Comments of the Independent Regulatory Review Commission

Pennsylvania Public Utility Commission Regulation #57-330 (IRRC #3298)

Rulemaking to Implement Act 120 of 2018

August 2, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the April 3, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Economic or fiscal impacts; Reasonableness; Implementation.

A commentator expresses concern that several of the PUC's proposed regulations will have the effect of creating confusing and conflicting requirements for entities seeking recovery under Act 120 of 2018 (Act 120) (66 Pa.C.S. § 1311 (b)) because the PUC is being too prescriptive in its proposed regulations. This commentator notes that it is subject to the PUC's jurisdiction and is also subject to drinking water, environmental and operational standards established by the Pennsylvania Department of Environmental Protection (DEP) and the United States Environmental Protection Agency (EPA). Lead service lines (LSLs) are the subject of the EPA Lead and Copper Rule (LCR) which is enforced by DEP. The commentator explains,

> 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. The LCRR will modify existing requirements related to LSL replacements and will impact how entities structure their LSL replacement programs.

The commentator's primary concern as it pertains to LSLs is that the PUC's proposed regulations would establish requirements that do not align with the LCRR. The commentator asserts that it is not appropriate for the PUC to claim jurisdiction over inventory, replacement and customer notification requirements, and other water quality issues that have been specifically addressed in environmental regulations. The commentator 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.

Acknowledging that, as of the date of the release of these comments, the effective date of the LCRR has been delayed until December 16, 2021, we ask the PUC to ensure that the final regulation aligns with the LCRR to the extent that the PUC deems appropriate. We ask the PUC to explain how implementation of the final regulation minimizes fiscal impacts for entities seeking recovery under Act 120.

Annex A
Chapter 65. Water Service
Subchapter B. Lead Service Line Replacements

2. Section 65.52. Definitions. – Protection of public health, safety and welfare; Clarity; Reasonableness.

"*Customer-owned lead service line*"

"*Customer-owned lead service line*" is defined as "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 the structure." Commentators' feedback illustrates that utilities define the customer-owned portion of the service line differently. We ask the PUC to amend the definition in the final regulation to ensure clarity for the regulated community.

"*LSL—Lead service line*"

The PUC defines "*LSL*" as "a service line made 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." Commentators note that the definition of LSL does not include service lines made of galvanized iron or galvanized steel as defined by the LCRR. We ask the PUC to amend the definition and modify any other portions of the final regulation as necessary to support this definition.

"*LSLR Project Area—Lead service line project area*"

The proposed regulation includes a definition for "*LSLR—Lead service line replacement*." We ask the PUC to revise the heading of the definition of "*LSLR Project Area—Lead service line project area*" to include the word "replacement."

A "*LSLR Project Area*" is defined as "the area served by an entity located within a 1-mile radius of a lead service line replacement project." Commentators assert that a one-mile radius may be too burdensome for entities and that the one-mile distance qualifier would create a patchwork of qualifying customers. We ask the PUC to explain how the definition in the final regulation reasonably protects the public health, safety and welfare.

"*Service line*"

The proposed regulation defines "*service line*" as "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." A commentator notes that the first shutoff valve may be located on the opposite side of where the service line is brought in to the structure. We ask the PUC to clarify the definition in the final regulation to ensure that LSLRs are conducted in an efficient and cost-effective manner.

3. Section 65.53. Time to replace LSLs. – Economic or fiscal impacts; Protection of public health, safety and welfare; Reasonableness; Implementation.

The language proposed under Subsections (a) and (b) imposes a maximum timeframe of 25 or 30 years (the timeframe being dependent upon the classification of an entity) for removal and replacement of all LSLs within or connected to its water distribution systems. A commentator asserts that due to the acute risk to consumer health and safety the PUC should reduce the lengthy timeline to ten years, and notes that the entire cost of LSLR programs does not need to be recovered within the same timeframe for replacement. We ask the PUC to explain the reasonableness of the implementation timeframe in the final regulation and how it protects the public health, safety and welfare while balancing the fiscal impacts.

