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June 2, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

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

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

Sincerely,

Sarah C. Stoner

Sarah C. Stoner
Enclosure

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I. INTRODUCTION

In its Notice of Proposed Rulemaking Order (“NOPR”) entered on September 17, 2020, the Pennsylvania Public Utility Commission (“Commission”) sought comment on proposed regulations intended to implement Act 120 of 2018 (“Act 120”). Act 120 amended the Public Utility Code at 66 Pa. C.S. § 1311(b), by addressing the replacement of private lead service lines (“LSL”) and damaged wastewater service laterals (“DWSL”) and the recovery of associated costs. The Commission proposes to expand Chapter 65 of its regulations by designating existing regulations addressing water service as Subchapter A, “Service Generally” and new regulations designated as Subchapter B, “Lead Service Line Replacements.” To address wastewater service, the Commission proposes to establish a new Chapter 66 that would reserve Subchapter A, “Service Generally” for future use and establish new regulations as Subchapter B, “Damaged Wastewater Service Laterals.”¹

The Pittsburgh Water and Sewer Authority (“PWSA” or “Authority”) appreciates this opportunity to provide its feedback on the proposals set forth in the NOPR and looks forward to a continuing dialogue with the Commission and interested stakeholders as the Commission moves toward adopting regulations to implement Act 120.

II. OVERVIEW OF PWSA’S LEAD SERVICE LINE REMEDIATION EFFORTS AND OVERARCHING CONCERNS WITH THE NOPR

Created by the City of Pittsburgh in 1984 pursuant to the Municipality Authorities Act,² PWSA operates as the largest combined water and sewer authority in Pennsylvania and provides service to more than 300,000 people throughout the City of Pittsburgh. PWSA is subject to the

¹ See proposed regulations in Annexes A and B to the Notice of Proposed Rulemaking Order.

² 52 Pa.C.S. §§ 5601-5632.

Commission’s jurisdiction and is also subject to drinking water, environmental and operational standards established by the Pennsylvania Department of Environmental Protection (“PA DEP”) and the United States Environmental Protection Agency (“EPA”).

LSLs are subject of the EPA Lead and Copper Rule (“LCR”) which is enforced by PA DEP.³ Environmental regulations direct actions and requirements related to LSL remediation efforts and range from a health-based “action level” to inventory, sampling, LSL replacement and customer notification requirements. The EPA published National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (“LCRR”) in the Federal Register on January 15, 2021. The LCRR are slated to become effective on June 17, 2021, and establish a compliance date of January 16, 2024.⁴ The LCRR will modify existing requirements related to LSL replacements and will impact how entities structure their LSL replacement programs.

PWSA has a comprehensive approach to lead remediation.⁵ The Authority’s Lead Service Line Replacement Program was developed to address exceedances of the lead action level in the PA DEP lead and copper regulations (see 25 Pa. Code § 109.1101 et seq.), an April 26, 2016 PA DEP Administrative Order and a November 17, 2017 Consent Order and Agreement with PA DEP. The Authority’s Lead Service Line Replacement Program has been reviewed by the PUC through its recent rate proceedings, Long-Term Infrastructure

³ 40 CFR Part 141 Subpart I and 25 Pa. Code §§ 109.1101 to 109.1108, collectively the “lead and copper Rules” or “LCR.”

⁴ See National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates, 86 Fed. Reg. 14063 (March 12, 2021)(proposing to delay the effective date of the LCRR until December 16, 2021, and to delay the January 16, 2024 compliance date to September 16, 2024).

⁵ See Lead Infrastructure Plan, Revised Appendix C to Amended LTIIP (Docket Nos. P-2018-3005037 and P-2018-3005039).

Improvement Plan and Stage 1 Compliance Plan proceeding.⁶ When the LCRR become operative, PWSA will need to revise its Lead Service Line Replacement Program on file with the Commission to reflect superseding requirements in the LCRR.

PWSA finalized a multi-year project to prepare and update an inventory of residential water service line materials in December 2020. The inventory was initiated in response to a lead action level exceedance of the LCR in the drinking water system in 2016 and evolved over the past several years. A subsequent analysis was conducted in February 2021 for private-side service lines and the analyses estimate that there were 15,633 residential private side lead service lines prior to commencement of PWSA's Lead Service Line Replacement Program, and that 11,386 lead service lines remain as of December 1, 2020.⁷

PWSA's primary concern with the Commission's NOPR as it pertains to lead service lines, is that the proposed regulations would establish requirements that do not align with the LCRR. PWSA submits that the Commission should focus on establishing uniform procedures to address tariff and rate recovery rules for replacement of customer-owned lead service lines. It is not appropriate for the Commission to claim jurisdiction over inventory, replacement and customer notification requirements, and other water quality issues that have been specifically

⁶ *Pennsylvania Public Utility Commission, et. al. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2020-3017951 et al.; *Pennsylvania Public Utility Commission, et. al. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2018-3002645, et al.; *Pennsylvania Public Utility Commission, et. al. Pittsburgh Water and Sewer Authority, Implementation of Chapter 32 of the Public Utility Code RE: Pittsburgh Water and Sewer Authority*; Docket Nos. M-2018-2640802 and M-2018-2640803; *Petition of the Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*; Docket Nos. P-2018-3005037 and P-2018-3005039.

