PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 24, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

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

FINAL RULEMAKING ORDER

BY THE COMMISSION:

Act 120 of 2018 (Act 120) amended Section 1311(b) of the Public Utility Code, 66 Pa.C.S. § 1311(b) (relating to valuation of and return on the property of a public utility), by addressing the replacement of lead service lines (LSL) and damaged wastewater service laterals (DWSL) as well as the recovery of associated costs. On September 17, 2020, at the above-referenced docket number, the Pennsylvania Public Utility Commission (Commission) entered a Notice of Proposed Rulemaking Order (NOPR) to implement Act 120. The Commission sought to modify the regulations at Title 52, 52 Pa. Code §§ 1.1-1065.1. In particular, we proposed to set forth regulations addressing LSL replacements (LSLR) in Chapter 65 and to create a new Chapter 66 addressing wastewater service and DWSL replacements (DWSL Replacements).

We provided interested stakeholders with an opportunity to offer input regarding the Commission's proposed Chapter 65 and Chapter 66 regulations by filing comments and reply comments. Upon consideration of the entirety of the stakeholder comments and reply comments received by the Commission, as well as the Independent Regulatory Review Commission's (IRRC) comments, we hereby enter this Final Rulemaking Order.

BACKGROUND

On October 24, 2018, Governor Wolf signed Act 120 into law, thereby amending 66 Pa.C.S. § 1311(b) to address the accelerated replacement of customer-owned LSLs and DWSLs. Act 120 sets forth a uniform, minimum standard under which jurisdictional water and wastewater utilities[1] (or entities hereinafter) may seek to replace LSLs and DWSLs and recover the costs associated with replacement.

A. Commission Actions

Prior to the passage of Act 120, the Commission and jurisdictional water and wastewater utilities were actively addressing the replacement of LSLs and DWSLs. On March 8, 2017, for instance, the Commission approved The York Water Company's (York Water) proposal to replace LSLs in their service territory. *See Petition of The York Water Company*, Docket No. P-2016-2577404 (Order entered March 8, 2017). Nonetheless, Act 120 served to clarify certain legal issues that the Commission, water utilities, and wastewater utilities identified during the course of such proceedings.

On December 23, 2018, when Act 120 became effective, the Commission was in the process of adjudicating Pennsylvania American Water Company's (PAWC) proposal regarding customer-owned LSLs. In response to Act 120, the Commission remanded the proceeding to the Office of Administrative Law Judge instructing the parties to evaluate the proposal under the new requirements of Act 120 and supplement the record to achieve compliance with 66 Pa.C.S. § 1311(b). *See Petition of Pennsylvania American Water Company*, Docket No. P-2017-2606100 (Order entered January 4, 2019). On July 17, 2019, the parties filed a Joint Petition for Settlement on Remand (Joint Settlement), which addressed many issues in accordance with 66 Pa.C.S. § 1311(b). The parties acknowledged and the Commission determined, however, that several issues

[1] Later, we use the term "entity" as defined in revised Section 65.52 to refer to jurisdictional water utilities, and the term "entity" as defined in revised Section 66.32 to refer to jurisdictional wastewater utilities. For purposes of the "Background" here, these terms are interchangeable. *See infra*, p. 12, 68.

implicated by Act 120 remain unresolved and required more generic guidance for future proceedings. *See* Joint Settlement ¶ 23, 41.

Accordingly, on October 3, 2019, Chairman Gladys Brown Dutrieuille and Commissioner John F. Coleman, Jr., issued a Joint Motion directing Commission staff to initiate a further examination of Act 120. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Joint Motion issued October 3, 2019). The Joint Motion instructed the Commission's Bureau of Technical Utility Services (TUS) and Law Bureau to develop recommendations for additional parameters for the replacement of LSLs and DWSLs, especially as part of the Long Term Infrastructure Improvement Plan (LTIIP) and the Distribution System Improvement Charge (DSIC). The Joint Motion directed (1) entry of an Order consistent with the Joint Motion, (2) transmission of directed questions to interested stakeholders within 30 days, (3) assembly of a working group, and (4) submission of a written staff recommendation to the Commission by March 31, 2020.

Consistent with the Joint Motion, on October 24, 2019, the Commission sent a Secretarial Letter to interested stakeholders for comment on the replacement of LSLs and DWSLs, accompanied by a list of directed questions including questions on the following topics: parameters for planning and reporting, communications, replacements, and refusals, an analysis of Section 1311(b), and rates. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Secretarial Letter issued October 24, 2019); *see* 66 Pa.C.S. § 1311(b). The Secretarial Letter directed the filing of comments by November 22, 2019.[2] The Secretarial Letter also scheduled a working group meeting to convene on December 19, 2019. Notice of the meeting was published in the *Pennsylvania Bulletin* on November 2, 2019. *See* 49 Pa.B. 6652.

[2] On November 15, 2019, Aqua Pennsylvania Water, Inc. (Aqua) requested that the Commission extend the period for comments in response to the directed questions to December 9, 2019. Suez Water Pennsylvania, Inc. (Suez) and the Office of Consumer Advocate (OCA) filed letters in support of Aqua's request on November 15, 2019, and November 18, 2019, respectively. On November 19, 2019, the Commission denied Aqua's request in light of the impending December 19, 2019 working group meeting.

On November 1, 2019, the Commission issued an Implementation Order in accordance with the Joint Motion. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Order entered November 1, 2019). The Implementation Order reiterated the steps to be taken by staff to conduct a further examination of Act 120.

On November 19, 2019, the County of Northampton (Northampton County) filed with the Commission comments in response to the October 24, 2019 directed questions. On November 21, 2019, Pennsylvania-American Water Company (PAWC) filed comments. On November 22, 2019, the following stakeholders also filed comments in response to the directed questions: the Coalition for Affordable Utility Service and Energy (CAUSE-PA), Green & Healthy Homes Initiative (GHHI), and Pittsburgh United (UNITED) collectively; the Natural Resources Defense Council (NRDC); the Office of Consumer Advocate (OCA); Aqua Pennsylvania, Inc. (Aqua); Suez Water Pennsylvania, Inc. (SUEZ); the Office of Small Business Advocate (OSBA); Pittsburgh Water and Sewer Authority (PWSA); and Columbia Water Company (Columbia Water).

On December 3, 2019, the Commission issued a Secretarial Letter containing further details regarding the working group meeting and noted that stakeholders may submit reply comments by January 16, 2020. *Implementation of Act 120 of 2018*, Docket No. M-2019-3013286 (Secretarial Letter issued December 3, 2019).

The working group meeting convened on December 19, 2019. The following stakeholders attended the meeting: Northampton County, PAWC, CAUSE-PA, GHHI, the NRDC, the OCA, Aqua, SUEZ, the OSBA, PWSA, Columbia Water, PENNVEST, the Public Utility Law Project (PULP), the Bureau of Investigation and Enforcement (BI&E), and York Water. The three-hour working group meeting started with a presentation by TUS staff, including questions for the participants in attendance, followed by an open dialogue regarding the replacement of LSLs and DWSLs as it pertains to parameters for planning and reporting, communications, replacements, and

refusals, an analysis of Section 1311(b), and rates. *See* 66 Pa.C.S. § 1311(b). TUS staff encouraged the filing of reply comments as a means to further respond to matters raised during the working group meeting. On January 16, 2019, the Commission received reply comments from CAUSE-PA, GHHI, UNITED, and the NRDC collectively, the OSBA, and PWSA.

On March 31, 2020, in consideration of the comments filed in response to the directed questions, the working group meeting, and the reply comments filed thereafter, TUS and Law Bureau staff submitted to the Commission a confidential Staff Report detailing their recommendations regarding additional parameters for the replacement of LSLs and DWSLs. Pursuant to the November 1, 2019 Implementation Order, the Staff Report addressed proposed requirements for planning and reporting, communications, replacements, and refusals, an analysis of Section 1311(b), and rates. *See* 66 Pa.C.S. § 1311(b). The Staff Report also addressed options for implementation such as orders, policy statements, and rulemakings.

Upon consideration of the Staff Report, on September 17, 2020, the Commission entered a NOPR proposing to implement Act 120 by modifying the regulations at 52 Pa. Code §§ 1.1-1065.1. In particular, the Commission proposed to set forth regulations addressing LSLRs in Chapter 65 and to create a new Chapter 66 addressing wastewater service and establishing regulations for DWSLs. The Law Bureau submitted the NOPR to the Office of Attorney General (OAG) for review as to form and legality and to the Governor's Office of Budget for review as to fiscal impact. By memorandum, on October 30, 2020, the OAG tolled its 30-day statutory review period for NOPR pending clarification from the Commission on certain items. The Law Bureau responded to the OAG's tolling memorandum on February 2, 2021, and the OAG approved the NOPR on February 10, 2020, contingent upon the Commission making the revisions identified in its

response.[3] The Law Bureau subsequently submitted the NOPR to the IRRC and Legislative Standing Committees. In addition, the NOPR was published in the *Pennsylvania Bulletin* on April 3, 2021, at 51 Pa.B. 1802. Stakeholder comments were due within 60 days of publication, and reply comments were due 30 days thereafter.

On June 2, 2021, the following parties filed comments with the Commission: the OCA; PWSA; CAUSE-PA and GHHI, collectively; and Aqua. With the exception of GHHI and Aqua, these parties also filed reply comments on July 2, 2021. The IRRC filed its comments on August 2, 2021.

B. Lead And Copper Rule Revisions

Pennsylvania is not alone in its focus on lead service line replacement and removal. The U.S. Environmental Protection Agency (EPA) recently set forth revisions to the National Primary Drinking Water Regulation for lead and copper, referred to as the Lead and Copper Rule Revisions (LCRR). The EPA promulgated the final rule on January 15, 2021, with an effective date of March 16, 2021, and a compliance date of January 24, 2024. *National Primary Drinking Water Regulation: Lead and Copper Rule Revisions*, 86 FR 4198-4312 (January 15, 2021) (amending 40 CFR 141-142). Subsequently, on June 15, 2021, the EPA delayed the effectiveness of the LCRR until December 16, 2021, to further review the final rule and consult with affected parties. The EPA also delayed the compliance date for water systems until October 16, 2024. *National Primary Drinking Water Regulation: Lead and Copper Rule Revisions*, 86 FR 31939-31948 (January 15, 2021) (amending 40 CFR 141-142).

The LCRR aims to provide greater and more effective public health protection by reducing lead and copper in drinking water. The EPA will now require all community water systems to develop an inventory of LSLs or service lines of unknown composition

[3] We identify our revisions to the proposed regulations based on the OAG's tolling memorandum in our dispositions of the stakeholders comments, the reply comments, and the IRRC's comments herein.

and to submit LSLR plans, within the meaning of the LCRR, to their respective state primacy agency by October 16, 2024. The centerpiece of the EPA program is the development of detailed service line inventories by water service provides to identify what is known and not known about their service lines, how service providers are to communicate that information to the public, and how they will establish LSL replacement priorities. The EPA service line inventory requirements include the identification and categorization of certain service lines by material directly associated with lead, including "lead," "non-lead," "lead status unknown," or "galvanized requiring replacement" designations. *See* 86 FR 4198 at 4200, 4213, 4290-4291.

Under the LCRR, LSLR plans are prepared in advance so that water systems are positioned to avoid delays that may impede their ability to implement a LSLR program in the event they are above the trigger level or action level established by the EPA. Water systems above the trigger level, but at or below the action level, must conduct replacements at a "goal rate," while water systems above the action level must "annually replace a minimum of three percent per year, based upon a 2-year rolling average of the number of known or potential LSLs in the inventory at the time the action level exceedance occurs." LSLR efforts based on the trigger level or action level are conducted pursuant to the LSLR program. Additionally, some water systems are afforded compliance alternatives and may not be required to conduct LSLRs. Water systems below the lead trigger level are not required to execute any system-wide LSLR program. *See* 86 FR 4198 at 4200, 4217-4218, 4221.

The EPA plans to issue guidance, including best practices, case studies, and templates to help develop service line inventories and to assist community water systems with implementation of the LCRR in the near future.[4] The EPA also plans to develop a

[4] *EPA Announces Intent to Strengthen Lead and Copper Regulations, Support Proactive Lead Service Line Removal Across the Country*, United States Environmental Protection Agency (December 16, 2021) available at https://www.epa.gov/newsreleases/epa-announces-intent-strengthen-lead-and-copper-regulations-support-proactive-lead.

new proposed rule, the Lead and Copper Rule Improvements, that will strengthen the Federal regulatory framework by proposing requirements that would result in the replacement of all lead service lines as quickly as feasible. *Id*. The primacy agency responsible for implementation of the LCRR and future iterations in Pennsylvania is the Pennsylvania Department of Environmental Protection (DEP).

DISCUSSION

Act 120 establishes a standard for LSLR and DWSL Replacements as well as the recovery of costs associated with replacement. Act 120 provides for LSLRs and DWSL Replacements under a Commission-approved program and directs the Commission to establish certain standards, processes, and procedures by regulation. *See* 66 Pa.C.S. §§ 1311(b)(2)(i)-(vii). In addition to the authority conferred upon the Commission by Act 120 to address LSLRs and DWSL Replacements, the Commission is responsible for enforcing 66 Pa.C.S. § 1501 (relating to character and service of facilities), which imposes an affirmative duty for "[e]very public utility . . . [to] furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as may be necessary or proper for the accommodation, convenience and safety of the utility's customers and the public." As set forth in 66 Pa.C.S. § 102 (relating to definitions), the term "service" includes a wide range of actions, and the statutory definition has been broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

The Commission has determined that LSLs are problematic with respect to the adequacy, efficiency, safety, and reasonableness of service and facilities under 66 Pa.C.S. § 1501. It is well established that lead is a cumulative poison in humans and that lead is known to cause serious health problems, which are permanent and irreversible.[5] The

[5] Salvato, P.E., DEE, Joseph A., *Environmental Engineering and Sanitation*, 4th Ed., p. 46, New York: John Wiley & Sons, Inc., 1992.

Commission's final LSLR regulations aim to address critical issues presented by LSLs. These regulations represent significant action to combat and eliminate the adverse effects of lead exposure by requiring all entities, as defined in Section 65.52, to remove LSLs.

Stakeholders and the IRRC have expressed concern regarding the interplay between the Commission's LSLR regulations and the EPA's LCRR, claiming that the Commission's regulations will not be consistent with the LCRR. Because the DEP is the primacy agency under the Federal Safe Drinking Water Act, it will be the responsibility of the DEP to interpret and direct all community water systems in the Commonwealth on compliance with the LCRR. Given the importance and scope of this task, the Commission will follow the directive of Section 318 of the Public Utility Code, 66 Pa.C.S. § 318 (relating to commission to cooperate with other departments), which mandates that the Commission cooperate with DEP in areas concerning the purity of the public water supply. To that end, the Commission will avoid promulgating regulations that may interfere with the DEP's efforts in an area of DEP primary jurisdiction, namely the implementation of the Federal Safe Drinking Water Act.

Our regulations will work with the LCRR to fill an important gap. The LCRR only requires water systems above the EPA's trigger level or action level to undertake LSLRs as a remedial measure, whereas the Commission's regulations will require all entities, as defined in Section 65.52, to undertake LSLRs as a matter of course. Entities will routinely engage in LSLRs pursuant to the Commission's regulations with the goal of total LSL removal. If an entity hits the EPA's trigger level or action level, however, that entity will become subject to the LCRR provisions for using LSLRs as a remediation tool. The Commission's final LSLR regulations are critical for the Commonwealth to ensure the total removal of LSLs by all entities, not just the removal of LSLs in water systems that are required to conduct LSLRs under the existing LCRR. *See* 66 Pa.C.S. § 1501. The public health and safety goals this rulemaking works to achieve are important efforts in the Commonwealth's rehabilitation of its water infrastructure.

Our final DWSL regulations are likewise important with regard to the rehabilitation of wastewater infrastructure. *See* 66 Pa.C.S. § 1501. Wastewater infrastructure installed more than 50 years ago is now reaching the end of its useful life and requires rehabilitation and modernization to support us in the current century. The volume of modern rainfall events exacerbates the shortfalls of aging wastewater infrastructure and can approach or exceed design limitations of aging combined wastewater/stormwater systems. This rulemaking takes critical steps to address these challenges. Service laterals are an integral component of wastewater collection systems and are susceptible to damage by natural material deterioration, tree roots, surface activities, or excavation. DWSLs may create serious environmental and health hazards due to the inherently deleterious composition of wastewater.[6] Consistent with Act 120, however, and to avoid disincentivizing the personal accountability of customers or property owners with respect to maintaining DWSLs in functional condition, entities should only replace DWSLs in limited situations where the costs will prudently benefit and improve system reliability, efficiency, and service quality in known problem areas.

As discussed herein, LSLRs and DWSL Replacements will benefit both ratepayers and public utilities. The final regulations addressing LSLRs and DWSL Replacements are set forth in Annexes A and B to this Order and are discussed in more detail below.

A. Lead Service Line Replacements

In order to implement the LSL provisions of Act 120, we proposed to divide Chapter 65 of the Commission's regulations, which relates to water service, into two subchapters. We suggested that the first subchapter address water service generally, and that the subsequent subchapter address LSLRs. The stakeholders do not object to this

[6] DWSLs may cause wastewater to backup into a customer's home or discharge into the environment and may become a source of inflow and infiltration (I&I), contributing to hydraulically overloaded conditions within portions of a wastewater collection system or at a wastewater treatment plant (WWTP). I&I adds to the flow entering the collection system and being treated at the WWTP, reducing capacity and, in extreme cases, may be the largest contributing factor to hazardous overflows.

approach, and the Commission continues to find that it is appropriate. Thus, Subchapter A, Service Generally, will encompass the existing water service regulations at 52 Pa. Code §§ 65.1-65.23, and Subchapter B, Lead Service Line Replacements, will encompass the new LSLR regulations at 52 Pa. Code §§ 65.51-65.62.

1. § 65.51. Purpose.

In the NOPR, we stated that proposed Section 65.51 would set forth the purpose of Subchapter B, which is to implement Act 120, governing the standard under which "entities," as defined in Section 65.52, may seek to replace LSLs and recover associated costs. We also explained that Subchapter B would establish the time, manner, form, and content of filings for Commission approval of LSLRs and set forth the minimum requirements for LSLRs. The stakeholders do not offer substantive comments regarding Section 65.51. The IRRC also does not offer comments on this Section. The OCA, however, notes a grammatical correction in Appendix A of its comments. OCA Comments at 2. Accordingly, we will change "minimum requirements *of* LSLRs" to "minimum requirements *for* LSLRs." (emphasis added). We will also replace the term "jurisdictional water utilities" with "an entity" in Section 65.51 to be consistent with the remainder of the regulations. We note that this revision is based on the Law Bureau's response to the OAG's tolling memorandum.

2. § 65.52. Definitions.

In the NOPR, we explained that proposed Section 65.52 would set forth definitions pertinent to the regulation of LSLRs. We defined "LSL" consistent with Act 120. Additionally, we explained the meaning of "LSLR" and distinguished an "LSLR Program" from an "LSLR Plan." Among other things, we also defined the term "entity" as encompassing (1) a public utility as defined in 66 Pa.C.S. § 102 that provides water service, (2) a municipal corporation as defined in 66 Pa.C.S. § 102 that provides water

service beyond its corporate limits, and (3) an authority as defined in 66 Pa.C.S. § 3201 (relating to definitions). [7]

a. Stakeholder Comments on § 65.52.

In its comments, the OCA recommends defining "authority" and "municipal corporation" with respect to the meaning of "entity." The OCA notes that 66 Pa.C.S. § 1329 (relating to valuation of acquired water and wastewater systems) provides a different definition for "entity." The OCA also suggests revising the definition of "customer-owned LSL" to more clearly identify the portion owned by the customer and proposes a definition that it claims more closely aligns with how entities define the term. The OCA points to PAWC as an example. In addition, the OCA asserts that the "LSLR Program" and "LSLR Plan" overlap, suggesting that the Commission combine the definition of "LSLR Program" with that of "LSLR Plan." Further, the OCA recommends revising the definition of "LSLR Project Area" by removing the one-mile radius. The OCA argues that what constitutes an "LSLR Project Area" should be examined on a case-by-case basis. OCA Comments at 2-4.

PWSA recommends modifying the definition of "customer-owned LSL" and "service line" to replace "at the first shutoff valve located within" with "to one foot beyond the interior foundation wall of," and claims that its proposed modifications will permit an entity to bring the service line into a structure where it makes the most sense and replace lines in an efficient and cost-effective manner. PWSA suggests that the definition of "LSL" be expanded to include service lines composed of galvanized iron and galvanized steel as defined by LCRR and claims that lead particles can attach to the surface of galvanized pipes. PWSA contends that confusion may persist if there are different standards for service line materials in the regulations implementing Act 120 and the LCRR. PWSA also notes that other places in the proposed regulation may require

[7] For purposes of Sections A and C of the "Discussion" pertaining to the LSLR provisions of this rulemaking, "entity" has the same meaning as it does in revised Section 65.52, which is explained herein.

modifications to include galvanized pipes. Further, PWSA recommends modifying the definition of "Service Line Inventory" to require the inventory, where applicable, to identify the service line material for both the entity-owned and customer-owned portions of the line. PWSA also suggests replacing "composition" with "material" and removing the requirement to inventory the diameter of the services lines, which PWSA claims is not required under the LCRR. PWSA Comments at 4-7.

CAUSE-PA and GHHI support the inclusion of pigtails and goosenecks in the definition of "LSL" to help ensure that all possible sources of lead contamination are removed during a LSLR. CAUSE-PA and GHHI Comments at 4.

