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July 2, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
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:

Enclosed for electronic filing please find The Pittsburgh Water and Sewer Authority's ("PWSA") Reply Comments with regard to the above-referenced matter.

If you have any questions regarding this filing, please feel free to call or email me.

Sincerely,

Sarah C. Stoner

Sarah C. Stoner

Enclosure

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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Reply Comments upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: July 2, 2021

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF
THE PITTSBURGH WATER AND SEWER AUTHORITY**

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I. INTRODUCTION

The Pittsburgh Water and Sewer Authority (“PWSA”) hereby submits these Reply Comments to the Comments of the Office of Consumer Advocate (“OCA”), Aqua Pennsylvania, Inc. (“Aqua”) and the Joint Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and the Green & Healthy Homes Initiative (“GHHI”) (collectively, “Joint Commenters”) filed on June 2, 2021 pursuant to the Pennsylvania Public Utility Commission’s Notice of Proposed Rulemaking (“NOPR”) entered on September 17, 2020.

II. REPLY COMMENTS

A. Comments on Regulatory Changes Proposed by OCA and Aqua

1. Section 65.52. Definitions.

The proposed regulations set the definition of a LSLR Project Area as a one-mile radius surrounding a LSLR Project. Both OCA and Aqua recommended modifications to the definition to remove the one-mile qualifier.¹ PWSA agrees with OCA’s comment that a one-mile radius may be too burdensome for entities and Aqua’s comment that the one-mile distance qualifier would create a patchwork of qualifying customers.² PWSA recommends that the Commission adopt Aqua’s proposed language that would define the LSLR Project Area to include, for a main replacement project, the premises affected by a main replacement project.³

OCA commented that there appears to be overlap between the definition for LSLR Plan and LSLR Program.⁴ PWSA agrees and supports OCA’s proposed elimination of the definition

¹ OCA Comments at 3-4; Aqua Comments at 4.

² OCA Comments at 4; Aqua Comments at 4.

³ Aqua Comments at 4.

⁴ OCA Comments at 2-3.

for LSLR Plan and edit to the LSLR Program definition. The aforementioned changes proposed by OCA will help clarify the proposed regulations.

2. Section 65.55. LSLR Program requirements.

PWSA echoes Aqua’s recommendation that Section 65.55(d) be changed from “must” to “may,” so that a LSLR Program is not required to be reviewed in each base rate case.⁵ As the proposed regulations already require periodic review of the entity’s LSLR Plan pursuant to Section 65.57, PWSA believes that Aqua’s proposed change from “must” to “may” will provide appropriate flexibility so that an entity’s LSLR Program may be reviewed in a base rate case but is not required to be reviewed in each rate case.

As written, the proposed regulations would only permit an entity’s LSLR Program to be modified via a base rate case. PWSA agrees with Aqua’s comment that an entity should be permitted to petition the Commission outside of a base rate case for modifications to its LSLR Program.⁶ As indicated by Aqua, a change to the Environmental Protection Agency’s (“EPA”) Lead and Copper Rules (“LCR”) or a directive from EPA or the Pennsylvania Department of Environmental Protection (“PA DEP”) could require a change to an entity’s LSLR Plan. Limiting modifications of a LSLR Plan to a base rate case could put an entity in the untenable position of violating the EPA’s regulations or its Commission approved LSLR Plan. Accordingly the regulation should specify that an entity should be able to file a petition to modify its Plan or a proposed tariff revision pursuant to 66 Pa. C.S. § 1308(a).

3. Section 65.56. LSLR Plan requirements.

⁵ Aqua Comments at 6. OCA recommended deletion of the last provision in Section 65.55 and an edit to Section 65.57. OCA Comments at 5.

⁶ OCA also indicated that there may be circumstances where changes may need to be made to a LSL Program outside the context of a base rate proceeding. OCA Comments at 5.

