connect to the entity-owned service line until the applicant verifies the replacement of the customer-owned LSL by providing a paid invoice from a contractor ~~licensed to perform LSLR work in the Commonwealth where applicable~~, or a verified statement from the contractor attesting to completion of the LSLR.

(d) *Reimbursements.* An entity shall provide a reimbursement to an eligible [property owner and/or](#) customer who replaced their LSL within one year ~~of~~ [prior to or after](#) commencement of an entity's LSLR Project within a LSLR Project Area.

(1) An entity's *pro forma* tariff or tariff supplement must include language explaining its reimbursement terms and conditions which shall contain, at a minimum:

(i) An explanation of the entity's method for determining the amount of reimbursement, including any restrictions on reimbursements.

(ii) An explanation of the entity's reimbursement methods, including the forms of payment to be used by the entity to distribute reimbursements and the length of time by which the utility will issue a reimbursement for an eligible reimbursement request.

(iii) An explanation of the entity's method for determining [property owner and/or](#) customer eligibility, providing that:

(A) ~~Customers~~[Properties](#) located within a LSLR Project Area are eligible for a reimbursement of LSLR expenses up to 125% of the average cost the entity would have incurred to perform the replacement of a similarly-sized service line, not to exceed the [property owner's and/or](#) customer's actual cost.

(B) ~~Customers~~[Property owners and/or customers](#) shall submit to the entity, a detailed estimate and paid invoice from a contractor ~~licensed to perform LSLR work in the Commonwealth where applicable,~~ verifying the replacement of the customer-owned LSL. In lieu of a detailed estimate, a verified statement from the contractor attesting to completion of a LSLR ~~may be~~ [is](#) sufficient.

(2) If the value of reimbursements would cause the entity to exceed its annual budgeted cap on the number of LSLRs, the entity's annual budgeted cap for LSLRs for the following year must be reduced by this amount.

(3) An entity shall make reasonable best efforts to assist [property owners and/or](#) customers through the reimbursement process and, to the extent possible, make determinations in favor of the [property owner and/or](#) customer where the [property owner and/or](#) customer has provided reasonable evidence of a LSLR to the entity.

- (e) Warranty. An entity's *pro forma* tariff or tariff supplement ~~must~~shall provide a warranty on LSLR work performed of a term of not less than two years. The entity's warranty provisions ~~must~~shall:
- (1) Define the start date of the two-year term.
 - (2) Ensure that the materials and workmanship of the replacement and restoration of surfaces are covered.
 - (3) Define the maximum coverage amounts under the warranty.
 - (4) Explain any liability an entity will have for damages not covered by the warranty.
 - (5) Ensure entity access to the property to correct any deficiencies.

§ 65.5958. LSLR Program Reports.

- (a) An entity with an approved LSLR Program shall file with the Commission a LSLR Program Report by March 1 of each year, in both print and electronic formats, including supporting spreadsheets. If an entity is implementing its LSLR ~~Plan~~Program as part of a Commission-approved LTIP, the entity shall include a LSLR Program Report as part of the entity's AAO Plan under 52 Pa. Code § 121.6~~(b)(3)~~ (relating to AAO Plan filings).
- (b) An entity's LSLR Program Report must identify the preceding year's activities, including:
- (1) The number of LSLs replaced in the preceding year by county~~;~~, or by municipality if service territory is within a county.
 - (2) The length of LSLs removed, by pipe diameter, in each county~~;~~, or by municipality if service territory is within a county.
 - (3) The length, pipe diameters, and material types of LSLRs by county~~;~~, or by municipality if service territory is within a county.
 - (4) The actual cost of each LSLR by county~~;~~, or by municipality if service territory is within a county.
 - (5) The average cost of a LSLR by county~~;~~, or by municipality if service territory is within a county.

- (6) The total annual LSLR expenditures for the calendar year by customer class.
- (7) The total projected LSLR expenditures for the following calendar year.
- (8) The entity's outreach and coordination activities with other utilities, the Pennsylvania Department of Transportation, local governments, and customers.
- (9) The number and geographic location of LSLR customer refusals for the calendar year [and reasons for refusal](#).
- (10) Applicable lead monitoring requirements established by the Pennsylvania Department of Environmental Protection for each of the entity's water distribution systems.
- (11) The entity's compliance with the regulatory requirements established by the [U.S. Environmental Protection Agency](#) and the Pennsylvania Department of Environmental Protection, including a description of any violations thereof associated with lead.
- (12) The current status of the entity's Service Line Inventory efforts, including the known material types and pipe diameters of customer service lines.
- (13) The entity's efforts to obtain grants, low interest loans and donations for LSLRs.

