

COMMONWEALTH OF PENNSYLVANIA



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July 2, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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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 Reply 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

*312506

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 Reply 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 July 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 :

REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: July 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).

In response to the Notice of Proposed Rulemaking Order published in the Pennsylvania Bulletin, comments were filed by the Office of Consumer Advocate (OCA), Pittsburgh Water and Sewer Authority (PWSA) and Aqua Pennsylvania Inc. (Aqua). Joint Comments were also filed by the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Green and Healthy Homes Initiative (GHHI).

In accordance with the Notice of Proposed Rulemaking Order, the OCA now submits these Reply Comments responding to certain portions of the comments filed by the other parties. Failure to address certain portions should not be considered acceptance of the other parties' positions. The OCA's position remains as stated in its Comments, unless otherwise stated in its Reply Comments.

II. REPLY COMMENTS ON PROPOSED LEAD SERVICE LINE REGULATIONS

The OCA will address the Comments of the other parties on a section by section basis below. As an initial matter, however, the OCA is generally supportive of the concerns raised in

the Comments filed by CAUSE-PA and GHHI. The OCA agrees that there should be a concerted effort to address the public health risks of lead service lines in low-income communities and ensure that regulations adequately deal with landlord-tenant situations.

A. Section 65.52 – Definitions

In its initial Comments, the OCA raised an issue with the definition of customer-owned lead service line, noting that the proposed definition could create some confusion. OCA Comments at 2-4. Similarly, PWSA and Aqua both recommended revising the definition of customer-owned lead service line. More specifically, PWSA recommended that the definition be revised by removing “at the first shutoff valve located within the structure,” and replacing it with “one foot beyond the interior foundation wall of the structure.” PWSA Comments at 5. In contrast, Aqua proposed that the customer-owned lead service line definition be amended to include the “edge of an entity easement or right of way.” Aqua Comments, Att. A at 1.

These comments demonstrate that each utility defines the customer-owned portion of the service line differently. The OCA submits that it may be difficult to craft a definition that encompasses how each utility defines the customer portion of the service line. Accordingly, it may be best to refer to the definition contained in each utility’s tariff rather than defining it through the regulations.

With respect to the definition of lead service line, the OCA supports inclusion of the term, “...or galvanized iron or galvanized steel that is or formerly was downstream of lead...” See PWSA Comments at 6. This is consistent with the Lead and Copper Rule Revisions referenced by PWSA and Aqua.

B. Section 65.53 – Time to replace LSLs

PWSA recommends that the proposed regulations be modified to reflect that utilities should be required to replace only residential customer-owned lead service lines. PWSA

Comments at 8. PWSA comments that utilities should have the option to replace non-residential customer-owned lead service lines and recover the associated costs, rather than being required. *Id.* As support for their position, PWSA states that non-residential customers should have the necessary funds available to replace their portion of the lead service line and as such should be treated differently than residential customers. *Id.*

The OCA submits that the Commission not adopt PWSA's recommendation. Act 120 of 2018 was established to provide a framework for entities to begin to address the public health risks associated with lead service lines expeditiously without regard to customer class or income level. Importantly, Act 120 does not limit its application to any specific customer class or income level. Likewise, the Commission's regulations implementing Act 120 should not limit its scope or application. If PWSA seeks an exception, such exceptions can be dealt with in the entity-specific proceedings seeking to establish an LSLR Program.

C. Section 65.56 – LSLR Plan requirements

In its Comments, PWSA recommends that the Commission require completion of the LSL inventory prior to filing an LSLR Program. PWSA Comments at 10. PWSA states that this will allow utilities to establish realistic objectives based on a better understanding of the Company's distribution system. *Id.* The OCA submits, however, that this recommendation should not be adopted by the Commission. Utilities should be encouraged to begin implementing LSLR Programs expeditiously while at the same time meeting its inventory obligations. Other utilities have, for example, been able to establish LSLR Programs while in the process of completing an inventory of services lines, including PWSA, Aqua, and Pennsylvania-American Water Company (PAWC).