Aqua recommends that the definition of "LSL" be updated to align with the LCRR, noting that the definition now includes a galvanized service line if it was or is downstream of a LSL or service line of unknown material. Aqua states that the definition of "LSLR Project Area" should not include a one-mile radius or be defined by distance. Rather, Aqua suggests that the definition be limited to the premises that are affected by the main replacement project. Aqua states that including a one-mile distance qualifier from the site of any one-off replacement would create a patchwork of one-mile qualifying customers that is constantly changing depending on the year and timing of the one-off replacement. Aqua notes that the "LSLR Project Area" is important for customer reimbursement purposes. Aqua states that, in a separate proceeding regarding its existing Lead Service Line Replacement Program, at Docket No. P-2020-3021766, it offered a sliding scale reimbursement for the previous three years from the start of a main replacement project. Aqua also offered a similar sliding scale reimbursement for customers who request reimbursement within approval of Aqua's Program. Aqua asserts that its reimbursement plan is beneficial to customers and provides equitable results for customers who may have replaced their own LSLs in the past. Lastly, Aqua notes that it agrees with the Commission's definition of "entity." Aqua Comments at 4-5.

b. Reply Comments on § 65.52.

In its reply comments, the OCA notes that it may be difficult to define "customer-owned LSL" in a way that encompasses how each entity defines the customer portion of the line, pointing to PWSA and Aqua's comments as an example. The OCA suggests referring to the definition of customer-owned LSL contained in each entity's tariff. The OCA also notes that it supports including the phrase "or galvanized iron or galvanized steel that is or formerly was downstream of lead" in the definition of "LSL" and claims that this is consistent with the LCRR. OCA Reply Comments at 2.

PWSA agrees with the OCA's proposed elimination of "LSLR Plan" and its edit to the definition of "LSLR Program." PWSA also agrees with the OCA's comment that a one-mile radius for the "LSLR Project Area" may be too burdensome for entities, and with Aqua's comment that the one-mile radius may create a patchwork of qualifying customers. PWSA recommends that the Commission adopt Aqua's proposed language, which would define "LSLR Project Area" to include, for a main replacement project, the premises affected by a main replacement project. PWSA Reply Comments at 1-2.

c. IRRC Comments on § 65.52.

The IRRC states that the stakeholders' comments illustrate that entities define the customer-owned portion of the service line differently. The IRRC asks the Commission to revise the definition to ensure clarity for the regulated community. The IRRC also indicates that the definition of "LSL" does not include service lines made of galvanized iron or galvanized steel as defined by the LCRR. The IRRC asks the Commission to revise the definition and modify any other portions of the final regulation as necessary to support this definition. In addition, the IRRC notes stakeholders' assertions that a one-mile radius for a "LSLR Project Area" may be burdensome and would create a patchwork of qualifying customers. The IRRC asks the Commission to explain how the definition reasonably protects the public health, safety and welfare. Further, the IRRC notes the stakeholders' contentions that, with respect to a "service line," the first shutoff

valve may be located on the opposite side of where the service line is brought into the structure. The IRRC asks the Commission to clarify the definition to ensure that LSLRs are conducted in an efficient and cost-effective manner. IRRC Comments at 2-3.

d. Disposition on § 65.52.

First, in response to later comments regarding the distinction between customers and property owners, we will add a definition for "customer" in Section 65.52, which is consistent with the existing definition in Section 65.1 of the Commission's regulations. In later Sections, we will revise the proposed regulations by specifying where we refer to a customer versus a property owner and where we refer to both in some circumstances.

Next, we will revise the proposed definition of "customer-owned LSL" in Section 65.52, to clarify that, if the entity's meter is located outside of the structure, or water is not metered by the entity, the customer-owned LSL ends "at the first shutoff valve located within the interior of the structure." This definition of "customer-owned LSL" is consistent with industry standards. We also note that this definition will not impact other definitions for similar terms that entities may have in their tariffs. This definition is only for purposes of determining what is a "customer-owned LSL" for LSLRs.

We will also revise the proposed definition of "entity." We will use the language from 66 Pa.C.S. § 102, with respect to water service to refer to "public utility." While we will continue to refer to "municipal corporation" in the definition of "entity," we will separately define the term as well. The definition will refer to 66 Pa.C.S. § 102, noting that a municipal corporation diverts, develops, pumps, impounds, distributes or furnishes water service to or for the public for compensation beyond its corporate limits as referenced in 66 Pa.C.S. § 1501. This revision is based on the Law Bureau's response to the OAG's tolling memorandum. In the definition of "entity," we will also modify the citation for "authority" to 66 Pa.C.S. § 3201(1), which references water service. These combined modifications will better clarify the meaning of the "entity."

Further, we will modify the proposed definition of "LSL" to include galvanized materials as the stakeholders recommend. In doing so, we will set forth a definition for "galvanized service line" and state in the definition of "LSL" that a galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material. With these modifications, the definition of "LSL" is consistent with 66 Pa.C.S. § 1311(b)(5), which includes lead pigtails, goosenecks, and other fittings in the definition of "lead water service line," and is consistent with the LCRR, which includes galvanized materials.

With regard to the definitions of "LSLR Program" and "LSLR Plan," we decline to merge the two terms as suggested by the OCA or to otherwise make changes to the proposed definitions. Contrary to the OCA's assertions, the LSLR Program and LSLR Plan are not one and the same. Although the terms "LSLR Program" and "LSLR Plan" carry different meanings in the Commission's regulations than they do in the LCRR, the terms are clear here. The LSLR Program is the "what," and the LSLR Plan is the "how." Thus, the LSLR Program focuses on what actions an entity will undertake to remove LSLs from its water distribution systems, while the LSLR Plan describes how the entity will implement its LSLR Program. Combining these terms as the OCA suggests would fundamentally alter the LSLR regulations, making them impractical.

As it pertains to the proposed definition of "LSLR Project Area," we will make changes to reflect that it is the area encompassing an entity's scheduled LSLR activities, including the area within a one-mile radius of a LSLR Project if served by the entity. We decline, however, to eliminate the one-mile radius. This radius will create economies of scale and equity for customers. This radius is appropriate as service lines within the radius are likely to be of the same vintage requiring replacement, which will enhance mobilization and cost efficiencies. This radius will also ensure that LSLR Projects are properly conducted and managed as LSLR Projects, rather than main replacement

projects. We will also define "LSLR Project Commencement" to clarify that a LSLR Project commences upon installation of the first LSLR within a LSLR Project Area.

Moreover, we will revise the proposed definition of "Service Line Inventory" to reflect the changes to Section 65.56(a) discussed in detail below. *See infra*, p. 37-39. In short, we agree that the Commission's Service Line Inventory requirements should conform to the LCRR as implemented by the DEP. Therefore, we will define "Service Line Inventory" in Section 65.52 as the "process of identifying each service line under the timing and direction of the United States Environmental Protection Agency regulation at 40 CFR 141.1-143.20 as enforced by the Department of Environmental Protection, inclusive of future changes as those regulations may be amended."

Lastly, we will revise proposed Section 65.52 by adding a definition for "water distribution system." The LSLR regulations refer to water distribution systems a number of times, such as in Section 65.53, Section 65.56, and Section 65.59. Defining the term will clarify that the Commission is referring to equipment and facilities owned or operated by an entity for diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation. This language is also consistent with other definitions such as the definition of "entity" and "municipal corporation."

3. § 65.53. Time to replace LSLs.

In the NOPR, we noted that Section 65.53 would establish that the requirement to remove and replace LSLs applies to all entities. We proposed that a Class A public utility or an authority replace all LSLs within or connected to its distribution system within 25 years. We also proposed that a Class B or Class C public utility do the same within 30 years, while a municipal corporation replace all LSLs within or connected to its distribution system, beyond its corporate limits, within 30 years. We explained that the proposed timeframes of 25-to-30 years would avoid rate shock.

a. Stakeholder Comments on § 65.53.

In its comments, the OCA proposes to move the timeframes for a Class A public utility or an authority to replace all LSLs to Section 65.53(a) and the timeframes for a Class B or Class C public utility or a municipal corporations to Section 65.53(b). The OCA does not propose changes to the timeframes for replacement. OCA Comments at 4.

PWSA contends that entities seeking Act 120 cost recovery be required to replace only residential customer-owned lead service lines, rather than all non-residential customer-owned services lines. PWSA believes that such a requirement may dissuade entities from submitting a LSLR Program for Commission approval. PWSA also suggests that the Commission recognize in its regulations that it will be almost impossible for an entity to remove every single LSL from its system due to unresponsive property owners and that, despite an entity's best efforts to identify all LSLs, there may be some LSLs that remain in the system. PWSA Comments at 8-10.

CAUSE-PA and GHHI fully support applying the requirement to remove and replace LSLs to all LSLs in an entity's system regardless of ownership. They believe the regulations will fill an important gap as the replacement of LSLs is currently only required if the entity exceeds the lead action level. CAUSE-PA and GHHI assert that customer-owned LSLs present a significant threat to public health, especially when a consumer lacks the resources to replace a LSL. They urge the Commission to reduce the timeline for completing LSLRs to 10 years. CAUSE-PA and GHHI Comments at 4-6.

In addition, CAUSE-PA and GHHI recommend that the Commission require entities to provide targeted education and flushing instructions to all customers with known or suspected LSLs, as well as free filters to low-income and moderate-income customers with LSLs. CAUSE-PA and GHHI suggest an income threshold of no less than 250% of the federal poverty level for households to receive free filters. In situations where a LSLR is truly not an option, such as certain landlord/tenant scenarios,

CAUSE-PA and GHHI suggest that entities should be required to offer tenants alternative lead remediation programming like free testing kits, filters, and replacement cartridges. CAUSE-PA and GHHI Comments at 6, 21-22, 23-24.

Moreover, CAUSE-PA and GHHI urge the Commission to include mitigation provisions to help control costs, noting that the cost of a LSLR Program does not need to be recovered within the timeframe for replacement. They recommend that the Commission require entities to amortize the cost of the program over a 25-year period and explicitly require entities to seek all available public funds and long-term financing programs to help reduce the cost of the program to ratepayers. They encourage the Commission to require entities to exhaust all avenues of funding, including federal and state dollars, before allowing entities to use a rate increase to recover LSLR costs. They also urge the Commission to take clear and decisive steps to ensure that water affordability programs are appropriately funded, adequately designed, and readily accessible to ensure that low-income households can continue to access and maintain safe and affordable water service. Further, CAUSE-PA and GHHI contend that the cost of LSL remediation programming should be shared across all customer classes and that the Commission should set clear expectations for entities to come forward with such proposals. CAUSE-PA and GHHI Comments at 6-7, 22.

Aqua agrees that the Commission's proposed timeframe of 25 years provides a reasonable amount of time for a Class A public utility to find and replace all of the LSLs in its system. Aqua states that it has policies and procedures in place to observe service line material during customer service calls. Aqua also states that it will continue to implement its pre-main replacement project of service line materials in order to be able to plan projects accordingly. Aqua Comments at 5.

b. Reply Comments on § 65.53.

In its reply comments, the OCA asks the Commission to reject PWSA's recommendation to require entities to replace only residential customer-owned LSLs. The OCA argues that Act 120 does not limit its scope or application to any specific customer class. OCA Reply Comments at 2-3.

PWSA recommends that the Commission reject CAUSE-PA and GHHI's suggestion to provide targeted education, flushing instructions, and free filters to low-income and moderate-income customers with known LSLs. PWSA submits that filter distribution should be tied to individual lead testing results, not income levels. If the Commission adopts CAUSE-PA and GHHI's recommendation, PWSA recommends that filters be provided only upon request. PWSA also opposes CAUSE-PA and GHHI's proposal that entities be required to exhaust all avenues of funding before allowing entities to put forth a rate increase to recover LSLR costs and that entities be required to document all sources of financing pursued by the entity. PWSA Reply Comments at 8-9.

c. IRRC Comments on § 65.53.

The IRRC notes that one stakeholder asserts that, due to the acute risk to consumer health and safety, the Commission should reduce the timeline to 10 years, and that the entire cost of LSLR Programs does not need to be recovered within the same timeframe for replacement. The IRRC asks the Commission to explain the reasonableness of the implementation timeframe in the final regulation and how it protects the public health, safety, and welfare while balancing the fiscal impacts. IRRC Comments at 3.

d. Disposition on § 65.53.

We disagree with PWSA that LSLRs should be limited to residential customers. We agree with the OCA that Act 120 does not limit the scope of replacements to residential customers. Section 1311(b) of the Public Utility Code refers to customers generally, not only residential customers, for LSLR purposes. *See* 66 Pa.C.S. § 1311(b).

In addition, we disagree with the OCA that proposed Sections 65.53(a) and 65.53(b) should be combined. The Commission's proposed structure sets forth clear requirements and the OCA's revisions do not have a substantive impact on these provisions. We also note that the OCA does not recommend changes to the timeframes for the replacements of LSLs. With regard to CAUSE-PA and GHHI's proposal to reduce the timeframes to 10 years, we disagree that 10 years is an appropriate timeframe to require all entities to replace LSLs. The LCRR may require a shorter timeframe for water systems above the EPA's trigger level or action level and, as explained earlier, entities that hit the trigger level or action level will be subject to those requirements. The 25-to-30-year timeframes identified by the Commission for replacement are reasonable for entities that are currently in compliance with the LCRR and not subject to the accelerated replacement schedule. Entities that are currently in compliance with the LCRR generally do not present risks that require faster replacement schedules. Additionally, the 25-to-30-year timeframes proposed by the Commission will serve to minimize the financial impact of LSLRs on entities by allowing entities to undertake replacements over a period of years, at a reasonable pace. Thus, where entities do not exceed the trigger level or action level, the Commission's schedule will provide an appropriate amount of time for entities to conduct LSLRs in a manner that protects the public health, safety, and welfare. We note that these timeframes will be the minimum requirements and that entities may choose to accelerate LSLRs to complete total LSL replacement before the Commission's deadlines.

Moreover, we disagree with CAUSE-PA and GHHI that the Commission should require entities to provide mitigation instructions or devices and remediation programs to customers. The primary focus of this rulemaking is the removal of LSLs. We note that the LCRR provides for mitigation measures, such as pitcher filters or point-of-use devices, in certain circumstances. We will not require entities to provide mitigation instructions or devices and remediation programs as part of this rulemaking. Entities,

however, are not prohibited by the Commission from proposing such provisions in their LSLR Plans or otherwise undertaking such action.

Regarding CAUSE-PA and GHHI's comments on mitigating the costs associated with a LSLR Program, we note that Section 65.60(b) of the regulations will authorize entities to defer certain expenses associated with the regulations, including income taxes which may be associated with grants or loans related to LSLRs, and expenses associated with service line inventories, LSLR Program development, LSLR Plan, LSLR Program Report, and reimbursement expenses, to the extent such costs are not recovered through the entities existing base rates or DSIC. Entities, however, will not be required to defer such costs and may, if necessary, initiate a rate proceeding to change its existing rates to address costs related to the proposed regulations. We discuss our revisions to Section 65.60(b) in more detail later in this Order. *See infra*, p. 60-61.

Further, we will make minor changes to proposed Section 65.53(b) to coincide with our revisions to the definitions of "municipal corporation" and "water distribution systems." These changes are for purposes of consistency and do not alter the requirements of this Section.

4. § 65.54. Petitioning the Commission for a LSLR Program.

In the NOPR, we explained that Section 65.54 would effectuate the mandate of Act 120 that an entity shall obtain prior approval from the Commission for LSLRs by filing a new tariff or supplement to its existing tariff under 66 Pa.C.S. § 1308(d) (relating to voluntary changes in rates), by requiring all entities to file a LSLR Program petition with the Commission for review and approval. *See* 66 Pa.C.S. § 1311(b)(2)(v). We noted that an entity's LSLR Program petition would vary based on whether the entity has a Commission-approved LTIIP.

In its comments,[8] the OCA notes that 52 Pa. Code § 121.5 requires an entity to file a separate petition for major modifications to an existing LTIIP. The OCA argues that entities should use existing procedures for LTIIPs and suggests that the Commission make it clear that the LSLR Program filing does not trigger or inhibit the existing LTIIP review process. OCA Comments at 4-5.

Aqua states that it is not opposed to filing a modified LTIIP that includes its LSLR Plan within the LTIIP document. However, Aqua suggests that a ten-day protest period apply to those entities that have a Commission approved LSLR Program prior to the effective date of these regulations. Aqua notes that those entities that already have a Commission approved LSLR Program in place have had their plan reviewed by the Commission and have begun implementing replacements. Aqua Comments at 5-6.

We do not intend to change existing LTIIP modification procedures. For an entity that has a Commission-approved LTIIP, a LSLR Plan is intended to be a separate and distinct component of the LTIIP. A LSLR Plan may result in a "major modification" if the LSLR Plan filing meets the criteria as this term is defined in Section 121.2 of the Commission's regulations. *See* 52 Pa. Code § 121.2. In addition, regarding the protest period, we do not intend to alter the timeframe provided in the Commission's regulations. Contrary to Aqua's suggestion, this timeframe should still apply to an entity that received prior Commission approval to perform LSLR activities given that the entity remains required to file a LSLR Program and a corresponding LSLR Plan that conforms with the LSLR regulations pursuant to Section 65.61.

5. § 65.55. LSLR Program Requirements.

In the NOPR, we stated that Section 65.55 would set forth the time for establishing and filing a LSLR Program, the components of a LSLR Program, and the approval

[8] We address only comments here as the stakeholders did not file reply comments on Section 65.54. The IRRC likewise does not offer comments regarding this Section.

process for a LSLR Program. We proposed that a Class A public utility or an authority file a LSLR Program within one year of the effective date of the regulations, while a Class B or Class C public utility or a municipal corporation file a LSLR Program within two years. We also proposed that the LSLR Program primarily entail: (1) a LSLR Plan as described in Section 65.56; (2) a *pro forma* tariff or tariff supplement containing proposed changes necessary to implement the entity's LSLR Program as described in Section 65.58; and (3) other information required for filings under 66 Pa.C.S. § 1308. Further, we proposed that a final Commission Order direct the resubmission of the entity's *pro forma* tariff or tariff supplement pursuant to 66 Pa.C.S. § 1308 and that, after Commission-approval, an entity's LSLR Program would be reviewed in base rate cases.

a. Stakeholder Comments on § 65.55.

In its comments, the OCA agrees that an entity's LSLR Program should be subject to review during base rate cases, but states that this should be addressed in Section 65.57, rather than Section 65.55. The OCA also notes that there may be circumstances where changes to the LSLR Program need to be made outside of a base rate proceeding. The OCA expands on these comments in addressing Section 65.57. OCA Comments at 5.

Aqua agrees with the Commission that Class A public utilities that do not have a pre-existing replacement program in place should be required to file a LSLR Program petition within one year of the effective date of the regulations. Aqua suggests that the Commission should add clarifying language to Section 65.55(a) to reference Section 65.61 for entities with existing Commission-approved LSLR Programs. However, Aqua disagrees that the LSLR Program "must" be reviewed in each base rate case. Aqua recommends that "must" be changed to "may" so that entities have the flexibility to petition the Commission to modify their LSLR Programs as needed. Aqua notes that this includes instances where the DEP or EPA may implement regulatory changes that would require changes to an entity's LSLR Plan. Aqua Comments at 6-7.

b. Reply Comments on § 65.55.

PWSA agrees with Aqua's recommendation that Section 65.55(d) be changes from "must" to "may" so that the LSLR Program is not required to be reviewed in each base rate case. PWSA also agrees with Aqua that an entity should be permitted to petition the Commission for modifications to its LSLR Program outside the context of a base rate case. PWSA Reply Comments at 2.

c. IRRC Comments on § 65.55.

As it pertains to Section 65.55(a), the IRRC questions how the requirement to file a LSLR Program within a given timeframe impacts those entities that have a preexisting LSLR Program. The IRRC notes that one stakeholder claims that a LSLR Program will be challenging and of limited value for entities that do not have an inventory in place. The IRRC also notes that the stakeholder asks for an inventory timeframe consistent with the LCRR. The IRRC asks the Commission to explain how the requirements of this provision are reasonable and will impact existing programs.[9] IRRC Comments at 3.

With respect to Section 65.55(d), the IRRC notes that stakeholders assert that a LSLR Program should not be required to be reviewed in each base rate case and that an entity should be able to file a petition to modify its LSLR Plan or a proposed tariff revision under 66 Pa.C.S. § 1308(a). The IRRC explains that stakeholders assert that changes by the Department of Environmental Protection (DEP) or the EPA could force an entity to violate its approved LSLR Plan if a change cannot be made outside of a base rate case. The IRRC questions whether opportunities for the submission of modifications should be limited and asks the Commission to clarify the final regulation or explain the reasonableness of the requirements. IRRC Comments at 3.

[9] We address comments regarding the timeframe for entities with pre-existing LSLR activities to file LSLR Programs and the impact on pre-existing LSLR activities in the "Disposition on § 65.55." *See infra*, p. 26. We address comments regarding Service Line Inventories and the LCRR's inventory requirements, which appear to relate to PWSA's comments regarding Section 65.56(a), rather than Section 65.55, in the "Disposition on § 65.56." *See infra*, p. 36.

d. Disposition on § 65.55.