§ 65.6059. Accounting and financial.

- (a) An entity shall record LSLR costs in compliance with the National Association of Regulatory Utility Commissioners uniform system of accounts applicable to the entity as intangible assets. [This shall include establishing a subaccount to separately identify LSLR costs.](#)
- (b) An entity may defer:
 - (1) Income taxes related to no cost and low-cost sources of funding for LSLRs, including applicable income taxes on contributions-in-aid-of-construction and/or below-market rate loans, for accounting purposes to the extent that such costs are not recovered through the entity's existing base rates or DSIC. Prudent and reasonable deferred income taxes must be amortized over a reasonable period of time ~~with a return on the entity's investment.~~

- (2) Service line inventory, LSLR program development, LSLR ~~Plan~~Program, LSLR Program Report, and reimbursement expenses for accounting purposes to the extent that such costs are not recovered through the entity's existing base rates. Prudent and reasonable deferred expenses must be amortized over a reasonable period of time without a return on the entity's investment, ~~unless the Commission, pursuant to 66 Pa. C.S. § 523 (relating to performance factor consideration), finds that providing a return on the entity's investment is warranted based on sufficient supporting data submitted by the entity in its rate case filing.~~

§ 65.6160. Preexisting LSLR activities.

An entity that received prior Commission approval to perform LSLR activities shall submit for Commission approval a LSLR Program that, at a minimum, conforms with the requirements of this subchapter and takes effect no later than the effective date of the rates established under the entity's next base rate case following the effective date of this Section, or within two years of the effective date of this Section, whichever comes first.

§ 65.6261. Prohibition on partial LSLRs.

The following provisions must apply after the effective date of this Section:

- (a) Where a ~~property owner and/or~~ customer elects to replace a customer-owned LSL, an entity shall replace the connected entity-owned LSL concurrent with the ~~customer's~~ replacement of the customer-owned LSL, subject to the following:
- (1) A Class A public utility or authority shall replace the entity-owned LSL within 90 days of the date of the customer's request or on the LSLR date specified by the customer, whichever is later.
- (2) A Class B or Class C public utility or a municipal corporation shall replace the entity-owned LSL within 180 days of the date of the customer's request or on the LSLR date specified by the customer, whichever is later.
- (b) An entity may not install, or cause to be installed, a partial LSLR and may not furnish water service using a partial LSLR that is installed by a ~~property owner and/or~~ customer after the effective date of this Section, ~~unless an emergency waiver is granted.~~
- (c) If a ~~property owner and/or~~ customer refuses, or fails to accept, an entity's offer to replace a customer-owned LSL, the entity shall replace the entity-owned portion of the LSL in accordance with the entity's LSLR ~~Plan~~Program and ~~may~~ terminate service in accordance with the entity's tariff.

- (d) Where an entity has reasonable evidence indicating that a customer is being served by a partial LSLR installed by the customer after the effective date of this Section, the entity shallmay terminate service to the customer in accordance with the entity's tariff.
- (e) An entity shall install, or cause to be installed, entity-owned and customer-owned LSLRs even where an entity is under a Pennsylvania Department of Environmental Protection directive to replace LSLs due to a water system's action level exceedance of 0.015 mg/L as defined in 25 Pa. Code § 109.1103 (relating to monitoring requirements).

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
SUBPART C. FIXED SERVICE UTILITIES
CHAPTER 65. WATER SERVICE
SUBCHAPTER A. SERVICE GENERALLY

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SUBCHAPTER B. LEAD SERVICE LINE REPLACEMENTS

§ 65.51. Purpose.

The purpose of this subchapter is to implement 66 Pa.C.S. § 1311(b) governing the standard under which jurisdictional water utilities may seek to replace LSLs and recover associated costs. This subchapter establishes the time, manner, form, and content of filings for Commission approval of LSLRs. This subchapter also sets forth the minimum requirements for LSLRs.

§ 65.52. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

AAO plan—Annual asset optimization plan—The term as defined in 52 Pa. Code § 121.2 (relating to definitions).

Authority – An authority as defined in 66 Pa. C.S. § 3201 (relating to definitions).

