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January 16, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing are The Pittsburgh Water and Sewer Authority's Reply and Additional Comments in the above-referenced matter. Copies are being served in accordance with the Certificate of Service.

If you have any questions, please feel free to contact me.

Sincerely,



Sarah C. Stoner

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of The Pittsburgh Water and Sewer Authority's Reply and Additional Comments upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Date: January 16, 2020



Sarah C. Stoner, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY AND ADDITIONAL COMMENTS OF
THE PITTSBURGH WATER AND SEWER AUTHORITY**

I. INTRODUCTION

On October 24, 2018, Governor Wolf signed into law Act 120 of 2018, which amended Section 1311(b) of the Public Utility Code, 66 Pa.C.S. § 1311(b), to authorize water and wastewater public utilities to recover a return on and a return of the costs they incur to replace customer-owned lead service lines (“LSLs”) and customer-owned damaged wastewater laterals (“DWWLs”). On October 24, 2019, the Pennsylvania Public Utility Commission (“Commission”) issued a Secretarial Letter soliciting comments to the Bureau of Technical Utility Services’ (“TUS”) Directed Questions – Set I. The Pittsburgh Water and Sewer Authority (“PWSA”) and other stakeholders submitted initial comments and responses to the Directed Questions, which TUS intends to consider when developing “recommendations for additional parameters for customer-owned lead LSL and DWWL replacement programs.”¹ The Secretarial Letter scheduled an Act 120 Working Group Meeting, which was held on December 19, 2019.

PWSA, which as the Commission is aware, came under the jurisdiction of the Commission as a result of the passage of Act 65 of 2017,² submits the following Reply and Additional Comments in response to the initial comments submitted by stakeholders to the Bureau of Technical Utility Services’ Directed Questions on the Implementation of Act 120 of 2018. These Reply and Additional Comments also respond to comments made by stakeholders during the Act 120 Working Group Meeting.

¹ *Implementation of Act 120 of 2018*, Secretarial Letter issued October 24, 2019, Docket No. M-2019-3013286.

² 2017, Dec. 21, P.L. 1208, No. 65 (adding Chapter 32 to the Public Utility Code -66 Pa.C.S. §§ 3201 to 3209).
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II. REPLY AND ADDITIONAL COMMENTS

A. The Commission Should Defer to the Environmental Protection Agency and Pennsylvania Department of Environmental Protection on Water Quality Issues

Created by the City of Pittsburgh in 1984 pursuant to the Municipality Authorities Act,³ 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. As noted, in December 2017, Act 65 was passed and added Sections 3201-3209 to the Public Utility Code, subjecting PWSA to the Commission's jurisdiction. PWSA 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").⁴ The LCR is enforced by PA DEP.⁵ As explained in PWSA's initial comments, EPA recently proposed Lead and Copper Rule Revisions ("LCRR").⁶ The LCRR, if approved, would modify existing requirements related to LSL replacements and would affect how water utilities structure their LSL replacement programs. Case law has established that jurisdiction to address water quality issues rests with PA DEP.⁷ Water quality issues handled by PA DEP include not only treatment of the water, but also infrastructure replacement directives. Environmental regulations – not the Commission's regulations – direct actions and requirements related to LSL remediation efforts and range from a health-based "action level" to inventory, sampling, LSL

³ 52 Pa.C.S. §§ 5601-5632.

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

⁵ 25 Pa. Code §§ 109.1101 to 109.1108.

⁶ The LCRR were published in the Federal Register on November 13, 2019.

⁷ *Rovin, D.D.S. v. PUC*, 502 A. 2d 785 (Pa.Cmwlth 1986) ("Rovin"); *Pickford v. PUC*, 4 A.3d 707 (Pa.Cmwlth. Ct. 2010) ("Pickford"); *see also Country Place Waste Treatment Company, Inc. v. PUC*, 654 A.2d 72 (Pa.Cmwlth Ct. 1995) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

replacement and customer notification requirements. These regulations and orders⁸ establish both requirements and limits on what water utilities like PWSA must do with respect to the water quality issues created by the existence of privately owned lead service lines. Consequently, it would not be appropriate for the Commission to claim jurisdiction over inventory, sampling, LSL replacement and customer notification requirements, and other water quality issues governed by PA DEP.

PWSA recognizes and welcomes the Commission's objective of creating uniform procedures to address tariff and rate recovery rules for customer-owned lead water service lines when utilities voluntarily determine (or are directed by DEP) to engage in such efforts. However, many of the issues raised in the Directed Questions related to LSLs are the subject of federal and state environmental and water quality regulations. The exercise of jurisdiction by the Commission in these areas will likely lead to unavoidable conflicting water quality directives. Conflicting water quality objectives will leave water utilities attempting to manage (and pay the costs of) potentially conflicting directives, coordination with multiple regulatory agencies and the likely litigation that will result due to differing opinions about whether or not a utility is in compliance. Such a result would be a disservice to customers and is not in the public interest.

