

COMMONWEALTH OF PENNSYLVANIA



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June 20, 2023

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Petition of City of Lancaster – Water Bureau
for Approval of a Lead Service Line
Replacement and Related Tariff Changes
Docket No. P-2023-3041043

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Petition of the City of Lancaster – Water Bureau in this matter. The Answer is accompanied by a verification in accordance with 52 Pa. Code Section 1.36.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Paul Diskin, TUS (**email only:** pdiskin@pa.gov)
Certificate of Service

*347995

CERTIFICATE OF SERVICE

Petition of City of Lancaster – Water :
Bureau for Approval of a Lead Service Line : Docket No. P-2023-3041043
Replacement and Related Tariff Changes :

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

Dated this 20th day of June 2023.

SERVICE BY E-MAIL ONLY

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Dated: June 20, 2023
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of City of Lancaster- Water Bureau :
For Approval of a Lead Service Line Replacement : Docket No. P-2023-3041043
And Related Tariff Changes :

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 5.61(e) of the Pennsylvania Public Utility Commission's (PUC or Commission) regulations, 52 Pa. Code § 5.61(e), the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of the City of Lancaster-Water Bureau (the City), in this matter. As set forth below, the OCA does not disagree with the concept of the City replacing customer-owned lead service lines; however, the OCA is not in agreement with all of the City's proposals and has questions regarding how the replacement program will be implemented. The OCA requests that the Petition be referred to the Office of Administrative Law Judge for hearings on issues raised by the OCA's Answer.

I. INTRODUCTION

On May 31, 2023, the City filed with the Commission a Petition seeking tariff revisions (attached as Exhibit A to the Petition) which will allow it to replace customer-owned lead service lines (COLSL) when replacing mains, and to recover those costs as provided in Section 1311(b)(2) of the Public Utility Code, which was added to the Public Utility Code pursuant to Act 120 of 2018. 66 Pa. C.S. § 1311(b)(2). The City filed the Petition pursuant to the Settlement reached in the City's Distribution System Improvement Charge (DSIC) and Long-Term Infrastructure Improvement Plan (LTIIP) proceeding at Docket No. R-2022-3035591. Petition ¶1. Pursuant to

the Settlement, the City agreed to remove all costs related to the replacement of the City-owned Lead Service Lines (LSLs) from its LTIP and to seek approval of a Lead Service Line Replacement (LSLR) program from the Commission for service provided to customers in its PUC-jurisdictional area. Petition ¶1; *see Petition of the City of Lancaster- Water Bureau for Approval of Distribution System Improvement Charge and Long-Term Infrastructure Improvement Charge*, Docket No. P-2022-3035391, Settlement at ¶¶ 16(g)-(h)(Settlement). The Settlement provided that the filing was to be made as of May 31, 2023 and would include a plan for the replacement of PUC-jurisdictional LSLs and for recovery of costs associated with the replacement of the customer-owned LSLs. Petition ¶1; Settlement at ¶¶ 16(g)-(h).

In the instant Petition, the City sets forth its proposal to replace LSLs in its PUC-regulated service territory. Petition ¶ 18. Pursuant to Section 65.53 of the Commission’s regulations, the City, as a municipal corporation, has thirty years, or until July 22, 2052 to replace all LSLs, whether City-owned or customer-owned in the PUC-jurisdictional areas. Petition ¶¶ 18, 23; 52 Pa. Code § 65.53. The City requests expedited approval of its Petition due to the City’s on-going planned replacement project schedule where it is anticipated that the City will encounter LSLs. Petition ¶ 4.