PWSA supports Aqua’s proposed language in Section 65.56(a)(4)(i) that would allow an entity to identify the material type of entity-owned and customer-owned service lines as “not lead” in completing an inventory.⁷ PWSA currently identifies material type as non-lead, consistent with the Lead and Copper Rule.⁸

Aqua recommended that the Commission modify Section 65.56(c) so that entities are not required to provide 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.⁹ PWSA’s website hosts an online map that discloses the location of lead service lines and where PWSA plans to replace lead lines.¹⁰ PWSA believes that provision of this information sufficiently informs the public about the status of replacements. With regard to customer eligibility, PWSA submits that information regarding customer eligibility for reimbursement on an entity’s website is sufficient and that entities should not be required to offer a “secure online tool” for a customer to determine their eligibility.

4. Section 65.57. Periodic review of LSLR Plan.

In its comments, Aqua indicated that if an entity is submitting information through its Annual Asset Optimization Plan (“AAOP”) and Long-Term Infrastructure Improvement Plan (“LTIIP”), an increase or decrease in the quantities or dollars projected for LSLRs should not trigger a major modification under the Commission’s regulations.¹¹ PWSA supports Aqua’s comment and encourages the Commission to reflect it in its proposed regulations.

⁷ Aqua Comments at 8.

⁸ 40 C.F.R. § 141.84(a)(4).

⁹ Aqua Comments at 11.

¹⁰ <https://lead.pgh2o.com/your-water-service-line/planned-waterservice-line-replacement-map/>

¹¹ Aqua Comments at 9.

OCA proposed language that would establish that the periodic review of an entity's LSLR Program would not prevent the Commission and the parties from reviewing the LSLR Program as part of a base rate proceeding.¹² While PWSA concedes that the LSLR Program may be reviewed in a base rate proceeding, it recommends that the Commission make clear that the parties cannot relitigate issues decided by the Commission in its initial approval of an entity's LSLR Program or in the periodic review process. The scope of review in a base rate proceeding should be limited to new issues so that aspects of an entity's LSLR Program are not relitigated on a continual basis.

5. Section 65.58. Pro forma tariff or tariff supplement requirements.

Section 65.58(d) of the proposed regulations requires that an entity reimburse eligible customers who replace a LSL "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 customer's actual cost." Aqua recommended modification of this language to reflect that an entity is required to reimburse eligible customers for LSLR expenses "at the lower of the customer's actual cost or what the entity would have incurred to perform the replacement."¹³ PWSA supports Aqua's proposed change.

Aqua proposed language in Section 65.58(e) that would clarify that if a customer replaces their customer-side LSL outside of the entity's replacement program and seeks reimbursement from the entity, that the entity is not responsible for providing a warranty on the LSL replacement. PWSA agrees with Aqua's proposed change and recommends that the Commission

¹² OCA Comments at 6.
¹³ Aqua Comments at 14.

adopt Aqua’s proposed language, as an entity should not be responsible for work that was not performed by the entity or its contractors.

6. Section 65.62. Prohibition on partial LSLRs.

In its Comments, OCA stated its position that there should be an exception to the prohibition on partial LSLs for emergencies, landlord tenant situations and “tangled titles,”¹⁴ PWSA agrees with OCA’s position as well as its view that proposed Section 65.62(d) goes too far by requiring an entity that becomes aware that a customer is currently taking service under a partial LSL to terminate service to the customer in all instances.¹⁵ PWSA acknowledges that in PWSA’s Compliance Plan proceeding, the Commission found that partial LSLRs create a health risk and are therefore not in the public interest and inconsistent with Section 1501 of the Public Utility Code.¹⁶ PWSA is not attempting to refute or contradict that finding. OCA’s comment, however, recognizes that, in many circumstances, the potential harm from terminating water service may also pose health and safety risks. Moreover, there are mitigation steps that can be taken to reduce the health risks of the partial (i.e., the provision of water filter pitchers, increased consumer communication).¹⁷

Because the facts may differ from system to system, PWSA suggests that the regulations permit each entity (including those that have approved LSLR Plans) to submit a proposal regarding partial replacements which would include: 1) the circumstances in which it believes a

¹⁴ However, PWSA does not support OCA’s proposal that those replacements only be permitted through an emergency waiver request by the utility or the owner of the customer-owned LSL. Requesting a waiver would be impractical in most circumstances.

