



COMMONWEALTH OF PENNSYLVANIA

November 22, 2019

E-FILED

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

Re: Implementation of Act 120 of 2018 / Docket No. M-2019-3013286

Dear Secretary Chiavetta:

Enclosed please find the Comments, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on the parties indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Erin K. Fure'.

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 120 of 2018

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Docket No. M-2019-3013286

**COMMENTS
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

**Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245**

**For: John R. Evans
Small Business Advocate**

**Commonwealth of Pennsylvania
Office of Small Business Advocate
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Harrisburg, PA 17101**

Date: November 22, 2019

I. INTRODUCTION

On October 3, 2019, the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) issued an Order directing the development of staff recommendations, led by the Bureau of Technical Utility Services (“TUS”) and the Law Bureau, for additional parameters related to the replacement of customer-owned lead water service lines (“LSLs”) and damaged wastewater laterals (“DWWLs”) in response to Act 120 of 2018, which amended the Pennsylvania Public Utility Code (the “Code”). On October 24, 2019, the Commission issued a Secretarial Letter inviting stakeholders to provide comments to directed questions related to Act 120 of 2018, and its amendments to the Code.

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Commission. The OSBA respectfully submits the following as its responses to various directed questions included as Attachment 1 in the October 24, 2019 Secretarial Letter.

II. DIRECTED QUESTIONS SET 1

a. Planning and Reporting

M-5 Other than annual asset optimization plans filed pursuant to 66 Pa. C.S. § 1356, what is/are the most effective means of reporting the progress of LSL and DWWL replacement program efforts, including the number of LSL and/or DWWL replacements, the size and length of pipe removed, the cost per service, the location of removal, site conditions, etc.?

The most effective means of reporting the progress of LSL and DWWL replacement program efforts, at least for the OSBA’s review purposes, are through annual asset optimization plans filed pursuant to 66 Pa. C.S. § 1356. While the OSBA believes that it would be helpful for utilities to make such reports quarterly as opposed to annually when reporting the progress of

LSL and DWWL replacement program efforts, the OSBA does not believe utilities should be required to provide more frequent reporting if such reporting will lead to increased costs.

b. Communications

M-6 What information should be provided to customers that are or may be affected by a known or suspected LSL or DWWL (e.g., The utility's replacement schedule, the material type of the company owned service line, etc.)?

Customers that are or may be affected by a known or suspected LSL or DWWL should be given the utility's replacement schedule and a contact number to call to request more specific information. Additionally, these customers should also be provided with a pamphlet explaining the risks of lead exposure and the options water utilities have to address lead in their systems.

If there are options to have the utility repair or replace the LSL or DWWL, the customer should be notified of the existence of these options, the eligibility of the customer for these options, the cost to the customer (if any) to exercise these options, and how the customer can avail itself of the option. Furthermore, if there is a deadline or cut-off imposed on eligibility for these options, the customer should be explicitly notified of the date and time of the deadline.

M-7 How and when should information be provided to customers that are or may be affected by a known or suspected LSL or DWWL? Discussions may include, but are not limited to, providing information in a website portal and/or printed materials, sending out materials at periodic intervals and/or providing materials when a customer completes an application for service.

The OSBA believes that providing information to customers is critical to appropriately addressing known and suspected LSLs and DWWLs. When a utility becomes aware of a suspected LSL or DWWL, it should, at a minimum provide to the customer a notification of that fact and an indication of what next steps will be taken by the utility. General information concerning lead, its effects, and mitigation steps should be posted on the utility's website when a utility believes it may have LSLs.

Once the LSL or DWWL is verified, the utility should provide to the customer specific information as to what the customer's options are to address the LSL or DWWL. This information should be provided on the utility's website portal and the customer should be notified telephonically (either by automatic phone call or by text messaging) to access its website portal to view its options. The OSBA is concerned that in an increasingly paperless world, including inserts along with monthly bills may not be the most effective way to notify customers of such a serious issue. Additionally, as it specifically relates to small business customers, the entity responsible for paying the utility's invoice may not be the end user and may disregard the information related to LSLs or DWWLs if such information is provided only by a bill insert.