With respect to the timing of the inventory, PWSA appears to support a three-year period for completing an inventory, whereas Aqua supports a five-year period. See PWSA Comments at

10; Aqua Comments at 8. More specifically, Aqua disagrees because a three-year period to complete a LSL inventory for a newly acquired water system is unreasonable. Aqua Comments at 10. The OCA submits that the three-year period recommended by PWSA be adopted by the Commission. This is consistent with the requirements set forth in the Lead and Copper Rule Revisions, which requires a three-year inventory for all water systems. National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions, 84 Fed. Reg. 61,684, 64,755 (proposed Nov. 13, 2019) (to be codified at 40 C.F.R. pts. 141, 142) ([Lead and Copper Rule Revisions](#)). Thus, it is reasonable to coordinate the Commission's regulations with that of the Lead and Copper Rule revisions.

For its part, Aqua suggests that utilities be allowed to incorporate a set of assumptions as it inventories service lines to facilitate the process and keep costs low. Aqua Comments at 7-8. For example, Aqua submits that it is appropriate to assume that all pipes constructed and installed after 1995 are not made of lead. [Id.](#), at 8. The OCA supports the ability of entities to use reasonable assumptions specific to the circumstances of the entity and its service territory when completing its inventory. Such assumptions can be addressed in the entity-specific proceedings when the entity is seeking approval of the LSLR Program.

Aqua disagrees, however, that it should be required to establish an online tool showing projects planned six months into the future, a tool that would show whether the customer is eligible for reimbursement, and a map showing if the customer has a lead service line. Aqua Comments at 11. The OCA disagrees with this suggestion. PWSA, for example, has provided a publicly accessible, online map that indicates where LSLs continue to exist on this system.¹ Such online maps provide critical and helpful information to the public in understanding the scope of LSLs in

¹ Pittsburgh Water and Sewer Authority, Lead Map (last visited Jul. 1, 2021) (available at <https://lead.pgh2o.com/your-water-service-line/planned-water-service-line-replacement-map/>).

any given water system. This is also required by the Lead and Copper Rule Revisions, which states that “[a]ll water systems must develop and maintain a **publicly accessible** inventory of lead service lines and service lines of unknown material in its distribution system.” [Lead and Copper Rule Revisions](#) at ¶ 64,755 (emphasis added).

Lastly, CAUSE-PA and GHHI recommend that the Commission amend proposed subsection 65.56(b)(10) to require entities to provide robust and clear notice and disclosures to tenants who are at risk of lead exposure – both upon identification of a lead service line or due to a landlord or property owner’s refusal to accept a LSLR. CAUSE-PA and GHHI Comments at 15. The OCA is likewise supportive of such changes as it is critical that tenants are adequately informed as to the status of any existing LSL they may be receiving water from, as well as if and when it will be replaced.

D. Section 65.57 – Periodic review of LSLR Plan

Aqua stated in its Comments that if an entity submits information through its Annual Asset Optimization Plan (“AAOP”) and LTIIP, under 52. Pa. Code § 65.59, an increase or decrease in the quantities or dollars projected for LSLRs should not trigger a major modification under the Commission’s regulations. Aqua Comments at 9. The OCA submits that circumventing the LTIIP procedures in this regard is premature. ‘Major Modification’ is defined in the Commission’s Regulations as a change to a previously approved LTIIP that, among other things, increases the total estimated cost of the LTIIP by more than 20 percent. 52 Pa. Code § 121.2. Thus, there is sufficient flexibility within the existing regulation. A cost variance in an LSLR Program that would exceed this amount would be concerning to the OCA and should certainly be reviewed under the standard LTIIP procedures, if necessary.

E. Section 65.58 – *Pro forma* tariff or tariff supplement requirements

Both Aqua and PWSA raise the issue of service line demarcation and what exactly constitutes the customer portion of that service line. See PWSA Comments at 14; Aqua Comments at 12-13. For the reasons stated above, the OCA submits that it may be difficult to develop a definition that fits every utility's approach to the customer-owned portion of the LSL. Thus, it may be best to allow utilities to propose programs based on the specific circumstances and service territory, rather than crafting a one-size-fits all definition or approach.