Customer-owned lead service line – A customer’s service line (as defined in § 65.1 (relating to definitions)) made of lead or containing lead solder, including a lead pigtail, gooseneck, or other fitting connected to the service.

Entity – A public utility as defined in § 65.1 (relating to definitions), a municipal corporation or an authority.

LSL – Lead service line – A service line made of lead or containing lead solder, including a lead pigtail, gooseneck or other fitting that is connected to the service line.

DSIC – Distribution system improvement charge – The term as defined in 52 Pa. Code § 121.2 (relating to definitions).

LSLR – Lead service line replacement – A service line, whether entity-owned or customer-owned, installed to replace a lead service line.

LSLR Program – Lead service line replacement program – A program and supporting documents submitted to and approved by the Commission for the replacement of lead service lines by an entity.

LSLR Program Report – Lead service line replacement program report – An annual report, including a plan and supporting documents, providing information for lead service line replacements completed by an entity under its lead service line replacement program.

LSLR Project – Lead service line replacement project – An entity-scheduled lead service line replacement activity either in conjunction with main replacements or as part of a lead service line replacement program.

LSLR Project Area – Lead service line project area – The area served by an entity located within a certain distance of a lead service line replacement project.

LTIP – Long-term infrastructure improvement plan – The term as defined in 52 Pa. Code § 121.2 (relating to definitions).

Municipal corporation – A municipal corporation, except an authority, that provides water service to or for the public for compensation beyond its corporate limits.

Partial LSLR - Partial lead service line replacement – A lead service line replacement that does not replace both the entity-owned and customer-owned portions of a lead service line.

Service line – The Company’s service line and the customer’s service line, as those terms are defined in § 65.1 (relating to definition).

Service Line Inventory – The process of identifying each service line’s material, composition, diameter, and location.

Water distribution system – The service area of an entity in which the entity provides water service to or for the public for compensation subject to regulation by the Commission.

§ 65.53. Time to replace LSLs.

- (a) A Class A public utility or authority shall remove and replace all LSLs, whether entity-owned or customer-owned, within or connected to its water distribution systems within 25 years from the effective date of this Section.

- (b) A Class B public utility, Class C public utility, or municipal corporation shall remove and replace all LSLs, whether entity-owned or customer-owned, within or connected to its water distribution systems, within 30 years from the effective date of this Section.

§ 65.54. Petitioning the Commission for a LSLR Program.

- (a) An entity shall file a LSLR Program petition in accordance with 52 Pa. Code § 65.55(a) with the Commission's Secretary's Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and the parties of record in the entity's most recent base rate case. Service is evidenced by a certificate of service filed with the LSLR Program petition.
- (b) An entity that has a Commission-approved LTIP shall include with its LSLR Program petition a modified LTIP containing a LSLR Program as a separate and distinct component of the entity's LTIP. Such modification shall constitute a major modification as defined in 52 Pa. Code § 121.5.
- (c) An entity that does not have a Commission-approved LTIP when filing its LSLR Program petition shall include a LSLR Program meeting the requirements of 52 Pa. Code § 121.3 (relating to LTIP).

§ 65.55. LSLR Program requirements.

A LSLR Program must comply with the following:

- (a) A Class A public utility or authority shall file a LSLR Program within one year of the effective date of this Section. A Class B public utility, Class C public utility, or municipal corporation shall file a LSLR Program within two years of the effective date of this Section.
- (b) An entity's LSLR Program must include:
- (1) A *pro forma* tariff or tariff supplement containing the proposed changes necessary to implement the entity's LSLR Program as described in 52 Pa. Code § 65.58.
 - (2) Information required by the Commission for filings under 66 Pa. C.S. § 1308 (relating to voluntary changes in rates), including statements required by 52 Pa. Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies).

(c) A final Commission Order approving an entity's LSLR Program may direct the entity to make any necessary revisions to the *pro forma* tariff or tariff supplement and resubmit the tariff or tariff supplement pursuant to 66 Pa. C.S. § 1308 (relating to voluntary changes in rates).

(d) *Service Line Inventory.*

(1) A Class A public utility, authority, or municipal corporation shall complete a Service Line Inventory of its water distribution system within 60 months of the filing date of the entity's LSLR Program.

(2) A Class B public utility or Class C public utility shall complete a Service Line Inventory of its water distribution system within 36 months of the filing date of the public utility's LSLR Program.