First, we agree with Aqua that Section 65.55(a) should include a reference to Section 65.61, which addresses filing requirements and timing for entities with pre-existing LSLR activities. We will revise proposed Section 65.55(a) to clarify that entities with prior Commission approval to perform LSLR activities shall comply with Section 65.61. Section 65.61 will work in conjunction with Section 65.55 and provide that an entity that received prior approval to perform LSLR activities shall submit a LSLR Program meeting the requirements of Section 65.55(b) no later than the effective date of the rates established under the entity's next base rate case following the effective date of the Section or within two years of the effective date of this Section, whichever comes first. This provision will provide entities with preexisting LSLR activities with a reasonable amount of time in which to file their LSLR Program. Consistency among LSLR Programs for entities with preexisting LSLR activities and entities undertaking LSLR activities for the first time is important to effectuate the goal of Act 120.

We disagree with the OCA that review of the LSLR Program should be addressed in Section 65.57, rather than Section 65.55. Section 65.55(d) pertains to the review of LSLR Programs in future base rate cases, while Section 67.57 pertains to the review of LSLR Plans as part of the LTIIP process. Additionally, we agree with Aqua and PWSA that LSLR Programs may be reviewed in base rates cases, but are not required to be reviewed at that time. Accordingly, we will revise proposed Section 65.55(d) to reflect that an entity's LSLR program "may" be subject to review in future base rate cases.

Further, while an entity will be permitted to modify its LSLR Plan outside the context of a base rate case, a base rate case is the most appropriate vehicle for review and modification of an entity's LSLR Program. Changes to a LSLR Program are expected to occur less frequently than changes to a LSLR Plan since the LSLR Program involves the "what" and the LSLR Plan involves the "how." Also, 66 Pa.C.S. § 1311(b)(2)(v) requires Commission approval of tariff provisions regarding LSLRs. The LSLR Program

involves the entity's tariff, which is typically subject to review in base rate cases where any party may call into question tariff provisions. Thus, LSLR Program changes should be limited to base rate cases. In case-by-case situations where an entity requires changes to a LSLR Program outside of a base rate case, the entity may petition the Commission for a waiver under 52 Pa. Code § 5.43.

6. § 65.56. LSLR Plan Requirements.

In the NOPR, we explained that Section 65.56 would outline the main components of a LSLR Plan: Service Line Inventory; planning and replacements; and communications, outreach, and education. For example, we stated that Section 65.56(a) would specify the timeframe for an entity to complete a Service Line Inventory identifying the material, composition, diameter, and location of each service line connected to its water distribution systems. We also noted that Section 65.56(b) would set forth the minimum requirements for the portion of a LSLR Plan that addresses the entity's LSLR criteria, processes, and procedures for LSLRs. Further, we stated that Section 65.56(c) would require an entity to outline the communications, outreach, and education steps it will take to inform customers of the harmful effects of LSLs and the entity's plan to remove LSLs.

a. Stakeholder Comments on § 65.56.

The OCA's comments pertain to Section 65.56 generally. The OCA suggests combining this Section, which addresses LSLR Plan requirements with Section 65.55 regarding LSLR Program requirements, assuming the LSLR Plan and LSLR Program are one and the same. The OCA also raises concerns regarding landlord-tenant situations. The OCA notes that Section 65.56(c)(1)(iv) requires notification to "persons that receive drinking water from the entity . . ." as part of the communications and outreach plan for LSLRs, and states that it agrees certain individuals who receive drinking water from an entity, but who may not be a bill-paying customers, should be included in communication and outreach efforts. The OCA, however, states that the portions of Section 65.56 that

discuss the obligations of a customer do not include language or exceptions for customers that are not the property owner. The OCA argues that there should generally be more specificity regarding what is required under a landlord-tenant arrangement and proposes language to address these situations. OCA Comments at 5-6.

With regard to Section 65.56(a) and Service Line Inventory, PWSA notes that the LCRR requires an inventory within a three-year period followed by a LSLR Plan. PWSA states that requiring completion of an inventory followed by a LSLR Program will help ensure that an entity establishes realistic replacement objectives based on a solid understanding of the number and concentration of LSLs in the entity's system. PWSA, however, questions why the Commission would depart from the EPA parameters for service line inventories without justification. PWSA contends that the inventory requirements proposed in Section 65.56(a)(4) should be aligned with the requirements in the LCRR to prevent the need for entities to create two separate inventories – one to comply with the LCRR and one to comply with the Commission's regulations. PWSA also supports allowing entities to identify the material type of entity-owned and customer-owned service lines as "non lead" when completing an inventory because it is consistent with the LCRR. In addition, PWSA asks the Commission to clarify the meaning of "grouped" in Section 65.56(a)(4)(ii), which requires inventory to "be grouped by material type and diameter." PWSA Comments at 10-11.

As it pertains to planning and replacement requirements, PWSA submits that requiring a LSLR Plan to include a description of an entity's lead/material recycling and disposal efforts, per Section 65.56(b)(7), is unnecessary as these are addressed in regulations promulgated by other regulatory bodies. PWSA Comments at 10-11.

Moreover, regarding communications and outreach, PWSA seeks clarification on the meaning of "sensitive populations" in Section 65.56(c)(1)(i). PWSA asks where the term is defined in a separate regulation. PWSA suggests revising the subsection to reflect

that a LSLR plan must describe the entity's prioritization of LSLRs. In addition, to be consistent with the LCRR, PWSA recommends revising Section 65.56(c)(1)(iv) to require communication to those served by lead service lines and service lines of unknown material, rather than to all customers. PWSA also recommends deleting Section 65.56(c)(1)(v) in its entirety because as-built drawings or graphical depictions of a LSLR on the property between the customer's structure and the curb stop are not necessary. Further, PWSA notes that it supports Section 65.56(c)(2), assuming that printed and broadcast materials can be modified as necessary, without Commission approval as the LSLR Program evolves. PWSA Comments at 12-14.

CAUSE-PA and GHHI offer general comments as well as specific comments regarding Section 65.56. Generally, they advise that Sections 65.56 requires clarification as to specific prioritization criteria and should explicitly include prioritization criteria for Service Line Inventory and planning and replacements. They argue that clarification is required to ensure that the most vulnerable communities are prioritized at every stage. They also argue that specific prioritization will prevent delays in remediating properties or neighborhoods that are more difficult to serve, noting that batch LSLRs may be easier. CAUSE-PA and GHHI Comments at 7-9.

As it pertains to Service Line Inventory, CAUSE-PA and GHHI urge the Commission to revise Section 65.56(a) to include a requirement that an entity explain how it will ensure that historically underserved populations are not overlooked in the inventory process. CAUSE-PA and GHHI also recommend that Section 65.56(a) be revised to require inventories of all entities to be completed within three years, which they claim is a more reasonable timeframe. CAUSE-PA and GHHI Comments at 9-10.

With regard to planning and replacements, CAUSE-PA and GHHI urge the Commission to revise Section 65.56(b) to require entities to describe their plan to replace LSLs at no upfront costs to consumers, prioritize disadvantaged communities, and

specify plans to handle landlord refusals. CAUSE-PA and GHHI note that it is important that consumers do not shoulder the cost of property restoration once LSLs have been removed and that property restoration should be included as part of the remediation plan. Restoration, according to CAUSE-PA and GHHI, should include ensuring any damage to the property necessary for mobility, such as stairs, walkways, and ramps, are repaired. CAUSE-PA and GHHI assert that it is important for the Commission to specify that customer-driven replacement and reimbursement should be limited to pre-program reimbursements or subsequent to customer refusals pursuant to Sections 65.58(d) and 65.56(b)(10)(ii) respectively. CAUSE-PA and GHHI Comments at 10-13.

In addition, CAUSE-PA and GHHI argue that the Commission should clarify the meaning of "sensitive populations" in Section 56.56(b)(3). They assert that the Commission should require entities to include in the definition of "sensitive populations" the six demographic indicators identified in the EPA's EJSCREEN: Environmental Justice Screening and Mapping Tool, percent low income, percent people of color, less than high school education, linguistic isolation, individuals under age five, and individuals over age sixty-four. CAUSE-PA and GHHI recommend biannual reporting that include equity metrics, *i.e.*, entities should be required to track the demographics of customers who participate in in a LSLR Program to ensure equitable deployment of program dollars and to allow for course correction if the reports indicate that certain populations are not equitably served. CAUSE-PA and GHHI Comments at 14, 17-18.

CAUSE-PA and GHHI also note that Section 65.56(b) does not address or require entities to provide information to tenants about the risk of lead exposure or the consequences of their landlord's inaction and contends that additional steps must be taken to protect tenants and other occupants who reside in housing with private side LSLs. Thus, CAUSE-PA and GHHI urge the Commission to revise the regulations to provide step-in rights for entities to provide replacements where a landlord's failure to respond or refusal to accept a LSLR places tenants at increased risk of lead exposure and/or the loss

of critical water services to their home. CAUSE-PA and GHHI urge the Commission to revise Section 65.56(b)(10) to require entities to provide robust notice and disclosures to tenants who are at risk of lead exposure, and notes that informing end users, including tenants, may take extra effort. CAUSE-PA and GHHI further recommend that the Commission revise Section 65.56(b)(10) to require entities to document the reasons for customer refusals, which will provide vital information for evaluation of the program and remove barriers to participation. CAUSE-PA and GHHI Comments at 20-22.

Regarding Section 65.56(c) and communications and outreach, CAUSE-PA and GHHI recommend that baseline communications, outreach, and education procedures for each entity to seek customer consent, including at least one attempt by mail, phone, and in person. CAUSE-PA and GHHI also urge the Commission to require that materials be provided in multiple languages. They recommend that entities be instructed 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. For languages spoken less commonly, notices should include a statement in those languages informing the consumer to contact the entity for assistance. CAUSE-PA and GHHI Comments at 14-16, 19.

Aqua believes that, with respect to Service Line Inventory and Section 65.56(a), 60 months is a reasonable amount of time for an entity to complete an inventory provided that certain assumptions and methods may be used. Aqua contends that the only "full proof" way to comply with the Commission's proposal to determine service line material type is to perform an in-person examination of the service line at the customer's structure. Aqua states that this type of examination is cost prohibitive and cannot be completed in five years. Aqua submits that entities be permitted to make reasonable assumptions regarding their inventory or that the five-year time period be extended to 10 years. Aqua disagrees that 36 months is reasonable for entities to complete an inventory for a new acquisition because an entity may have to develop the inventory from scratch. Aqua proposes 60 months for inventories for new acquisitions. Aqua also disagrees with

the requirement that each entity must complete an inventory for all entity-owned and customer-owned service line materials and diameters. Aqua opines that, since the purpose of Act 120 is to find and replace LSLs, an identification of "not lead" should be acceptable for a service line material. Likewise, Aqua does not see the relevance of including pipe diameter in a service line inventory that is focused on LSLs. Further, regarding costs, Aqua believes that permitting certain assumptions will assist in lowering overall costs to establish the inventory and allow for a more targeted review of the entity's system. Aqua Comments at 7-9.

As it pertains to planning and replacements and Section 65.56(b), Aqua notes that it agrees with the information required in the planning and replacement portion of the LSLR. Aqua states that an entity can provide a projection of the number of LSLs it will replace in the upcoming five years based upon main replacement projects. However, Aqua explains that the timing may shift depending upon several factors including the weather, municipal paving schedules, etc. Aqua notes that one-off replacements by customer requests will vary year-to-year. Aqua attached a copy of the LSLR consent form it uses to its comments for reference. Aqua Comments at 9.

With respect to communications and outreach and Section 65.56(c), Aqua agrees with the Commission that consumer communication, outreach, and education is important. However, Aqua disagrees that entities should be required to provide as-built drawings that identify the location of LSLs on customers' property. Aqua believes that sharing such information poses a security risk to its infrastructure and urges the Commission to remove this provision from the regulation. Regarding its website, Aqua is not opposed to dedicating a section of its website to consumer information regarding the health effects of lead, including communication materials and a consent form. However, Aqua disagrees that entities should be required to establish an online tool showing planned LSLR projects, whether customers are eligible for reimbursements, and a map showing the location of LSLs. Aqua believes that providing this type of

information may violate customer privacy. Aqua acknowledges that the LCRR requires entities to provide some form of LSL identifier on its website for systems that serve populations over 50,000. However, Aqua notes that this requirement is system-wide, only covers systems in this targeted group and does not require the information to be in the form of a map. Aqua Comments at 10-11.

b. Reply Comments on § 65.56.

In its reply comments, the OCA asks the Commission to reject PWSA's suggestion to require completion of the Service Line Inventory prior to filing a LSLR Program. The OCA argues that entities should expeditiously implement LSLR Programs while at the same time fulfilling inventory obligations. The OCA notes that PWSA proposed a three-year inventory period, while Aqua supports a five-year period. The OCA submits that the three-year period is preferred because it is consistent with the requirements of the LCRR. Additionally, the OCA agrees with CAUSE-PA's suggestion to revise Section 65.56(b)(1) to require entities to provide robust and clear notice and disclosures to tenants at risk of lead exposure. Further, the OCA disagrees with Aqua's position against establishing an online tool to show LSL projects and a map showing whether a customer has a LSL. The OCA avers that these tools are critical and that the LCRR requires a "publicly accessible" inventory of LSLs. OCA Reply Comments at 3-4.

PWSA supports Aqua's proposed language in Section 65.56(a)(4)(i) to allow an entity to identify the material type of entity-owned and customer-owned service lines as "not lead" in completing a service line inventory. PWSA is concerned that CAUSE-PA and GHHI's recommendation regarding property restoration could be misconstrued to require entities to repair preexisting structural issues with the foundation/wall around the replacement site. PWSA submits that the replacement should be deemed complete when the replacement is completed, not when restoration is completed, and recommends that certain restoration costs be borne by the customer. In addition, PWSA opposes CAUSE-PA and GHHI's recommendation that entities be required to submit a biannual

report on equity metrics. PWSA also contends that the proposal to translate materials into multiple languages goes beyond the Commission's current requirements for termination notices and would require entities to incur significant costs to translate various outreach and education materials. PWSA believes that providing an online map for communication and outreach purposes that discloses the location of LSLs and where PWSA plans to replace LSLs sufficiently informs the public about the status of replacement. PWSA does not believe entities should be required to offer a "secure online tool" for a customer to determine their eligibility for reimbursement where information is available on the entity's website. PWSA Reply Comments at 3, 9-11.

CAUSE-PA agrees with the OCA's concern that more specificity is needed regarding landlord-tenant arrangements and exemptions for customers that may not be property owners. CAUSE-PA recommends additional clarification to the OCA's proposed language of adding "property owners and/or" in front of customers. Instead, CAUSE-PA would simply add "property owners and." CAUSE-PA believes that this clarification would ensure that entities notify both property owners and tenants of LSLs and LSL programming. Additionally, CAUSE-PA fully supports the OCA's recommended clarifying language to Sections 65.56(b)(5) and 65.56(b)(6), stating that these modifications ensure that all persons who receive drinking water from an entity are adequately protected and processes are in place to ensure that communication is provided to both those with authority to make decisions about LSLRs and those who are the direct recipient of those decisions. CAUSE-PA reiterates that the Commission should require all LSLR Plans to consider equity impacts and the methods entities will use to ensure lower income households benefit from LSLR and the metrics entities will use to track the socioeconomics and demographics of households receiving LSLRs. CAUSE-PA Reply Comments at 4-7.

c. IRRC Comments on § 65.56.

Regarding Section 65.56(a), the IRRC notes that a stakeholder expresses concern regarding the definition of "complete" and further asserts that the LSLR should only be deemed complete when full remediation and restoration efforts have occurred. The IRRC asks the PUC to clarify how completion will be determined. Additionally, the IRRC notes that a stakeholder asserts that the purpose of Act 120 is to find and replace LSLs and that the identification of "not lead" should suffice since it is consistent with the LCRR. The IRRC also notes that the stakeholder opposes requirements to provide the service line material and diameter. The IRRC questions the need for identifying and grouping by material type. The IRRC asks the Commission to explain the reasonableness and need for this information and to clarify the term "grouped." IRRC Comments at 4.

As it pertains to Section 65.56(b), the IRRC questions whether the phrase "within 1 year of commencement of an entity's LSLR Project" means within one year prior to or after commencement. The IRRC also questions what marks a project's commencement. The IRRC notes that these comments also apply to Sections 65.58(d), 66.36(a)(9)(ii), and 66.38(d). Additionally, the IRRC notes that stakeholders are concerned about scenarios where a landlord's failure to respond or refusal to accept a LSLR places tenants at risk. The IRRC asks the Commission to clarify Section 65.56(b)(10)(iii) and other relevant provisions to ensure protection of the public health, safety, and welfare where inaction or refusal by landlord may harm others. IRRC Comments at 4.

With regard to Section 65.56(c), the IRRC notes that stakeholder states that it is not aware of any DEP or EPA regulation regarding "sensitive populations." The IRRC asks the Commission to include where the regulated community can locate a definition of this term or clarify how the term is to be defined. In addition, the IRRC notes that a stakeholder expresses concern regarding notifying a bill-paying customer who is not the property owner for outreach purposes due to landlord-tenant situations. The IRRC notes that another stakeholder argues that only those served by the LSL should be notified. The

IRRC asks the Commission to clarify Section 65.56(c)(1)(iv) in terms of what is required when the bill-payer is not the owner. The IRRC also asks the Commission to explain the need for notifying all bill-paying customers and persons that receive drinking water, rather than targeting who would be impacted. The IRRC states that its comment here also applies to Section 66.36(b)(1)(iii). Further, the IRRC notes that a stakeholder expressed concern regarding Section 65.56(c)(1)(v) since this stakeholder indicated it is unlikely to have "as-built drawings" of each customer's service line and that sharing this information could pose a security risk. Thus, the IRRC asks what the need is for such information. The IRRC also asks the Commission to clarify the phrase "relevant documents associated with the LSLR." IRRC Comments at 4-5.

d. Disposition on § 65.56.

Generally, we reject the OCA's recommendation to combine Section 65.55 and Section 65.56, noting that Section 65.55 pertains to LSLR Programs and Section 65.56 pertains to LSLR Plans. As explained earlier, LSLR Programs and LSLR Plans will be separate components of the LSLR regulations. We note that we will change the term "inventorying" to "the inventory" in Section 65.56(a)(5) at the suggestion of the OCA. This minor wording change does not impact the substance of the regulation.

Moreover, throughout Section 65.56, we will clarify references to "customer" to address concerns raised in the OCA's comments and in CAUSE PA and GHHI's comments. Since "customer" refers to a person contracting with an entity for service, there may be situations in which the customer is not the property owner and cannot legally authorize a LSLR. The modifications to language referring to "customers" in Section 65.56 will address these situations by ensuring that the customer or property owner, if the customer is not the property owner, authorizes the LSLR. Additionally, the Commission will account for instances in which both the customer and the property owner, if the customer is not the property owner, should receive information regarding LSLRs since the customer's service will be impacted by the LSLR and the property

owner's asset will be impacted by the LSLR. We will make such changes throughout Section 65.56. We will also add a provision regarding an entity's process to address replacements in situations where a property owner who is not the customer is nonresponsive to an entity's offer to replace a customer-owned LSL in Section 65.58, which pertains to an entity's *pro forma* tariff or tariff supplement, given that such situations are most appropriately addressed in an entity's tariff. *See infra*, p. 52.

With regard to Section 65.56(a) and Service Line Inventory requirements, we agree that entities should not be required to identify service line material beyond the categorization required in the LCRR. Requiring this information as part of the Commission's Service Line Inventory requirements is not consistent with the intent of nor necessary for compliance with Act 120, is not likely cost-effective, could potentially delay LSL replacements throughout the Commonwealth, and risks the creation of confusion and/or uncertainty with the EPA's already robust service line inventory requirements and future DEP regulations developed to direct compliance with the LCRR.

In particular, the Pennsylvania Regulatory Review Act requires that Commission regulations both conform to the intention of the Pennsylvania General Assembly and be necessary for compliance. See 71 P.S. § 745.5(b). Under Act 120, the General Assembly authorized the Commission to, *inter alia*, coordinate the elimination of LSLs. The Commission's role under Act 120 with respect to LSLs is to establish certain standards, processes, and procedures under which water utilities may engage in the accelerated replacement of such lines and recover costs associated with replacement. Similar infrastructure legislation implemented by the Commission – the highly detailed LTIIP filed by water utilities – only requires a "general description of the location of eligible property" and a "reasonable estimate of the quantity" of the property to be improved. *See* 66 Pa.C.S. § 1352(a)(3)-(4) (relating to long-term infrastructure improvement plan). Thus, as to the Commission, the fundamental intent of Act 120 is the accelerated replacement of lead service lines, not a granular survey of all materials in use as service

lines.[10] Requiring water utilities to identify service lines by material in a manner similar, but not identical, to that directed by the LCRR, is beyond the scope of and is not necessary for compliance with Act 120. The diameter of a service line is also not relevant to whether the service line is a LSL under Act 120.

Moreover, requiring entities to identify service lines other than by the categorization included in the LCRR will likely result in significant additional costs for ratepayers. The Regulatory Review Act requires that the Commission consider the fiscal impacts of our regulatory requirements and any "adverse effects on prices of goods and services, productivity or competition." 71 P.S. § 745.5(b). Similarly, the Public Utility Code mandates that the Commission pursue service that is cost efficient as well as safe and reliable. 66 Pa.C.S. § 1501. Under the cost recovery mechanism of Act 120, costs incurred by entities in identifying LSLs will eventually be recovered from ratepayers, meaning that any unnecessary costs will not serve the goal of lead service line replacement, but will ultimately be borne by customers.