With respect to Partial LSLRs, Aqua notes that requiring termination for refusal to allow replacement of the customer-owned LSL, may present difficulties for entities administering a LSLR, referencing a tenant-landlord situation. Aqua Comments at 13. The OCA agrees and again submits that it may be best to allow the utility to propose termination protocols based on the specific circumstances and service territory, which will allow for different approaches where termination is not feasible or otherwise not appropriate.

With respect to reimbursements, Aqua submits that, rather than the proposed language which provides for reimbursement up to 125 percent of the average cost the entity would have incurred to perform the replacement, reimbursements should be capped at the lower of the customer's actual cost or what the entity would have incurred to perform the replacement. Aqua Comments at 14. Moreover, PWSA recommends that reimbursements only apply one year before commencement of an LSLR Project, not after. PWSA Comments at 15. PWSA also recommends that once a plan for an LSLR Project is in place, the applicable customer is ineligible for a reimbursement. *Id.* PWSA states that adopting these two suggestions would discourage customers from replacing their own LSL when a plan to replace them already exists, thereby preventing a waste of utility resources. *Id.* PWSA also recommends that the Commission eliminate Subsection 65.58(d)(1)(iii)(B) because it is overly prescriptive. PWSA Comments at 16.

The OCA submits that the suggestions by Aqua and PWSA not be adopted by this Commission. It is imperative that customers not be penalized for seeking to replace their own LSL to remediate their own health concerns. If a customer replaces their LSL after the commencement of a LSLR Project, they should still have the opportunity to seek reimbursement if eligible. Moreover, the Commission's proposed language concerning the amount of reimbursement appropriately recognizes that a customer's cost to replace their LSL may exceed the utility's cost to replace because they may not generate the same economies of scale as a utility. It also sufficiently protects Aqua's concern by capping any reimbursement at the actual cost of the replacement.

With respect to warranties, PWSA recommends that a 30-day warranty is sufficient as opposed to the two-year warranty contemplated by the proposed regulations. PWSA Comments at 17. PWSA states that a two-year warranty is unnecessarily long and contrary to standard industry practice. The OCA submits that PWSA's position should not be adopted. Aqua indicated that a two-year warranty is acceptable. Aqua Comments at 14. In addition, pursuant to its existing LSLR Program, PAWC currently provides two year warranties. See Pennsylvania-American Water Company, Tariff Water – Pa. P.U.C. No. 5, Original Page 47.1, Rule 4.9.1.2.² It is also reasonable to provide a two year warranty as that will subject the new service line to extreme weather conditions over time, ensuring that there are no defects in the replaced pipe.³

² The referenced portion of PAWC's tariff states as follows:

The Customer shall enter into an Agreement for Replacement of Lead Service Pipe, in a form provided by the Company, prior to the initiation of any work by the Company to replace a Customer's Service Pipe. The Company will provide a two-year warranty on workmanship and materials for any Customer lead Service Pipes it replaces.

³ Moreover, a two-year warranty is a reasonable minimum time for a warranty. For example, the Pennsylvania Infrastructure Investment Authority (PENNVEST) loans for lead service line replacements require the utility to maintain the service line for the life of the loan, which can be up to 30 years in some cases. See Pa. Pub. Util. Comm'n

F. Section 65.59 – LSLR Program Reports

Both Aqua and PWSA challenge certain information that the proposed regulations require utilities to provide as part of their LSLR Program reports. Aqua states that providing pipe length and diameter of LSLRs need not be reported and would be overly burdensome. Aqua Comments at 15. Similarly, PWSA submits that it should not have to provide length and pipe diameter, the actual cost of each LSLR by county, and the average cost of LSLR by county, among others. PWSA Comments at 18. The OCA respectfully disagrees. This information will be helpful during base rate cases and when reviewing LSLR Programs. Moreover, receiving relevant and comprehensive information ensures a transparent and informative process that will allow parties to adequately review LSLR programs and determine whether any changes need to be made.