(3) An entity completing an acquisition of a water distribution system shall complete a Service Line Inventory of the acquired system within 36 months of the date of the acquisition.

(4) An entity's Service Line Inventory must:

(i) Identify the material type of all entity-owned and customer-owned service lines within and connected to the water distribution system.

(ii) Be grouped by material type and diameter.

(iii) Detail any known or discovered lead components.

(iv) Include the entity's projection of the annual number of service lines to be inventoried and the means by which the entity will identify material types. An entity may utilize several methods to properly identify material types.

(5) Until the inventory is complete, an entity shall provide detailed information regarding the progress of its Service Line Inventory as part of its annual LSLR Program Report under 52 Pa. Code § 65.58.

(6) After an entity's Service Line Inventory is complete, it must be incorporated into the entity's next LSLR Program update pursuant to 52 Pa. Code § 65.56.

(f) *Planning and replacements.* The Planning and Replacements section of an entity's LSLR Program must include:

- (1) The entity's projected annual investment in LSLRs with an explanation of the entity's anticipated sources of financing.
- (2) The entity's projected number of LSLRs per calendar year with an explanation of how the entity's projection was determined, and a statement that this number is consistent with the entity's annual cap on LSLRs.
- (3) The prioritization criteria considered by the entity when developing its LSLR schedule.
- (4) An explanation of the entity's processes and procedures to address emergency repairs or replacements which reveal LSLs.
- (5) The entity's plan to address situations where the entity's water customer of record is not the property owner or otherwise lacks the legal authority to agree to a LSLR.
- (6) The entity's processes and procedures to obtain property owner and/or customer acceptance of a LSLR prior to commencement of a LSLR Project.
- (7) The entity's processes and procedures based upon a property owner and/or customer's acceptance of a LSLR, including:
 - (i) A consent agreement form by which the property owner and/or customer will authorize the completion of the LSLR.
 - (ii) A brief description of the entity's process for LSLRs under normal conditions and under atypical conditions.
 - (iii) An explanation of the entity's process for coordination with the property owner and/or customer and the information the entity will provide to the property owner and/or customer throughout the LSLR process.
 - (iv) The entity's process for addressing LSLR completion and/or closeout with the property owner and/or customer.
- (8) The entity's lead/material recycling and disposal efforts, including a description of what the entity will do with proceeds from recycling and disposal efforts.

- (9) The industry-accepted practices that the entity plans to utilize to replace entity-owned and customer-owned LSLs.
- (10) A detailed explanation of how the entity's acquisition of water distribution systems will be integrated into the entity's efforts to complete LSLRs throughout its water distribution system; and
- (11) The procedure for documenting a property owner's and/or customer's refusal of, or failure to accept, the offer by the entity to replace a LSL, including the entity's duty to:

 - (i) Provide the property owner and/or customer with a complete disclosure of the known health hazards from the continued use of a LSL.
 - (ii) Inform the property owner and/or customer that refusal or failure to accept will require the property owner and/or customer to replace the customer-owned LSL, at the property owner's and/or customer's expense, within one year of commencement of an entity's LSLR Project within a LSLR Project Area in order to be eligible for reimbursement.
 - (iii) Communicate to the property owner and/or customer that failure to allow the entity to complete the LSLR or to replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL may lead to termination of water service pursuant to the provisions of the entity's tariff.
- (g) *Communications, outreach, and education.* An entity's LSLR Program must outline the entity's communication, outreach, and education steps to educate property owners and customers about the harmful effects of lead and the entity's plan to address LSLRs.
- (1) An entity's LSLR Program must describe, at a minimum, how the entity will:

 - (i) Prioritize LSLR efforts to target sensitive populations as defined by the Environmental Protection Agency or Pennsylvania Department of Environmental Protection, areas with elevated levels of lead in tap water, areas with high concentrations of LSLs and areas of the entity's distribution system which have elevated corrosion rates.