⁷ PWSA Lead Service Line Replacement Plan (March 31, 2021).

addressed in environmental regulations. PWSA is concerned that entities that work to comply with the LCRR and elect to seek recovery under Act 120 will face unnecessary challenges in meeting different directives in overlapping regulations. PWSA therefore encourages the Commission to align its regulations with the LCRR, to the extent possible, and accept plans, reports, inventories, etc. prepared under the LCRR instead of imposing different requirements and criteria. In addition, for entities that have an existing, comprehensive lead remediation plan (such as the Authority), the Commission should not impose additional or conflicting requirements and limit these rules to only the standards and procedures it is tasked with establishing per Act 120.

As explained in PWSA's suggestions below, PWSA is concerned that several of the Commission's proposed regulations will have the effect of creating confusing and conflicting requirements for entities seeking recovery under Act 120. In PWSA's view, the Commission is being too prescriptive in its proposed regulations, and it should work to neatly fit its regulations within the predefined boxes of the LCRR. PWSA's feedback on the NOPR is intended to achieve the appropriate balance between the directives of Act 120 and the regulations in the confines of EPA/DEP.

III. SUGGESTED REVISIONS TO PROPOSALS RELATING TO REPLACEMENT OF LEAD SERVICE LINES

A. Proposed Modifications to Definitions

1. Section 65.52. Definitions (“Customer-Owned Lead Service Line” and “Service Line”).

PWSA suggests modification of the definition of the terms “customer-owned lead service line” and “service line” as follows:

Section 65.52: Definitions.

Customer-owned lead service line – The portion of the lead service line extending from the curb, property line or entity connection to an entity’s water meter or, if the entity’s meter is located outside of the structure or water is not metered by the entity, ~~at the first shutoff valve located within~~ **to one foot beyond the interior foundation wall of** the structure.

Service line – The pipe and appurtenances which connect any main to an entity’s water meter or, if the entity’s water meter is located outside of the structure or the connection is not metered by the entity, ~~at the first shutoff valve located within the structure.~~ **to one foot beyond the interior foundation wall of the structure**

PWSA’s proposed modifications to the definitions above will allow entities to replace lines in an efficient and cost-effective manner. In its lead service line replacement efforts, PWSA has encountered numerous situations where the first shutoff valve is located on the opposite side of where the service line is brought in to the structure. In replacing a customer-owned lead service line, PWSA ties in to the existing plumbing, but does not necessarily run the replacement line to the other side of the structure if the first shutoff valve is on the opposite side of where the line is brought in to the structure. In those scenarios, PWSA installs a shutoff valve close to where the service line enters the inside of the foundation of the structure.

Replacing the phrase “at the first shutoff valve located within the structure” with “one foot beyond the interior foundation wall of the structure” in the definitions of “customer-owned lead service line” and “service line,” would permit an entity to bring the service line in to a structure where it makes the most sense. It would also help to ensure that lead service line replacements are conducted in an efficient and cost-effective manner.

As the first shutoff valve located within the structure may not be close to the entry point of the service line, PWSA recommends that the definitions of “customer-owned lead service line” and “service line” be modified as indicated above.

2. Section 65.52. Definitions (“Lead Service Line”).

As drafted, the definition of the term “lead service line” does not include service lines made of galvanized iron or galvanized steel. Lead particles can attach to the surface of galvanized pipes. Over time, the particles can enter drinking water, causing elevated lead levels.⁸ PWSA recommends that the definition of the term “lead service line” be expanded to include service lines composed of galvanized iron and galvanized steel as defined by the LCRR. The soon-to-be effective LCRR covers galvanized lines and treats them as lead service lines if they are or ever were downstream of a lead service line.⁹

PWSA believes it will be extremely confusing if there are different standards for service line materials in the regulations implementing Act 120 and the LCRR, especially as the Commission’s proposed regulations are similar to the requirements in the LCRR.

PWSA recommends that the following revised definition of “lead service line” be adopted:

Section 65.52: Definitions.

LSL – Lead service line – A service line made of lead, or galvanized iron or galvanized steel that is or formerly was downstream of lead, that connects the water main to a building inlet and a lead pigtail, gooseneck or other fitting that is connected to the lead line.

⁸ Environmental Protection Agency, *Concerned About Lead in Your Drinking Water? Sources of Lead in Drinking Water*, available at https://www.epa.gov/sites/production/files/2017-08/documents/epa_lead_in_drinking_water_final_8.21.17.pdf

⁹ 40 C.F.R. § 141.80 et seq. (effective June 17, 2021).

In addition to PWSA’s proposed modification of the definition of “lead service line,” PWSA recommends that the Commission also modify any other portions of the proposed regulations necessary to include galvanized iron and galvanized steel lines in the definition.¹⁰

3. Section 65.52. Definitions (“Service Line Inventory”).

To be consistent with the LCRR, PWSA recommends that the Commission modify the proposed definition of “service line inventory.” PWSA proposes to add that, where applicable, the inventory identify the service line material for both the entity and customer-owned portions of the line. In addition, PWSA recommends replacing the word “composition” with “material” and removing the requirement to inventory the diameter of the service lines (which is not required under the LCRR). The purpose of PWSA’s proposed modifications of the definition of “service line inventory” is to align the requirements with the LCRR.¹¹

Section 65.52: Definitions.