¹⁵ OCA Comments at 11.

¹⁶ *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket No. M-2018-2640802 at 92-94 (Order entered June 18, 2020).

¹⁷ OCA Comments at 11.

partial replacement could be justified; and 2) the steps it would be willing to take to reduce potential health risks caused by the partials.

As noted, OCA also recommended that the Commission address landlord-tenant situations and issues dealing with tangled title.¹⁸ PWSA's Lead Infrastructure Plan already addresses these issues. PWSA's Lead Infrastructure Plan reflects that it may "stand in the shoes" of a property owner and replace a private-side LSL at no direct cost to the property owner when it has offered to replace the line, the property is not occupied by the legal owner of the property and PWSA has made attempts to obtain authorization to replace the line and the legal owner can not be identified, can not be located or has never responded.¹⁹ PWSA encourages the Commission to grandfather preexisting policies of this nature and/or to consider authorizing this policy for all entities.

7. Section 66.35. DWSL Program requirements.

Similar to its comments on Section 65.55, Aqua expressed that the DWSL Program should not be required to be reviewed in each base rate case. Aqua recommended that the Commission change "shall be subject to review in all future base rate cases" to "may be subject to review in all future base rate cases," as the proposed regulations already require periodic review of the entity's DWSL Plan under Section 66.37. PWSA agrees that Aqua's proposed change would provide appropriate flexibility so that an entity's DWSL Program may be reviewed in a base rate case but is not required to be reviewed in each rate case.²⁰ PWSA also

¹⁸ OCA Comments at 11.

¹⁹ PWSA Tariff Water – Pa. P.U.C. No. 1 at First Revised Page No. 69.

²⁰ Aqua Comments at 18.

supports Aqua's position that an entity should be permitted to petition the Commission outside of a base rate case for modifications to its DWSL Program.²¹

8. Section 66.36. DWSL Plan requirements.

PWSA agrees with Aqua's assessment that an online tool that would provide customers the ability to determine whether records reflect that the property of record has a DWSL would not be particularly helpful as customers will be informed by the entity of the DWSL.²²

9. Section 66.37. Periodic Review of DWSL Plan.

PWSA offers feedback regarding OCA's proposal that the Commission specify that periodic review of a DWSL Plan not inhibit the scope of review during future base rate cases.²³ Similar to the discussion above regarding proposed Section 65.57, PWSA concedes that a DWSL Plan may be reviewed in a base rate proceeding. PWSA encourages the Commission to clarify that parties cannot relitigate issues decided by the Commission in its initial approval of an entity's DWSL Plan or in the periodic review process. The scope of review in a base rate proceeding should be limited to new issues so that an entity's DWSL Plan is not relitigated on a continual basis.

10. Section 66.38. Pro forma tariff or tariff supplement requirements.

Consistent with PWSA's position on reimbursements for LSLR, PWSA agrees with Aqua's proposed language that would change the Commission's proposed customer reimbursement amount in Section 66.38(d).²⁴ Instead of the reimbursement amount being up to 125% of the average cost the entity would have incurred to perform the replacement, not to

²¹ Aqua Comments at 18. OCA also indicated that there may be circumstances where changes may need to be made to a DWSL Program outside the context of a base rate proceeding. OCA Comments at 14-15.

²² Aqua Comments at 21.

²³ OCA Comments at 15.

²⁴ Aqua Comments at 23.

exceed the customer's actual cost, PWSA recommends that the amount be set at the lower of the customer's actual cost or what the entity would have incurred to perform the replacement.