III. REPLY COMMENTS ON PROPOSED DAMAGED WASTEWATER SERVICE LATERAL REGULATIONS

The OCA will address the Comments of the other parties on a section by section basis below.

A. Section 66.32 – Definitions

As with above, there may be discrepancies in how each utility defines the customer-owned portion of the service lateral. See e.g. Aqua Comments at 17. Thus, it may be more appropriate to allow each utility or entity to define the term in a way that best suits their circumstances and service territory.

B. Section 66.33 – DWSL Program parameters

PWSA states in Comments that the Commission should add a third category of program that could be pursued to fix damaged wastewater laterals where the damaged wastewater lateral is

v. Pittsburgh Water and Sewer Authority, Docket No. R-2020-3017951, OCA Statement 1: Direct Testimony of Scott J. Rubin at 58 (entered Sept. 21, 2020).

creating a public health and/or safety hazard. PWSA Comments at 23. PWSA believes it would be in the public interest if it engaged in an Act 120 private wastewater lateral program to address these kinds of circumstances.

The OCA is supportive of PWSA's suggestion to allow for DWSL replacement programs that address public health and safety hazards. Importantly, PWSA's recommendation does not seek to limit the application of Act 120, but rather to add additional reasons to the proposed regulation for the establishment of a DWSL Replacement Program. This is consistent with the purpose of Act 120 and analogous to replacing lead service lines to remediate public health concerns. While the OCA is supportive, however, there will likely need to be details and specifics that will have to be addressed in entity-specific proceedings seeking Commission approval for this type of replacement program.

C. Section 66.38 – *Pro forma* tariff or tariff supplement requirements

In its Comments, PWSA recommends that where a proposed DWSL replacement is to alleviate risks to public health or safety, the entity's tariff should allow for the ability to terminate water service if the customer refuses a cost-free replacement of a DWSL. PWSA Comments at 27. As Aqua noted in its Comments, however, termination of water service can be difficult because not often does the same utility or entity provide water and wastewater service. Aqua Comments at 25.

The OCA is concerned with PWSA's suggestion that an entity be allowed to terminate water service if a customer refuses a cost-free replacement of a DWSL. For one, the OCA agrees with Aqua that termination of water service due to issues with wastewater service is complicated, particularly when each service is provided by different entities or even unregulated municipalities.

See e.g. Aqua Pennsylvania, Inc., Tariff Water – Pa. P.U.C. No. 2, Appendix A – Water Service Termination. Moreover, while larger water utilities have processes and agreements in place for

termination of water service in the event of non-payment for wastewater services, that is a very different circumstance than a customer losing water and wastewater service due to refusing a cost-free replacement of a DWSL. The OCA understands that there are situations where water service may need to be terminated for refusing a cost-free DWSL replacement, but the utility should not be given absolute discretion to determine when it can and cannot terminate water or wastewater service. There must be strict limitations in place depending on, *inter alia*, the type of replacement program and the degree or risk of public harm. The exact details of this could be dealt with on a utility-specific and program-specific basis.

With respect to reimbursements, Aqua recommends a similar change as it did with respect to LSLR reimbursements, stating that it should be the lower of the customer's actual cost or what the entity would have incurred to perform the replacement. Aqua Comments at 23. For the reasons stated above, Aqua's recommendation should not be adopted. The Commission's proposed language concerning the amount of reimbursement appropriately recognizes that a customer's cost to replace their DWSL may exceed the utility's cost to replace because they may not generate the same economies of scale as a utility.

D. Section 66.39 – DWSL Program Reports

Similarly, Aqua also recommends limiting the extent of information it reports when replacing DWSLs. Aqua Comments at 23-24. Aqua does not believe reporting on the length, pipe diameter, and replacement method is necessary. As stated above, the OCA submits that the utility will collect this information as it undergoes these replacements and there should be few barriers, if any, to ensure that its annual reports provide complete, transparent descriptions of the work undertaken by the entity. It is always prudent to collect as much information as possible, which will allow for informed decision-making.

IV. CONCLUSION

The Office of Consumer Advocate appreciates the opportunity to provide Reply Comments.

Respectfully Submitted,

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