There are two parts to the service line: (1) the City-owned portion of the service line from curb stop to the main and (2) the customer-owned portion of the service line from the curb stop to the meter. Petition ¶ 12.¹ Under the City’s current policy for replacement of LSLs, “[w]hen the City discovers a LSL on both the customer and the City portion of the service line, the City will replace the City-owned LSL, advise the customer, and encourage the customer, to replace the

¹ Ownership of the customer-side portion of a service line and responsibility to maintain the service line will not change as a part of the City’s LSLR Plan. Petition ¶ 13.

customer owner [sic] LSL.” Petition ¶ 24. Further, the City will install a temporary garden hose to maintain service until the customer arranges and pays for replacement of the customer-owned LSL. Settlement ¶ 14.c. The customer bears the full cost for replacement.

The Commission has previously approved LSLR programs for utilities including for York Water Company, Pennsylvania-American Water Company, Aqua Pennsylvania, Inc., and Pittsburgh Water & Sewer Authority. Petition ¶ 15. As the Petition notes, these approvals were received prior to the promulgation of the Commission’s new regulations, and the instant Petition is the first to be presented under the Commission’s new regulations. Petition ¶ 15.

II. ANSWER

The City recognizes the need to replace LSLs and the customer-owned portion of the LSL. Petition ¶¶ 8-12. In its Petition, the City states that “[r]eplacing only the City-owned LSL may result in higher lead concentrations in water at that customer’s tap for some period of time after such a ‘partial’ LSL replacement occurs.” Petition ¶ 25. Act 120 specifically prohibits such partial replacement, and the Petition notes that this prohibition is “likely based on the fact that such ‘partial replacements’ can lead to a higher potential for lead exposure through drinking water.” Petition ¶ 25, *citing* 52 Pa. Code § 65.62. The City-owned portion is maintained by the City while the City’s current tariff places the responsibility on the customer to maintain the customer-owned portion of the service line.² Petition at 13. In its Petition, the City states that under Act 120, it will replace any customer-owned LSLs discovered contemporaneously with main replacement projects. Petition ¶ 33. The City states that after the City has completed the replacement of the customer-owned LSL replacement, the responsibility for ownership, maintenance, repair or

² See City of Lancaster-Water Bureau Tariff-Water Pa. P.U.C. No. 6, at 2nd Revised Page No. 9 (eff. June 29, 2022).

replacement will remain with the customer.³ Petition ¶ 33. The Petition proposes that a customer will enter into an agreement with the City to permit the City to replace the COLSL on the customer's property and document the customer's ownership of the replacement customer service line. Petition ¶ 33. If the customer declines the replacement, the City proposes to only replace the City-owned portion of the LSL and then to advise the customer of the potential health risks associated with only a partial LSL replacement. Petition ¶ 33, Exh. A. The City would install a temporary service line, then follow termination procedures for a customer who fails to replace the customer-owned LSL within a prescribed timeframe. Petition ¶ 33, Exh. C at 5.

During COVID-19, the City began the process of digitizing its service line records. Petition ¶ 12. In its Petition, the City states that it input the information from the records into the City's Geographic Information System (GIS) and that the process alerted the City to the existence of eighty-five (85) LSLs in the PUC-jurisdictional area that are spread out in several older developments. Petition ¶¶ 13, 32, 35.⁴ The City estimates that based upon its prior experience with service line replacements, when the City-owned portion of the line contains lead, approximately 40% of the customer-owned service lines have been found to also contain lead. Petition ¶ 34. Based on preliminary information, the City estimates that the replacement rate of "customer-owned LSL replacements in the PUC jurisdictional area would be five (5) per year and the replacement within City limits would be twenty-five (25) per year." Petition ¶ 36, Exh. C. The City estimates that the average cost to replace a service line from the curb stop to the meter is approximately \$12,000. Petition ¶¶ 14, 37.⁵ The City is proposing to establish an annual cap of \$600,000 on the costs

³ The City proposes to provide for a two-year warranty for the work provided. Petition ¶¶ 52-54.

⁴ The Petition details the process that the City used to identify the LSLs. Petition ¶¶ 26-31.