M-8 What information, if any, should the utility provide a municipality about the number of known and suspected LSLs within its jurisdictional boundaries and the potential schedule for replacement?

Utilities should provide to municipalities the proposed schedule for replacement of LSLs, the location and number of the identified LSLs, and the general justification the utility has for its proposed schedule (for example, targeting higher risk projects first). Ideally, the utility will engage in discussions with the municipality to coordinate replacement and road construction projects to mitigate the disruption caused to ratepayers and the public.

M-9 What processes and procedures should utilities follow based upon a customer's acceptance of an LSL or DWWL replacement?

First and foremost, the utility should verify that the individual accepting the replacement is in fact the customer, or has actual authority on behalf of the customer to accept the LSL or DWWL replacement. This is especially a concern for small business customers. Once verification occurs, the utility should provide information to the customer regarding any steps the customer can take to mitigate the effects of lead in their system until the LSL is replaced. At the

time of acceptance, the utility should provide to the customer an estimate of the length of time replacement will take as well as an estimate of the cost to the customer (if any). The utility should also provide the customer with a customer service contact number and/or email address so that the customer has a means of contacting the utility with any questions the customer may have.

Following acceptance, the customer should be provided with an anticipated replacement schedule. At the point that the anticipated schedule becomes the actual replacement schedule, the customer should be notified of the time frame in which the utility reasonably expects the replacement to occur. Two days prior to the replacement, the customer should be notified that the replacement is scheduled and should be reminded of any service disruptions that may occur and the anticipated length of time service is anticipated to be disrupted.

c. Replacements

M-11 What are the best ways to prioritize LSL replacements outside of scheduled main replacement and relocation projects to allow for a proactive and distinct LSL replacement program in an efficient and effective manner?

The OSBA believes that the best way to prioritize LSL replacements outside of scheduled main replacement and relocation projects is to log individual requests for LSL replacements and then coordinate group replacements, by geographic location. Once requests within a targeted area reach sufficient size to permit the utility to achieve economies of scale on par with that realized during scheduled main replacement, the utility should begin to implement replacements in the target area. Such an approach is both efficient and effective, reducing the costs incurred for LSL replacements and reducing the disruption on customers by having multiple replacements occur within the same geographic area during the same timeframe.

M-12 Should priority LSL replacement scheduling be provided for customers where water is/will likely be consumed by sensitive populations (e.g. children in schools or day-care centers, pregnant women, etc.), what criteria should make a customer eligible for prioritization and how should utilities obtain this information?

The OSBA is in favor of scheduling priority LSL replacement for customers where water is/will likely be consumed by sensitive populations. As indicated by the above-question, customers who own LSLs that may impact sensitive populations are not only of the residential class. Daycares, medical offices, pre-schools, and restaurants are only some of the numerous examples of small business customers that may own or be impacted by LSLs which provide drinking water to sensitive populations. In the recent Pittsburgh Water and Sewer Authority Compliance Plan proceeding, expert witness Dr. Bruce Lanphear submitted testimony for Pittsburgh UNITED detailing that “fetuses, infants, and children are uniquely vulnerable to lead toxicity because their brains are still developing.”¹ Based on this testimony, the OSBA submits that any customer (both residential and non-residential) providing drinking water to pregnant women, infants, and children should be given prioritization. Utilities should obtain this information by having customers self-identify.

M-15 Should the Commission establish a cap on the amount a utility is permitted to invest in a LSL or DWWL replacement for a customer, what should this amount be and would it be reasonable to establish this cap based on a customer’s meter size?