Service Line Inventory – The process of identifying each service line’s material (both entity and customer-owned portions, if applicable), ~~composition, material, diameter,~~ and location.

Aligning the Commission’s proposed regulations on Act 120 with the LCRR will create efficiencies for entities and reduce unnecessary expenditures of costs and resources to comply with substantially similar but different regulatory requirements.

¹⁰ Note: the LCRR refers to these lines as “galvanized requiring replacement.” 40 C.F.R. § 141.84 (effective June 17, 2021).

¹¹ 40 C.F.R. § 141.84 (effective June 17, 2021) (“The inventory must include all service lines connected to the public water distribution system regardless of ownership status (e.g., where service line ownership is shared, the inventory would include both the portion of the service line owned by the water system and the customer-owned portion of the service line”).

B. Section 65.53. Time to Replace LSLs.

In Section 65.53 of Annex A to its NOPR, the Commission proposes to require entities seeking cost recovery under Act 120 to replace all entity-owned and customer-owned lead service lines in their systems within a 25-year period for a Class A public utility or authority and within a 30-year period for a Class B public utility or Class C public utility. PWSA recommends that the proposed language in Section 65.53 be modified to reflect that entities seeking Act 120 cost recovery be required to replace only residential customer-owned lead service lines. An entity should be permitted Act 120 recovery for costs associated with replacement of non-residential customer-owned lead service lines if the entity elects to replace those lines. However, PWSA does not believe it is appropriate for the Commission to require replacement of all non-residential customer-owned lead service lines. Imposing such a requirement may dissuade entities from submitting a LSL Replacement Program for approval by the Commission. PWSA recommends modifying the language in Section 65.53 as follows:

Section 65.53: Time to replace LSLs.

(a) An entity, other than a municipal corporation, shall remove and replace all **entity-owned and residential customer-owned** LSLs, whether ~~entity-owned or customer-owned~~, within or connected to its water distribution systems within 25 years from the effective date of this Section for a Class A public utility or authority, and within 30 years from the effective date of this Section for a Class B public utility or Class C public utility.

(b) A municipal corporation providing water service beyond its corporate limits shall remove and replace all **municipal corporation-owned and residential customer-owned** LSLs, within or connected to its distribution systems, beyond its corporate limits, ~~whether municipal corporation-owned or customer-owned~~, within 30 years from the effective date of this Section.

While PWSA understands the Commission's desire to have entities remove all lead service lines in their system, prioritizing the replacement of non-residential customer-owned lead

service lines is not essential. Without voluntary support from an entity, a significant portion of residential customer-owned lead service lines would not be replaced due to customer inability to fund such investment. Most non-residential customers are in a different position, and replacing their customer-owned lead service line can reasonably be viewed as a “cost of doing business.” A commercial or industrial customer may pass on the cost of replacement of the lead service line (that they own and have responsibility to replace/repair) as a nominal overhead expense in the prices it charges its customers. Residential customers do not have the ability to pass on those replacement costs, and the Commission’s regulations should be crafted to treat non-residential customer-owned lead service lines differently.¹²

Moreover, entities may utilize an effective corrosion control process that obviates the need for replacement of lead service lines. As such, entities, authorities and municipal corporations should have the flexibility to structure their Lead Service Line Program to exclude or include non-residential customer-owned lines so as to not deter lead remediation efforts and ability to seek Act 120 recovery.

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. Some locations will

¹² PWSA’s practice includes replacement of non-residential customer-owned service lines from the main to the curb when a water main is replaced to ensure that any street restoration efforts conducted as part of that work do not need to be disturbed due to the reuse of aged infrastructure under the roadway. Because such a replacement raises concerns similar to those when an entity replaces only the “public” side of the line in the residential lead service line replacement context, PWSA intends to revise its Commission-approved tariff to reflect expansion of its Lead Infrastructure Plan to include replacement of customer-owned lead service lines serving non-residential properties (at no direct cost to the customer) where PWSA replaces a water distribution main connected to the customer-owned lead service line pursuant to its Small Diameter Water Main Replacement Program.

have unresponsive property owners (whose service will be terminated for failure to consent to an entity's offer to replace a customer-owned LSL) and that, despite an entity's best efforts to identify all LSLs, there may be some LSLs that remain in the system.

C. Section 65.55. LSLR Program requirements and Section 65.56. LSLR Plan requirements.

1. Timing of Inventory and LSLR Program Filing

The Commission proposes language in Sections 65.55 and 65.56 that would require entities seeking Act 120 recovery to file a LSLR Program in advance of completion of an inventory of their lead service lines. As drafted, the proposed regulations would require an entity to complete a lead service line inventory within five years of the filing date of the entity's LSLR Program. After an entity's inventory is completed, the proposed regulations would require that the inventory be incorporated into the entity's next LSLR Plan update.¹³

For entities that do not have an inventory in-place, creation of a LSLR Program (prior to completion of an inventory) will be challenging and of limited value. PWSA encourages the Commission to review the LCRR requirements that require establishment of an inventory within a three-year period, and a LSLR plan to follow upon completion of the inventory.¹⁴ Requiring completion of the inventory and a subsequent filing of a LSLR Program will help to ensure that the LSLR Program establishes realistic replacement objectives based on a solid understanding of the number and concentration of LSLs in an entity's system.

