

COMMONWEALTH OF PENNSYLVANIA



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June 30, 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 Comments in the above-referenced proceeding.

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

Respectfully submitted,

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Paul Diskin, TUS (**email only:** pdiskin@pa.gov)
Certificate of Service

*348509

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 Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30th day of June 2023.

SERVICE BY E-MAIL ONLY

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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 :

COMMENTS
OF THE
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I. INTRODUCTION

On May 31, 2023, the City of Lancaster (Lancaster or City) filed with the Pennsylvania Public Utility Commission (Commission) a Petition seeking approval of a Lead Service Line Replacement Program (LSLR Program) and tariff revisions that will allow it to replace customer-owned lead service lines (COLSL), 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). As required by Commission regulations implementing Act 120 of 2018, 52 Pa. Code §§ 65.51-65.62, the City attached to its Petition a modified Long-Term Infrastructure Improvement Plan (LTIIIP).

The City filed the COLSL Petition pursuant to the Settlement reached in the City's Distribution System Improvement Charge (DSIC) and LTIIIP proceeding at Docket No. P-2022-3035591. Petition ¶1. The Settlement, DSIC and the City's second LTIIIP are pending before the Commission in that docket. In its Answer and Comments at Docket No. P-2022-3035591, the OCA identified concerns with the City's plan to limit replacements to the utility-owned portion of lead service lines (LSLs), including how it would address and coordinate replacements of the customer-owned portion of LSLs in the absence of a Commission-approved LSL replacement program. OCA Answer at 5; OCA Comments at 3. The Settlement addressed those concerns through the City's agreement to seek Commission approval of a lead service line replacement (LSLR) plan that coordinates replacements of City-owned and customer-owned LSLs in its jurisdictional service areas. Specifically, the Settlement provided that the City would remove the proposed projects and projected costs for replacing only the City-owned LSLs from its proposed second LTIIIP.¹ *Id.*; *see*

¹ As a part of the Settlement, Table 5-1 of the LTIIIP was adjusted to reflect the removal of the \$850,000 estimated cost for replacement of the 85 known lead service lines in 2023 and 2024. Settlement ¶ 16 (h), Exh. B at 13.

Settlement Exh. B at 13. Then, in a new docket and no later than May 31, 2023, the City would file the instant petition for approval of a plan to replace jurisdictional lead services under 66 Pa. C.S. § 1311(b)(2) and 52 Pa. Code §§ 65.51-65.62. The petition for approval of an LSLR plan would include a modified LTIP containing the proposed LSLR plan. 52 Pa. Code § 65.54(b).

In the current proceeding at Docket No. P-2023-3041043, the OCA filed an Answer to the City's COLSL Petition on June 20, 2023, and requested that the matter be referred to the Office of Administrative Law Judge for hearings. In particular, the OCA identified that the City's LTIP does not appear to have been revised to integrate the related elements of the proposed LSLR. The OCA also raised questions about the proposed number and rate of replacement of PUC-jurisdictional LSLs and the proposed annual budget cap, when a COLSL will be eligible for replacement outside of the City's LSLR program, the City's proposed reimbursement for customers who replace their customer-owned LSLs prior to the adoption of the City's LSLR program, customer education, notice and outreach proposals, and the proposed limitations on the two-year warranty.

In these Comments, the OCA makes recommendations for the Commission's consideration in reviewing the proposed modified LTIP. As discussed below, additional information will be necessary for the Commission to determine whether the proposed LSLR improvements to the LTIP are prudent and cost-effective and will maintain safe, reliable and reasonable service as required by 66 Pa. C.S. §§ 1352(a)(5), (a)(6) and 1353.

II. COMMENTS

A. Introduction

The proposed LSLR program and plan will allow the City to recover the costs for LSL replacements, both City-owned and jurisdictional customer-owned, through its base rates and DSIC. 66 Pa. C.S. § 1311(b)(2). For customers, the LSLR plan has the potential to provide both

financial and public health benefits. Currently, the City replaces the utility-owned portion of LSLs and, if it determines the customer-owned portion is made of lead, it maintains water service to the customer through a temporary garden hose until the customer arranges and pays for replacement of the customer-owned LSL. Settlement ¶ 14(c); *see also* Petition Exh. C at 5-6. While this process mitigates the hazards of partial replacements, it creates other concerns. The garden hose is a temporary and seasonal solution. Eventually, prior to freezing temperatures, the temporary hose must be replaced with a permanent line or removed. *Id.* Currently, when a customer-owned service line is identified as being lead, the customer bears the full cost for replacement. If a customer does not, or cannot afford to, replace the customer-owned portion of the line in a timely fashion, the customer could be subject to termination of service. The OCA submits that this is an unreasonable approach given the tools available to the City for its jurisdictional customers.