Requiring entities to identify service lines other than by the categorization included in the LCRR could also delay LSLRs throughout the Commonwealth. As Aqua indicates, LSL installations were widely used across the country until the 1950s. The only way to definitively know the material and diameter of each existing service line is by in-person examination of all of an entity's service lines, which could take years. The Commission will not delay efforts to replace LSLs by mis-directing resources away from identifying those directly associated with lead.

Further, the EPA has already developed a robust, science-based service line inventory requirement in the LCRR that does not require identification of water provider service lines by materials not directly associated with lead. As noted above, the EPA's

[10] Memorandum from Representative Alexander T. Charlton to All House Members, *Lead Water Service Lines and Replacement of Damaged Sewer Lateral,* 2017-2018 Sess. (Pa. February 1, 2018).

service line inventory requirements include the identification and categorization of certain service lines by material directly associated with lead, including "lead," "non-lead," "lead status unknown," or "galvanized requiring replacement." The EPA plans to issue guidance to help develop service line inventories in the coming months, while DEP, the agency charged with enforcing the LCRR in the Commonwealth, has yet to develop regulations and/or guidance regarding service line inventories. Because the EPA and DEP are still developing their materials, we decline to establish separate Service Line Inventory requirements at this time.

Therefore, we will eliminate the proposed separate Service Line Inventory requirements in this final rulemaking and instead refer to the LCRR service line inventory requirements. Adopting the EPA's service line inventory requirements is the prudent step for the Commission to take at a time when the EPA and the DEP are still in the process of developing guidance regarding the LCRR. Because the EPA and DEP are still working to develop their materials, we will include language in our regulations to ensure automatic adoption of any future changes to the LCRR. Automatic adoption language has been most recently used by the Commission in our pole attachment regulations at 52 Pa. Code § 77.4(a), which adopted certain Federal telecommunications regulations "inclusive of future changes as those regulations may be amended." Thus, Section 65.56(a) will require entities to submit to the Commission a Service Line Inventory that complies with the EPA's regulation at 40 CFR 141.1 - 143.20 as enforced by the DEP, inclusive of future changes as those regulations may be amended.

As it pertains to acquisitions, we will make changes to proposed Section 65.56(a)(3), which is now Section 65.56(a)(2), to reflect that an entity acquiring a water distribution system shall provide to the Commission a Service Line Inventory for the acquired system upon completion of the acquisition or as part of the Service Line Inventory under Section 65.56(a)(1), whichever is later. We will also add language to specify that an entity may rely on a previously completed Service Line Inventory for an

acquired system if the entity updates the Service Line Inventory to meet the requirements set forth by the Commission. This revision is based on the Law Bureau's response to the OAG's tolling memorandum.

Additionally, with regard to proposed Section 65.56(a)(4), which is now Section 65.56(a)(3), we will address PWSA's concerns regarding the meaning of "grouped" by removing this requirement. We will revise Section 65.56(a)(3) to require only that a Service Line Inventory must comply with the timing and direction of the EPA's regulation at 40 CFR 141.1-143.20 as enforced by the DEP, inclusive of future changes as those regulations may be amended. Moreover, we agree with Aqua that entities are permitted to use assumptions in their Service Line Inventories. Accordingly, in the new Section 65.56(a)(4), we will clarify that an entity shall identify assumptions in its Service Line Inventory to the Commission.

With regard to planning and replacements, in proposed Section 65.56(b)(7), the Commission seeks information regarding the entity's lead/material recycling and disposal efforts in order to understand the entity's responsibilities regarding disposal of waste materials, and to estimate the salvage value, if any, that an entity may receive since the value may be appropriate to pass through to customers to reduce rates. Providing this information to the Commission for service and rate purposes will not interfere with other regulatory bodies' regulations as PWSA suggests.

Regarding proposed Section 65.56(b)(9), it is commonly understood that a LSLR is "complete" when water service has been restored, any excavations have been backfilled, and grade has been returned to such a level that does not present a hazard. Entities are generally not responsible for replacing sidewalks, stone or asphalt driveways, or landscaping outside of a right-of-way. We agree with PWSA that completion should not be misconstrued to require entities to repair preexisting issues on a property.

Additionally, we will revise proposed Section 65.56(b)(10)(ii) to clarify when a LSLR Project commences by referencing the term "LSLR Project Commencement" as defined in Section 65.52. LSLR Project Commencement means the installation of the first LSLR within a LSLR Project Area. Additionally, we will clarify that the phrase "within 1 year of commencement" refers to "1 year from LSLR Project Commencement" here, where we are dealing with a customer or property owner's refusal to accept an entity's offer to replace a LSL and the impact on reimbursement. In this context, it would not be possible for refusal to occur one year before LSLR Project Commencement since the entity would not yet have made the offer at that time.

As for communications, outreach, and education, we will revise Section 65.56(c) consistent with the public notice requirements of the LCRR. The LCRR requires that a service line inventory must be publicly accessible and that water systems serving greater than 50,000 persons must make the inventory available online. The LCRR also specifies that the inventory must include a location identifier such as a street address associated with each service line requiring replacement. In addition, the LCRR provides for extensive public outreach and public education regarding the results of the service line inventory. *See* 86 FR 4198 at 4290-4296. Therefore, it is unnecessary to duplicate this effort or run the risk of promulgating regulations that compete or conflict with those of DEP or that confuse the public.

Section 65.56(c) of the final regulations will direct entities to demonstrate compliance with the EPA's regulations at 40 CFR 141.85, inclusive of future changes as those regulations may be amended. We will remove proposed Section 65.56(c)(1)(i)-(v) in its entirety. Proposed Section 65.56(c)(2) will become Section 65.56(c)(1) and proposed Section 65.56(c)(3) will become Section 65.56(c)(2). With regard to revised Section 65.56(c)(2), we will remove the proposed requirement for a "secure online map" and require a Class A public utility or an authority to provide on their website "information that provides the ability to determine whether a property may have a LSL."

We will also require these entities to provide a method to request assistance to determine if a service line is a LSL.

7. § 65.57. Periodic review of LSLR Plan.

In the NOPR, we noted that proposed Section 65.57 would require an entity to update its LSLR Plan at least once every five years after initial approval of the LSLR Plan. We proposed that the Commission would review the LSLR Plan of an entity with a LTIIP as part of the typical LTIIP review and renewal process and would review other LSLR Plans using a similar periodic review outside of the LTIIP process.

a. Stakeholder Comments on § 65.57.

In its comments, the OCA states that reviewing the LSLR Plan as part of the LTIIP review process is reasonable given that Section 64.54(b) requires an entity to file a modified LTIIP for the LSLR Program. The OCA argues that review should only occur every five years if an entity does not have a LTIIP. The OCA avers that this will be more efficient and prevent competing processes. The OCA asks the Commission to specify that Section 65.57 does not inhibit the scope of review of the LSLR Program during base rates cases. The OCA avers that both processes should complement each other and provide multiple opportunities for review. OCA Comments at 6.

PWSA suggests that the Commission establish procedures for completion of a LSLR Plan in or around Section 65.57, where the Commission currently proposes periodic reviews. PWSA Comments at 14.

Aqua notes that it agrees with the Commission that LSLR Plans should be reviewed during the periodic review of the LTIIP. Based on fluctuating factors, Aqua submits that an increase or decrease in the quantity of dollars projected for LSLRs should not trigger a major modification under 52 Pa. § 121.2 for information filed in an entity's Annual Optimization Plan and LTIIP under 52 Pa. Code § 65.59. Aqua states that if the

program is not flexible, the Commission may be required to process LTIIP modifications several times within a five-year projected period. Aqua Comments at 9, 11.

b. Reply Comments on § 65.57.

In its reply comments, the OCA disagrees with Aqua's suggestion that submitting information regarding an increase or decrease in the quantities or dollars projected for LSLRs through an annual asset optimization plan (AAOP) should not trigger a major modification to the LTIIP under the Commission's regulations. The OCA argues that circumventing the LTIIP procedures is premature. OCA Reply Comments at 5.

PWSA supports Aqua's comment that if an entity is submitting information through its AAOP and LTIIP, then an increase or decrease in the quantities or dollars projected for LSLRs should not trigger a major modification under the Commission's regulations. PWSA Reply Comments at 3-4.

c. IRRC Comments on § 65.57.

The IRRC notes that one stakeholder states that there should come a point in time when an entity has completed its LSLR Plan and the obligations in Chapter 65 dissipate. The IRRC asks the Commission to revise the final regulation to establish procedures for the completion of a LSLR Plan. IRRC Comments at 5.

d. Disposition on § 65.57.

We agree with the OCA that existing LTIIP procedures should not be changed. As noted earlier, a LSLR Plan may constitute a "major modification" if the LSLR Plan filing meets the criteria in 52 Pa. Code § 121.2. However, the LSLR Program annual cap on the number of replacements should minimize Aqua's concern that one of these parameters would be triggered.

As it pertains to the OCA's concerns regarding the scope of review of the LSLR Program during base rates cases, we note that Section 65.57 will not limit the scope of the issues that may be raised in a base rate proceeding. Section 65.57 addresses only the items to be considered as part of the periodic review under Chapter 65.

Additionally, while LSLR Plans will be longstanding, we agree with PWSA that the regulations should provide for the Commission's review of a LSLR Plan to determine whether the requirements should terminate. We note that entities may acquire non-jurisdictional water distribution systems that contain LSLs and those systems, upon acquisition, would become subject to Commission regulations and the entity's LSLR Program. As such, an entity's LSLR Program may need to remain in place for the foreseeable future, and a LSLR Plan update that indicates minor changes to update an entity's prior LSLR Plan would generally be required after acquisition. Thus, review of an entity's LSLR Plan status is appropriate as part of the periodic review. We will revise proposed Section 65.57(a) to specify that the Commission's periodic review of a LSLR Plan will include determinations regarding whether an entity's LSLR Plan has been satisfied, whether the entity has demonstrated the absence of LSLs through its Service Line Inventory, and whether the entity should be released from LSLR Plan requirements.

8. § 65.58. *Pro forma* tariff or tariff supplement requirements.

In the NOPR, we stated that proposed Section 65.58 would outline the minimum requirements, in addition to proposed changes necessary to implement a LSLR Program, that must be contained in an entity's *pro forma* tariff or tariff supplement, including: LSLR Program annual cap; service line demarcation; partial LSLRs; reimbursements; and warranty. For example, we noted that Section 65.58(a) would effectuate the mandate that a new tariff or supplement to an existing tariff approved by the commission include a cap on the maximum number of customer-owned lead water services lines that can be replaced annually." *See* 66 Pa.C.S. § 1311(b)(2)(vi). We also noted that Section 65.58(b) would require an entity's tariff or tariff supplement to distinguish entity-owned

and customer-owned LSLs for LSLRs. In addition, we explained that Section 65.58(c) would require an entity to include in its tariff or tariff supplement provisions to address partial LSLRs. We also explained that Section 65.58(d) would require an entity to offer reimbursements to eligible customers who have replaced their LSLs within one year of commencement of an entity's LSLR Project within a LSLR Project Area. *See* 66 Pa.C.S. § 1311(b)(2)(vii)(B). Further, we addressed warranty provisions in Section 65.58(e). *See* 66 Pa.C.S. § 1311(b)(2)(vii)(A).

a. Stakeholder Comments on § 65.58.

The OCA focuses its comments on Section 65.58(c) and partial LSLRs. The OCA claims that Section 65.58(c)(2) allows a customer to require an entity to replace the entity-owned portion of a LSL if the customer elects to replace their portion of the LSL sooner. The OCA argues that this could create a problem by requiring the entity to replace a LSL in a geographic area where it has yet to develop economies of scale creating additional costs. The OCA also argues that 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 entity to notify others in surrounding areas of a quicker timeline. In addition, the OCA recommends that the regulations address emergency situations so that a LSL can be replaced faster than the 90-day minimum when necessary. Moreover, the OCA claims that Section 65.58(c)(3) allows partial replacements when a customer's service is terminated. The OCA argues that this provision contradicts Section 65.62, which prohibits partial LSLRs. OCA Comments at 6-7.

Additionally, regarding Section 65.58(d), the OCA proposes language changes so that reimbursements apply to customers who moved forward to replace LSLs prior to the establishment of an entity's LSLR program. The OCA also recommends removing the phrase "licensed to perform LSLR work in the Commonwealth" from Sections 65.58(c) and 65.58(d), addressing reimbursements and warranty respectively, noting that it is not aware of any such licensing requirements. OCA Comments at 6-8.

Noting its proposed revisions to the definitions of "customer-owned lead service line" and "service line," first, with regard to service line demarcation PWSA recommends deleting Section 65.58(b)(2). PWSA also requests clarification regarding how an entity is to use the LSLR process to perfect its ownership of the portion of the service line located within the then-existing right-of-way to ensure it can obtain necessary permits as directed by Section 65.58(b)(3). PWSA Comments at 14-15.

Next, as it pertains to reimbursements, PWSA seeks clarity of the language in Section 65.58(d) establishing that an entity will "provide a reimbursement to an eligible customer who replaced their LSL within one year of commencement of an entity's LSLR Project within a LSLR Project Area" and also suggests defining "commencement of the LSLR Project." PWSA suggests that once the planning on a LSLR Project is complete, the customer not be eligible for reimbursement for replacement of their line. PWSA also seeks clarification as to whether it can continue its income-based reimbursement program for customer-initiated replacements not performed within a year of commencement of a LSLR Project, if the Commission's proposed regulations are adopted. PWSA also recommends deletion of Section 65.58(d)(1)(iii)(B) by contending that it would micromanage the submission and verification of appropriate documentation relating to a customer-initiated LSLR. PWSA Comments at 15-17.

Further, with respect to warranty, PWSA submits that the Commission's proposal to require a two-year warranty for a customer-owned LSL that an entity replaced is longer than the accepted industry practice for a warranty term and believes that a 30-day warranty on workmanship and materials would adequately protect the customer. PWSA recommends that the proposed warranty requirement be revised to exclude "restoration of surfaces" from Section 65.58(e)(2) or clarify that the surfaces to be restored are roadways, public sidewalks, and the backfilling of any trenches excavated as part of the replacement and not all surfaces on private property. PWSA Comments at 17-18.

Aqua begins its comments by addressing the LSLR Program annual cap and Section 65.58(a). In this regard, Aqua does not offer substantive comments regarding changes to the proposed regulations, but recounts how it developed its yearly LSLR cap. Aqua states that it ultimately estimated that each LSLR project would be $4,000 based on discussions with contractors and a review of similar LSLR projects. Aqua noted that the projects generally ranged from $3,000-$5,500, depending on the length of the service line and other factors, including restoration. Aqua Comments at 12.

Regarding service line demarcation, Aqua agrees with the Commission's proposed regulation at Section 65.58(b) regarding what the entity owns and what the customer owns. Aqua believes that an entity should not be required to investigate or have a duty to investigate a customer's internal plumbing to determine material type while replacing a customer LSL. Aqua asserts that entities should not be exposed to potential liability of what may, may not, or should have been observed related to the internal plumbing of a customer's structure. Aqua Comments at 12-13.

Moreover, with respect to Section 65.58(c) and partial LSLRs, Aqua notes that it understands the Commission's rationale for requiring termination of service for partial LSLRs. However, Aqua points to complexities and difficulties in terminating service for refusal to allow replacement of customer side LSLs or discovery of a partial LSL. For example, if the landlord refuses to accept replacement or refuses to replace a customer side LSL, the renter is left without water without any fault of their own. Also, Aqua notes that replacement by customers may be difficult to track, unless the entity is notified by the customer. Aqua states that the likely scenario is that when an entity discovers a partial LSL, it will enter an emergency PA One Call ticket and replace the LSL rather than terminate service to the customer. Aqua Comments at 13.

As for Section 65.58(d) and reimbursements, Aqua agrees with the Commission that an entity's tariff should explain LSLR reimbursement conditions. Aqua disagrees

with the amounts set forth in the proposed regulations. Aqua recommends that the language be changed to reflect that customers will be eligible for reimbursement at the lower cost of the customer's actual cost or what the entity would have incurred to perform the replacement. Aqua Comments at 14.

Finally, with respect to Section 65.58(e) and warranty, Aqua agrees with the Commission that a two-year warranty term is appropriate. Aqua recommends that the warranty, begin on the date that the LSLR is dedicated to the customer, and that it be limited to repairing the customer's service line. Aqua states that the language regarding access for repairs can be included in the consent form. Aqua clarified that the two-year warranty should not apply if a customer replaces its LSL outside of the two-year warranty period and seeks reimbursement. Aqua reasoned that an entity should not be required to provide a warranty on work done by someone other than the entity or the entity's contractor(s). Aqua recommends that this change should also be reflected in Section 65.56(b)(10)(ii). Aqua believes that this language change should encourage customers to seek replacement under the entity's replacement program. Aqua Comments at 14.

b. Reply Comments on § 65.58.

In its reply comments, the OCA notes that it agrees with Aqua regarding difficulties with termination for refusal to allow a LSLR and suggests that it may be best to allow an entity to propose termination protocols based on the specific circumstances and service territory. The OCA argues that this will allow for different approaches where termination is not feasible or appropriate. In addition, the OCA asks the Commission to reject Aqua's and PWSA's suggestions regarding reimbursements. The OCA states that customers should not be penalized for replacing LSLs to remediate health concerns and that customers who replace LSLs after the commencement of a LSLR Project should still have the opportunity to seek reimbursement. The OCA also disagrees with PWSA's suggestion that a 30-day warranty is sufficient. OCA Reply Comments at 6-7.

PWSA states that it supports Aqua's proposed change to Section 65.58(d) 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." PWSA also agrees with Aqua that, if a customer replaces their LSL outside an entity's replacement program and seeks reimbursement, the entity should not be responsible for a warranty on the LSLR. PWSA Reply Comments at 4-5.

CAUSE-PA agrees with Aqua that an emergency LSLR is appropriate in circumstances where a tenant faces termination of service due to the landlord's refusal to allow LSLR, even though replacement is to be provided at no cost to the landlord. Also, CAUSE-PA agrees with OCA that termination of service should not be a requirement for discovering a partial LSL. CAUSE-PA recommends that references to termination of service be stricken from the regulation and be replaced with OCA's proposed process for emergency LSLRs. CAUSE-PA asks the Commission to consider revising this process to ensure that customers, especially tenants, are not placed at risk of lead exposure or deprived of water service. CAUSE-PA Reply Comments at 7-8.

c. IRRC Comments on § 65.58.

Regarding the LSLR Program annual cap and Section 65.58(a), the IRRC notes that the annual cap is described as a maximum number of replacements, while the Commission later refers to the "value of reimbursements" causing the entity to exceed its annual budgeted cap. The IRRC questions whether the cap is based on a number of replacements or the value of reimbursements. If the cap is number-based, the IRRC asks the Commission to explain how the value of reimbursement impacts the annual cap. The IRRC also asks the Commission to explain the conflicting provisions. The IRRC notes that this comment applies to Sections 66.38(a) and 66.38(d)(2). IRRC Comments at 5-6.

As it pertains to service line demarcation and Section 65.58(b), the IRRC notes that one stakeholder questions how an entity is to 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. The IRRC asks the Commission to clarify this provision. IRRC Comments at 6.

With respect to partial LSLRs and Section 65.58(c), the IRRC notes that a stakeholder claims terminating service for refusal to allow an entity to replace a customer-side LSL, or discovery of a partial replacement, will present difficulties for entities administering a LSLR. The IRRC also notes that another stakeholder asks the Commission to allow an entity 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. The IRRC asks the Commission to explain the reasonableness of requiring termination of service for a partial LSLR and how the final regulation protects the public health, safety and welfare. In addition, the IRRC notes that a stakeholder questions the phrase "licensed to perform LSLR work in the Commonwealth." The IRRC asks the Commission to clarify this provision. The IRRC states that the same applies to Sections 65.58(d)(1)(iii)(B) and 66.38(d)(1)(iii)(B). Further, the IRRC notes that a stakeholder claims an entity is allowed to perform a partial LSLR when service has been terminated and that this conflicts with Section 65.62. The IRRC asks the Commission to clarify these provisions. IRRC Comments at 6-7.

Regarding reimbursements and Section 65.58(d), the IRRC notes that some stakeholders argue that reimbursements should be the lower of the customer's actual cost or what the entity would have incurred to perform the replacement, while another commentator states that the Commission's proposed language appropriately recognizes that a customer's costs to replace a LSL may exceed the entity's cost. The IRRC asks the Commission to explain the reasonableness of the proposed language and notes that this comment applies similarly to Section 66.38(d)(1)(iii)(A). IRRC Comments at 7.

Finally, the IRRC notes that stakeholders request clarification that the warranty in Section 65.58(e) would not apply to a customer-side LSL replaced by someone other than the entity or its contractors. The IRRC asks the Commission to clarify this provision as well as Section 66.38(e). IRRC Comments at 7.

d. Disposition on § 65.58.

First, we will revise proposed Section 65.58(a), which addresses LSLR Program annual caps, by removing the word "maximum" as it is redundant. Thus, the LSLR Program annual cap will be a "cap on the number of customer-owned LSLs that can be replaced annually." There will not be a specified monetary value for a LSLR Program annual cap in the regulations. Rather, an entity will be responsible for establishing a prudent budget for LSLRs based on the number of customer-owned LSLs that the entity can replace annually under the cap. However, entities may establish budget caps in their tariff, and some have done so.