4. Section 65.55. LSLR Program requirements. – Clarity; Reasonableness; Implementation.

Under Subsection (a), an entity must file a LSLR Program within one or two years (the timeframe depending upon the classification of the entity) of the effective date of this section. How does this requirement impact an entity that has an existing program? A commentator asserts that creation of a LSLR Program will be challenging and of limited value for entities that do not have an inventory in place. The commentator asks for a timeframe consistent with the requirements set forth in the LCRR. We ask the PUC to explain how the implementation requirements of this provision in the final regulation are reasonable and will impact existing programs.

Subsection (d) states, "After initial PUC approval of an entity's LSLR Program, the LSLR Program must be subject to review in all future base rate cases. An entity shall submit any modification to the LSLR Program for review with its base rate case." Commentators assert that a LSLR Program should not be required to be reviewed in each base rate case, and that an entity should be able to file a petition to modify its LSLR Plan or a proposed tariff revision pursuant to 66 Pa.C.S. § 1308(a). Commentators assert that changes by DEP or EPA could force an entity to violate the LCR or its approved LSLR Plan if a change cannot be made outside of the base rate case. Is it the PUC's intent to limit opportunities for the submission of modifications? We ask the PUC to clarify the final regulation or explain the reasonableness of requirements in the final regulation. This comment applies to similar language in Section 66.35 (c) (relating to [damaged wastewater service lateral (DWSL)] Program requirements).

5. Section 65.56. LSLR Plan requirements. – Public health, safety and welfare; Clarity; Need; Reasonableness.

Subsection (a) Service Line Inventory.

Under Paragraphs (a)(1) and (2), the PUC provides entities with timelines for completing a Service Line Inventory. A commentator expresses concern regarding the definition of "complete," asserting that the LSLR should only be deemed complete when full remediation and restoration efforts have occurred. We ask the PUC to clarify how completion of the LSLR will be determined.

Under Subparagraph (a)(4)(i), an entity's Service Line Inventory must "[i]dentify the material type of all entity-owned and customer-owned service lines within and connected to the entity's distribution system." Under Subparagraph (a)(4)(ii), the inventory must "be grouped by material type and diameter." A commentator asserts that the purpose of Act 120 is to find and replace lead service lines, and that the identification of "not lead" should suffice since that is consistent with the LCR. The commentator states that the service line material and diameter are not needed. What is the need for identifying and grouping by material types? If this language is retained in the final regulation, we ask the PUC to explain the reasonableness of and need for collecting this information, and to clarify what is meant by the term "grouped."

Subsection (b) Planning and replacements.

Paragraph (b)(10) addresses how an entity will document the procedure regarding a customer's refusal of, or failure to accept, the offer by the entity to replace a LSL.

Under Subparagraph (b)(10)(ii) an entity must "[i]nform the customer that refusal or failure to accept will require the customer to replace the customer-owned LSL, at the customer's expense, **within 1 year of commencement of an entity's LSLR Project** within a LSLR Project Area in order to be eligible for reimbursement." [Emphasis added.] Is this one year prior to or after commencement? What marks a project's commencement? We ask the PUC to clarify what is meant by "within one year" and the phrase "commencement of an entity's LSLR Project." This comment also applies to Section 65.58 (d) (relating to pro forma tariff or tariff supplement requirements), as well as similar language in Sections 66.36 (a)(9)(ii) (relating to DWSL Plan requirements) and 66.38 (d) (relating to pro forma tariff or tariff supplement requirements).

In Subparagraph (b)(10)(iii), an entity must "[c]ommunicate to the customer that failure to allow the entity to complete the LSLR or to replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL will lead to termination of water service under the provisions of the entity's tariff." Commentators express concern regarding the scenario where a landlord's failure to respond or refusal to accept a LSLR places tenants at an increased risk of lead exposure and/or the loss of critical water services to their homes. The commentator suggests step-in rights for entities to provide LSLRs in such circumstances. We ask the PUC to clarify this section and other relevant provisions in the final regulation to ensure protection of the public health, safety and welfare in scenarios where inaction or refusal by a landlord may harm others.

Subsection (c) Communications, outreach, and education.