⁵ The City notes that the average would exclude any projects for which major excavation work would be required to complete the replacement and is based upon replacements to date. Petition ¶¶ 14, 37. The City identifies that the

associated with the customer-owned LSL replacements. Petition ¶ 38. If the amount for a given year is not expended, then the City proposes that the unused portion could be rolled forward and applied to the cap of the prior year, with the understanding that the carry-forward would not increase the number of customer-owned replacements that the City would conduct in a year. Petition ¶ 38.a.

The City’s initial LTIP is pending before the Commission at Docket No. P-2022-3035391. The City has attached to its Petition an LTIP marked as being Revised February 1, 2023. Petition Exh. B. The City has attached to its Petition, Exh. C, the Lead Service Line Replacement Plan dated May 31, 2023, but the LSLR Plan does not appear to have been integrated into the LTIP. Petition at Exh. C. Based on the OCA’s preliminary review, the LTIP is identical to the LTIP attached to the Settlement in the Petition proceeding. The narrative does not reference that the City proposes to include jurisdictional lead service line replacements in the LTIP. The projected number of services to be replaced under the LTIP has not been changed to include lead service lines, nor have the projected expenditures been increased to reflect the City’s proposed budget or cap for its planned annual replacements under the LSLR plan. *See* LTIP at 18, Table 5-1 (LTIP expenditures by year).

The OCA also notes that the City also appears to have incorrect references to the LTIP and LSLR plan in its Petition. *See, e.g.*, Petition at 2, note 4, ¶ 36. Contrary to the description in the Petition, Exhibit B appears to be the LTIP that is currently pending before the Commission for review, and as noted above does not appear to have been revised. Exhibit C is the proposed LSLR plan. The City also indicates that the LSLR plan would be Section 8 of the LTIP, but there already

replacements to date “have largely been in dense urban areas where the residence can be very close to the sidewalk.” Petition ¶ 14.

is a Section 8.0 (“Outreach and Coordination with Other Utilities, PennDOT, and Local Governments”).

The OCA also has concerns regarding proposals contained in the Petition and believes that additional review is needed. Based on preliminary information, the City estimates that the replacement rate of “customer-owned LSL replacements in the PUC Jurisdictional Area would be five (5) per year” with a cap of 50 and a total cap of \$600,000 (assuming \$12,000 average per COLSL replacement).⁶ Petition ¶¶ 14, 36-37, Exh. C. The Petition provides that the City will replace 25 LSLs inside the City and that the rate of 5/25 or a total of 30 per year will allow the City to meet its system-wide target of 85/550 before the 30-year deadline. Petition ¶ 35, Exh. C at 2-3. The OCA has concerns that an annual cap of 5 service line replacements may be too low, especially in light of the requirement to reimburse eligible customers who have made replacements within one year preceding the LSLR project. 52 Pa. Code § 65.58(d)(2). When the City initially proposed to include replacements of City-owned LSLs in its LTIP, it planned to do 85 replacements in two years. Settlement ¶ 16.h. If, based on the City’s estimates, 40% of the related COLSLs are also lead, that would be 34 replacements. While the City has 30 years to complete replacements, the proposed number of PUC-jurisdictional LSLs should be reviewed as well as the proposed annual budget cap, including the operation of the proposed carry-forward budget.

It is not clear from the filing how the City proposes to address COLSL replacements that are made at a customer’s request (outside of the City’s planned main replacement projects).⁷

⁶ The City notes that the average would exclude any projects for which major excavation work would be required to complete the replacement and is based upon replacements to date. Petition ¶¶ 14, 37. The City identifies that the replacements to date “have largely been in dense urban areas where the residence can be very close to the sidewalk.” Petition ¶ 14.

⁷ Paragraph 6.c of the LSLR plan (under the heading “Routine Maintenance”) discusses “if a LSL is found on the privately-owned side of the service line, the line will need to be scheduled for replacement.” If this is intended to apply to situations where a customer contacts the City to request replacement that should be clarified.