¹³ Proposed 52 Pa. Code § 65.56(a)(6).

¹⁴ 40 C.F.R. § 141.84 (effective June 17, 2021).

2. Content of Inventory

In addition to PWSA's comments above regarding the timing and coordination of the LSL inventory and LSLR Plan, PWSA has additional feedback regarding the proposed content of the LSL inventory. It is unclear to PWSA why the Commission is departing from the LCRR parameters for LSL inventories. PWSA recommends that the inventory requirements contained in Section 65.56(a)(4) be aligned with the requirements in the LCRR so that entities seeking recovery under Act 120 are not required to (potentially) create two separate inventories – one to comply with the LCRR and one to comply with the Commission's regulations.

If the Commission elects to utilize the language in Section 65.56(a)(4)(iii) (requiring that the inventory "be grouped by material type and diameter"), PWSA requests that the Commission clarify what it means by "grouped."

3. Recycling and Disposal Efforts

Section 65.56(b)(7) of the Commission's proposed regulations would require that an entity's LSLR Plan include a description of the entity's lead/material recycling and disposal efforts. PWSA submits that requiring a LSLR Plan to include a description of an entity's lead/material recycling and disposal efforts is unnecessary as lead recycling and disposal efforts are addressed in regulations promulgated by other regulatory bodies. As lead/material recycling and disposal requirements are outside the Commission's jurisdiction, PWSA encourages the Commission to eliminate this proposed requirement as it continues to evaluate and modify the regulatory framework for implementation of Act 120.

4. Prioritization of LSLRs

Subsection 65.56(c)(1)(i) requires that an entity’s LSLR Plan describe how the entity will “prioritize LSLR efforts to target sensitive populations as defined by the Environmental Protection Agency or Pennsylvania Department of Environmental Protection....” PWSA is not aware of any EPA or PA DEP regulation that defines “sensitive populations.” PWSA recommends that the Commission cite the regulation it is referring to (if available) or revise the subsection to reflect that the LSLR Plan must describe the entity’s prioritization of LSLRs.

5. Communication Requirement for All Bill-Paying Customers

PWSA encourages the Commission to revise its proposed language in Subsection 65.56(c)(1)(iv) that would require communication to all customers and persons that receive drinking water from the entity regarding the health effects of lead, sources of lead, and steps the consumer may take to reduce lead exposure. The LCRR requires an annual communication to those served by lead service lines and service lines of unknown material (but not all customers). To be consistent with the LCRR, the Authority recommends that the Commission’s proposed language be adjusted to require the above-referenced communication to those served by lead service lines and service lines of unknown material. If the Authority is required to provide such a communication to all customers (including those that have had their customer-owned lead service line replaced), it would be counterproductive. A customer that is served by non-lead service lines may be confused by such a communication. Moreover, requiring the proposed notice/communication to customers that are served by non-lead service lines would

require the Authority to incur additional costs unnecessarily. Accordingly, PWSA suggests the following revised language:

Section 65.56(c)(1)(iv)

Ensure that relevant information will be provided to ~~all bill-paying~~ customers and persons that receive drinking water from the entity ~~through a lead service line or a service line of unknown material~~, in plain language that can be understood by the general public, including:

6. As-Built Drawings or Similar Depictions of LSLRs

Subsection 65.56(c)(1)(v) would require entities to “provide customers with copies of as-built drawings or similar depictions that indicate the location of the LSLR on the property between the customer’s structure and the curb stop” and to make a good faith effort to provide customers with relevant documents associated with the LSLR. PWSA recommends that this subsection be deleted in its entirety. PWSA submits that providing as-built drawings or graphical depictions of a LSLR on the property between the customer’s structure and the curb stop is not necessary. In addition, the vague requirement to provide customers with “relevant documents associated with the LSLR” is also not necessary.

Customers can easily determine the placements of their LSLR as the replacements are made in a relatively straight line between the curb box and point of entry to the foundation of the structure. Over 98% of PWSA’s private-side replacements occur using a trenchless method, where the curb box and point of entry to the foundation are the only two locations needed to be accessed for any future work. Requiring a drawing or graphical depiction of the LSLR would provide little value to customers and require the Authority to incur additional costs, which in its view, would be unnecessary.

7. Printed and Broadcast Material

Subsection 65.56(c)(2) would require an entity's LSLR Plan to include copies of all printed and broadcast material to be distributed under the entity's LSLR Program.

PWSA is supportive of this requirement so long as printed and broadcast materials may be modified as necessary, without Commission approval, as a LSLR Program evolves.

D. Section 65.57. Periodic review of LSLR Plan.

PWSA suggests that the Commission establish procedures for completion of a LSLR Plan. There should come a point in time when an entity has completed its LSLR Plan and obligations in the Chapter 65 regulations dissipate. While this section addresses periodic review of a LSLR Plan, we encourage the Commission to address completion of the LSLR Plan.