PWSA also supports Aqua's proposed clarification that if a customer replaces its customer side DWSL outside of the entity's replacement program and seeks reimbursement from the entity, that the entity is not required to provide a warranty for the replacement.²⁵

B. Response to Recommendations in Joint Comments of CAUSE-PA and GHHI

1. Filter Distribution

The Joint Commenters suggested that the Commission require entities to provide targeted education, flushing instructions, and free filters to low and moderate-income customers with known lead service lines.²⁶ The Joint Commenters suggested an income threshold of no less than 250% of the federal poverty level for households to receive free filters.²⁷ PWSA recommends that the Commission reject the Joint Commenters' suggestion. PWSA submits that filter distribution should be tied to individual lead testing results and not income levels. Pursuant to PWSA's current Lead Remediation Plan, it provides a tap water lead testing kit to any resident within its service area who requests one. If testing reveals lead levels above ten parts per billion, PWSA provides a water filter which is NSF-certified to remove lead, six months of filter cartridges and an additional tap water lead testing kit. So long as the resident continues to return testing kits, PWSA continues to provide additional testing kits at three-month intervals and additional filter cartridges until the resident's lead levels fall below ten parts per billion. PWSA submits that its current filter distribution policy is equitable. If the Commission were to adopt

²⁵ Aqua Comments at 23.

²⁶ CAUSE-PA/GHHI Joint Comments at 6, 24.

²⁷ CAUSE-PA/GHHI Joint Comments at 6.

the recommendation of the Joint Commenters (which PWSA opposes), PWSA recommends that filters be provided only upon request.

2. Available Funding Sources

The Joint Commenters suggested that the Commission “require utilities to exhaust all avenues for funding – including federal and state dollars – before allowing utilities to put forth a rate increase request to recover LSL replacement costs.”²⁸ PWSA does not support the Joint Commenters’ recommendation or their proposal that entities be required to document all sources of financing pursued by the entity.²⁹ PWSA opposes the proposed requirements because funding is periodic and an entity may not know the outcome of a grant or loan application prior to submitting a rate increase request. Entities are proactive in evaluating funding sources and should not be required to “exhaust all avenues for funding” prior to seeking a rate increase request to recover LSL replacement costs, especially as large projects of this nature need to designed several years in advance. This recommendation, if adopted, would severely delay the pace of lead line replacement because entities will not be able to include line replacements in their construction plans until they are reasonably sure they have funding for the projects.

3. Property Restoration

The Joint Commenters recommended that the Commission’s regulations ensure that an entity restores the integrity of the foundation/wall around the replacement site.³⁰ PWSA patches the wall where the service line enters a residence. In addition, PWSA restores roadways and public sidewalks, as well as backfills trenches excavated as part of the replacement process.³¹

²⁸ CAUSE-PA/GHHI Joint Comments at 6.

²⁹ CAUSE-PA/GHHI Joint Comments at 6-7.

³⁰ CAUSE-PA/GHHI Joint Comments at 13.

³¹ PWSA Comments at 17.

PWSA is concerned that the recommendation of the Joint Commenters could be misconstrued to require entities to repair preexisting structural issues with the foundation/wall around the replacement site.

PWSA is also concerned with the Joint Commenters recommendation that a LSL replacement not be deemed complete until full remediation and restoration efforts have occurred (at the expense of the entity).³² PWSA's tariff currently reflects that costs associated with restoration of landscaping, interior finishes, paving, seeding or walkways are to be borne by the property owner. (Tariff Water – Pa. P.U.C. No. 1, Original Page No. 70). PWSA submits that a LSL replacement should be deemed complete when the replacement is completed, not at some other point of time such as when a sidewalk has been fully restored. Moreover, PWSA recommends that the Commission reflect that certain restoration costs, such as those specified in PWSA's tariff, are to be borne by the customer (that is receiving replacement of their customer-owned lead service line at no direct cost to them).

4. Demographics

PWSA opposes the Joint Commenters' recommendation that entities be required to submit a biannual report on equity metrics.³³ Their proposal would require entities to track the demographics of customers that participate in a LSLR program and provide for "course correction" if the reports indicate that certain populations are not equitably served. Instead of prioritizing replacement efforts for low-income customers, communities of color and immigrant communities, entities should prioritize LSL replacement efforts on areas with the highest need based on a prioritization model developed by the utility as part of the LSLR Program.

³² CAUSE-PA/GHHI Joint Comments at 12.

³³ CAUSE-PA/GHHI Joint Comments at 14.