Subparagraph (c)(1)(i) requires an entity's LSLR Plan to describe how the entity will "[p]rioritize LSLR efforts to target sensitive populations as defined by the [EPA] or [DEP] . . . ." A commentator states that it is not aware of any EPA or DEP regulation that defines "sensitive populations." We ask the PUC to include where the regulated community can locate a definition of "sensitive populations" or clarify how the term is to be defined in the final regulation.

Subparagraph (c)(1)(iv) requires an entity's LSLR Plan to describe how the entity will "[e]nsure that relevant information will be provided to **all bill-paying customers and persons that receive drinking water from the entity** . . . ." [Emphasis added.] A commentator expresses concern regarding notifying a bill-paying customer who is not the property owner and requests more specificity regarding what is required in a landlord/tenant situation. Another commentator asks that this provision be amended to be consistent with the LCRR, requiring notification only to those served by LSLs and service lines of unknown material. The commentator notes that including those who do not have LSLs could cause confusion and would incur unnecessary costs. We ask the PUC to clarify this provision in terms of what is required in situations where the bill-payer is not the owner to ensure protection of the public health, safety and welfare. Also, we ask the PUC to explain the need for and reasonableness of notifying all bill-paying customers and persons that receive drinking water rather than targeting those who would be impacted. This comment also applies to the similar provision in Section 66.36 (b)(1)(iii) (relating to DWSL Plan requirements).

Subparagraph (c)(1)(v) requires an entity's LSLR Plan to describe how the entity will "[p]rovide 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. An entity shall make a good faith effort to provide customers with relevant documents associated with the LSLR." A commentator states that it is unlikely to have as-built drawings of each customer's service line, and further asserts that sharing such information could pose a security risk to utility infrastructure. What is the need for providing a drawing or depiction of service lines? What are the "relevant documents associated with the LSLR"? We ask the PUC to explain the need for these provisions or amend the final regulation.

6. Section 65.57. Periodic review of LSLR Plan. – Implementation.

A commentator states that there should come a point in time when an entity has completed its LSLR Plan and obligations in the Chapter 65 regulations dissipate. We ask the PUC to amend the final regulation to establish implementation procedures for completion of a LSLR Plan.

7. Section 65.58. Pro forma tariff or tariff supplement requirements. – Economic or fiscal impacts; Protection of public health, safety and welfare; Clarity; Reasonableness; Implementation.

Subsection (a) LSLR Program annual cap.

An entity's pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity's LSLR Program must address certain items. Paragraph (a)(1) states, "An entity's pro forma tariff or tariff supplement must include a cap on the **maximum number** of customer-owned LSLs that can be **replaced** annually." [Emphasis added.] We note that this cap is described as a maximum number of replacements. However, Paragraph (d)(2) states, "If the **value of reimbursements** would cause the entity to exceed its annual budgeted cap on the number of LSLRs, the entity's annual budgeted cap for LSLRs for the following year must be reduced by this amount." [Emphasis added.] Is the annual cap based on the number of replacements or the value of reimbursements? If the annual cap is based on the number of replacements, how does the value of reimbursements impact the annual cap? We ask the PUC to explain these seemingly conflicting provisions of the LSLR Program annual cap in the Preamble to the final regulation. This comment also applies to similar provisions in Sections 66.38 (a) and (d)(2) (relating to pro forma tariff or tariff supplement requirements).

Subsection (b) Service line demarcation.

Paragraph (b)(3) states, "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." A commentator questions how an entity is to use the LSLR process to achieve the directed outcome. We ask the PUC to clarify this provision in the final regulation.

Subsection (c) Partial LSLRs.

Paragraph (c)(1) states, "Neither a property owner nor a bill paying customer may install a partial LSLR. A partial LSLR must result in termination of service until such time as the entity can replace the entity-owned LSL under [Section] 65.62 (relating to prohibition on partial LSLRs)." Several commentators express concern relating to termination of service. A commentator notes 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. Another commentator asserts that the PUC should allow an entity to propose termination protocols based on the specific circumstances and service territory which will allow for different approaches where termination is not feasible or otherwise not appropriate. We ask the PUC to explain the reasonableness of requiring termination of service for a partial LSLR and how the final regulation protects the public health, safety and welfare.