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

1. Service line demarcation

PWSA recommends deletion of Subsection 65.58(b)(2), which provides that an entity may specify in its tariff that, "if a shutoff valve is not located along a specific length of pipe within a structure, the entity may install a shutoff valve to serve as a point of demarcation between the property's service line and the property's interior water distribution piping." PWSA suggests the deletion of this subsection as, in its view, the Authority's proposed revisions to the definitions of "customer-owned lead service line" and "service line" render this subsection unnecessary.

With regard to Subsection 65.58(b)(3), which provides that an entity "shall 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,” PWSA recommends that the Commission clarify how an entity is to use the LSLR process to achieve the directed outcome.

2. Partial LSLRs

Subsection 65.58(c)(2)(i) would require a customer that elects to replace a customer-owned LSL to provide a Class A public utility or an authority at least 90 days’ notice prior to replacing the customer-owned LSL. A similar, but more detailed requirement is defined in the LCRR and the Commission’s regulations should align with the provisions in the LCRR so that entities do not have to juggle competing requirements.¹⁵

3. Reimbursement for Customer Replacement Within a Year of Commencement of a LSLR Project

PWSA requests clarification of the proposed language in Subsection 65.58(d) that would establish 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.” Is the Commission intending to require reimbursement for customer-initiated replacements for the year prior to commencement of the LSLR Project? If so, it should clarify the period for customer-initiated replacements eligible for reimbursement. The Commission should also define “commencement of the LSLR Project” as it is unclear if that phrase means when construction commences, planning begins, etc.

¹⁵ 40 C.F.R. § 141.84(d)(3) (effective June 17, 2021).

If the Commission is interpreting “within one year of commencement of an entity’s LSLR Project” to be the year after commencement of the project, that entity could be required to reimburse a customer who elects to replace their customer-owned line when the entity is planning to replace the line in the near-term. This would be a waste of resources as it could require the entity to mobilize its employees or contractor to replace the connected entity-owned LSL in an area where work will soon be performed under the LSLR Project.

PWSA suggests that once the planning of the LSLR Project is complete (which could be indicated by publication of a project map on the entity’s website), the customer not be eligible for reimbursement for replacement of their line. This would be a reasonable parameter as the customer’s replacement would be addressed in the LSLR Project and performing the replacement of the LSL outside of the LSLR Project will result in unnecessary excess cost for the entity.

As PWSA currently has an income-based reimbursement program for eligible customers that elect to replace their customer-owned LSL on their own initiative, PWSA is seeking clarification as to whether it could continue its income-based reimbursement program (for customer-initiated replacements not performed within a year of commencement of a LSLR Project) if the proposed regulations were adopted.

PWSA recommends deletion of Subsection 65.58(d)(1)(iii)(B). If adopted, the provision would micromanage the submission and verification of appropriate documentation relating to a customer-initiated LSL. Entities should be allowed to develop procedures that fit their needs and locale. For example, PWSA requires an invoice from a licensed plumber and a final inspection report from the local plumbing

enforcement authority prior to reimbursing a customer for their replacement of a customer-owned LSL. The Authority (and other entities) should not be limited by the language in Subsection 65.58(d)(1)(iii)(B) and should be provided the flexibility to establish their own standards.

4. Warranty

PWSA's Commission-approved Water Tariff provides that PWSA will provide, at a minimum, a 30-day warranty on workmanship and materials for a customer-owned LSL that it replaces. (Tariff Water – Pa. P.U.C. No. 1, Original Page No. 70). PWSA submits that the Commission's proposal to require a two-year warranty for a customer-owned LSL that an entity replaces is unnecessarily long, as it is longer than the accepted industry practice for a warranty term. From PWSA's experience, most issues encountered related to the installation arise within the first few days of the installation. PWSA believes that providing at least a 30-day warranty on workmanship and materials would adequately protect the customer while maintaining reasonable costs for the contractors engaged to perform the replacements.

PWSA recommends that the Commission's proposed requirements for warranty provisions be revised to exclude "restoration of surfaces." PWSA's Commission-approved Water Tariff provides that PWSA will restore roadways and public sidewalks, as well as backfill any trenches excavated as part of the replacement process. It also provides that costs associated with restoration of landscaping, interior finishes, paving, seeding or walkways are to be borne by the property owner. (Tariff Water – Pa. P.U.C. No. 1, Original Page No. 70). PWSA encourages the Commission to exclude "restoration of surfaces" from Section 65.58(e)(2) or, at the very least, 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).¹⁶

F. Section 65.59. LSLR Program Reports.

Several proposed metrics for an entity’s LSLR Program Report are, in PWSA’s view, not necessary or useful information for an entity’s lead remediation efforts. First, PWSA believes it is irrelevant to capture the length and pipe diameter of LSLs replaced. Second, the “actual cost of each LSLR by county” is not a figure that is easily determined for each location. Third, the “average cost of a LSLR by county” and “total annual LSLR expenditures for the calendar year by customer class” can be difficult to determine, especially if the LSLR is performed as part of a water main replacement project. While some project costs are specific to a LSLR and can be easily extrapolated, other costs are related to other items in a contract and are more difficult to extract. If a contract extends beyond a year, it could present additional challenges in determining the “the total annual LSLR expenditures for the calendar year.”