An LSLR program could prevent that unnecessary risk of loss of service for customers. Section 1311(b)(2) of the Public Utility Code provides a process to eliminate the individual financial burden for replacing customer-owned LSLs by recovering those costs over the City's entire jurisdictional customer base. If a customer could not have otherwise afforded the replacement of the line, the customer will be able to maintain essential water service. The lead service line also poses a direct health risk to customers. An LSLR program can protect public health by helping to ensure the timely removal of lead from the customer-owned portion of the LSL.

The OCA appreciates the City's filing of this proposed LSLR plan and amended LTIP in furtherance of the goal of coordinating City-owned and customer-owned LSL replacements and providing the benefits above. In its Answer to the Petition and here in these Comments, the OCA identifies some additional information that may be necessary for the Commission to determine that

the proposed modified LTIP including an LSLR plan meets the requirements for LTIP approval, *i.e.* the planned improvements are prudent and cost-effective, and will maintain safe, reliable and reasonable service as required by 66 Pa. C.S. §§ 1352(a)(5), (a)(6) and 1353. 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 modified LTIP and LSLR Plan.

B. OCA Questions and Recommendations

Based on the OCA's preliminary review, the OCA has the following concerns regarding the modified LTIP and proposed LSLR plan:

1. Integration of LSLR Plan into LTIP Projections

The LTIP attached to the LSLR plan does not appear to have been revised to reflect the proposed LSLR plan. Specifically, the narrative does not reference that the City is now seeking approval of an LSLR plan and proposing to include jurisdictional lead service line replacements in the LTIP. LTIP at 13. The projected number of services to be replaced under the LTIP has not been changed to include jurisdictional 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 15-16, 18 and Table 5-1 (LTIP expenditures by year); *see also* 66 Pa. C.S. § 1352; OCA Answer at 5.

2. Rate of LSL Replacement

The City estimates that the replacement rate of COLSL replacements in the PUC Jurisdictional Area would be five (5) per year with an annual cap of 50 and a total annual cap of \$600,000 (assuming \$12,000 average per COLSL replacement). Petition ¶¶ 14, 36-37, Exh. C. The

Petition proposes that City will replace 25 LSLs inside the City and that the rate of 5 outside/25 inside, or a total of 30 per year, will allow the City to meet its system-wide target of 85 within the PUC jurisdictional area /550 LSLs within the City’s total distribution system before the 30-year deadline. Petition ¶ 35, Exh. C at 2-3, 13. The OCA is concerned that an annual cap of 5 service line replacements may be too low, especially considering the requirement to reimburse eligible customers who have made replacements within one year preceding the LSLR project. OCA Answer at 5; 52 Pa. Code § 65.58(d)(2). Further, the OCA notes that when the City initially proposed to include replacements of jurisdictional, 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 the 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. OCA Answer at 6.

3. Requests for COLSL Replacements Initiated by Customers

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).² 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); *see* OCA Answer at 5-7. Are these requests factored into the proposed LSLR plan cap of 5 replacements per year?

² 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.

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. *See* OCA Answer at 7. Also, it is not clear what customers would be eligible if the City is not doing replacements in the area. In any of these situations, the City has not explained how customers will be notified about the LSLR program. Whether and how these types of requests are factored into the proposed LSLR plan cap is not clear.

4. Reimbursement

The OCA also has concerns whether the City's proposed reimbursement for customers who replace their customer-owned LSLs prior to the adoption of the City's LSLR program complies with the requirements of Act 120. Petition ¶¶ 55-56. 66 Pa. C.S. § 1311(b)(2)(vii)(B). The City's proposed reimbursement program would impose certain conditions on reimbursement, which may not be reasonable. *See* OCA Answer at 7-8. 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 52 Pa. Code § 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.

5. Customer Outreach and Notice

As discussed further in the OCA’s Answer, the OCA also has questions regarding the City’s proposals for notice to customers with lead service lines, whether City-owned or customer-owned. Exh. C, App. A and B; OCA Answer at 8-9. The OCA recommends that the draft notice and draft line replacement agreement attached to the LSLR Plan should be reviewed to see where they could be improved. For example, the agreement discusses the risks of lead but does not tell the customer until the last page that they could lose water service if they do not make the replacement. 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 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.

6. Conclusion

The OCA submits that the questions and concerns identified herein and others that arise during review should be answered, prior to approval of the modified LTIP and LSLR Plan. The

OCA respectfully requests that the City's proposed modified LTIP and attached LSLR plan should be referred to the Office of Administrative Law Judge for development of a record on which the Commission can determine that the plan complies with the requirements of Act 11 and applicable Commission Orders and regulations related to approval of LTIPs and LSLR programs.

III. CONCLUSION

The OCA submits that the City of Lancaster should be required to provide additional information and make necessary revisions to its modified Long-Term Infrastructure Improvement Plan consistent with the requirements of the Public Utility Code and Commission orders and regulations applicable to LTIPs and Lead Service Line Replacement Plans. The OCA respectfully requests that the City's proposed revised LTIP should be referred to the Office of Administrative Law Judge.

Respectfully Submitted,

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