Paragraph (c)(3) states, "Applicants for water service at a property where a customer previously refused or failed to accept an entity's offer of a LSLR may not be permitted to connect to the entity-owned service line until the applicant verifies the replacement of the customer-owned LSL by providing a paid invoice from a contractor **licensed to perform LSLR work in the Commonwealth** where applicable or a verified statement from the contractor attesting to completion of the LSLR." [Emphasis added.] A commentator questions the phrase "licensed to perform LSLR work in the Commonwealth" because the commentator is not aware of any such licensing requirements. We ask the PUC to clarify this provision in the final regulation. This comment also applies to Subsection (d)(1)(iii)(B) and Section 66.38(d)(1)(iii)(B) (relating to pro forma tariff or tariff supplement requirements).

Also related to Paragraph (c)(3), a commentator states that it seems that a utility is allowed to perform the partial LSLR provided that the customer's service has been terminated, which appears to contradict the requirements set forth in proposed Section 65.62 (relating to prohibition on partial LSLRs). We ask the PUC to explain how implementation of these two provisions is consistent.

Subsection (d) Reimbursements.

Clause (d)(1)(iii)(A) states, "Customers located within a LSLR Project Area are 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 customer's actual cost." Some commentators assert that the provision should reflect that customers would be eligible for reimbursement at the lower of the customer's actual cost or what the entity would have incurred to perform the replacement. However, another commentator states that the PUC's proposed language appropriately recognizes that a customer's costs to replace a LSL may exceed the entity's cost to replace because the customer is unlikely to generate the same economies of scale as the entity. We ask the PUC to explain the reasonableness of the proposed language related to customer reimbursement in the final regulation. This comment applies similarly to Section 66.38 (d)(1)(iii)(A) (relating to pro forma tariff or tariff supplement requirements).

Subsection (e) Warranty.

Subsection (e) states, "An entity's pro forma tariff or tariff supplement must provide a warranty on LSLR work performed of a term of not less than 2 years." Commentators request clarification that the warranty would not apply to a customer-side LSL replaced by someone other than the entity or the entity's contractors. We ask the PUC to clarify this provision in the final regulation. This comment applies to Section 66.38 (e) (relating to pro forma tariff or tariff supplement requirements), as well.

8. Section 65.59. LSLR Program Reports. – Need; Reasonableness.

Subsection (a) provides requirements for a LSLR Program Report to be filed by an entity with an approved LSLR Program. The PUC proposes to require an entity's LSLR Program Report to identify thirteen items from the preceding year's activities. Commentators assert that several of the proposed metrics are not necessary or useful information for an entity's lead remediation efforts. For example, a commentator states that it is irrelevant to capture the length and pipe diameter of LSLs replaced. The commentator points out that certain data points, such as "actual cost of each LSLR by county" and "total annual LSLR expenditures for the calendar year by customer class" can be difficult to determine. We ask the PUC to explain the need for and reasonableness of the items required for the LSLR Program Reports in the final regulation.

9. Section 65.60. Accounting and financial. – Statutory authority; Economic or fiscal impacts; Reasonableness.

Subsection (b) states, "An entity may defer:

(1) Income taxes related to no cost and low-cost sources of funding for LSLRs, including applicable income taxes on contributions-in-aid-of-construction and/or below-market rate loans, for accounting purposes to the extent that such costs are not recovered through the entity's existing base rates or [distribution system improvement charge]. Prudent and reasonable deferred income taxes must be amortized over a reasonable period of time with a return on the entity's investment.

(2) Service line inventory, LSLR program development, LSLR Plan, LSLR Program Report, and reimbursement expenses for accounting purposes to the extent that such costs are not recovered through the entity's existing base rates. Prudent and reasonable deferred expenses must be amortized over a reasonable period of time without a return on the entity's investment, unless the PUC, under 66 Pa.C.S. § 523 (relating to performance factor consideration), finds that providing a return on the entity's investment is warranted based on sufficient supporting data submitted by the entity in its rate case filing."