5. Translation of Materials in to Multiple Languages

The Joint Commenters proposed that entities be required to translate all outreach and education materials into Spanish, as well as other languages spoken by 5% or more of individuals in the entity's service territory.³⁴ They also proposed that for less commonly spoken languages, notices include a statement in those languages informing the consumer to contact the utility for assistance, regardless of how many languages that would be. The Commission's regulations require that termination notices include information in Spanish providing phone numbers to call for information and translation assistance, and that similar information be provided in other language when census data shows that 5% or more of the residents in the utility's service territory are using a particular language.³⁵ The Joint Commenters' proposed requirements go well beyond the Commission's current requirements for termination notices and would require entities to incur significant costs to translate various outreach and education materials.

6. Historical Infrastructure

PWSA challenges the accuracy of the claim made by the Joint Commenters that "unless a customer subsequently replaced their service line, the material used is typically a legacy of the water utility's historical infrastructure material choices – not the choice of an individual homeowner."³⁶ The City of Pittsburgh historically did not install customer-owned service lines. Historically, individual customers (or property developers) were responsible for installation of customer-owned service lines in the City.

³⁴ CAUSE-PA/GHHI Joint Comments at 19.

³⁵ 52 Pa. Code §§ 56.91(b)(17).

³⁶ CAUSE-PA/GHHI Joint Comments at 23.

III. RESPONSES TO QUESTIONS IN VICE CHAIRMAN SWEET’S STATEMENT

PWSA offers the following responses to Vice Chairman Sweet’s questions that were issued in his statement that accompanied the NOPR:

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

Yes. PWSA believes that the proposed regulations carry out the directives of the statute. However, as indicated in its Comments, PWSA believes that the proposed regulations impose certain requirements that are overly burdensome for entities that seek recovery under Act 120.

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?

Pursuant to Act 120 of 2018, water utilities should only be required to develop and file a lead service line replacement plan if they seek recovery under Act 120. The Commission should accept lead service line replacement plans prepared by utilities in accordance with the federal Lead and Copper Rule and only require those entities to include additional information specifically required by Act 120.

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

PWSA is the only municipal authority that is currently subject to the jurisdiction of the Commission. 66 Pa. C.S. Ch. 32. PWSA does not believe that there is a conflict between the provisions of Act 44 of 2017 and the provisions of Act 120 as they relate to PWSA. Unless a provision of Act 44 of 2017 indicates that there is an exclusive way in which a municipal authority must perform activities with respect to private water and sewer laterals, the provisions of Act 120 and the Commission’s regulations would apply.

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

PWSA's website hosts an online map that discloses the location of lead service lines.³⁷

PWSA believes that provision of this information sufficiently informs the public about the status of replacements. PWSA is concerned about the Commission's proposal to require entities to disclose customer refusals in their filed plans and believes that such information should be maintained in PWSA's internal customer notes.

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

No. The NOPR does not appropriately acknowledge that utilities with preexisting LSLR plans have already been through a rigorous and costly review process. Preexisting LSLR plans (such as PWSA's Lead Infrastructure Plan) have been designed to reflect the size, resources, and infrastructure of an entity. PWSA submits that the NOPR does not provide entities with preexisting system-specific plans enough flexibility to continue replacing affected lines in an efficient and cost effective manner. The regulations should make clear that preexisting and PUC approved LSLR plans will be accepted as compliant.

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

Yes, PWSA believes that the NOPR adequately provides due process to both the utility and customer.

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

³⁷ <https://lead.pgh2o.com/your-water-service-line/planned-waterservice-line-replacement-map/>

The NOPR does not set forth specific procedures for a litigated replacement plan but PWSA believes the process for challenging a plan should be consistent with the process set forth in the Commission's regulations and existing PUC procedures.

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

PWSA believes that the NOPR can and should be streamlined by utilizing the Lead and Copper Rule provisions relating to inventories and LSLR plans, instead of creating a completely new set of obligations with slightly different requirements and timeframes.

IV. CONCLUSION

For all the reasons set forth above and in its initial comments, PWSA recommends that the Commission's proposed regulations to implement Act 120 be revised.

Respectfully submitted,

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