- (ii) Establish, and/or participate in, voluntary lead advisory committees, either individually or on an industry-wide basis.
- (iii) Coordinate LSLR Program efforts with state, county and local governments and agencies, community organizations and public works departments.
- (iv) Ensure that relevant information will be provided to all property owners, bill-paying customers, and other persons that receive drinking water from the entity, in plain language that can be understood by the general public, including:

 - (A) An explanation of the health effects of lead using the language established by the U.S. Environmental Protection Agency under 40 CFR 141.85(a)(1)(ii) (relating to health effects of lead).
 - (B) A notice explaining sources of lead, using the language established by the U.S. Environmental Protection Agency under 40 CFR 141.85(a)(1)(iii) (relating to sources of lead).
 - (C) A description of steps the consumer may take to reduce lead exposure, using the language established by the U.S. Environmental Protection Agency under 40 CFR 141.85(a)(1)(iv) (relating to reducing lead exposure).
- (v) Provide property owners and/or customers with copies of as-built drawings or similar depictions that indicate the location of the LSLR on the property between the water main and the end of the service line. An entity shall make a good faith effort to provide customers with relevant documents associated with the LSLR.
- (2) The entity's LSLR Program must include copies of all printed, electronic, and broadcast material to be distributed under the entity's LSLR Program.
- (3) A Class A public utility or an authority shall develop a LSLR section of the public utility or authority's website within 12 months of Commission approval of its LSLR Program. The website must contain, at a minimum:

 - (i) An online tool describing the replacement schedule by geographic location, at least six months into the future.

- (ii) Information regarding the reimbursement requirements and a secure online tool that provides customers the ability to determine whether they may be eligible for a reimbursement.
- (iii) An online map that provides customers the ability to determine whether records reflect that the property has a LSL, delineating the known or reasonably anticipated material types for the utility-owned and customer-owned portions of the service line.
- (iv) Information and resources relating to health risks associated with lead and LSLs, the status of current efforts to replace LSLs, community meeting, and advisory committees.

§ 65.56. Periodic review of LSLR Program.

After initial Commission-approval of an entity's LSLR Plan, the entity shall update the LSLR Program for Commission review at least once every five years. The Commission will, to the extent possible, coordinate the review of the updated LSLR Program with the periodic review of an entity's LTIP pursuant to 52 Pa. Code § 121.7 (relating to periodic review of an LTIP). This periodic review does not preclude the Commission and the parties from reviewing the LSLR Program as part of a base rate proceeding under 66 Pa. C.S. § 1308.

(a) The Commission's review will determine:

- (1) If the entity has adhered to its LSLR Program; and
- (2) If changes to the entity's LSLR Program are necessary to maintain and improve the efficiency, safety, adequacy, and reliability of its LSLR Program.

(b) The update to the LSLR Program may be filed:

- (1) As part of a base rate case filing under 66 Pa. C.S. § 1308;
- (2) As an LTIP modification. Service must be made consistent with 52 Pa. Code § 121.4(a) (relating to Filing and Commission review procedures); or
- (3) As a separate filing if the entity does not have an LTIP. Service of the updated LSLR Program must be made consistent with the requirements of 52 Pa. Code § 65.54(a). The Commission will issue a Secretarial Letter

establishing a schedule for the submission of comments and reply comments to aid in its periodic review.

- (c) If the Commission determines that the entity's approved LSLR Program is no longer sufficient to ensure and maintain efficient, safe, adequate, reliable, and reasonable service, the Commission will direct the entity to revise, update, or resubmit its LSLR Program as appropriate.

§ 65.57. Pro forma tariff or tariff supplement requirements.

An entity's pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity's LSLR Program must address, at a minimum:

- (a) LSLR Program annual cap.

(1) An entity's pro forma tariff or tariff supplement must include a cap on the maximum number of customer-owned LSLs that can be replaced annually.

- (b) Service line demarcation.

(1) An entity's pro forma tariff or tariff supplement must include a definition for customer-owned lead service line consistent with 52 Pa. Code § 65.52.

(2) An entity may specify in its tariff or tariff supplement that, if a shutoff valve is not located along a specific length of pipe within a structure, the entity may install a shutoff valve to serve as a point of demarcation between the property's service line and the property's interior water distribution piping.

(3) An entity shall use the LSLR process to perfect the entity's ownership of the portion of the service line located within the then-existing right-of-way to ensure that the entity can obtain necessary permits.

- (c) Partial LSLRs. An entity shall specify as follows in its pro forma tariff or tariff supplement:

(1) Neither a property owner nor a customer may install a partial LSLR. A partial LSLR may result in termination of service until such time as the entity can replace the entity-owned LSL pursuant to subsection 65.62.