The OSBA interprets this question as asking whether the Commission should establish a cap on the amount a utility is permitted to expend on individual unit replacements conducted outside of main replacement projects. The Commission should establish a cap on the amount a utility is permitted to invest in a LSL or DWWL replacement for a customer because Section

¹ Pittsburgh UNITED St. C-3 (Revised), at 6; submitted April 5, 2019 at *Implementation of Chapter 32 of the Public Utility Code re Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802, -2640803 and *Petition of the Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, Docket Nos. P-2018-3005037, -3005039.

1311(b)(2)(iii) of the Code acknowledges that in order for the utility to earn a return of and on an investment, the cost of replacement must be prudently incurred. Rather than identify an explicit dollar figure as the cap, the OSBA suggests it is more reasonable for the Commission to articulate an economic analysis to be used by all utilities to determine the expected unit cost of LSL replacements when conducted in conjunction with main replacement projects. The OSBA believes it would be reasonable to limit cost recovery to the average cost of replacement during scheduled main replacement projects, but also believes it would not unreasonable to allow for cost recovery for expenditures up to 110% of the average cost of scheduled main replacement projects.

d. Refusals

M-18 If a customer refuses to accept full replacement of a LSL, what considerations should be addressed to reduce potential liabilities for the utility and its ratepayers?

If a customer refuses to accept full replacement of a LSL, the utility should have the refusing customer sign a waiver in which the customer acknowledges that it has been informed by the utility of the existence of the LSL on the customer's premises, that the customer acknowledges awareness and understanding that the customer may be negatively impacted by the LSL, that the customer has been informed by the utility of the potential issues that may result from exposure to lead in a water system, that the customer has been informed by the utility of its various options to address and replace the LSL, and that the customer knowingly and voluntarily refused to accept full replacement of a LSL.

e. 1311(b) Analysis

M-24 What are reasonable standards, processes, and procedures for establishing the amount and means for reimbursing customers that have replaced a LSL and/or DWWL within one year of commencement of a replacement project?

The OSBA submits that the following are reasonable standards, processes, and procedures for establishing the amount and means for reimbursing customers that have replaced

a LSL and/or DWWL within one year of commencement of a replacement project: First, reimbursement should be limited to the amount that the utility would have incurred had the utility, and not the customer, undertaken the replacement project. Second, customers should be repeatedly notified in writing of the possibility of reimbursement as well as the deadline to submit information to the utility for reimbursement. Bill inserts and information posted on the utility's website should be sufficient to provide notification to the customer of reimbursement programs. Third, the utility should provide a reimbursement application to eligible customers that requires the submission of an invoice as proof to the cost and date of the replacement. Reimbursement should be available to the customer in either the form of a check or a bill credit.

f. Rates

M-26 What benefits do LSL and DWWL replacements provide to each customer class, including the public and private fire protection, bulk/wholesale and industrial customer classes?

LSL and DWWL replacements benefit a utility's small general service and medium general service customers by ensuring the provision of safe and reliable water and wastewater service.

M-27 What benefits do utilities and ratepayers realize from LSL and DWWL replacements apart from a return on and of the utility's investment?

LSL and DWWL replacements benefit ratepayers by ensuring the provision of safe and reliable water and wastewater service. Lead is a known health risk and its removal from water systems improves the safety of drinking water.

M-28 What is the applicable depreciation or amortization rate for LSL and DWWL replacement costs for DSIC purposes and would this change over the life of the investment?

For DSIC purposes, LSL and DWWL replacement costs should be depreciated at a uniform rate over the expected service lives of water service lines and wastewater laterals, respectively. The OSBA believes it would be inappropriate to adjust depreciation rates so as to accelerate the recovery of LSL and/or DWWL replacement costs from ratepayers.

M-29 What is the applicable depreciation or amortization rate for LSL and DWWL replacement costs for base rate purposes and would this change over the life of the investment?

For base rate purposes, LSL and DWWL replacement costs should be depreciated at a uniform rate over the expected service lives of water service lines and wastewater laterals, respectively. The OSBA believes it would be inappropriate to adjust depreciation rates so as to accelerate the recovery of LSL and/or DWWL replacement costs from ratepayers.