Section 1311(b)(2)(1) contemplates a Commission-approved program to address the situation where a customer requests the replacement of their COLSL. 66 Pa. C.S. § 1311(b)(2)(i). Other water utilities have received approval for a LSLR plan have addressed this situation of a customer-requested COLSL replacement. *Petition of York Water Co. for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Costs of Certain Customer-Owned Service Line Replacements to the Company's Service Account*, Docket No. P-2016-2577404, Order (Mar. 8, 2017); *Petition of Pennsylvania-American Water Co. for Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-Owned Service Pipes*, Docket No. P-2017-2606100, Order (Oct. 3, 2019); *Petition of Aqua Pennsylvania, Inc. for Approval of Tariff Changes Authorizing Replacement of Customer-Owned Lead Service Lines*, Docket No. P-2020-3021766, Order (July 15, 2021).

In addition to specific customer requests, more information should be provided about when a COSLR will be eligible for replacement under the LSLR plan when a lead service line is detected by the City outside of the LSLR program, for example, if the City identifies a COLSL while doing a meter inspection unrelated to its LSLR replacement projects. Also, what customers would be eligible if the City is not doing replacements in the area? In any of these situations, how will customers be notified about the LSLR program?

The OCA also has concerns with the City's proposed reimbursement for customers who replace their customer-owned LSLs prior to the adoption of the City's LSLR program. Petition ¶ 55. Act 120 requires the City's LSLR Plan to provide reimbursement to any customer who replaced that customer-owned LSL at their own expense within one year of commencement of a project in accordance with a Commission-approved tariff. 66 Pa. C.S. § 1311(b)(2)(vii)(B). The City's proposed reimbursement program would impose the following conditions on reimbursement:

- The customer or property owner must provide the City with an opportunity to inspect the customer's installation. The property owner or customer must provide the City notice a minimum of 72 hours' notice of the installation time.
- The property owner or customer reimburses the City for the cost of the inspector. Current inspection costs are \$89 per hour and will increase annually. The time for inspection is anticipated to be less than four (4) hours.
- The property owner or customer presents the City with the bill for reimbursement within 30 days of the installation's completion.
- The property owner or customer will be reimbursed using a City issued check for up to 100% of the cost of a similarly sized service line, with similar attributes of replacement at the property in the City's sole discretion. The City will determine the average cost of the installation using one of its pre-approved contractors to estimate the replacement cost.
- The City will issue the reimbursement via check.
- The City will issue the reimbursement check for eligible applications no later than one hundred eighty (180) days from receipt of the eligible application.

Petition ¶ 56. The conditions may not be reasonable. For example, the customer has to meet requirements within hours and days but reimbursement checks may not be provided for as long as six months. Also, it is not clear that the City's proposed conditions meet all of the requirements of Section 65.58(d). For example, the regulations do not provide for reimbursement of inspection costs. Also, the City proposes to limit reimbursement to 100% of the cost of a similarly sized service line, whereas the regulations provide that the customer "is eligible for a reimbursement of LSLR expenses up to 125% of the average cost the entity would have incurred to perform the replacement of a similarly-sized service line, not to exceed the actual cost." 52 Pa. Code § 65.68(d)(iii)(A). The City states that it may seek approval to modify the cap if the City feels that the annual number or replacements or monetary cap should be increased, but the regulations have requirements for when the utility "must" increase and decrease its annual cap related to reimbursements that would cause the entity to exceed its annual cap. 52 Pa. Code § 65.68(d)(2). These and other compliance issues should be reviewed.