Next, we will revise proposed Section 65.58(b)(1) regarding service line demarcation to reflect that the entity's tariff must include a definition of customer-owned LSL "for purposes of the entity's LSLR Program" that is consistent with Section 65.52. As noted above, the definition is only intended to determine what is a "customer-owned LSL" in terms of an entity's LSLR Program, not other aspects of an entity's tariff. In addition, we will revise Section 65.58(b)(3) to clarify an entity's requirements for perfecting ownership of the portion of a service line located within a then-existing right-of-way. In this regard, the entity shall resolve ownership conflicts in accordance with its Commission-approved tariff during the planning phase of a LSLR Project.

Throughout Section 65.58(c) regarding partial LSLRs, we will clarify references to "customer" as we did in Section 65.56 to properly refer to customers versus property owners. We will also make similar changes throughout Section 65.58(d). We note that proposed Section 65.58(c)(1) is not inconsistent with proposed Section 65.62, as the

OCA suggests. Section 65.58(c)(1) pertains to an entity's tariff provisions on partial LSLRs and Section 65.62 pertains to partial LSLRs generally. Accordingly, when a customer-owned LSL is replaced prior to the replacement of an entity-owned LSL, Section 65.58(c)(1) will require the entity to terminate service until it can replace its LSL. Section 65.62 will require an entity to replace its LSL concurrent with the replacement of a customer-owned LSL within a specified timeframe when a customer initiates a LSLR. It will also require that a customer's refusal when an entity offers to replace the customer-owned LSL will result in termination. Thus, a partial LSLR on the customer or entity will be prohibited and lead to termination. Partial LSLRs result in permanent negative health effects from lead exposure. Therefore, these termination requirements are necessary to ensure adequate, efficient, safe, and reasonable service due to the known dangers of partial LSLRs to the public health.[11]

We recognize that entities may wish to proceed with replacements necessary to avoid a partial LSLR resulting in termination in situations where the property owner is not the customer and is nonresponsive to the entity's offer to replace a customer-owned LSL. Thus, we will revise Section 65.58(c) by adding a provision regarding an entity's process to address such situations. This provision will allow an entity to propose in its tariff language specifying the entity's process to address replacement of a customer-owned LSL to avoid termination of service when a property owner who is not the customer is nonresponsive to the entity's offer to replace the LSL. For instance, an entity should specify whether it will exercise step-in rights to make necessary replacements of a customer-owned LSL to avoid termination of service when a property owner who is not

[11] As stated in the NOPR, in *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket No. M-2018-2640802 (Order entered June 18, 2020), the Commission determined that partial LSLRs are not in the public interest and are not consistent with the statutory requirements of 66 Pa.C.S. § 1501. *Id.* at 93-94. The Commission noted that "[t]he negative effects of partial service line replacements are well documented in scientific literature" and that "[t]he permanent negative health effects from lead exposure, especially to uniquely vulnerable populations of developing fetuses, infants and children, is explained in the unrebutted testimony of [UNITED's expert witness] Dr. Lanphear." *Id*. at 92.

the customer is nonresponsive to an entity's offer to replace a customer-owned LSL.[12] This provision will be Section 65.58(c)(3) and the proposed Section 65.58(c)(3) will be Section 65.58(c)(4).

With respect to the new Section 65.58(c)(4), we will replace the phrase "contractor licensed to perform LSLR work in the Commonwealth" with "licensed contractor." We agree with the OCA that there is no specific license required for LSLR work. The purpose of this provision is simply to ensure that qualified professionals are undertaking LSLRs or are verifying as to the completion of the LSLR. Requiring that a licensed contractor complete the work or verify completion of the LSLR will fulfill this purpose. We will make the same change in Section 65.58(d)(1)(iii)(B).

Moreover, we note that Section 65.58(d) will require reimbursement to all eligible customers or property owners, if the customer is not the property owner, who replace their LSL within one year of LSLR Project Commencement. As noted in Section 65.52, the term "LSLR Project Commencement" refers to the installation of the first LSLR within a LSLR Project Area. Thus, under Section 65.58(d), a LSLR eligible for reimbursement must be within a LSLR Project Area. Section 65.58(d) is intended to encompass all eligible customers or property owners, including, as noted in Section 65.56(b)(10)(ii), those that refuse an entity's offer to replace their LSL and later replaced the LSL within the requisite timeframe. For such customer or property owners, replacement must occur within one year from LSLR Project Commencement in order to be eligible for reimbursement as earlier replacement would not be possible given that refusal cannot occur before LSLR Project Commencement. *See supra*, p. 41.

[12] In *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket No. M-2018-2640802 (Order entered February 4, 2021), the Commission directed PWSA to include provisions regarding step-in rights in its tariff. *Id.* at 31-32.

Otherwise, we will revise proposed Section 65.58(d) to clarify that an entity shall provide a reimbursement to an eligible customer or property owner, if the customer is not the property owner, who replaced their LSL "1 year before or from LSLR Project Commencement." In this regard, we note that Act 120 broadly allows "reimbursement to a customer who has replaced the customer's lead water service line . . . within one year of commencement of a project." 66 Pa.C.S. § 1311(b)(2)(vii)(B). For instance, we note that customer-initiated LSLRs under Section 65.62(a) will generally be eligible for reimbursement under Section 65.58(d), if the customer-owned LSL is replaced within one year before or from LSLR Project Commencement and is within a LSLR Project Area. We note that the cap under Section 65.58(a) will not apply to entity-owned LSLRs installed concurrent with a customer-owned LSLR under Section 65.62(a), since the cap only applies to the entity's replacement of customer-owned LSLs. Further, PWSA seeks clarification about the impact of the reimbursement regulations on its existing reimbursement program for customer-initiated replacements not performed within one year of commencement of LSLR Project Commencement. Again, we note that the Commission's regulations will set forth minimum requirements and, thus the regulations will not limit entities from offering other reimbursements.

Regarding the amount of reimbursement, in proposed Section 65.58(d)(1)(iii), the Commission properly limited reimbursements to the customer's actual cost. Restricting the reimbursement amount further would not provide a meaningful reimbursement and may disincentivize customers from proceeding with replacements. Therefore, we decline to limit the amount of reimbursement in the manner some stakeholders suggest.

In addition, we will revise the language of proposed Section 65.58(d)(2) to specify that, notwithstanding the LSLR Program annual cap set out in Section 65.58(a), an entity shall provide reimbursements within the length of time in Section 65.58(d)(1)(ii) to eligible customers. If the reimbursement would cause the entity to exceed its current annual cap under Section 65.58(a), the entity will be required to increase its current

annual cap by the amount of the reimbursement and reduce its next annual cap by the same amount. The purpose of Section 65.58(d)(2) is to ensure that, if the annual cap in an entity's tariff, budgetary or otherwise, would restrict the entity from providing a reimbursement to an eligible customer, the entity shall nonetheless provide the reimbursement to the customer and reduce their next annual cap by the amount of reimbursement. We note that entities should develop annual caps based on an expectation of reimbursements, and that entities cannot use such caps as a basis for rejecting reimbursement requests or delaying reimbursement requests beyond the length of time indicated in Section 65.58(d)(1)(ii).

Lastly, with respect to proposed Section 65.58(e) regarding warranty, we agree with PWSA and Aqua that the warranty is only for LSLR work performed by the entity or its contractor and we will revise this Section accordingly. Additionally, we disagree that the warranty term in Section 65.58(e)(1) should be shortened. A two-year warranty period is reasonable as it covers a full freeze-and-thaw cycle, which may reveal any issues with the LSLR. Further, regarding Section 65.58(e)(2), as noted earlier, "restoration of surfaces" refers to excavations that have been backfilled and grade that has been returned to level. Entities are generally not responsible for replacing sidewalks, stone or asphalt driveways, or landscaping outside of a right-of-way. Therefore, the warranty required by our regulations will not extend beyond this.

9. § 65.59. LSLR Program Reports.

In the NOPR, we stated that Section 65.59 would require that each entity with an approved LSLR Program file an annual LSLR Program Report by March 1. We also proposed that the LSLR Program Report would detail an entity's annual activities based on 13 metrics identified by the Commission, including, for example, the number of LSLRs, the average costs of LSLRs, and the efforts to obtain additional funding.

a. Stakeholder Comments on § 65.59.

In its comments, the OCA suggests adding language to Section 65.59(b) to reflect more specific references to LSLs replaced by a municipality, rather than at the county level if the entity provides service only one county. The OCA also suggests adding the reason for the refusal as a proposed reporting requirement. The OCA argues that these items will be helpful as part of the reports. OCA Comments at 8.

PWSA believes it is irrelevant to capture the length and pipe diameter of LSLs replaced. Additionally, PWSA notes that the "actual cost of each LSLR by county," "average cost of a LSLR by county," and total annual LSLR expenditures for the calendar year by customer class" can be difficult to determine and are not always apparent. PWSA seeks clarity on the geographic location of LSLR customer refusal for the calendar year and the applicable lead monitoring requirements established by the DEP for each entity's water distribution systems. PWSA recommends removal of the reference to "pipe diameters" in Section 65.59(b) as well as adjusting the reference to "customer service lines" if the Commission is seeking the status of the inventory of both entity-owned and customer-owned LSLs. PWSA Comments at 18.

Aqua agrees that certain information should be provided in reporting and tracking LSLRs. However, Aqua believes that some of the information included in the proposed regulation is unnecessary. Aqua suggests removing (b)(2) and (b)(3) from the reporting requirements. Aqua believes that length and pipe diameter does not need to be reported and would be overly burdensome to collect. Aqua Comments at 15.

b. Reply Comments on § 65.59.

In its reply comments, the OCA notes that it disagrees with PWSA's and Aqua's claims regarding the content of LSLR Program Reports, specifically that providing the pipe length and diameter of LSLRs would be burdensome. The OCA argues that providing information on pipe length and diameter of LSLRs will assist in base rate cases

and in the review of LSLR Programs. The OCA also notes that these requirements ensure transparency. OCA Reply Comments at 8.

c. IRRC Comments on § 65.59.

The IRRC notes that stakeholders assert that several of the proposed metrics in Section 65.59(a) are not necessary or useful information for an entity's lead remediation efforts. For example, the IRRC states that one stakeholder argues that the length and pipe diameter of LSLs replaced are irrelevant and the "actual cost of each LSLR by county" and "total annual LSLR expenditures for the calendar year by customer class" can be difficult to determine. The IRRC asks the Commission to explain the reasonableness and need for the items required in the LSLR Program Reports. IRRC Comments at 7.

d. Disposition on § 65.59.

We disagree with Aqua and PWSA that the length of LSLs removed, by pipe diameter, and the pipe length, diameter, and material type for LSLRs are not necessary to include in LSLR Program Reports pursuant to Section 65.59(b)(2) and 65.59(b)(3). We nonetheless acknowledge PWSA's concern regarding reporting certain metrics on a "by county" basis. To reduce the risk of increased costs and delay, we will revise Sections 65.59(b)(1)-(5) to require reporting "by water system," rather than "by county." Identifying and reporting these metrics should not present a burden for entities as they perform replacements. This data is likely readily available to entities and is consistent with accepted ratemaking principles and practices. Tracking such metrics is also important to ensure complete records for water distribution systems.

We also disagree with PWSA's assertion that tracking the actual cost and average cost of LSLRs is not necessary. We agree with the OCA's comments that this information is useful for the review of LSLR Programs in the context of base rate proceedings. We also agree that reporting this information offers transparency. The same is true of tracking the total annual LSLR expenditures for the calendar year by

customer class. Accordingly, the metrics specified in Section 65.59(b) are reasonable and appropriate for inclusion in LSLR Program Reports.

Additionally, we agree with the OCA that entities should report the municipality of refusals and the reasons for refusal when reporting the number of LSLR refusals. As the OCA notes, this information will allow for a better understanding of the issues leading to refusals and will allow an entity to identify and tailor its outreach efforts in problem areas. The Commission does not anticipate that entities will face a large number of refusals and, as such, reporting this information will not be a burden for entities. We will revise Section 65.59(b)(9) to reflect this change.

Regarding PWSA's comment on the reporting of applicable lead monitoring requirements established by the DEP proposed in Section 65.59(b)(10), we clarify that the Commission will seek information on an entity's compliance reporting to DEP here. This information must be in the form of an explanation indicating whether an entity is in compliance with the DEP's lead monitoring requirements. Further, we will revise the language in Section 65.59(b)(12), which will require an entity to report the status of its Service Line Inventory efforts as part of its LSLR Program Report.

10. § 65.60. Accounting and financial.

In the NOPR, we explained that Section 65.60 would set forth uniform standards for the accounting treatment of LSLR costs, including expenditures associated with installing LSLRs. We proposed to require an entity to record LSLR costs in compliance with the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts applicable to the entity, in an intangible asset account. We also proposed to allow the deferral of certain income taxes that are not recovered through base rates or the DSIC for accounting purposes and the deferral of certain expenses that are not recovered through base rates. We noted that prudent and reasonable deferred income taxes would be amortized over a reasonable period of time with a return on an entity's

investment, whereas other expenses would be amortized over a reasonable period of time without a return on an entity's investment, unless otherwise directed by the Commission. Further, we explained that, for purposes of calculating the return of and on an entity's prudently incurred cost for LSLRs, the Commission would employ the equity return rate in 66 Pa.C.S. § 1357(b)(2)-(3) (relating to computation of charge), which appear to indicate the amortization rate for LSLRs should be the entity's permitted equity return rate. *See* 66 Pa.C.S. § 1311(b)(2)(iii).

a. Stakeholder Comments on § 65.60.

In its comments,[13] the OCA proposes the use of a subaccount to separately identify LSLR costs. The OCA states that its proposal is consistent with the procedure used by PAWC in its previously approved LSLR Program. The OCA claims that Act 120 does not authorize entities to defer income taxes or expenses related to implementation of its requirements. The OCA avers that it is unusual for the Commission to promulgate regulations that expressly allow deferral of all taxes and expenses associated with the implementation of regulations and that deferred regulatory accounting has only been used sparingly for expenses that are non-recurring and extraordinary. The OCA states that there is no reason costs cannot be dealt with in the normal course of a base rate proceeding. The OCA also states that whether deferred costs are allowed to be recovered in future proceedings is not predetermined at the time deferred regulatory accounting is granted. The OCA argues that allowing an entity to earn a return on deferred income taxes and dollar-for-dollar recovery of expense is unwarranted. The OCA also asks the Commission to remove language referring to 66 Pa.C.S. § 523 (relating to performance factor consideration), arguing that it is a departure from ratemaking principles. OCA Comments at 9-10.

[13] We address only the stakeholders' comments and the IRRC's comments here as no stakeholders filed reply comments regarding Section 65.60.

Aqua disagrees with the Commission that LSLRs should be recorded as intangible assets. Aqua submits that the proper NARUC account is "Account 333" and that these costs and these investments should be depreciated over the group remaining life of the entire class of assets. Aqua asserts that this treatment method allows for a more accurate match of cost recovery through depreciation expense incorporated into the cost of service. Aqua states that under this method, costs will be recognized for return on and return of an entity's investment as projects are completed and depreciated over the useful life of the services asset class. Aqua Comments at 15-16.

b. IRRC Comments on § 65.60.

The IRRC notes that one stakeholder asserts that LSLRs should not be recorded as intangible assets and another stakeholder asserts that this Section goes beyond the requirements of Act 120, stating that Act 120 does not authorize entities to defer income taxes or expenses related to implementation. The IRRC also notes that this stakeholder expresses further concerns related to the language that would permit a return on the entity's investment and states that it is not appropriate for the entity to earn a return on operating expenses and is contrary to sound ratemaking principles. The IRRC asks the Commission to explain its statutory authority regarding tax deferment and explain the reasonableness of the fiscal impacts of these provisions. The IRRC states that this comment applies to similar language in Section 66.40(b). IRRC Comments at 8.

c. Disposition on § 65.60.

We agree with the OCA that entities should use subaccounts for LSLR costs. We will eliminate the portion of proposed Section 65.60(a) that refers to intangible assets and revise this Section to reflect that LSLR costs recorded as assets must be maintained under separate and distinct subaccounts. This revision will also resolve Aqua's concerns that LSLR costs should not be recorded as intangible assets and should instead be recorded in certain NARUC accounts. We will not require use of a particular account.

In addition, we will largely re-write proposed Section 65.60(b) pertaining to deferral. Per the OCA's comments, we will remove language allowing entities to earn a return on deferred income taxes. Also, consistent with the OCA's recommendation, we will remove language providing that 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 finds that providing a return on investment is warranted. This change will likewise eliminate the reference to 66 Pa.C.S. § 523.

We will revise proposed Section 65.60(b) to provide that entities may defer, for accounting purposes, 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, Service Line Inventory, LSLR Program development, LSLR Plan, LSLR Program Report, and reimbursement expense, to the extent that such costs are not recovered through the entity's existing base rates or DSIC. With these revisions, the accounting and financial provisions in Section 65.50 are reasonable and appropriate.

Additionally, we note that an entity will not be required to defer the costs identified and may, if necessary, initiate a rate proceeding to change its existing rates to address costs related to the proposed regulations. Within the context of a rate proceeding, the Commission will review whether any costs, deferred or otherwise, are recoverable and, if so, whether the entity's proposed methods to recover costs result in rates that are just and reasonable. The Commission's review will include, among other things, consideration of how costs should be recovered from the entity's various customer classes and what periods are appropriate to recover such costs. This review will be appropriately based upon the specific facts presented in the entity's rate proceeding.

11. § 65.61. Preexisting LSLR activities.

In the NOPR, we noted that Section 65.61 would require an entity that is engaged in existing Commission-approved LSLR activities to submit a LSLR Program that, at a

minimum, conforms with the requirements set forth in Subchapter B. We explained that these LSLR Programs would become effective no later than the filing date of the rates established under the entity's next base rate case or within two years of the effective date of these regulations, whichever occurs first.

a. Stakeholder Comments on § 65.61.

In its comments,[14] PWSA suggests that the Commission avoid a "one size fits all" approach to implementation of Act 120. Therefore, for entities that have an existing comprehensive lead remediation plan, PWSA recommends that the Commission create and impose only the standards and procedures that it is tasked with establishing pursuant to Act 120, with those not specifically directed by Act 120 falling to the jurisdiction of DEP and the EPA. PWSA Comments at 19.

Aqua states that, if an entity has a pending rate case before the Commission at the time these regulations become effective, the entity should be required to file a LSLR Program, no later than the effective date of its next base rate case or within two years of the effective date of the regulations, whichever is sooner, and not on the date rates would go into effect for an entity's pending rate case. Aqua Comments at 16.

b. IRRC Comments on § 65.61.

The IRRC states that a stakeholder seeks clarification with respect to entities that have pending rate cases before the Commission at the time the regulations go into effect. The IRRC asks the Commission to clarify these procedures. IRRC Comments at 8.

c. Disposition on § 65.61.

We disagree with PWSA that entities with preexisting LSLR activities should not be subject to the LSLR regulations in Subchapter B. As noted earlier, achieving

[14] We address only the stakeholders' comments and the IRRC's comments here as no stakeholders filed reply comments regarding Section 65.61.

consistency among all entities' LSLR Programs is important to effectuate the goal of Act 120. We agree with Aqua that an entity with preexisting LSLR activities should not be required to submit its LSLR Program on the date rates would go into effect for an entity's pending rate case. Accordingly, we will revise proposed Section 65.61 to provide that an entity that received prior Commission approval to perform LSLR activities shall submit its LSLR Program no later than the effective date of the rates established under the entity's next base rate case filed following the effective date of this Section or within two years of the effective date of this Section, whichever comes first.

12. § 65.62. Prohibition on partial LSLRs.

In the NOPR, we explained that Section 65.62 would prohibit partial LSLRs due to the known dangers of partial LSLRs to the public health. In this regard, we proposed requiring a full LSLR in all circumstances, including when the customer elects to replace the customer-owned LSL and when an entity is under a Pennsylvania DEP directive to replace a LSL due to a system's action level exceedance. In Section 65.62, we also proposed the termination of service to a partial LSLR.

a. Stakeholder Comments § 65.62.

The OCA states that it is concerned regarding the absolute prohibition on partial LSLRs. The OCA argues that there should be an exception for emergencies that would necessitate a partial replacement and that, in emergencies, certain actions can be taken to reduce potential harm to customers. To prevent abuse of an exception, the OCA suggests limiting emergencies to only those allowed by a waiver request. Additionally, the OCA asks the Commission to address landlord-tenant situations or issues with tangled title. The OCA also argues that terminating service when an entity becomes aware that a customer is taking service from a partial LSLR goes too far. The OCA recommends that a lead test be performed to determine whether there are actionable levels of lead that necessitate termination. Further, the OCA claims that the intent of Section 65.62(e) is not clear. The OCA questions whether the Commission will require replacements if the DEP

requires replacement. The OCA suggests a possible Memorandum of Understanding to address any issues related to this provision. OCA Comments at 10-13.

PWSA expresses that the Commission's regulations at Section 65.58(c)(2)(i) and Section 65.62 should align with the provisions of the LCRR with respect to the timeframe in which an entity must replace an entity-owned LSL when a customer elects to replace the customer-owned LSL. PWSA Comments at 15, 19.

CAUSE-PA and GHHI note that they appreciate the Commission's prohibition on partial LSLRs. CAUSE-PA and GHHI Comments at 2.

Aqua agrees that partial LSLRs should be discouraged and should be replaced wherever they are found. However, Aqua reiterates that terminating service will create difficulties for entities implementing their LSLR Programs. Aqua Comments at 16.

b. Reply Comments on § 65.62.