M-30 When allocating LSL and DWWL replacement costs between customer classes, what guidelines should balance cost causation, benefits received and LSL/DWWL replacement program participation while ensuring just and reasonable rates?

Since LSL and DWWL replacements result in additional utility investment in water service lines and wastewater laterals, the OSBA believes the costs associated with such replacements should be allocated to classes in the same fashion that (i) water utilities currently allocate service line costs and (ii) wastewater utilities currently allocate wastewater lateral costs to rate classes. Put simply, LSL and DWWL replacement costs should not be treated differently by water and wastewater utilities for cost allocation purposes, unless one or more rate classes are excluded from participating in a replacement program. If adopted, this method would generally allocate replacement costs in proportion to the weighted average cost of water service lines and/or wastewater laterals across customer classes, and ensure just and reasonable rates. If one or more rate classes are excluded from participating in a replacement program, replacement costs

should be directly assigned to participating classes in proportion to the weighted average cost of water service lines and/or wastewater laterals across participating customer classes.

M-31 When allocating LSL and DWWL replacement costs within a customer class, should customers with larger meters and greater consumption than the average member of their customer class have a lesser, equal or greater proportionate financial responsibility for LSL and DWWL replacement costs and should this responsibility be capped at a fixed amount for customers with meters larger than a certain size?

By definition, customers with larger service lines will use larger meters than customers with smaller service lines, within a given customer class. If LSL and DWWL replacements costs are allocated to classes consist with the methods used by utilities to allocate water service lines and wastewater laterals, customers with larger service lines would be allocated a proportionately greater amount of replacement costs within a given class, based on the larger (relative) capacity of their service lines. Such an allocation would be appropriate since the service line material costs increase with the diameter of the service line. However, it would not be appropriate to allocate LSL or DWWL replacement costs to customers based on consumption levels, since replacement costs are not a function of usage.

M-32 What alternative financial support sources exist for the replacement of LSLs and DWWLs, e.g. grants, and how should the potential and actual use of such funding sources be recognized by public utilities for accounting and ratemaking purposes in their respective LSL and DWWL replacement programs?

The OSBA believes that utilities should consider PENNVEST as an alternative financial support source for the replacement of LSLs and DWWLs. Any non-utility financing sources used to fund LSL and DWWL replacements would act to reduce the cost impact on ratepayers, since grant awards would not be subject to recovery in rates, and the costs of PENNVEST financing are normally much lower than utility supplied capital.

M-33 Should utilities be required to continually seek out alternative financial support sources to fund the replacement of LSL and DWWLs and how should these efforts be documented and/or reported?

Utilities should be required to continually seek out alternative financial support sources to fund the replacement of LSL and DWWLs in order to mitigate the cost impact on customers.

Utilities should be required to report their efforts on an annual basis by filing with the Commission a letter of compliance listing the alternative funding source, application date, and result (denied, approved, etc.). If alternative financing is acquired, the utility should also indicate the amount of funding for which it was approved and the anticipated date of receipt of such funding.

M-34 Should utilities be required to submit and receive approval of a new tariff or a tariff supplement pursuant to 66 Pa. C.S. § 1311(b)(v) before LSL and DWWL replacement cost are incorporated into a utility's LTIP?

Utilities should be required to submit and receive approval of a new tariff or a tariff supplement pursuant to 66 Pa. C.S. § 1311(b)(v) before LSL and DWWL replacement costs are incorporated into a utility's LTIP. Such requirement will allow the Commission, statutory advocates, and other stakeholders the opportunity to review, analyze, and respond to the cost recovery proposed by the utility.

III. CONCLUSION

The OSBA respectfully requests the Commission consider its comments submitted in response to the directed questions which were included as Attachment 1 in the October 24, 2019 Secretarial Letter.

Respectfully submitted,



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For:

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Dated: November 22, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 120 of 2018

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Docket No. M-2019-3013286

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).


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Dated: November 22, 2019



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