PWSA respectfully requests that the Commission clarify: (1) the “geographic location” of LSLR customer refusal for the calendar year; and (2) the applicable lead monitoring requirements established by PA DEP for each of the entity’s water distribution systems. Lastly, PWSA recommends that the Commission modify the language in Subsection 65.59(b) to: (1) remove the reference to “pipe diameters”; and (2) adjust the reference to “customer service lines”, if the Commission is seeking the status of the inventory of both entity-owned and customer-owned LSLs.

¹⁶ These comments also apply to Section 66.38(e) regarding warranties for replacing DWSLs.

G. Section 65.61. Preexisting LSLR activities.

PWSA has spent an enormous amount of time and resources to develop a comprehensive lead remediation plan. While PWSA understands the Commission’s desire for consistency among entities’ LSLR Programs, it suggests that the Commission avoid the “one size fits all” approach to implementation of Act 120 of 2018. The Commission’s implementation of Act 120 should reflect that entities have different sizes, resources and infrastructure, and that their LSL replacement plans are system-specific. PWSA already has a comprehensive lead remediation plan tailored to its operational, regulatory, and other constraints. For entities that have an existing, comprehensive lead remediation plan (such as the Authority), the Commission should create and impose only the standards and procedures it is tasked with establishing per Act 120. Standards and procedures not specifically directed by Act 120 should fall under the jurisdiction of PA DEP/EPA.

H. Section 65.62. Prohibition on partial LSLRs.

This section would require the Authority to replace the entity-owned LSL connected to a customer-owned LSL within 90 days of the date of the customer’s request (or on the LSLR date specified) when a customer elects to replace their customer-owned LSL. As indicated in PWSA’s comments regarding Subsection 65.58(c)(2)(i), PWSA recommends that the Commission align its regulations with the LCRR so that entities are not faced with conflicting directives in the Commission’s regulations and the LCRR.¹⁷

¹⁷ 40 C.F.R. § 141.84(d)(3) (effective June 17, 2021).

IV. OVERVIEW OF PWSA'S WASTEWATER/STORMWATER SYSTEM AND PRIMARY OBJECTIVE OF PWSA'S COMMENTS ON THE NOPR

PWSA has approximately 110,000 private wastewater laterals, about 75% of which are part of its combined wastewater/stormwater system. For PWSA, the customer owns and is responsible for the entire wastewater lateral from the main to the customer connection, including the portion in the public right of way. Pursuant to currently effective PWSA Tariff Wastewater – Pa. P.U.C. No. 1, a “lateral, customer lateral or sewer lateral” is defined as wastewater or sewer lines that connect a property to the PWSA’s Collection Mains and carry sewage and/or stormwater from one or more buildings or premises to the PWSA’s Collection Mains. (Tariff, Part II at 21). The Tariff further states that ownership of the wastewater lateral that provides service to residential and non-residential properties, up to and including the connection of the wastewater lateral to the sewer main, lies with the property owner. The property owner is responsible for the operation, inspection, maintenance, repair, replacement, abandonment, and removal of the wastewater lateral. (Tariff, Part III, Section B.7.a at 35). Finally, the PUC-approved wastewater tariff provides that if a condition of a wastewater lateral presents a risk to public health or safety or damage to public property and the property owner fails to take prompt action to cure the problem following notice to do so, the PWSA has the right (but not the duty) to make the necessary repair or replacement and charge the property owner with the reasonable cost. If a property owner fails to pay for the repair/replacement the PWSA may file a municipal lien against the property. (Tariff, Part III, Section B.7.b at 35). The current private ownership of the wastewater laterals up to and including the connection of the sewer lateral to the sewer main stems from the Pittsburgh Code of Ordinances § 431.04, in which the City of Pittsburgh required property owners to construct, own and maintain laterals from the building to the main.

Given the full private ownership of laterals on PWSA's system, PWSA has, in the past, focused on damaged laterals that are part of its combined, wastewater/stormwater system and the portion that are in the public right of way. As noted, approximately 75% of the PWSA system, or approximately 900 miles of sewer lines, are part of its combined sewer system. Therefore, a high percentage of Damaged Wastewater Service Laterals (DWSL) in the PWSA's system may be in areas where infiltration/inflow is not the main reason for PWSA to consider repairing/replacing. DWSLs in the right-of-way are often identified from sinkholes formed in the public right-of-way. The sinkholes not only pose a risk to the traveling public (foot, bike, or vehicle), but additionally can affect the bedding of other utility facilities and can cause operations and maintenance issues in the sewer main, which may or may not lead to a wastewater overflow. Additionally, private lateral failure can result in seepage into public areas, posing a health hazard to local residents as well as the public.

PWSA believes it would be in the public interest if it engaged in an Act 120 private wastewater lateral program to address these kinds of circumstances. PWSA would consider private sewer lateral repair/replacement, with no direct cost to the customer or the property owner to address laterals in the public right of way where: 1) the damage is creating a public health or safety hazard; and 2) the cost of replacing the line by the property owner is deemed cost prohibitive.