PWSA agrees with the OCA that there should be an exception to the prohibition on partial LSLRs for emergencies, landlord tenant situations, and "tangled titles," and also agrees that 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 in all instances. PWSA suggests that the regulations permit each entity to submit a proposal regarding partial replacements that would include circumstances in which it believes partial replacement could be justified and the steps it would be willing to take to mitigate potential health risks caused by the partials. PWSA encourages the Commission to grandfather preexisting policies that address landlord tenant situation and tangled titles. PWSA Reply Comments at 5-6.

c. IRRC Comments on § 65.62.

The IRRC notes that a stakeholder asserts that there is some confusion as to when an entity's obligation to replace a LSL is triggered and that it appears that an entity is required to replace its portion of the LSL within a certain time period if the customer provides notice to the entity that it will be replacing the customer-owned portion. The IRRC also notes that the stakeholder indicates that this could be problematic if the entity has not yet developed economies of scale in a particular area, or if such requirements would unreasonably burden the entity's prioritized replacements and schedule. The IRRC asks the PUC to clarify this provision or explain the reasonableness of the fiscal impacts. Additionally, the IRRC notes that stakeholders express concerns over termination provisions if a customer refuses or fails to accept a LSLR, particularly with respect to landlord-tenant and tangled title scenarios. The IRRC asks the Commission to ensure protection of the public health, safety and welfare. IRRC Comments at 8-9.

d. Disposition on § 65.62.

Section 65.62(a) will require an entity to replace an entity-owned LSL concurrent with replacement of a customer-owned LSLs when a customer or property owner, if the customer is not the property owner, elects to replace a customer-owned LSL. This requirement is necessary to avoid partial LSLRs, which, as explained earlier, pose a danger to the public health. With regard to the OCA's concerns about economies of scale, the timeframes for replacement in Section 65.62(a)(1) and 65.62(a)(2) will allow an entity to coordinate other LSLRs in the area to create cost efficiencies, if necessary. Also, as noted regarding Section 65.58(d) above, customer-initiated LSLRs under Section 65.62(a) will only be eligible for reimbursement under Section 65.58(d) if the customer-owned LSL is replaced within one year before or from LSLR Project Commencement and is within a LSLR Project Area. *See supra,* p. 53. Any potential reductions in cost efficiencies for an entity related to a customer-initiated LSLR will be offset, in part, by the customer or property owner bearing the cost of replacement of the customer-owned LSL when a LSLR is not eligible for reimbursement.

We disagree with PWSA that the timeframes for replacing an entity-owned LSL in this situation should align with the LCRR. The timeframes in the LCRR pertain to situations where simultaneous replacement cannot be conducted. Here, we will require the entity to coordinate with the customer or property owner so that the entity's LSLR occurs at the same time as the customer or property owner's LSLR. The timeframes we provide will be the period in which the simultaneous replacement must occur. Thus, while we state in proposed Section 65.62(a) that replacement must be concurrent, we will revise Sections 65.62(a)(1) and 65.62(a)(2) to reiterate the same for purposes of clarity.

Additionally, we will make changes throughout Section 65.62 to specify where we refer to a customer versus a property owner. As it pertains to the OCA and PWSA's concerns about landlord-tenant situations, as noted earlier, in Section 65.58(c) addressing partial LSLR tariff provisions, we will allow an entity to propose in its tariff language specifying the entity's process to address replacement of a customer-owned LSL to avoid termination of service when a property owner who is not the customer is nonresponsive to the entity's offer to replace a customer-owned LSL. Such language will specify how the entity intends to address replacements of customer-owned LSLs in these situations to avoid termination resulting from a partial LSLR.

Further, Section 65.62(d) will require an entity to terminate service when it has reasonable evidence indicating service by a partial LSLR that was installed after the effective date of the Section by a customer or property owner, if the customer is not the property owner. Thus, termination will not be required for preexisting partial LSLRs installed by a customer or property owner. We note that, in cases where a partial LSLR was completed by a customer or property owner long before the effective date of this Section, the immediate harm resulting from a partial LSLR appears to have passed. Moreover, we will revise Section 65.58(d) to specify an entity is required to terminate service pursuant to the terms of the entity's tariff, unless otherwise directed by the Commission. We remind entities that, to resolve concerns regarding terminations, they

may petition the Commission for a waiver of the termination requirements under 52 Pa. Code § 5.43.

Finally, with respect to the OCA's questions regarding Section 65.62(e), we note that this Section will require the entity-owned and customer-owned LSLs to both be replaced when an entity is conducting replacements for purposes of a DEP directive due to an action level exceedance. Thus, this requirement is consistent with the prohibition on partial LSLRs. We also note that we will change the reference to DEP's regulations in this Section to 25 Pa. Code Chapter 29, Subchapter K, which relates to lead and copper, generally. While 25 Pa. Code § 109.1102 relates to action levels specifically, we find that citing Subchapter K generally is appropriate to ensure that our regulations are inclusive of all DEP regulations relating to action levels.

B. Damaged Wastewater Service Laterals

In order to implement the DWSL provisions of Act 120, we proposed to create a new Chapter 66 addressing wastewater service. We also proposed to divide Chapter 66 into two subchapters. We suggested that the first subchapter be set aside for wastewater service generally, while the subsequent subchapter address DWSLs alone. The stakeholders do not object to this approach, and the Commission continues to find that it is appropriate to create a new Chapter for wastewater regulations with a separate subchapter for DWSL provisions. Thus, Subchapter A, Service Generally, will establish wastewater service regulations and Subchapter B, Lead Service Line Replacements, will establish DWSL regulations at 52 Pa. Code §§ 66.31-66.42.

1. § 66.31. Purpose.

In the NOPR, we proposed that Section 66.31 would set forth the purpose of Subchapter B, that is, to implement Act 120 governing the standard under which an entity, as defined in Section 66.32, may seek to replace, rehabilitate, or repair DWSLs and recover associated costs. We explained that Subchapter B would encompass the

proposed program for optional replacement, rehabilitation, and/or repair of DWSLs (DWSL Program). The stakeholders do not offer substantive comments regarding Section 66.31. The IRRC also does not offer comments on this Section. We note that we will replace the term "jurisdictional wastewater utilities" in Section 66.31 with "an entity," as defined in Section 66.32, to be consistent with the remainder of the regulations. We note that this revision is based on the Law Bureau's response to the OAG's tolling memorandum.

2. § 66.32. Definitions.

In the NOPR, we explained that Section 66.32 would set forth definitions pertinent to the regulation of DWSL Replacements. We defined "DSWL," explained the meaning of "DWSL Replacement," and distinguished a "DWSL Program" from a "DWSL Plan." Among other things, we defined the term "entity," which encompasses (1) a public utility as defined in 66 Pa.C.S. § 102 that provides wastewater service, (2) a municipal corporation as defined in 66 Pa.C.S. § 102 that provides wastewater service beyond its corporate limits, and (3) an authority as defined in 66 Pa.C.S. § 3201. [15]

a. Stakeholder Comments on § 66.32.

In its comments, the OCA claims that the definition of "customer" may not fully capture who has the responsibility or ownership over a DWSL. The OCA argues that there may be landlord-tenant situations or tangled title situations where the customer of an entity may not be the owner of a portion of the DWSL. OCA Comments at 14.

PWSA contends that the definition of "company's service lateral" and "customer's service lateral" should include the standard ownership structure for municipal utilities, wherein all laterals are owned and are the responsibility of customer or property owners. In addition, PWSA suggests that the definition of "DWSL" should be modified to permit

[15] For purposes of Section B of the "Discussion" pertaining to the DWSL Replacement provisions of this rulemaking, "entity" has the same meaning as it does in revised Section 66.32, which is explained herein.

an Act 120 Plan to propose that an entity may undertake to replace, at its expense, laterals or portions of laterals in the public right-of-way where the damaged lateral is or could become a health or safety risk and where the cost of replacing the DWSL would be prohibitive to the customer or property owner. PWSA Comments at 22-23.

Aqua notes that it agrees with many of the Commission's proposed definitions. Aqua suggests that a "customer's service lateral" should be defined as the lateral two feet outside the exterior wall of the structure to clarify "away from" in the definition. Aqua also suggests changing "area" to "defect" in the definition of "DWSL" to clarify that it is the defects in the DWSL that cause impairments to the lateral. Aqua Comments at 16-17.

b. Reply Comments on § 66.32.

In its reply comments, the OCA notes that there may be discrepancies in how entities define the customer-owned portion of the service lateral. The OCA suggests that it may be more appropriate to allow each entity to define the term in a way that best suits the entity and its service territory. OCA Reply Comments at 8.

c. IRRC Comments on § 66.32.

The IRRC notes that a stakeholder questions whether the definition of "customer" adequately captures who has the responsibility or ownership over the DWSL in the case of a landlord-tenant or tangled title situation. The IRRC requests that the Commission clarify the term or explain how the definition protects the public health, safety and welfare. With regard to the definition of "company's service lateral" and "customer's service lateral," the IRRC notes that a stakeholder states that all laterals in its service territory are owned and are the responsibility of the customer or property owner. The IRRC also notes that another stakeholder indicates that it may be more appropriate to allow each entity to define this term in a way that best suits them. The IRRC asks the Commission to explain why these definitions are reasonable and how they protect the public health, safety, and welfare. Further, the IRRC notes that a stakeholder asserts that

replacement efforts should focus on situations where portions of private laterals in the public right-of-way fail or are damaged, which do not necessarily create inflow and infiltration issues. The IRRC also asks the Commission to explain how the definition of "DWSL" protects the public health, safety, and welfare. IRRC Comments at 10.

d. Disposition on § 66.32.

First, for purposes of clarity and consistency throughout this regulation, we will rename "company's service lateral" as "entity's service lateral." We will also revise the proposed definition of "customer" to refer to "[a] party contracting with an entity for service," replacing "public utility"' in the definition with "entity." In response to the OCA's concern about whether the definition of "customer" adequately captures the party with responsibility or ownership of a DWSL in the case of a landlord-tenant or tangled title situation, in later sections of Subchapter B, as with the LSLR regulations, we will modify the proposed DWSL regulations by specifying where we refer to a customer versus a property owner and where we reference both in some circumstances.

Next, we will adopt the recommendation of Aqua and revise the proposed definition of "customer's service lateral" to reference "the portion of the service lateral owned by the customer or property owner, if the customer is not the property owner, most often extending from the curb, property line or entity connection to a point 2 feet from the exterior face of the foundation of the structure." Similarly, we will revise the generic term "service lateral" to reflect the same. While PWSA contends that the definitions of "entity's service lateral" and "customer's service lateral" should be modified to include an ownership structure wherein all service laterals are owned by and are the responsibility of a customer or property owner, we note that, while this is not an uncommon scenario, the proposed phrasing "most often" is sufficient to recognize the varying ownership dynamics of wastewater service laterals. This language also addresses the OCA's reply comments about the discrepancies in how entities may define the customer-owned portion of a wastewater service lateral. We also note that this definition

will not impact other definitions for similar terms that entities may have in their tariffs. This definition is only for determining what is a "customer's service lateral" for DWSLs. We will make a similar change to add the phrase "most often" to the definition of "entity's service lateral."

We reject PWSA's suggestion that the proposed definition of "DWSL" be modified to permit an entity to undertake replacement, more widely than we have defined the scope, by replacing DWSLs pursuant to its own DWSL Program. We conclude that the intent of Act 120 is purpose driven, rather than supportive of a broad application of unconditional replacement of any DWSL by entities, which would abdicate individual property owners of the responsibility to maintain their service laterals in functional condition. Thus, we will properly limit our approval of DWSL Programs to where the purpose can be specifically linked to the parameters of Section 66.33. Moreover, we are not inclined to adopt Aqua's proposed revision that would change the word "area" in the definition of "DWSL" to "defect." The word "area" is less prescriptive than "defect" and is more appropriate to achieving the goals outlined in Act 120. Thus, we maintain that the definition of "DWSL" proposed by the Commission is reasonable and will adequately protect the public health, safety, and welfare.

Regarding the term "DWSL Replacement," we will revise the proposed DWSL regulations generally to correct a typographical error where we referenced "DWSL replacement," rather than "DWSL Replacement." We will correct this error to clarify that we are referring to "DWSL Replacement" as defined in Section 66.32. We will also provide a definition for "DWSL Project Commencement" for clarity and use this term in areas where we previously referred to simply "commencement" or other similar terms and phrases throughout the proposed DWSL regulations.

Further, we will revise the proposed definition of "entity." We will use the language from 66 Pa.C.S. § 102, with respect to wastewater to refer to "public utility"

and "municipal corporation." We will also add a reference to 66 Pa.C.S. § 1501 with respect to "municipal corporation" for clarity. This revision is based on the Law Bureau's response to the OAG's tolling memorandum. In addition, in the definition of "entity," we will modify the citation for "authority" to 66 Pa.C.S. § 3201(2), which references wastewater service. These modifications will solidify the meaning of "entity."

3. § 66.33. DWSL Program parameters.

In the NOPR, we explained that Section 66.33 would allow an entity to file a petition with the Commission for approval of a DWSL Program to repair, rehabilitate, or replace DWSLs under certain circumstances. We noted that Act 120 mandates that an entity obtain prior approval from the Commission for the replacement of customer-owned DWSLs by filing a new tariff or supplement to existing tariffs under 66 Pa.C.S. § 1308. *See* 66 Pa.C.S. § 1311(b)(2)(v). Additionally, we proposed to limit approval of DWSL Programs to instances where the purpose is linked to an entity's efforts to address: (1) excessive I&I causing, or which is reasonably expected within the next five years to cause, a hydraulically overloaded condition, wastewater overflows, and/or additional flow which is prudent for the entity to avoid; or (2) other design or construction conditions causing, or which are reasonably expected within the next five years to cause, wastewater overflows.

a. Stakeholder Comments on § 66.33.

In its comments,[16] PWSA requests that the Commission add an additional category of program to Section 66.33 in which a damaged lateral is otherwise creating a public health and/or safety hazard. Additionally, PWSA expresses concern regarding modifying its LTIIP prior to obtaining Commission approval of a DWSL Program. PWSA suggests

[16] We address only the stakeholders' comments and the IRRC's comments here as no stakeholders filed reply comments regarding Section 66.33.

that Section 66.33(b) be modified to permit an entity to file an amendment to its proposed LTIIP after Commission approval of the DWSL Program.[17] PWSA Comments at 23-24.

Aqua agrees with the Commission that Act 120 should not be used as a replacement for customer responsibility to maintain and repair their wastewater service lateral. Aqua also agrees that DWSL Replacements should be linked to excessive inflow and infiltration that lead to wastewater overflows. Additionally, Aqua states that it would use a graduated approach, consistent with DEP guidelines to improve its system where I&I was present by removing I&I at its source. Aqua Comments at 8.

b. IRRC Comments on § 66.33

The IRRC states that a stakeholder suggests a new program for DWSLs that are creating a public health or safety hazard. The IRRC also notes that a stakeholder recommends adding an option for to permit an entity to file an amendment to its approved LTIIP after the Commission approves its DWSL Program. The IRRC asks the Commission to revise this provision or explain how retaining the proposed language protects the public health, safety, and welfare. IRRC Comments at 10.

c. Disposition on § 66.33

As stated in our disposition regarding Section 66.32, the intent of Act 120 is purpose driven, rather than supportive of a broad application of unconditional replacement of any DWSL by entities, which would abdicate individual property owners of the responsibility to maintain their service laterals in functional condition. Limiting the parameters of DWSL Programs will not prohibit an entity from petitioning the Commission, separately, to institute a program that would allow the entity to replace or repair service laterals that create a public health and/or safety hazard to individual customers, but that would not provide system-wide benefits. Our decision not to expand

[17] We note that this comment appears to relate to PWSA's comments regarding Section 66.34. Accordingly, we address this comment in the "Disposition on § 66.34."

the scope of a DWSL Program as requested by PWSA is based on the scope and objectives of Act 120, which is to address system-wide benefits. The cost recovery mechanism for an entity to petition the Commission to replace service laterals outside the scope of Act 120 may also differ from a Commission-approved DWSL Program under the provisions of this subchapter. Therefore, we will not revise Section 66.33 as suggested by PWSA. We agree with Aqua that the proposed parameters of a DWSL Program are sufficiently limited to accomplish the purpose of Act 120.

Moreover, in Section 66.33(a), we will remove an errant "or both" that appeared in our NOPR. We will also revise proposed Section 66.33(b)(1) to move the words "to cause." This will make Sections 66.33(b)(1) and 66.33(b)(2) consistent.

4. § 66.34. Petitioning the Commission for a DWSL Program.

In the NOPR, we explained that Section 66.34 would effectuate the mandate of Act 120 that an entity electing to have a DWSL Program shall obtain prior approval from the Commission for the replacement of customer-owned DWSLs by filing a new tariff or tariff supplement to its existing tariff under 66 Pa.C.S. § 1311(b)(2)(v). We noted that an entity's DWSL Program petition would vary based on whether the entity has a LTIIP.

a. Stakeholder Comments on § 66.34.

In its comments,[18] the OCA notes that Section 121.5 of the Commission's existing regulations requires an entity to file a separate petition for major modifications to an existing LTIIP. The OCA argues that entities should use existing procedures for LTIIPs and suggests that the Commission make it clear that the DWSL Program filing does not trigger or inhibit the existing LTIIP review process. OCA Comments at 14.

[18] We address only the stakeholders' comments and the IRRC's comments here as no stakeholders filed reply comments regarding Section 66.34.

PWSA recommends that Section 66.34(b) be revised to read that "[a]n entity that has a Commission-approved LTIIP may include with its DWSL Program petition a modified LTIIP containing a DWSL Plan as a separate and distinct component of the entity's LTIIP or may file for an amendment to its LTIIP after its DWSL Program petition is approved by the Commission." PWSA Comments at 24.

Aqua notes that it agrees with the Commission and has no substantive comments regarding Section 66.34. Aqua Comments at 18.

b. IRRC Comments on § 66.34.

The IRRC notes that a stakeholder again asks for the opportunity to file for an amendment to its LTIIP after its DWSL Program petition is approved. The IRRC questions whether the Commission intends to limit opportunities for modifications and asks the Commission to clarify the final regulation or explain the reasonableness of this requirement. IRRC Comments at 10.

c. Disposition § 66.34.

As with the LSLR regulations, we note here that we do not intend to change existing LTIIP modification procedures. For an entity that has a Commission-approved LTIIP, a DWSL Plan is intended to be a separate and distinct component of the LTIIP. Thus, we reject PWSA's requested revision, which would make the filing of a modified LTIIP containing a DWSL Plan optional when an entity files a DWSL Program petition. A DWSL Plan may result in a "major modification" if the DWSL Plan filing meets the criteria in 52 Pa. Code § 121.2. In response to the IRRC's inquiry as to whether the Commission intends to limit opportunities for modification, we do. We take this action to account for the fact that such modifications generally impact customer rates, which may be reasonable, but should also be approached cautiously.

Further, with respect to proposed Section 66.34(a), we will make a ministerial revision to reference Section 66.35(a), which sets forth the DWSL Program requirements. This revision is intended to clarify that an entity's DWSL Program petition should be filed in accordance with the requirements of Section 66.35(a).

5. § 66.35. DWSL Program requirements.

In the NOPR, we stated that Section 66.35 would set forth the primary components of a DWSL Program, which include: (1) a DWSL Plan; (2) a *pro forma* tariff or tariff supplement containing proposed changes necessary to implement the entity's DWSL Program; and (3) other information required for filings under 66 Pa.C.S. § 1308, including statements as required by 52 Pa. Code § 53.52(a). We also identified the approval process that would follow submission of a DWSL Program. We proposed that a final Commission Order direct the resubmission of the entity's *pro forma* tariff or tariff supplement pursuant to 66 Pa.C.S. § 1308 and that, after Commission-approval, an entity's DWSL Program would be reviewed in base rate cases.

a. Stakeholder Comments on § 66.35.

In its comments,[19] the OCA agrees that an entity's DWSL Program should be subject to review during base rate cases, but notes that there may be circumstances where changes need to be made outside of a base rate proceeding. The OCA suggests replacing "shall" with "may" when stating that "[a]n entity shall submit any modification to the DWSL Program for review with its base rate case." OCA Comments at 5.

Aqua's disagreements with respect to Section 66.35 are similar to its disagreements regarding Section 65.55. Aqua does not believe that the DWSL Program "must" be reviewed in each base rate case and recommends that the language in Section 65.35(c) be changed to "may." In addition, because the proposed regulations already

[19] We address only the stakeholders' comments and reply comments here as the IRRC does not offer comments on Section 66.35.

require periodic review under Section 66.37, Aqua believes that making this provision permissive will allow flexibility when an entity's DWSL Program does not require review in each base rate case. Aqua also disagrees that modifications to an entity's DWSL Program may only be done during a base rate case. Aqua notes that, if an entity is not permitted to petition to modify its DWSL Program when modifications are necessary, waiting for the next base rate case would unnecessarily delay the replacement of damaged laterals in an entity's system. Aqua Comments at 18-19.

b. Reply Comments on § 66.35.

PWSA agrees that Aqua's proposed changes to Section 66.35 would provide appropriate flexibility so that an entity's DWSL Program may, but is not required to, be reviewed in each base rate case. PWSA also 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. PWSA Reply Comments at 6.

c. Disposition on § 66.35.

We agree with the OCA, Aqua, and PWSA that DWSL Programs may be reviewed in base rates cases, but should not be required to be reviewed at that time. Accordingly, we will revise proposed Section 66.35(c) to reflect that an entity's DWSL Program "may" be subject to review in future base rate cases.