(2) Where a customer elects to replace the customer-owned LSL, the customer shall replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL, subject to the following:

- (i) For a Class A public utility or an authority, the customer shall provide the public utility or authority at least 90 days' notice prior to replacing the customer-owned LSL.
- (ii) For a Class B or Class C public utility or a municipal corporation, the customer shall provide the public utility or municipal corporation at least 180 days' notice prior to replacing the customer-owned LSLs.
- (3) Applicants for water service at a property where a customer previously refused, or failed to accept, an entity's offer of a LSLR may not be permitted to connect to the entity-owned service line until the applicant verifies the replacement of the customer-owned LSL by providing a paid invoice from a contractor, or a verified statement from the contractor attesting to completion of the LSLR.
- (d) *Reimbursements.* An entity shall provide a reimbursement to an eligible property owner and/or customer who replaced their LSL within one year prior to or after commencement of an entity's LSLR Project within a LSLR Project Area.

 - (1) An entity's *pro forma* tariff or tariff supplement must include language explaining its reimbursement terms and conditions which shall contain, at a minimum:

 - (i) An explanation of the entity's method for determining the amount of reimbursement, including any restrictions on reimbursements.
 - (ii) An explanation of the entity's reimbursement methods, including the forms of payment to be used by the entity to distribute reimbursements and the length of time by which the utility will issue a reimbursement for an eligible reimbursement request.
 - (iii) An explanation of the entity's method for determining property owner and/or customer eligibility, providing that:

 - (A) Properties located within a LSLR Project Area are eligible for a reimbursement of LSLR expenses up to 125% of the average cost the entity would have incurred to perform the replacement of a similarly-sized service line, not to exceed the property owner's and/or customer's actual cost.

- (B) Property owners and/or customers shall submit to the entity, a detailed estimate and paid invoice from a contractor, verifying the replacement of the customer-owned LSL. In lieu of a detailed estimate, a verified statement from the contractor attesting to completion of a LSLR is sufficient.
- (2) If the value of reimbursements would cause the entity to exceed its annual budgeted cap on the number of LSLRs, the entity's annual budgeted cap for LSLRs for the following year must be reduced by this amount.
- (3) An entity shall make reasonable best efforts to assist property owners and/or customers through the reimbursement process and, to the extent possible, make determinations in favor of the property owner and/or customer where the property owner and/or customer has provided reasonable evidence of a LSLR to the entity.
- (e) Warranty. An entity's pro forma tariff or tariff supplement shall provide a warranty on LSLR work performed of a term of not less than two years. The entity's warranty provisions shall:

 - (1) Define the start date of the two-year term.
 - (2) Ensure that the materials and workmanship of the replacement and restoration of surfaces are covered.
 - (3) Define the maximum coverage amounts under the warranty.
 - (4) Explain any liability an entity will have for damages not covered by the warranty.
 - (5) Ensure entity access to the property to correct any deficiencies.

§ 65.58. LSLR Program Reports.

- (a) An entity with an approved LSLR Program shall file with the Commission a LSLR Program Report by March 1 of each year, in both print and electronic formats, including supporting spreadsheets. If an entity is implementing its LSLR Program as part of a Commission-approved LTIIP, the entity shall include a LSLR Program Report as part of the entity's AAO Plan under 52 Pa. Code § 121.6 (relating to AAO Plan filings).
- (b) An entity's LSLR Program Report must identify the preceding year's activities, including:

- (1) The number of LSLs replaced in the preceding year by county, or by municipality if service territory is within a county.
- (2) The length of LSLs removed, by pipe diameter, in each county, or by municipality if service territory is within a county.
- (3) The length, pipe diameters, and material types of LSLRs by county, or by municipality if service territory is within a county.
- (4) The actual cost of each LSLR by county, or by municipality if service territory is within a county.
- (5) The average cost of a LSLR by county, or by municipality if service territory is within a county.
- (6) The total annual LSLR expenditures for the calendar year by customer class.
- (7) The total projected LSLR expenditures for the following calendar year.
- (8) The entity's outreach and coordination activities with other utilities, the Pennsylvania Department of Transportation, local governments, and customers.
- (9) The number and geographic location of LSLR customer refusals for the calendar year and reasons for refusal.
- (10) Applicable lead monitoring requirements established by the Pennsylvania Department of Environmental Protection for each of the entity's water distribution systems.
- (11) The entity's compliance with the regulatory requirements established by the U.S. Environmental Protection Agency and the Pennsylvania Department of Environmental Protection, including a description of any violations thereof associated with lead.
- (12) The current status of the entity's Service Line Inventory efforts, including the known material types and pipe diameters of customer service lines.
- (13) The entity's efforts to obtain grants, low interest loans and donations for LSLRs.

