



July 1, 2021

**VIA E-File**

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

**RE: Rulemaking to Implement Act 120 of 2018,  
Docket No. L-2020-3019521**

Dear Secretary Chiavetta,

Please find the **Reply Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA)**, which are respectfully submitted for consideration in the above referenced docket, pursuant to the Notice of Proposed Rulemaking published in the *Pennsylvania Bulletin* on April 3, 2021. An electronic copy will be provided to Commission Staff, as indicated below.

Respectfully submitted,

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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY COMMENTS OF**

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY**  
**EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

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**July 1, 2021**

## I. INTRODUCTION AND BACKGROUND

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA or Commenters)<sup>1</sup> file the following Reply Comments for the Pennsylvania Public Utility Commission's consideration in establishing standards and guidelines for lead service line (LSL) replacement programming, through its implementation of Act 120 of 2018 (Act 120 or the Act).

On June 2, 2021, CAUSE-PA (jointly with Green and Healthy Homes Initiative (GHHI)), the Office of Consumer Advocate (OCA), Pittsburgh Water and Sewer Authority (PWSA), and Aqua Pennsylvania, Inc. (Aqua), each submitted initial Comments in response to the Commission's Notice of Proposed Rulemaking (NPRM), published in the *Pennsylvania Bulletin* on April 3, 2021. These Reply Comments respond to the Comments submitted by OCA, Aqua, and PWSA. For the sake of brevity, CAUSE-PA will not restate the points previously raised in our initial comments to the Commission but incorporates those points by reference. These reply comments will instead focus on responding to issues raised by other stakeholders to which we have not previously addressed or which warrant further response. As with our initial comments, these reply comments will focus on Chapter 56, related to Lead Service Line Replacement (LSLR). To the extent that any argument raised in the other stakeholders' initial Comments is not addressed does not indicate Commenters' agreement or disagreement.

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<sup>1</sup> CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

## II. REPLY COMMENTS

### a. Section 65.53 Time to replace Lead Service Lines (LSLs)

Under the Commission’s proposed regulations, a Class A public utility or an authority is required to replace all LSLs within 25 years and within 30 years for a Class B or Class C public utility. In comments, Aqua supported the timeline as proposed without suggested amendment.<sup>2</sup> OCA offered amendment to clarify, but not reduce, the two timeframes proposed for Class A and Class B and C public utilities.<sup>3</sup> PWSA did not offer support or objection to the length of time, but rather recommended modification to proposed language so that entities would only be required to replace LSLs for residential customers. PWSA states that 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.

Given the acute risk to consumer health and safety, CAUSE-PA stands firms in their position put forward in Initial Comments, urging the Commission to reduce the lengthy timeline that the proposed regulations allow for completing LSL replacements.<sup>4</sup> CAUSE-PA notes the dueling public health crises for low-income households – the lead crisis and the water affordability crisis – both of which pose serious and immediate threats to the public health and safety of residents throughout the state. One crisis does not need to compound the other. As we provided in detail in our initial comments, the whole cost of the LSLR programs does not need to be recovered within the same timeframe as LSLs are being replaced. Further, the Commission should require utilities to exhaust all avenues of available funding before allowing utilities to put forth a

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<sup>2</sup> Aqua Comments at 5.

<sup>3</sup> OCA Comments at 4.

<sup>4</sup> See Joint Comments of CAUSE-PA and GHHI at 5.

rate increase request to recover costs.<sup>5</sup> It is imperative that all customers have access to safe *and* affordable water service to their homes.

Furthermore, CAUSE-PA disagrees with PWSA's recommendation that nonresidential customers be excluded from Act 120 LSLR programming, because excluding *any* customer from the program potentially places vulnerable populations at risk and would be in conflict with the goals of Act 120. Residential multifamily buildings and mixed use buildings are considered part of the commercial classes, and many businesses provide water to consumers who use their facilities. Buildings often switch uses over time – what may be a commercial business today could transition to residential housing in the future. In order to ensure all LSLs in the Commonwealth are replaced and that vulnerable residents are adequately protected, all customers, whether residential or non-residential *must* have access to LSL replacement as provided through Act 120. In addition, LSL programming costs should be recovered from all utility customers, and excluding non-residential customers from access to LSLR programming could inhibit necessary, reasonable, and just cost recovery, placing an unfair burden on residential customers, especially those most economically vulnerable, to address the lead crisis – thereby exacerbating the affordability crisis. As noted in our initial comments, all consumer classes derive benefits from the availability of LSLR programs, and costs for public purpose programs are most appropriately shared across all customer classes.<sup>6</sup>