Further, while an entity will be permitted to modify its DWSL Plan outside the context of a base rate case, a base rate case is the most appropriate vehicle for review and modification of an entity's DWSL Program. Changes to an DWSL Program are expected to occur less frequently than changes to a DWSL Plan since the DWSL Program involves the "what" and the DWSL Plan involves the "how." Also, 66 Pa.C.S. § 1311(b)(2)(v) requires Commission approval of tariff provisions regarding DWSL Replacements. The DWSL Program involves the entity's tariff, which is typically subject to review in base rate cases where any party may call into question tariff provisions. Thus, DWSL

Program changes should be limited to base rate cases. In case-by-case situations where an entity requires changes to a DWSL Program outside of a base rate case, the entity may petition the Commission for a waiver under 52 Pa. Code § 5.43.

6. § 66.36. DWSL Plan requirements.

In the NOPR, we explained that Section 66.36 would outline the two main components of a DWSL Plan: planning and replacements; and communications, outreach, and education. For example, we noted that Section 66.36(a) would establish the minimum requirements for the portion of a DWSL Plan that addresses the planning and replacements, including the projected annual investment in DWSL Replacements with an explanation of the anticipated sources of financing, the standard to be used to determine whether a customer's service lateral is damaged and is impacting the entity's system, the prioritization criteria considered by the entity in developing its DWSL Replacement schedule, and the processes and procedures to be followed based upon a customer's acceptance or refusal of a DWSL replacement. We also noted that Section 66.36(b) would require an entity to outline the communications, outreach, and education steps it will take to ensure customers are educated about the impact of DWSLs and the entity's plan to address DWSL Replacements.

a. Stakeholder Comments on § 66.36.

The OCA's comments[20] focus on communications and outreach. The OCA's notes that its recommendation for Section 66.36 mirrors in part its recommendation for Section 65.57 addressing LSLRs. Thus, the OCA suggests that property owners be notified of DWSL Replacements. OCA Comments at 15.

Regarding planning and replacements, PWSA states that it has the technical capability to provide a graphic depiction of the private sewer lateral to be replaced but

[20] We address only the stakeholders' comments and reply comments here as the IRRC does not offer comments on Section 66.36.

does not prepare bearing angles, distances or metes and bounds; these would result in PWSA incurring additional costs. PWSA recommends that 66.36(a)(4) be revised to require one or the other. With regard to Section 66.36(a)(6), PWSA believes that improving public health and safety should be added as an alternative benefits analysis. PWSA notes that preparing a net present value study can be costly and time consuming and urges the Commission to add a provision that permits an entity to describe the costs and benefits on a qualitative basis and provide cost reductions when readily available. In addition, as it pertains to communications and outreach, PWSA claims that Section 66.36(b)(1)(iv) should be revised to accommodate the fact that, in its service territory, the customer owns the entire lateral to the main. PWSA Comments at 24-26.

With regard to planning and replacements, Aqua notes that identifying DWSLs is a much different and more difficult task than identifying LSLs. Aqua states that repairing DWSLs is usually the last step in a concerted effort to investigate a system with hydraulic overloading and wastewater overflow issues. Aqua recited the steps it takes to identify damaged wastewater laterals and noted that its DWSL Plan would need to be updated to reflect its investigative work. For customer acceptance or refusal, Aqua notes that it would follow the same procedures it uses for LSLRs. Similar to LSLRs, Aqua would dedicate the wastewater lateral back to the customer upon completion of the project. Customer refusals would be noted in Aqua's customer information system. In terms of communications and outreach, Aqua agrees that entities should develop information regarding DWSLs that can be put on their websites. Aqua disagrees, however, that as-built drawings should be provided to customers. Aqua states that it would not be in possession of as-built drawing and cites security issues as a concern as well. Aqua also disagrees that an online tool should be set up to determine if a customer has a DWSL. Aqua asserts the tool is unnecessary because it will communicate directly with the customer when it detects a DWSL. Aqua Comments at 19-21.

b. Reply Comments on § 66.36.

In its reply comments, PWSA agrees with Aqua that an online tool for customers to determine whether records reflect that a property of record has a DWSL would not be helpful as customers will be notified by the entity. PWSA Reply Comments at 7.

c. Disposition on § 66.36.

Generally, we note that, similar to the dynamic of the LSLR regulations, DWSL Programs and DWSL Plans will be separate components of the DWSL regulations. Therefore, to the extent that stakeholders suggest we combine the provisions proposed in Section 66.35 with those in Section 66.36, we disagree. Section 66.35 properly addresses DWSL Programs, while Section 66.36 addresses DWSL Plans.

Moreover, throughout Section 66.36, we will clarify references to "customer" to address concerns raised by the OCA. Since "customer" refers to a person contracting with an entity for service, there may be situations in which the customer is not the property owner and cannot legally authorize a DWSL Replacement. The modifications to language referring to "customers" in Section 66.36 will address these situations by ensuring that the customer or property owner, if the customer is not the property owner, authorizes the DWSL Replacement. Additionally, the Commission will account for instances in which both the customer and the property owner, if the customer is not the property owner, should receive information regarding DWSL Replacements since the customer's service will be impacted by the DWSL Replacement and the property owner's asset will be impacted by the DWSL Replacement.

In this regard, as it pertains to planning and replacements, we will add a provision to require the entity to identify its processes and procedures to obtain acceptance of a DWSL Replacement prior to DWSL Project Commencement if the customer is the property owner, and the entity's processes and procedures to obtain acceptance prior to DWSL Project Commencement if the customer is not the property owner. This provision

mirrors Section 65.56(b)(5) of the LSLR regulations. We note that the addition of this provision will impact the numbering of proposed Sections 66.36(a)(9) and 66.36(a)(10).

Additionally, we decline to adopt PWSA's suggestion that Section 66.36(a)(4) be revised to require either a graphic depiction of the private sewer lateral or the bearing angles and distances or metes and bounds, rather than both. Class A public utilities and municipal corporations, using Geographic Information Systems (GIS) or other computer-aided tools, are sophisticated and can readily collect and provide both through available data properties; this can be achieved with minimal effort and at a reasonable cost. As addressed in our dispositions of Section 66.32 and Section 66.33, we will reject PWSA's proposed revisions to Section 66.36(a)(6) to add improving public health and safety as an alternative benefits analysis. Our decision is based on the scope of Act 120 and its objectives, which are to address system-wide functionality. Similarly, we find that requiring an estimate of the net present value of an entity's future reduced and/or increased costs associated with DWSL Replacements identified in a DWSL Plan is prudent. Thus, we will not revise proposed Section 66.36(a)(7) as requested by PWSA.

We will, however, revise proposed Section 66.36(a)(9), which is now Section 66.36(a)(10), to clarify, as we did in the LSLR regulations, that the phrase "within 1 year of commencement" refers to "1 year from DWSL Project Commencement" here, where we are dealing with a customer or property owner's refusal to accept an entity's offer to replace a DWSL and the impact on reimbursement. In this context, it would not be possible for refusal to occur one year before DWSL Project Commencement since the entity would not yet have made the offer at that time.

Further, regarding the communications, outreach, and education provisions proposed in Section 66.36(b), we note that we will not limit the applicability of these provisions to certain customers or property owners. All customers or property owners should receive information regarding DWSLs given that anyone in an entity's wastewater

system could have an existing DWSL or may have DWSL at some point in the future. It is important that entities communicate widely regarding the harmful effects of DWSLs and the entity's plan to address DWSL Replacements.

Based on Aqua's comment that it would not be in possession of as-built drawings, we agree that the requirement proposed in Section 66.36(b)(1)(iv) should be modified. The proposed requirement would mean that at least some entities would need to survey a property to prepare new as-built drawings for each customer or property owner's sewer lateral upon a DWSL Replacement. The preparation of each new as-built drawing will result in additional costs, time, and resources. To avoid the potential delay of DWSL Replacement and associated increased costs, we will only require an entity to provide as-built drawings for each customer or property owner's sewer lateral if the as-built drawings are already available to the entity. When possible, the customer or property owner should possess this information to avoid damaging service laterals that have been replaced by an entity. Further, we will revise this Section to reflect that the "relevant documents" to be provided by the entity include documents associated with the DWSL Replacement and appurtenances, including product manuals, specification sheets, and manufacturer brochures.

Finally, as it pertains to Section 66.36(b)(3)(i), we will make a minor change to require that the secure online tool used to determine reimbursement eligibility must also include information regarding the reimbursement requirements. Additionally, regarding Section 66.36(b)(3)(ii), we do not agree with Aqua and PWSA that the online tool that will be used to determine whether records reflect that a property has a DWSL is unnecessary. Rather, the tools on an entity's website to assist with whether a property has a DWSL will be important for the public in terms of information and education. We also note that such tools do not need to be secure. Thus, we will remove "secure" from Section 66.36(b)(3)(ii) to provide sufficient public information.

7. § 66.37. Periodic review of DWSL Plan.

In the NOPR, we noted that proposed Section 66.37 would require an entity to update its DWSL Plan at least once every five years after initial approval of the DSWL Plan. We proposed that the Commission would review the DWSL Plan of an entity with a LTIIP as part of the typical LTIIP review and renewal process and would review other DWSL Plans using a similar periodic review outside of the LTIIP process.

a. Stakeholder Comments on § 66.37.

In its comments,[21] the OCA notes that reviewing the DWSL Plan periodically will ensure that it continues to be sufficient to maintain efficient, safe, adequate, reliable, and reasonable service. In addition, the OCA states that DWSL Plan review should be incorporated in the LTIIP review process and argues that review should only occur every five years if an entity does not have a LTIIP. The OCA asks the Commission to clarify that Section 66.37 does not inhibit the scope of review of the DWSL Program during base rates cases. OCA Comments at 15.

Aqua agrees that the DWSL should be reviewed during the periodic review of the LTIIP. Aqua has no other comments on Section 66.37. Aqua Comments at 21.

b. Reply Comments on § 66.37.

In response to the OCA's proposal, 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. PWSA Reply Comments at 7.

c. Disposition on § 66.37.

We agree with the OCA that existing LTIIP procedures should not be changed. As noted earlier, a DWSL Plan could constitute a "major modification" if the DWSL

[21] We address only the stakeholders' comments and reply comments here as the IRRC does not offer comments on Section 66.37.

Plan filing meets the criteria indicated in 52 Pa. Code § 121.2. Additionally, regarding the OCA's concerns about limiting the scope of review of the DWSL Program during base rate cases, we note that, as with the LSLR regulations at Section 65.57, Section 66.37 similarly will not limit the scope of the issues that may be raised. Section 66.37 addresses only the items to be considered as part of the periodic review under Chapter 66.

8. § 66.38. *Pro forma* tariff or tariff supplement requirements.

In the NOPR, we stated that proposed Section 66.38 would outline the minimum requirements, in addition to proposed changes necessary to implement a DSWL Program, that must be contained in an entity's *pro forma* tariff or tariff supplement, including: DWSL Program annual cap; service line demarcation; frequency of DWSL Replacements; reimbursement, and warranty. For example, we noted that Section 66.38(a) would require an entity's tariff or tariff supplement to include a cap on customer-owned DWSLs replaced annually. *See* 66 Pa.C.S. § 1311(b)(2)(vi). We also noted that Section 66.38(b) would require clear demarcation between customer-owned and entity-owned service laterals. In addition, we explained that Section 66.38(c) would limit the frequency of DWSL Replacements in order to ensure that costs will be reasonably and prudently incurred, and benefit and improve system reliability, efficiency, and service quality in problem areas. We also explained that Section 66.38(d) would require an entity to offer reimbursements to eligible customers who have replaced, rehabilitated, or repaired DWSLs within one year of commencement of the entity's DWSL Project within a DWSL Project Area. *See* 66 Pa.C.S. § 1311(b)(2)(vii)(B). Further, we addressed warranty provisions in Section 66.38(e). *See* 66 Pa.C.S. § 1311(b)(2)(vii)(A).

a. Stakeholder Comments on § 66.38.

PWSA's comments focus on service line demarcation and Section 66.38(b). Once again, PWSA notes that, like most municipal utilities, it does not own any portion of the sewer lateral. Therefore, PWSA argues that Section 66.38(b)(2) should be modified with

respect to perfecting an entity's ownership of the portion of the service lateral in the then-existing right-of-way. Noting that the Commission has established that a refusal to accept an entity's offer to replace a private LSL should result in the termination of water service at a property, PWSA suggests that, in instances in which a DWSL Replacement is to alleviate public health and safety risks, the Commission should consider a similar rule, *i.e.*, refusal to accept an offer of a cost-free replacement should result in termination of water service. PWSA Comments at 26-27.

Aqua begins its comments by addressing the DWSL Program annual cap in Section 66.38(a). Aqua explains that as an entity completes an investigation of its system or sewershed, the entity can provide more accurate numbers on how many laterals need to be replaced. Aqua cautioned that this number will be fluid and will fluctuate based upon the number of investigations and the timing of results. Aqua Comments at 22.

Next, with regard to service line demarcation, Aqua submits that its tariff clearly defines a "company service lateral" and a "customer service lateral." Aqua argues that those definitions provide clear demarcation of ownership between company-owned and customer-owned service lines. Aqua asks the Commission to adopt definitions for "company service line" and "customer service lateral" in which the service line will end two feet outside the exterior wall of a customer's structure. Aqua Comments at 22.

As it pertains to the frequency of DWSL Replacements, Aqua notes that it agrees with the Commission's proposed regulations at Section 66.38(c). Aqua agrees that DWSLs should not be eligible for more than one replacement during the time of the average service life established in the entity's most recent base rate case. Aqua notes that wastewater utilities are not required to file service life studies. In addition, Aqua proposes that Section 66.38(c) apply going forward as of the effective date of the regulations since entities may not have accurate records of replaced customer side service lines. Aqua Comments at 22-23.

With respect to reimbursements, Aqua agrees that an entity's tariff should explain reimbursement conditions as set forth in Section 66.38(d). Similar to its position on LSL reimbursements, Aqua disagrees with the proposed reimbursement amount. Aqua proposes that the language be changed to reflect that customers would be eligible for reimbursement at the lower of the customer's actual cost or what the entity would have incurred to perform the replacement. Aqua Comments at 23.

Finally, regarding warranty, Aqua proposes language that clarifies that if a customer replaces its DWSL outside of the entity's replacement program and seeks reimbursement from the entity, the two-year warranty will not apply to that service line. Aqua also asserts that an entity should not be required to provide a warranty for work that was not done by the entity or the entity's contractors. Aqua proposed similar language in Section 66.36(a)(9)(ii). Aqua believes that this language should encourage customers to seek replacements under an entity's replacement program. Aqua Comments at 23.

b. Reply Comments on § 66.38.

In its reply comments, the OCA disagrees with PWSA's recommendation that an entity should terminate water service if a customer refuses replacement of a DWSL. The OCA agrees with Aqua's comments regarding Section 66.39(b)(12) that termination of water service due to wastewater issues is complicated, particularly when each service is provided by different entities. The OCA argues that termination of water service for non-payment for wastewater service is a very different circumstance than terminating a customer for refusing a DWSL Replacement. Thus, the OCA states that there should be strict limitations in place depending on the type of replacement program and the degree of risk of public harm. Additionally, the OCA disagrees with Aqua's recommendation regarding reimbursements. The OCA states that the Commission's proposed language is appropriate. OCA Reply Comments at 9-10; *see also* Aqua Comments at 25.

PWSA agrees with Aqua's proposed language to change the Commission's proposed customer reimbursement amount in Section 66.38(d). PWSA also supports Aqua's proposed clarification that if a customer replaces a customer side DWSL outside of the entity's replacement program and seeks reimbursement, that the entity is not required to provide a warranty for the replacement. PWSA Reply Comments at 7-8.

c. IRRC Comments on § 66.38.

The IRRC states that a stakeholder raises the issue of whether a customer should be able to refuse to accept an offer to replace a private wastewater lateral where the reason for the replacement is to reduce or eliminate a public health or safety risk. The IRRC also states that the stakeholder suggests revising the final regulation similar to the termination language related to water service. The IRRC, however, again notes concerns related to the impacts of termination language and the potential for public harm. The IRRC asks the Commission to explain how this provision protects the public health, safety, and welfare. IRRC Comments at 10-11.

d. Disposition on § 66.38.

As an initial matter, we will revise proposed Section 66.38(a), which addresses DWSL Program annual caps, by removing the word "maximum" as it is redundant. Thus, the DWSL Program annual cap will be a "cap on the maximum number of DWSL Replacements that can be completed annually." In alignment with the Commission's reasoning for the LSLR Program annual cap, we note that there is will not be a specified monetary value for the DWSL Program annual cap in the regulations. Rather, an entity will be responsible for establishing a prudent budget for DWSL Replacements based on the number of DWSLs that the entity can replace annually under the cap. Section 66.38(a) is consistent with Section 66.38(d)(2), which addresses the protocol for reimbursements when the entity exceeds its "annual budgeted cap on the number of DWSL Replacements."

Regarding proposed Section 66.38(b) and service line demarcation, as stated in our disposition of Section 66.32, we will revise the definition of "customer's service lateral" as requested by Aqua. As noted above, the definition is only intended to determine what is a "customer's service lateral" in terms of an entity's DWSL Program, not other aspects of an entity's tariff. Additionally, we will revise Section 66.38(b)(2) to clarify an entity's requirements for perfecting ownership of the portion of a service line located within a then-existing right-of-way. The entity shall resolve ownership conflicts in accordance with its Commission-approved tariff. We note that, if no conflict exists, as may be the case for entities that do not own any portion of the sewer lateral, then ownership has been perfected.

Additionally, we reject PWSA's suggestion that we include in the regulations a rule providing that refusal to accept an entity's offer of a DWSL Replacement will result in the termination of water service. We agree with the OCA and Aqua that termination of water service due to wastewater issues is complex in light of the fact that each service may be provided by different entities. As the OCA notes, termination of water service for non-payment for wastewater service is a very different circumstance than terminating service for refusing a DWSL Replacement. Accordingly, the Commission finds that refusals of DWSL Replacements should be handled on a case-by-case basis. Thus, the Commission's determination to decline to adopt a blanket rule tying DWSL Replacement refusals to water service termination is in the public interest.

With regard to proposed Section 66.38(c) addressing the frequency of DWSL Replacements, we will not make modifications to the regulations to address Aqua's suggestion that Section 66.38(c) apply on a going forward basis as of the effective date of our final regulations since that application is inherent in the adoption of our regulations.

Moreover, throughout Section 66.38(d) regarding reimbursements, we will clarify references to "customer" as we did in Section 66.36 to properly refer to customers versus

property owners. Similar to Section 65.58(d) of the LSLR regulations, Section 66.38(d) will require reimbursement to all eligible customers or property owners, if the customer is not the property owner, who replace their DWSL within one year of DWSL Project Commencement. As noted in Section 66.32, the term "DWSL Project Commencement" refers to the installation of the first DWSL Replacement within a DWSL Project Area. Thus, under Section 66.38(d), a DWSL Replacement eligible for reimbursement must be within a DWSL Project Area. Section 66.38(d) is intended to encompass all eligible customers or property owners, including, as noted in Section 66.36(a)(10)(ii), those that refuse an entity's offer to replace their DWSL and later replaced the DWSL within the requisite timeframe. For such customer or property owners, replacement must occur within one year from DSWL Project Commencement in order to be eligible for reimbursement as earlier replacement would not be possible given that refusal cannot occur before DWSL Project Commencement. *See supra*, p. 81.

Otherwise, we will revise proposed Section 66.38(d) to specify that an entity shall provide a reimbursement to an eligible customer or property owner, if the customer is not the property owner, who replaced their DWSL "within 1 year of commencement," meaning within "1 year before or from DWSL Project Commencement." This provision mirrors the LSLR regulations at Section 65.58(d). We again note that Act 120 broadly allows "reimbursement to a customer who has replaced the customer's lead water service line . . . within one year of commencement of a project." 66 Pa.C.S. § 1311(b)(2)(vii)(B). Additionally, we will eliminate proposed Section 66.38(d)(4) as this provision is repetitive of what is already set forth at the outset of Section 66.38(d).

Regarding the amount of reimbursement, in proposed Section 66.38(d)(1)(iii), the Commission properly limited reimbursements to the customer's actual cost. Restricting the reimbursement amount beyond this would not provide a meaningful reimbursement and may disincentivize customers from proceeding with replacements. As with LSLR reimbursement, we decline to further limit the amount of DWSL reimbursement.

In addition, we will revise the language of proposed Section 66.38(d)(2) to specify that, notwithstanding the DWSL Program annual cap set out in Section 66.38(a), an entity shall provide reimbursements within the length of time in Section 66.38(d)(1)(ii) to eligible customers. If the reimbursement would cause the entity to exceed its current annual cap under Section 66.38(a), the entity will be required to increase its current annual cap by the amount of the reimbursement and reduce its next annual cap by the same amount. Like Section 65.58(d)(2), the purpose of Section 66.38(d)(2) is to ensure that, if the annual cap in an entity's tariff, budgetary or otherwise, would restrict the entity from providing a reimbursement to an eligible customer, the entity shall nonetheless provide the reimbursement to the customer and reduce their next annual cap by the amount of reimbursement. As with annual caps for LSLRs, we note that entities should develop annual caps based on an expectation of reimbursements, and that entities cannot use such caps as a basis for rejecting reimbursement requests or delaying reimbursement requests beyond the length of time indicated in Section 66.38(d)(1)(ii).