Accordingly, PWSA's comments and suggestions below are focused on adding to the rules language that would permit PWSA to replace a line at its cost when a line meets these criteria.

V. **SUGGESTED REVISIONS TO PROPOSALS RELATING TO REPLACEMENT OF DAMAGED WASTEWATER SERVICE LATERALS**

A. **Section 66.32. Definitions.**

1. **Company’s service lateral and Customer’s service lateral.**

As noted above, all laterals in PWSA’s service territory are owned and are the responsibility of the customer or property owner. This is the standard ownership structure for municipal utilities. Accordingly, the definition of “Company’s service lateral” and “Customer’s service lateral” should be modified to include this ownership structure:

Company’s service lateral – The portion of a service lateral owned by the company, **if any**, extending from a main to the inlet connection of a customer’s service lateral at the curb or property line.

Customer’s service lateral. – The portion of a service lateral owned by the customer, most often extending from the curb, property line or utility connection to a point two feet away from the face of the foundation of the structure, **or, where the service is owned entirely by the customer, the portion of the service line extending from the main to a point two feet away from the face of the foundation of the structure.**

2. **Damaged wastewater service lateral**

As noted in the introduction, PWSA believes that its private damaged wastewater lateral replacement efforts should be focused on situations in which the portion of private laterals in the public right of way fail or are damaged. In PWSA’s experience, such failures can cause harm to the public in the form of sinkholes, contamination to surrounding areas, and potential harm to private properties. These potential harms definitely create a risk to public health and safety and PWSA believes that it would be prudent to establish a plan for repair or replacement at PWSA expense. However, those types of situations do not necessarily create inflow and infiltration issues. Accordingly PWSA suggests that the definition of “Damaged Wastewater Service Lateral” be modified to permit 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: 1) is or could become a health or safety risk; and 2) where the cost of replacing the damaged wastewater lateral would be prohibitive.

DWSL – Damaged wastewater service lateral. – A customer’s service lateral containing a single area or a combination of several areas, acting collectively, identified by visual or other means, along the length of the lateral which has or have been determined to significantly impair the intended function of the customer’s service lateral to convey wastewater flow to the company’s service lateral and which would: 1) keep inflow and infiltration flows, within reason, out of the customer’s service lateral; or where 2) replacement would eliminate or reduce a public health or safety risk and the cost to the customer or property owner of replacing the damaged wastewater lateral would be prohibitive.

B. Section 66.33. DWSL Program parameters.

This section sets forth the acceptable parameters for an Act 120 damaged lateral replacement plan. In keeping with PWSA’s comments above, the Authority believes it would be beneficial to customers and in the public interest if it pursued a plan in which it would replace specific private damaged wastewater laterals when the damage creates a legitimate public health and/or safety risk and cost constraints make it very unlikely that the customer or property owner will be able to replace the private lateral in the public right of way. Accordingly, PWSA requests that the Commission add a third category of program that could be pursued: where the damaged lateral is otherwise creating a public health and/or safety hazard.

Section 66.33. DWSL Program parameters.

* * *

(b) An entity’s purpose for petitioning the Commission for approval of a DWSL Program shall be linked to:

- (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.
- (2) Design or construction conditions causing, or which are reasonably expected to cause within the next five years, wastewater overflows.

- (3) Addressing damaged wastewater laterals in the public right of way where the damage is creating a public health or safety hazard.

Section 66.33(b) states that a wastewater utility's program petition should include a modified LTIP with its petition setting forth the new plan. While PWSA does not have any issue with modifying its LTIP to include any authorized private wastewater lateral replacement program, it is concerned about the time and cost that would be associated with such an exercise prior to obtaining PUC approval and guidance as to a DWSL replacement program. PWSA suggests therefore that this provision be modified to permit an entity to file an amendment to its approved LTIP *after* the PUC approves its plan.

C. Section 66.34. Petitioning the Commission for a DWSL Program.

PWSA recommends the following revisions to Section 66.34(b):

* * *

(b) An entity that has a Commission-approved LTIP shall may include with its DWSL Program petition a modified LTIP containing a DWSL Plan as a separate and distinct component of the entity's LTIP or may file for an amendment to its LTIP after its DWSL Program petition is approved by the Commission.

D. Section 66.36. DWSL Plan Requirements.

1. Section 66.36(a)(4).

Section 66.36(a)(4). This subsection would require the entity to include within its plan "[t]he eligible areas designated by the entity as proposed DWSL Project Areas described with a bearing angles and distances or metes and bounds description and graphically depicted." PWSA has the technical capability to provide a graphic depiction of the private sewer lateral to be replaced but does not currently prepare bearing angles, distances or metes and bounds. To do so would result in the Authority incurring additional cost which, in its view, would be unnecessary.

The graphic depiction should suffice for the purposes of identifying the location of the line.

Accordingly, PWSA suggests the following slight modification:

(4) The eligible areas designated by the entity as proposed DWSL Project Areas: (i) described with a bearing angles and distances or metes and bounds description; and-or (ii) graphically depicted.