§ 65.59. Accounting and financial.

- (a) An entity shall record LSLR costs in compliance with the National Association of Regulatory Utility Commissioners uniform system of accounts applicable to the entity as intangible assets. This shall include establishing a subaccount to separately identify LSLR costs.
- (b) An entity may defer:
- (1) Income taxes related to no cost and low-cost sources of funding for LSLRs, including applicable income taxes on contributions-in-aid-of-construction and/or below-market rate loans, for accounting purposes to the extent that such costs are not recovered through the entity's existing base rates or DSIC. Prudent and reasonable deferred income taxes must be amortized over a reasonable period of time.
 - (2) Service line inventory, LSLR program development, LSLR Program, LSLR Program Report, and reimbursement expenses for accounting purposes to the extent that such costs are not recovered through the entity's existing base rates. Prudent and reasonable deferred expenses must be amortized over a reasonable period of time without a return on the entity's investment.

§ 65.60. Preexisting LSLR activities.

An entity that received prior Commission approval to perform LSLR activities shall submit for Commission approval a LSLR Program that, at a minimum, conforms with the requirements of this subchapter and takes effect no later than the effective date of the rates established under the entity's next base rate case following the effective date of this Section, or within two years of the effective date of this Section, whichever comes first.

§ 65.61. Prohibition on partial LSLRs.

The following provisions must apply after the effective date of this Section:

- (a) Where a property owner and/or customer elects to replace a customer-owned LSL, an entity shall replace the connected entity-owned LSL concurrent with the replacement of the customer-owned LSL, subject to the following:
- (1) A Class A public utility or authority shall replace the entity-owned LSL within 90 days of the date of the customer's request or on the LSLR date specified by the customer, whichever is later.

- (2) A Class B or Class C public utility or a municipal corporation shall replace the entity-owned LSL within 180 days of the date of the customer's request or on the LSLR date specified by the customer, whichever is later.
- (b) An entity may not install, or cause to be installed, a partial LSLR and may not furnish water service using a partial LSLR that is installed by a property owner and/or customer after the effective date of this Section, unless an emergency waiver is granted.
- (c) If a property owner and/or customer refuses, or fails to accept, an entity's offer to replace a customer-owned LSL, the entity shall replace the entity-owned portion of the LSL in accordance with the entity's LSLR Program and may terminate service in accordance with the entity's tariff.
- (d) Where an entity has reasonable evidence indicating that a customer is being served by a partial LSLR installed by the customer after the effective date of this Section, the entity may terminate service to the customer in accordance with the entity's tariff.
- (e) An entity shall install, or cause to be installed, entity-owned and customer-owned LSLRs even where an entity is under a Pennsylvania Department of Environmental Protection directive to replace LSLs due to a water system's action level exceedance of 0.015 mg/L as defined in 25 Pa. Code § 109.1103 (relating to monitoring requirements).

Responses to Directed Questions of Commissioner Sweet

1. Does the NOPR adequately carry out the directives in the statute? If not, how should it be changed?

The OCA submits that the proposed regulations do carry out the directives in the statute. As noted in the OCA's Comments, however, there are instances where the approach imposes too many requirements removing the ability for water utilities to create an approach that best suits their service territory. Moreover, the proposed regulations do not adequately address landlord/tenant situations where a bill-paying customer or person receiving service is not the property owner responsible for replacing the service line. Failure to address these situations, combined with the proposed regulations that impose strict termination requirements for partial lead service line replacements, is problematic. Lastly, the OCA is concerned with the Commission's proposal to potentially allow a utility to earn a return on program expenses incurred to implement these regulations pursuant to Section 523 of the Public Utility Code.

Altogether, the OCA's edits to the proposed regulations seeks to remedy these concerns by providing the utilities some discretion to propose a program that best suits their needs. Moreover, the OCA inserted some language to ensure that utilities are clear in how they intend to handle landlord/tenant concerns. The OCA submits that its proposal is a reasonable path forward and should be adopted by the Commission.

2. Should all water utilities be required to develop and file a lead service line replacement plan? If not, under what circumstances should a plan be required?