With respect to proposed Section 66.38(e) regarding warranty, we agree with PWSA and Aqua that the warranty is only for DWSL Replacement work performed by the entity or its contractor, and we will revise this Section accordingly. Additionally, we disagree that the warranty term in Section 66.38(e)(1) should be shortened. A two-year warranty period is reasonable as it covers a full freeze-and-thaw cycle, which may reveal any issues with the DWSL Replacement. Further, regarding Section 66.38(e)(2), as noted earlier, "restoration of surfaces" refers to excavations that have been backfilled and grade that has been returned to level. Entities are generally not responsible for replacing sidewalks, stone or asphalt driveways, or landscaping outside of a right-of-way. The warranty required by our regulation will not extend beyond this.

9. § 66.39. DWSL Program Reports.

In the NOPR, we noted that Section 66.39 would require that an entity with an approved DWSL Program file an annual DWSL Program Report by March 1. We also

proposed that the DWSL Program Report would include, among other things, the number of DWSLs replaced, the length of DWSLs removed by pipe diameter, and a breakdown of actual cost of each DWSL Replacement.

a. Stakeholder Comments on § 66.39.

In its comments, PWSA states that it believes that the proposed two-year time periods, both prior to and following a DWSL Replacement, for monthly average flow and the three-month maximum flow are excessive and recommends that each be reduced to a minimum of six months. PWSA believes that a longer period of time could be "cost prohibitive." PWSA asserts that it incurs approximately $2,500 per meter for every month of flow monitoring it is required to do. PWSA also provides that, in areas where a DWSL is replaced due to public health and safety issues, flow rates would more than likely not be observable. PWSA Comments at 27-28.

Aqua agrees that certain information can be provided in the AAOP related to DWSL Replacements. However, Aqua disagrees with several of the 16 reporting metrics especially in the time frame for submission of an AAOP. Aqua does not believe that length, pipe diameter and replacement method by county or the length, diameter, material type broken down by county, flow type or system type is necessary in AAOP reporting. Aqua does not see the benefit of providing additional information which would necessitate capturing and logging information not presently collected. Additionally, regarding I&I, Aqua believes that reporting the average flow cost per thousand gallons treated may provide a better metric if examined over the long term than by trying to quantify I&I and ascribe costs to it by sewershed. Aqua also believes that publicly reporting refusals by geographic area raises customer information security concerns. Lastly, Aqua believes that terminating a customer who refuses to fix or have the entity replace their DWSL may create complex issues if the entity does not provide both water and wastewater service to that customer. Aqua comments at 23-25.

b. Reply Comments on § 66.39.

The OCA notes that, similar to its comments regarding Section 65.59, it disagrees with Aqua's suggestion to limit the information reported when replacing DWSLs by eliminating the length and pipe diameter requirements. The OCA notes that an entity will collect this information during replacements and that there are few barriers to ensuring that the entity's DWSL Program Report provides complete, transparent descriptions of the work undertaken by the entity. OCA Reply Comments at 10.

c. IRRC Comments on § 66.39.

The IRRC notes that one stakeholder objects to several metrics in Section 66.39(b), especially in the timeframe for submission of an AAO plan. The IRRC also notes that the stakeholder asserts that inflow and infiltration varies year to year depending on precipitation and antecedent soil moisture and groundwater level conditions. The IRRC further notes that the stakeholder refers to difficulties with fixing certain leaks within a system is that that specific fix may cause other issues within the system. The IRRC asks the Commission to explain the need for and reasonableness of the reporting requirements contained in this provision of the final regulation. IRRC Comments at 11.

d. Disposition on § 66.39.

While Aqua does not believe identifying the metrics proposed in Section 66.39(b) is necessary, especially in the time frame for submission of an AAOP, we disagree in part. Tracking certain metrics is important to ensure that an entity maintains complete records and entities generally possess the ability to track and report the wastewater information proposed in Section 66.39(b). We will, however, revise some portions of Section 66.39(b) to allow for more flexible reporting requirements. Tracking the information required by Section 66.39(b) of this final rulemaking will be useful for the review of DWSL Programs in the context of base rate proceedings. We further note that requiring entities to report this information will offer transparency.

For the reasons explained with respect to Section 65.59 of the LSLR regulations, we will modify proposed Sections 66.39(b)(1) and 66.39(b)(2) to require the collection of information "by wastewater system," defined in Section 66.32, rather than "by county." We will likewise modify Section 66.39(b)(3) and 66.39(b)(4).

Additionally, with regard to Section 66.69(b)(5) and 66.69(b)(16), we note that, while collecting and interpreting monthly flow data at certain time intervals could help determine whether certain investments will improve the efficiency of a system, Act 120 does not authorize or require the Commission to make such determinations. Similarly, Act 120 does not require, as part of its program review and approval, a substantiation to the Commission that the proposed benefits of replacing certain DWSLs have been achieved. Because Act 120 does not expressly require prudency review or cost-benefit determinations, it follows that the significant additional costs presented by requiring such reporting should not be imposed on customers as a routine matter. Rather, benefit analysis regarding measurable cost savings, system capacity increases, reduction in service interruption, and/or reductions in observed wastewater overflows is the type of analysis that is appropriate for rate case review whereby entities must demonstrate how these improvements fit into just and reasonable rates overall. Therefore, we will eliminate proposed Section 66.39(b)(5) and 66.69(b)(16) from the final rulemaking. We will adjust the numbering of Section 66.39(b)(6) through 66.39(b)(15) accordingly.

10. § 66.40. Accounting and financial.

In the NOPR, we explained that Section 66.40 would set forth uniform standards for the accounting treatment of DWSL costs, including expenditures associated with installing DWSL Replacements. We proposed to require an entity to record DWSL Replacement costs in compliance with the NARUC uniform system of accounts applicable to the entity, in an intangible asset account. We also proposed to allow the deferral of certain income taxes that are not recovered through base rates or the DSIC for accounting purposes and the deferral of certain expenses that are not recovered through

base rates. We noted that prudent and reasonable deferred income taxes would be amortized over a reasonable period of time with a return on an entity's investment, whereas other expenses would be amortized over a reasonable period of time without a return on an entity's investment, unless otherwise directed by the Commission. Further, we explained that, for purposes of calculating the return of and on an entity's prudently incurred cost for LSLRs, the Commission would employ the equity return rate in 66 Pa.C.S. § 1357(b)(2)-(3), which appear to indicate the amortization rate for DWSLs should be the entity's permitted equity return rate. *See* 66 Pa.C.S. § 1311(b)(2)(iii).

a. Stakeholder Comments on § 66.40.

In its comments,[22] the OCA states that it has the same concerns with Section 66.40 as with Section 65.50. The OCA claims that it is unusual and not appropriate to allow an entity to defer income taxes and routine expenses by regulation and that the regulation should not predetermine that such costs are recoverable. OCA Comments at 16.

Aqua disagrees that DWSLs should be recorded as intangible assets. Aqua submits that the proper NARUC account is Account 363. Aqua asserts that recording these assets in this way will allow for a more accurate match of cost recovery through depreciation expense incorporated into the cost of service. Aqua states that this activity is properly reported at the project group level not as an accounting asset. In addition, Aqua disagrees with the proposed language in Section 66.40(b)(2). Aqua recommends that all costs associated with the development of the DWSL Program be accounted for as "Preliminary Survey and Investigation Charges", consistent with NARUC Account 183. Aqua states that costs accumulated under this account will be recognized incrementally as actual work is completed and placed in service. Aqua Comments at 25-26.

[22] We address only the stakeholders' comments and the IRRC's comments here as no stakeholders filed reply comments regarding Section 66.34.

b. Disposition on § 66.40.

We agree with the OCA that entities should use subaccounts for DWSL Replacement costs. We will eliminate the portion of proposed Section 66.40(a) that refers to intangible assets and revise this Section to reflect that DWSL Replacement costs recorded as assets shall be maintained under separate and distinct subaccounts. This revision will also resolve Aqua's concerns that DWSL Replacement costs should not be recorded as intangible assets and should instead be recorded in certain NARUC accounts. We will not require use of a particular account.

As with the similar provision in Section 65.60(b) of the LSLR regulations, we will largely re-write proposed Section 66.40(b). We will remove language allowing entities to earn a return on deferred income taxes. Also, we will remove language providing that 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 finds that providing a return on investment is warranted, including the cite to 66 Pa.C.S. § 523.

In addition, we will revise proposed Section 66.40(b) to provide that entities may defer, for accounting purposes, income taxes related to no-cost and low-cost sources of funding for DWSL Replacements, including applicable income taxes on contributions-in-aid-of-construction and/or below market rate loans, Service Line Inventory, DWSL Program development, DWSL Plan, DWSL Program Report, and reimbursement expense, to the extent that such costs are not recovered through the entity's existing base rates or DSIC. With these revisions, the provisions in Section 66.40 are reasonable and appropriate.

Again, we note that an entity will not be required to defer the costs identified and may, if necessary, initiate a rate proceeding to change its existing rates to address costs related to the proposed regulations. Within the context of a rate proceeding, the Commission will review whether any costs, deferred or otherwise, are recoverable and, if

so, whether the entity's proposed methods to recover costs result in rates that are just and reasonable. The Commission's review will include, among other things, consideration of how costs should be recovered from the entity's various customer classes and what periods are appropriate to recover such costs. This review will be appropriately based upon the specific facts presented in the entity's rate proceeding.

11. § 66.41. Unpermitted connections.

In the NOPR, we proposed that Section 66.41 would condition DWSL Program eligibility upon the elimination of any existing unpermitted connections in compliance with an entity's tariff provisions. We noted, however, that continued use of previously unpermitted connections is permitted where other applicable laws or the entity's tariff makes it permissible and the situation is documented. In its comments, Aqua states that it agrees with the Commission's language in this Section. Aqua states that it will document any connections allowed to remain in the entity's customer information system. Aqua Comments at 26. No other stakeholders filed comments regarding this Section. Accordingly, we will not modify Section 66.41 substantively. Throughout Section 66.41, however, we will clarify references to "customer" as we did in other Sections to properly refer to customers versus property owners.

12. § 66.42. Competitive advantage.

In the NOPR, we explained that Section 66.42 would relate to competition that may arise regarding optional insurance and warranty products to cover DWSL repair, replacement, and/or rehabilitation. We noted that proposed Section 66.42 is intended to require an entity with a DWSL Program, to make good faith efforts in structuring its DWSL Program to prevent competition with these products. No stakeholders object to this approach. Accordingly, we will maintain the requirements of Section 66.42.

C. Directed Questions from Former Vice Chairman Sweet

On September 17, 2020, former Vice Chairman David W. Sweet issued a Statement regarding the NOPR and asked stakeholders to file comments on a number of directed questions. The questions related to the LSLR provisions of the NOPR and addressed: (1) whether the NOPR adequately carries out the directives in the statute, (2) whether all entities should be required to develop and file a LSLR Plan, (3) whether the NOPR conflicts with Act 44 of 2017 (Act 44), (4) whether the requirement that a filed plan include the location of customer refusals adequately protects customer information, (5) whether the NOPR grants entities with preexisting LSLR activities the flexibility to continue replacing affected lines under already approved terms, (6) whether the NOPR adequately provides due process to both entities and customers, (7) whether the NOPR adequately provides information regarding the process to be used when a filed plan is contested, and (8) whether the NOPR should be streamlined.

1. Stakeholder Comments on the Directed Questions

The OCA states that the NOPR carries out the directives of Act 120, but reiterates its concerns regarding landlord-tenant situations and some of the financial proposals. The OCA states that the regulation should apply to all entities due to the serious health risks of LSLs and suggests that an entity seek a waiver under 52 Pa. Code § 5.43 if it cannot comply with the LSLR regulations. The OCA notes there is no conflict between Act 44 of 2017 and Act 120 as it relates to PWSA, which it points out is the only municipal authority subject to Commission jurisdiction. With respect to customer privacy concerns, the OCA notes that there is precedent for providing access to an online map indicating where LSLs exist and that the disclosure of such information is a helpful indicator of overall progress and concerns. The OCA also states that the NOPR affords entities with preexisting LSLR activities sufficient flexibility. OCA Comments, Appendix B at 1-2.

With regard to due process, the OCA notes that review of LSLR Plans in base rate cases and LTIIP reviews ensures that the programs will be updated as issues arise. The OCA states that the process for challenging a LSLR Plan is fairly straightforward and is consistent with the Commission's existing processes. Lastly, in terms of streamlining the NOPR, the OCA states that entities should retain some discretion to make LSLR decisions and that some processes should be simplified in order to eliminate confusion between the LSLR Plan and LSLR Program. OCA Comments, Appendix B at 1-2.

PWSA believes that the proposed regulations carry out the directives of Act 120; however, PWSA contends that the regulations impose certain requirements that are overly burdensome for entities that seek recovery under Act 120. PWSA expresses that entities should only be required to develop and file a LSLR Plan if they seek recovery under Act 120 and that the Commission should accept LSLR Plans prepared by entities in accordance with the LCRR. Also, the Commission should only require those entities to include additional information specifically required by Act 120. PWSA does not believe that there is a conflict between Act 44 of 2017 and Act 120 as they relate to PWSA. Regarding customer privacy, PWSA states that its website hosts an online map that discloses the location of LSLs and it believes that this information sufficiently informs the public about the status of replacements. PWSA states, however, that the NOPR does not appropriately acknowledge or provide flexibility to entities with preexisting LSLR activities to continue replacing affected lines in an efficient and cost-effective manner considering they have already been through a rigorous and costly review process. PWSA argues that the regulations should make clear that preexisting, Commission-approved LSLR activities will be accepted as compliant. PWSA Reply Comments at 12-14.

Moreover, PWSA believes that the NOPR adequately provides due process to entities and customers. PWSA contends that the process for challenging a LSLR Plan should be consistent with the process set forth in the Commission's regulations and existing procedures. PWSA also shares its opinion that the NOPR can and should be

streamlined by using the LCRR provisions relating to inventories and LSLR Plans, rather than creating different obligations. PWSA Reply Comments at 12-14.

Aqua believes that the proposed regulations carry out the directives Act 120. Due to the health effects of lead exposure, Aqua believes all entities should be directed to develop and file a LSLR Program. Aqua does not believe that the NOPR conflicts with Act 44 of 2017, since the NOPR and Act 120 specifically apply to municipal authorities that fall under the Commission's jurisdiction. Aqua is concerned about customer privacy relating to providing an online tool for customers to determine if their service line is made of lead, if the customer has a DWSL, or if the customer refuses to replace the LSL or DWSL. Aqua proposes to note the refusal in its customer information system and could report refusals by county to protect customer information. Aqua also is concerned with rate case filings and the timing of establishing a LSLR Program. If Aqua's proposed clarification is adopted, Aqua believes the NOPR will provide entities with adequate flexibility to continue under their current programs and to modify the programs as needed to comply with the new regulations. Aqua Comments at 27-29.

Finally, Aqua states that the NOPR adequately provides due process to customers and entities. Aqua notes that the NOPR does not set forth procedures for a litigated LSLR Program, but that the procedures would be the same as a typical litigated proceeding. Regarding streamlining the NOPR, Aqua asserts that its proposed changes will sufficiently streamline the NOPR and the reporting process for entities that apply for a LSLR Program and DWSL Program. Aqua Comments at 27-29.

2. Review of the Comments on the Directed Questions

Generally, the stakeholders agree that the NOPR carries out the directives set forth in Act 120. We note that the LSLR regulations will effectuate the mandate of Act 120 that entities perform replacements of customer-owned LSLs "under a Commission-

approved program." 66 Pa.C.S. § 1311(b)(2)(i). The regulations will also carry other Act 120 directives, such as the requirement that entities obtain prior approval from the Commission for LSLRs "by filing a new tariff or supplement to existing tariffs under section 1308." *See* 66 Pa.C.S. § 1308; 66 Pa.C.S. § 1311(b)(2)(v). With regard to PWSA's comment that the regulations go beyond Act 120, our revisions in this final rulemaking resolve PWSA's areas of concern, including the Service Line Inventory requirements. Nonetheless, as noted earlier, the Commission has the authority under 66 Pa.C.S. § 1501 to ensure adequate, efficient, safe, and reasonable water service and facilities. The Commission has determined that LSLs are not consistent with the requirements of 66 Pa.C.S. § 1501 and, therefore, our regulations will properly require the removal of all LSLs by entities.

Additionally, due to the known hazards of LSLs, the Commission appropriately determined that all entities should file LSLR Programs, including LSLR Plans. As explained with respect to Section 65.61, the regulations will account for the fact that some entities received prior Commission approval to engage in LSLR activities and will afford flexibility to such entities in filing their LSLR Programs. The revisions to Section 65.61 discussed herein will provide further flexibility by extending the timeframe to no later than the effective date of the rates established under the entity's next base rate case filed following the effective date of this Section or within 2 years of the effective date of Section 65.61, whichever comes first. While we recognize that some entities are currently engaged in preexisting LSLR activities, we emphasize the importance of consistent LSLR Programs that conform with the Commission's regulations.

Moreover, the stakeholders agree that the Commission's regulations do not conflict with Act 44 of 2017 because the regulations only extend to authorities subject to Commission jurisdiction. In this regard, we note that Act 65 of 2017 granted the Commission oversight of PWSA and, under 66 Pa.C.S. § 3202(a) (relating to application of provisions of this title), the provisions of the Public Utility Code, with the exception of

Chapters 11 and 21, apply to PWSA "in the same manner as a public utility." Accordingly, PWSA is subject to Act 120. PWSA is also required to comply with Section 1501 of the Public Utility Code in that it must "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" and "make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501.

For the requirement that an entity's LSLR Program Report include the number of refusals and information regarding the location of refusals, as noted above, we will revise Section 65.59(b)(9) to require that entities provide the municipality with the number of refusals, rather than the "geographic location." This revision will resolve any concerns regarding customer privacy. Additionally, regarding the online tool showing whether a property has a LSL, we will revise this requirement as explained with respect to Section 65.56(c)(3)(iii), which is now Section 65.56(c)(2)(iii).

Further, as it pertains to due process, the stakeholders agree that the Commission's LSLR regulations do not raise due process concerns. We agree with PWSA and Aqua that litigation resulting from the requirements of these regulations will follow the existing process set forth in the Commission's regulations. Further, as the OCA notes, rate cases and the LTIIP review process will ensure the resolution of issues as they arise.

Finally, regarding streamlining the rulemaking, we agree with PWSA that the Commission should adopt LCRR provisions to streamline some areas. As explained in this Order, the Commission's regulations will serve a separate and distinct purpose by requiring the removal of LSLs by all entities, as defined in Section 65.52, not just the removal of LSLs in water systems subject to the LCRR based on a trigger level or action level. Nonetheless, for purposes of consistency and to avoid confusion among entities required to comply with the LCRR and the Commission's regulations, we will revise

certain areas of the proposed regulations, including the definition of "LSL," the definition of "Service Line Inventory," portions of Section 65.56(a) regarding Service Line Inventory, and portions of Section 65.56(c) regarding communications, education, and outreach, to refer to the LCRR requirements.

With the feedback of the stakeholders and the IRRC, we will refine the regulations, as set forth in Annex A, by making appropriate modifications to a number of Sections. These modifications will ensure that the regulations properly carry out the Commission's duty to implement Act 120 and address the critical issues presented by LSLs. Streamlining the rulemaking in other aspects, however, would negatively impact the effectiveness of the regulations. Accordingly, we conclude that no further revisions to the regulations as proposed in the NOPR are required based on the stakeholders' comments in response to former Vice Chairman Sweet's Directed Questions.

CONCLUSION

The Commission's LSLR regulations represent significant action to combat and eliminate the adverse effects of lead exposure by requiring all entities to remove LSLs. The DWSL regulations are likewise a critical step in eliminating environmental and health hazards stemming from damage to service laterals by natural material deterioration, tree roots, surface activities, or excavation. Both the LSLR regulations at Chapter 65 and the DWSL Replacement regulations at Chapter 66 are reasonable, appropriate, and in the public interest.

Accordingly, under Sections 501, 1311(b), and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1311(b), and 1501; Sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P.S. §§ 1201 and 1202, referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of The

Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we seek to finalize the regulations set forth in Annexes A and B, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That the Commission hereby adopts the revised final regulations set forth in Annexes A and B.

2. That the Law Bureau shall submit this Final Rulemaking Order and Annexes A and B for review by the Legislative Standing Committees, and for review and approval by the Independent Regulatory Review Commission.

3. That the Law Bureau shall submit this Final Rulemaking Order and Annexes A and B to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

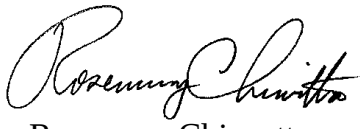
4. That the Law Bureau shall deposit this Final Rulemaking Order and Annexes A and B with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That the final regulations embodied in Annexes A and B shall become effective upon publication in the *Pennsylvania Bulletin*.

6. That the Secretary shall serve this Final Rulemaking Order and Annexes A and B upon all jurisdictional water and wastewater utilities and the Pennsylvania Chapter of the National Association of Water Companies; the Office of Consumer Advocate; the Office of Small Business Advocate; the Commission's Bureau of Investigation and Enforcement; and the Department of Environmental Protection.

7. That the contact persons for this Final Rulemaking are Assistant Counsel Hayley E. Dunn, (717) 214-9594, haydunn@pa.gov; Colin W. Scott, (717) 783-5959, colinscott@pa.gov; and Rhonda L. Daviston, (717) 787-6166, rdaviston@pa.gov, in the Law Bureau, and Fixed Utility Valuation Engineer Matthew T. Lamb, (717) 783-1001, mlamb@pa.gov, in the Bureau of Technical Utility Services.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 24, 2022

ORDER ENTERED: March 14, 2022