In its Petition, the City identifies that it will comply with the requirements of 40 C.F.R. § 141.85, as required by 52 Pa. Code § 65.56(c)(1). Petition ¶ 49. The City states that it will provide

notice to customers it serves with a customer-owned LSL made of lead, galvanized material requiring replacement, or an unknown material in the form of the notice as set forth in Appendix A of the City's LSLR Plan. Petition ¶ 50, Exh. B, App. A. The notice will advise customers of the health risks associated with lead in the drinking water and of steps needed to reduce exposure and for replacement of the LSLs. *Id.* The City's proposed LSLR also provides information to customers who refuse the replacement of the LSL. Petition ¶ 50, Exh. B, App. B. In addition, it may be appropriate for the City to have an outreach process, in addition to the written notices, in place to help customers understand the risks of LSLs and for customers who may be initially be hesitant to enter into an agreement for the replacement of the COLSL. Also, the OCA recommends that the draft agreement attached as Appendix B to the LSLR Plan should be reviewed to see where it could be improved. For example, the attachment agreement discusses the risks of lead but does not tell the customer that they could lose water service if they do not make the replacement until the last page. This important information should be more prominently featured in the document. It is also not clear whether any outreach will be provided to customers where the City has *not* identified that the City-owned portion of the service line is lead. This concern ties to the very limited time period that the customers have to meet the City's proposed eligibility criteria for reimbursement. It should be considered whether, along with the ongoing communications that will be necessary, that the City provide additional communication to the areas in which it is beginning main replacement projects so that customers who will be impacted by each project will be aware of these provisions. It is not clear from the information provided with the City's filing how the City will make its customers aware that they may have lead service lines and how to apply for reimbursement. Although the City proposes to include a Spanish language version of the notices, given the importance of the information, the City should include in its communication plan how it will

address a situation where a customer has Limited English Proficiency in a language other than Spanish.

The OCA also has several concerns about the revised tariff provisions attached in Appendix A. In the proposed Tariff Rule 4.15, the revised language provides that “[a]ll leaks or other deteriorated conditions of the Customer’s service line or any other pipe or fixture in or upon the Premises must be repaired immediately by the owner or occupant of the premises.” City of Lancaster Tariff Supplement No. 49 to Water Pa. P.U.C. No. 6, 3rd Revised Page No. 13, Rule 4.15. The OCA submits that the definition of immediate is not clear. A customer may not be aware of the deteriorated condition. Additional information about the need for the proposed language should be provided.

In addition, in Rule 4.19, the City proposes limits to the two-year warranty to the following:

[t]he utility shall provide a two-year warranty on workmanship, materials, and replacement of surface cover for any COLSL that the utility or its contractor replaces. The maximum coverage under the warranty shall be the average amount required to replace a COLSL. The liability of the utility and/or its contractor shall be limited only to those costs necessary to reasonably replace the COLSL and restore the affected portion of the Customer’s property to approximately the same condition it was in prior to commencement of the COLSL replacement.

City of Lancaster Tariff Supplement No. 49 to Water Pa. P.U.C. No. 6, 2nd Revised Page No. 13, Rule 4.19. Generally, the proposal does not include enough details to allow the OCA to evaluate the City’s proposal. The OCA submits that the reasonableness of the limitations placed by the City on the two-year warranty should be explored to determine whether they are consistent with the requirements of Act 120.

The OCA is willing to work with the City to develop a fair and equitable way to implement its program so that the public health and safety issues are fully addressed. The OCA submits that

a record should be developed to answer these questions and concerns, and others that arise during review, prior to approval of the LSLR Plan.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate generally supports the City of Lancaster's goal of replacing customer-owned lead service lines. The Office of Consumer Advocate requests that the Petition be referred to the Office of Administrative Law Judge for hearings on issues raised by the OCA's Answer.

Respectfully Submitted,

/s/ Christy M. Appleby
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DATE: June 20, 2023

347934

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of City of Lancaster – Water :
Bureau for Approval of a Lead Service Line : Docket No. P-2023-3041043
Replacement and Related Tariff Changes :

VERIFICATION

I, Christine Maloni Hoover, hereby state that the facts set forth in the Office of Consumer Advocate's Answer to the Petition of City of Lancaster – Water Bureau, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: June 20, 2023
*347988

Signature: 
Christine Maloni Hoover
Deputy Consumer Advocate

Address: Office of Consumer Advocate
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