A commentator asserts that LSLRs should not be recorded as intangible assets. Another commentator asserts that this section goes beyond the requirements of Act 120, which does not authorize utilities to defer income taxes or expenses related to the implementation of these requirements. The commentator expresses further concerns related to the language in Paragraph (b)(1) that would permit a return on the entity's investment. The commentator states that it is not appropriate for the utility to earn a return on operating expenses and is contrary to sound ratemaking principles. We ask the PUC to provide its statutory authority regarding tax deferment and explain the reasonableness of the fiscal impacts of these provisions in the final regulation. This comment applies to similar language in Section 66.40 (b) (relating to accounting and financial).

10. Section 65.61. Preexisting LSLR activities. – Clarity.

This section addresses an entity that received prior PUC approval to perform LSLR activities. A commentator asks for clarification regarding an entity that has a pending rate case before the PUC at the time that these regulations go into effect. We ask the PUC to ensure that the final regulation clarifies these procedures.

11. Section 65.62. Prohibition on partial LSLRs. – Economic or fiscal impacts; Protection of public health, safety and welfare; Clarity; Reasonableness.

In part, this section states, "The following provisions must apply after the effective date of this section:

(a) Where a customer elects to replace a customer-owned LSL, an entity shall replace the connected entity-owned LSL concurrent with the customer's replacement of the customer-owned LSL, subject to the following:

(1) A Class A public utility or authority shall replace the entity-owned LSL within 90 days of the date of the customer's request or on the LSLR date specified by the customer, whichever is later.

(2) A Class B or Class C public utility or a municipal corporation shall replace the entity-owned LSL within 180 days of the date of the customer's request or on the LSLR date specified by the customer, whichever is later."

A commentator asserts that there is some confusion as to when a utility's obligation is triggered to replace a LSL. The commentator states that under Subsection (a), it appears that a utility is required to replace its portion of the LSL within a certain time period if the customer provides notice to the utility that it will be replacing the customer-owned portion. This could be problematic if the utility has not yet developed economies of scale in a particular area, or if such requirements would unreasonably burden the utility's prioritized replacements and schedule. We ask the PUC to clarify this provision in the final regulation or explain the reasonableness of the fiscal impacts if the language remains unchanged at final.

As noted previously, commentators express concerns over termination provisions such as in Subsection (c) which states, "If a customer refuses, or fails to accept, an entity's offer to replace a customer-owned LSL, the entity shall replace the entity-owned portion of the LSL in accordance with the entity's LSLR Plan and terminate service in accordance with the entity's tariff." Particular concerns exist related to landlord/tenant and tangled title scenarios. Commentators note the potential harm from terminating water service may also pose health and safety risks. We ask the PUC to ensure protection of the public health, safety and welfare in this provision of the final regulation, particularly in scenarios where inaction or refusal by a landlord or a tangled title may harm others.

Annex B
Chapter 66. Wastewater Service
Subchapter B. Damaged Wastewater Service Laterals

12. Section 66.32. Definitions. – Protection of public health, safety and welfare; Clarity; Reasonableness.

"*Customer*"

The PUC proposes to define "*customer*" as "a party contracting with a public utility for service." A commentator questions whether this definition adequately captures who has the responsibility or ownership over the DWSL in the case of a landlord/tenant or tangled title situation. We ask the PUC to clarify the term in the final regulation or explain how the definition in the final regulation protects the public health, safety and welfare.

"*Company's service lateral*" and "*Customer's service lateral*"

The proposed regulation defines "*company's service lateral*" as "the portion of a service lateral owned by the company, extending from a main to the inlet connection of a customer's service lateral at the curb or property line," and defines a "*customer's service lateral*" as "the portion of a service lateral owned by the customer, most often extending from the curb, property line or utility connection to a point 2 feet away from the face of the foundation of the structure." A commentator states that all laterals in its service territory are owned and are the responsibility of

the customer or property owner. Another commentator submits that it may be more appropriate to allow each entity to define this term in a way that best suits the entity's circumstances and service territory. We ask the PUC to explain why the definition in the final regulation is reasonable and how it protects the public health, safety and welfare.