The OCA submits that that the regulations should be applied to all water utilities. This recognizes the serious public health risks of lead service lines and ensures that the law is equally applied to all water utilities. As with any requirement, the OCA acknowledges that there may be instances where a utility cannot adequately comply with the proposed regulations. Under those circumstances, a water utility may seek a waiver or all or a portion of the proposed regulations, where not required by statute, pursuant to Section 5.43 of the Commission's regulations, to the extent necessary. Such a process will provide interested parties an opportunity to investigate the utility's claims and determine whether an exception should be made.

3. Does this NOPR conflict with Act 44 of 2017 that prevents imposition of obligations upon municipal authorities regarding replacement of LSLs by municipal authorities?

Act 44 of 2017 sets forth permissive activities that a municipal authority may perform with respect to private water and sewer laterals. See 72 P.S. § 1719-E(c). It states that an authority may perform the replacement or remediation of private water laterals and private sewer laterals if the authority determines that the replacement or remediation will benefit the public health, public water supply system, or public sewer system. *Id.* Moreover, once a replacement or remediation is performed, the authority shall not be deemed to be the owner of the facilities and shall not be obligated to perform any other duties unless determined necessary by the authority. *Id.*

This statute is wholly consistent with the requirements set forth by Act 120 of 2018 and by the Commission's proposed regulations. The only municipal authority that currently is subject to the jurisdiction of the Commission is the Pittsburgh Water and Sewer Authority ("PWSA"). 66 Pa. C.S. Ch. 32. The proposed regulations appropriately consider the special status of PWSA, and OCA submits that there does not appear to be a conflict between the provisions of Act 44 and the provisions of Act 120 as they relate to PWSA.

4. Does the requirement that the filed plan include the location of customer refusals adequately protect customer information?

The Commission has noted in the past that customer privacy is of the utmost importance. Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Use, Docket No. M-2009-2092655, Final Order at 10 (Pa. PUC 2016). The OCA certainly agrees with this sentiment.

The OCA notes, however, that there is precedent for providing public access to an online map indicating where lead service lines exist or continue to exist on a water distribution system. For example, PWSA currently hosts an online map that is publicly available which discloses the location of lead services lines. See <https://lead.pgh2o.com/your-water-service-line/planned-water-service-line-replacement-map/>. Disclosure of this information sufficiently informs the public about the status of replacements and is a helpful indicator of overall progress and concerns.

5. Does the NOPR grant the utilities and entities with preexisting LSLR activities the flexibility to continue replacing affected lines under already approved terms?

Yes, so long as the approved plans are consistent with the regulations. There should be flexibility, however, for those utilities with pre-existing LSLR activities to exceed the minimum requirements provided for in the regulations.

6. Does the NOPR adequately provide due process to both utility and customer?

The OCA made several edits to the NOPR that clarifies the due process rights of the OCA and other affected parties. That is, it is imperative that the OCA and others be able to adequately investigate an LSLR Program at the initial time of filing over periodic intervals. To that end, the OCA submits that Commission review of LSLR Programs takes place in all base rate cases and periodic LTIP reviews, and at least every five years. This ensures that these programs continue to be updated and revised as issues arise or inefficiencies occur.

7. Does the NOPR adequately provide information regarding the process to be used when a filed plan is contested?

The process for challenging a contested plan should be fairly straightforward and consistent with the process already set forth in the Commission's regulations. Where a utility files a Petition to implement an LSLR Program, parties will have a right to file an Answer pursuant to Section 5.61 of the Commission's Regulations and raise any issues of material fact or concerns with the Company's proposal. The Commission should then direct any contested plans to the Office of Administrative Law Judge for hearings and the creation of an evidentiary record.

8. Should this NOPR be streamlined, and if so, how?

As the OCA noted in its Comments, the NOPR includes extensive requirements that leave very little discretion to the utility in certain areas. The utilities should retain some discretion so that the Company and affected parties can craft a plan that is specific to the utility's service territory. The OCA also recommends that the process be simplified by eliminating the confusing distinction between an LSLR Program and an LSLR Plan. The Commission should also conduct periodic reviews of the LSLR Program and the approved program should be updated at least every five years. Specific LSLR Projects to implement the approved Program will be reviewed through the existing LTIP process (for utilities with an LTIP) or in base rate cases when costs are proposed to be collected from customers through rates.