2. Section 66.36(a)(6).

This section requires an entity to submit as part of its plan “A benefit analysis detailing the expected improvements in the entity’s wastewater system functionality.” As noted above, PWSA believes that private wastewater lateral replacement should be considered when replacement would provide public health and safety benefits. Accordingly, PWSA believes that improving public health and safety should be added as an alternative benefits analysis:

(6) A benefit analysis detailing the expected improvements in the entity’s wastewater system functionality or public health or safety.

3. Section 66.36(a)(7).

This section requires an entity to submit “[a]n estimate of the net present value of the entity’s future reduced and/or increased costs associated with DWSL replacements identified in the DWSL Plan, broken down by capital costs and operation and maintenance costs.” For a municipal utility with limited resources, preparing such a NPV study would be costly and time consuming. Also, since PWSA is hoping to address private replacements to mitigate public health or safety risks, quantification of cost reductions would be speculative, in many cases. PWSA 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.

(7) Where available and appropriate, on either a project area or individual basis, [a]An estimate of the net present value of the entity’s future reduced and/or increased costs associated with DWSL replacements identified in the DWSL Plan, broken down by capital costs and operation and maintenance costs. Otherwise, the entity should detail the public health or safety benefits or risk reduction associated with the DWSL replacements.

4. Section 66.36(b)(1)(4).

This section requires the entity to provide to the property owner “copies of as-built drawings or similar depictions that indicate the location of the DWSL replacement *on the property between the customer’s structure and the edge of the existing right-of-way.*” Since in PWSA’s service territory the customer owns the entire lateral to the main, this section needs to be changed to accommodate that.

(b)(1)(4) Provide customers with copies of as-built drawings or similar depictions that indicate the location of the DWSL replacement *on the property between the customer’s structure and the edge of the existing right-of-way.*

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

1. Section 66.38(b)(2).

Section 66.38(b)(2) states that “each entity shall use the DWSL replacement process to perfect the entity’s ownership of the portion of the service lateral located within the then-existing right-of-way....” As noted above, PWSA, like most municipals, does not own any portion of the sewer lateral. Therefore, this section needs to be modified to accommodate those circumstances.

(b)(2). Where appropriate, [e]Each entity shall use the DWSL replacement process to perfect the entity’s ownership of the portion of the service lateral located within the then-existing right-of-way, if any, to ensure that the entity can obtain necessary permits to complete work within the public right-of-way in the future.

2. Section 66.38(d)(4).

This section states that “a customer’s refusal of a DWSL replacement offer by the entity does not negate the customer’s ability to submit for reimbursement in accordance with the entity’s reimbursement procedure once the customer has independently replaced a DWSL.” This 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. As the Commission is aware, the PUC has established that a refusal to accept a PWSA offer to replace a private lead service line should result in the termination of water service at the property. PWSA suggests that, at least in instances in which the replacement is to alleviate such public harms, the Commission should consider a similar rule. Refusal to accept an offer of a cost-free replacement should result in the termination of water service.

Accordingly, PWSA proposes the following:

(d)(4). (i) A customer’s refusal of a DWSL replacement offer by the entity does not negate the customer’s ability to submit for reimbursement in accordance with the entity’s reimbursement procedure once the customer has independently replaced a DWSL.

(ii) In situations in which the proposed DWSL replacement is to alleviate risks to public health or safety, the entity’s tariff should include provisions setting for a procedure for terminating water service until such time as the offer of a cost-free replacement is accepted.

F. Section 66.39(b)(5). DWSL Program Reports.

This section provides that an entity’s DWSL Program Report must include the monthly average flow for certain Project Areas for a two-year period prior to and after DWSL replacements and the three-month maximum flow for, at a minimum, a two-year period prior to and after the DWSL replacements. PWSA finds the proposed two-year

time periods to be excessive and recommends that they be reduced to a minimum of six months as follows:

(b)(5) The following information for each of the entity's Project Areas, specific to each wastewater facility that is currently, or is projected within the next five years to be, hydraulically overloaded or where flow is impacting or detrimental to wastewater system function:

(i) Monthly average flow for, at a minimum, a ~~two-year six-month~~ period prior to DWSL replacements being installed.

(ii) Three-month maximum flow for, at a minimum, a ~~two-year six-month~~ period prior to DWSL replacements being installed.

(iii) Monthly average flow for, at a minimum, a ~~two-year six-month~~ period after DWSL replacements have been installed.

(iv) Three-month maximum flow for, at a minimum, a ~~two-year six-month~~ period after DWSL replacements have been installed.

PWSA recommends a minimum of six-month periods for tracking the 3-month maximum and monthly average flows. A longer period of time (such as the two-year period proposed by the Commission) could be cost prohibitive. PWSA incurs approximately \$2,500 *per meter* for every month of flow monitoring it is required to do. Moreover, in areas where a DWSL is replaced due to public health and safety issues, flow rates would more than likely not be observable. PWSA notes that, for a one-off DWSL replacement, PWSA would not be able to provide the monthly average flow or three-month maximum flow.

VI. CONCLUSION

PWSA appreciates this opportunity to provide its viewpoint regarding this important proceeding and looks forward to continuing to assist the Commission with the implementation of Act 120 of 2018.

Respectfully submitted,

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