"*DWSL—Damaged wastewater service lateral*"

The PUC defines "*DWSL*" as "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 keep inflow and infiltration flows, within reason, out of the customer's service lateral." A commentator asserts that replacement efforts should be focused on situations in which the portion of private laterals in the public right-of-way fail or are damaged because such failures can cause harm to the public in the form of sinkholes, contamination to surrounding areas and potential harm to private properties. The commentator notes, however, that these types of situations do not necessarily create inflow and infiltration issues. We ask the PUC to explain how the definition in the final regulation protects the public health, safety and welfare generally, as well as specifically in situations which may be unrelated to inflow and infiltration issues.

13. Section 66.33. DWSL Program parameters. – Protection of public health, safety and welfare.

Subsection (b) states that "[a]n entity's purpose for petitioning the [PUC] for approval of a DWSL Program shall be linked to" certain conditions related to excessive inflow and infiltration or wastewater overflows. A commentator suggests adding an option for a situation in which the damaged lateral is otherwise creating a public health and/or safety hazard, and permitting an entity to file an amendment to its approved long-term infrastructure improvement plan (LTIIP) after the PUC approves its plan. We ask the PUC to amend this provision or explain how retaining the proposed language at final protects the public health, safety and welfare.

14. Section 66.34. Petitioning the [PUC] for a DWSL Program. – Clarity; Reasonableness.

Subsection (b) states, "An entity that has a [PUC]-approved LTIIP shall include with its DWSL Program petition a modified LTIIP containing a DWSL Plan as a separate and distinct component of the entity's LTIIP." A commentator asks for the opportunity to file for an amendment to its LTIIP after its DWSL Program petition is approved by the PUC. Is it the PUC's intent to limit opportunities for modifications? We ask the PUC to clarify the final regulation or explain the reasonableness of this requirement.

15. Section 66.38. Pro forma tariff or tariff supplement requirements. – Protection of public health, safety and welfare.

Paragraph (d)(4) states, "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." A

commentator raises the issue of whether a customer should be able to refuse to accept an offer to replace a private wastewater lateral where the reason for the replacement is to reduce or eliminate a public health or safety risk. The commentator suggests amending the final regulation similar to the termination language related to water service. However, we again note concerns related to the impacts of termination language and the potential for public harm. We ask the PUC to explain how this provision in the final regulation protects the public health, safety and welfare.

16. Section 66.39. DWSL Program Reports. – Need; Reasonableness.

Subsection (a) provides requirements for an entity with an approved DWSL Program to file with the PUC a DWSL Program Report by March 1 of each year. The proposed language states, "If an entity is implementing its DWSL Program as part of a LTIIP, the entity shall include a DWSL Program Report as part of the entity's [annual asset optimization (AAO)] plan under [Section] 121.6(b)(3) (relating to AAO plan filings)."

Under Subsection (b), an entity's DWSL Program Report must identify 16 items from the preceding year's activities. A commentator has objections to several of the metrics, especially in the timeframe for submission of an AAO plan. For instance, the commentator does not believe "length, pipe diameter and replacement method by county or the length, diameter, material type broken down by county, flow type, or system type is necessary in [AAO plan] reporting." Further, the commentator "does not have nor could it easily obtain a marginal cost of [inflow and infiltration] for each of the entity's wastewater systems, by individual sewershed broken down by whether the entity provides treatment. [Inflow and infiltration] varies year to year depending on precipitation and antecedent soil moisture and groundwater level conditions." Additionally, the commentator notes that one of the difficulties with fixing certain leaks within a system is that that specific fix may cause other issues within the system. We ask the PUC to explain the need for and reasonableness of the report requirements contained in this provision of the final regulation.

17. Compliance with the RRA; Economic or fiscal impacts.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

The information contained in the RAF submitted by the PUC at proposed is not sufficient to allow this Commission to determine if the regulation is in the public interest. RAF #15 requires the promulgating agency to identify the types and number of persons, businesses, small businesses and organizations which will be affected by the regulation. The PUC's response does not address whether any of the entities would be considered small businesses, and if so, how many. Likewise, the PUC does not address in RAF #17 the economic impacts of the regulation

on water and wastewater customers. Additionally, RAF #20 addresses municipal corporations that provide water or wastewater service beyond their corporate limits. However, the PUC does not indicate how many such municipal corporations exist. We ask the PUC to amend the final RAF to address these and any related responses regarding economic or fiscal impacts and small businesses.