CAUSE-PA also disagrees with PWSA's troubling assertion that “entities may utilize an effective corrosion control process that obviates the need for replacement of lead service lines.”<sup>7</sup> This assertion conflicts with the provisions of Act 120, and is alarming. The intent of Act 120 is

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<sup>5</sup> Joint Comments of CAUSE-PA and GHHI at 5-7.

<sup>6</sup> Joint Comments of CAUSE-PA and GHHI at 22-23.

<sup>7</sup> PWSA Comments at 9

to ensure all LSLs are removed. No amount of lead is safe for human consumption. In fact, PWSA has encountered problems with corrosion control processes in its service territory. An error regarding anti-erosion chemicals lead to spikes in lead concentration in its service territory, causing the 2016 Pittsburgh water crisis. There is no existing corrosion control process that can ensure lead is permanently removed from drinking water. Therefore, CAUSE-PA emphatically disagrees with PWSA and urges the Commission to reject recommendations to exclude non-residential customers and/or to approve lead remediation programming that falls short of actual removal of LSLs.

**b. Section 65.56(c) LSLR Plan Requirements; Communications, Outreach, and Education**

In its Comments, OCA asserts that more specificity is needed regarding landlord-tenant arrangements and exemptions for customers who may not be the property owner and recommends amendments to the regulations to provide specificity.<sup>8</sup> CAUSE-PA echoes OCA's concern and subsequent recommendation that notification requirements for LSLs and LSLR programming require additional clarification in the proposed regulation; however, CAUSE-PA recommends additional clarification to OCA's proposed amendments to the regulatory language, which would add "property owners and/or" in front of customers in this section of the regulation. CAUSE-PA proposes removal of the "or" and simply adding "**property owners and**." We understand that OCA's inclusion of "or" in the "and/or" is meant to account for those property owners who are also customers. However, the "or" could still be interpreted by entities as affording them the choice to only notify property owners *or* tenants/customers. This interpretation could result in tenants not receiving critical information for the protection of their health. CAUSE-PA provided

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<sup>8</sup> OCA Comments at 5.

detailed explanation of the importance of tenant notification in reply comments to the Advance Notice of Proposed Rulemaking published prior to the initiation of the formal rulemaking process.<sup>9</sup> Therefore CAUSE-PA supports OCA's recommended edits with our additional amendment incorporated. CAUSE-PA additionally, fully supports OCA's clarifying additional language to Section 65.56(b)(5) and 65.56(b)(6). (OCA Appendix (redline) at 5-8). These amendments provide necessary clarity and specificity to ensure all persons who receive drinking water from an entity are adequately protected and processes are in place to ensure communication is provided to both those with the authority to make decisions about LSLR and those who are the direct recipients of those decisions. For these reasons, we encourage the Commission to incorporate these amendments into the final form rulemaking.

Additionally, in initial Comments, CAUSE-PA strongly recommended prioritization of the most vulnerable communities – particularly low income communities and communities of color.<sup>10</sup> Aqua partly addressed prioritization of low income households/communities in their comments, stating the Company “will seek to prioritize low-income customers who request replacement of LSLs.” (Aqua at 10). While we commend Aqua for stating they will prioritize low income customers, entities should not wait for low income low income customers to request replacement, but should prioritize low income communities and communities of color at all stages of outreach,

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<sup>9</sup> The Public Utility Code requires utilities to communicate directly with tenants at a residential property served by the utility. The Discontinuance of Service to Leased Premises Act (66 Pa. C.S. Ch. 15, Subch. B.) requires utilities to identify and track tenant-occupied properties and to provide advanced notice of a pending termination to any residential property that is “reasonably likely” to be occupied by a tenant. (66 Pa. C.S. §§ 1523, 1524, 1526) In turn, DSLPA provides tenants with the right to take immediate actions to prevent the loss of service to their residence service. (66 Pa. C.S. § 1527). DSLPA protects tenants from service terminations resulting from a landlord's deliberate actions or inaction, and does not rely solely on the landlord to convey critical information to the tenant that will necessarily impact the tenant's ongoing access to safe, stable water service. Regarding identified LSLs, tenants similarly need to be protected from consuming lead tainted water due to a landlord's inaction. The need to convey accurate and timely information about the presence of lead in drinking water, and the steps a tenant could take to remediate the associated risk of lead exposure, deserves the same level of direct disclosure to tenants that is required in DSLPA.

<sup>10</sup> Joint Comments of CAUSE-PA and GHHI at 7-9, 11, 14, 17-78.

communication, and education in order to ensure that they have sufficient information to allow them to make that request. Ultimately, the onus is on the entity to conduct the outreach and to create prioritization metrics. The burden of outreach should not be placed on the customer to initiate their own prioritization. Thus, the Commission should require that all LSLR plans include considerations of equity impacts and should include methods they will use to make sure lower income homes are benefiting from LSLR and metrics to track the socioeconomic demographics of households receiving LSLRs.

**c. Section 65.58(c) Pro Forma Tariff or Tariff Supplement Requirements;  
Partial LSLRs**

In initial comments, Aqua noted concerns with the proposed requirement in § 65.58(c)(1); “...a partial LSLR must result in termination of service until such a time as the entity can replace the entity-owned LSL.” Aqua, specifically, raised the concern that “terminating service for refusal to allow an entity to replace a customer side LSL, or discovery of a partial replacement, will present difficulties for entities administering a LSLR.” (Aqua at 13). Aqua offered an example of a landlord refusing to replace an LSL and the tenants losing service through no fault of their own. Aqua noted that, should a partial LSL be discovered, an entity may be more likely to submit an emergency PA One Call ticket and replace the partial through that process rather than unnecessarily terminate critical water service to a customer.

CAUSE-PA agrees with Aqua that an emergency line replacement is appropriate in the situation where a tenant faces termination of service due to the landlord’s refusal to allow LSLR. Entities should not be forced to place residents at risk of either lead exposure due to a partial replacement or the host of public health risks associated with water service termination. Forcing the entity to terminate service in these situations potentially exposes the entity to liability for violating the tenant’s statutory rights that protect them from termination of water service due to

the fault of their landlord.<sup>11</sup> Furthermore, landlords have a legal obligation to provide safe, habitable housing to their tenants.<sup>12</sup> It would therefore be unjust to deprive a tenant of water service due to the landlord's refusal of a the LSLRs, which are to be provided at no cost to the landlord.

In its initial comments, OCA provided a recommended edit in their Appendix to their comments modifying the word "must" to "may", thus nullifying the requirement to terminate service. CAUSE-PA echoes OCA's sentiment that termination of service should not be a requirement for discovery of a partial LSL. However, we recommend that the reference to termination of service be stricken from the regulation and replaced with Aqua's proposed process for emergency LSLR in these situations. As stated above, tenants have statutorily protected rights to continued water service and to safe and habitable housing and they should not be deprived of those rights due to a landlord's refusal of an Act 120 LSLR.

Thus, CAUSE-PA urges the Commission to consider amending this process to ensure customers, especially tenants without the power to authorize LSLR, are not placed at risk of lead exposure nor deprived of their right to continued water service through no fault of their own.

### **III. CONCLUSION**

CAUSE-PA appreciates the opportunity to respond to the points raised by other stakeholders commenting on this proposed rulemaking. Once again, we support this rulemaking moving forward with amendments incorporated as recommended in these reply comments and in our initial comments. It is worth restating that Pennsylvania could serve as a nationwide model,

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<sup>11</sup> See 66 Pa. C.S. Ch. 15 Subch. B, "Discontinuance of Service to Leased Premises Act".

<sup>12</sup> See *Pugh v. Holmes*, 405 A.2d 897 (Pa. 1979).

with this Commission working to deliver appropriate program parameters to ensure consumers who are most at risk of lead exposure have access to effective LSL remediation programming.

Respectfully Submitted

**On Behalf of CAUSE-PA**



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