PWSA submits that questions regarding a water utility's obligation to replace LSLs or the technical manner in which such replacements will occur is beyond the Commission's jurisdiction. Notwithstanding the foregoing, PWSA fully understands and supports the Commission's review of how water utilities recover the costs of replacing customer-owned LSLs in their rates, including how those costs should be displayed in a water utility's Long Term Infrastructure Improvement Plan ("LTIIIP") or

⁸ PWSA is operating under a Consent Order and Agreement entered into with PA DEP on November 17, 2017. Other water utilities may be operating under similar consent agreements with PA DEP.

Distribution System Improvement Charge (“DSIC”) and how tariff provisions associated with such recovery should be structured. In an effort to assist with the crafting of reasonable Commission guidance in these areas, PWSA submits the following comments.

B. The Commission Should Avoid A “One Size Fits All” Approach to the Implementation of Act 120 of 2018

PWSA is concerned that the Commission will adopt a “one size fits all” approach to the implementation of Act 120 of 2018. Pennsylvania water utilities differ in size, resources and infrastructure. In addition, water utilities may serve regions with distinct topography and customer demographics. PWSA submits that customer-owned LSL and DWWL replacement plans are system-specific, tailored to the operational, regulatory, and other constraints of the utility. If the Commission establishes comprehensive LSL and DWWL replacement requirements that apply to all water utilities in the Commonwealth seeking Act 120 recovery, the Commission will prevent utilities from analyzing their unique operational and regulatory constraints and adopting plans that would best benefit their system and their ratepayers.

As described more fully below in discussing a few topics of interest, the Commission should create and impose only the standards and procedures it is tasked with establishing per Act 120 of 2018. Standards and procedures not specifically directed by Act 120 should fall under the jurisdiction of PA DEP/EPA or to the discretion of each water utility.

Timeframe to Inventory Lead Service Lines

In Directed Question M-3, Staff asked stakeholders what a reasonable timeframe for a utility to identify all LSLs in its territory would be. PWSA submits that the reasonableness of the timeframe for a utility to inventory its service lines depends on the size of the utility, its resources, its current programs, and the type of historical records available, etc. To establish an inventory deadline that would apply to all water utilities is not reasonable or practical. Pursuant to a Consent Order and Agreement entered into PA

DEP in November 2017, PWSA is required to inventory the service line materials for all residential structures connected to its system before December 31, 2020, and inventory the service line materials for all structures connected to its system by December 31, 2022.⁹ Other water utilities may already be operating under a directive from the PA DEP to inventory lines within a set period. In addition, if the Lead and Copper Rule Revisions recently proposed by EPA become effective, utilities will need to alter their methods for conducting inventories of LSLs.

Accordingly, PWSA submits that establishing a timeframe for a utility to inventory its LSLs is outside the Commission's jurisdiction. In addition, a Commission directive to inventory LSLs may result in conflicting regulatory directives. For the reasons stated, PWSA respectfully requests that the Commission not establish a requirement for water utilities to inventory their LSLs within a set period.

Lead Service Line Replacement Plans

Each water utility should be permitted to create its own policy and plan regarding investment in LSL replacements. Utilities should have the flexibility to structure their LSL replacement programs that are tailored to their systems, customer base, resources available and other infrastructure needs. Some stakeholders at the Working Group Meeting indicated a preference for a neighborhood-based LSL replacement program. While a neighborhood-based LSL replacement program may help utilities target LSLs that are concentrated in particular areas, a neighborhood program may not be well suited for every water utility. For example, PWSA's LTIP envisions an accelerated water main replacement program as the primary mechanism for LSL replacements in the next seven-plus years. Combining LSL and water main replacements allows PWSA to complete this work in a more efficient manner to the benefit of its ratepayers. By emphasizing main replacement in priority lead areas PWSA is better able to address the

⁹ Consent Order and Agreement entered into November 17, 2017, between the PA DEP and PWSA, at 13-14.

overall infrastructure needs of the utility, while continuing the important work of replacing LSLs. Mandating a neighborhood-based program would divert resources from the water main replacement work, resulting in higher operational costs associated with deteriorated infrastructure and increase the overall cost of the important work in meeting PWSA's infrastructure needs. PWSA submits that if the Commission were to mandate a neighborhood-based LSL replacement program for water utilities seeking Act 120 recovery, it would inappropriately expand the authority granted to it in Act 120.

For the aforementioned reasons, the Commission should not require a neighborhood-based lead service program as a condition of cost recovery under Act 120. Each water utility should be permitted to craft its own policy and plan.

The Amount a Utility May Invest In a Lead Service Line

In Directed Question M-15, TUS inquired whether the "Commission should establish a cap on the amount a utility is permitted to invest in a LSL or DWWL for a customer," what the amount should be and if it would "be reasonable to establish this cap based on a customer's meter size."¹⁰ While Act 120 of 2018 requires a tariff seeking recovery of customer-owned LSLs or DWWLs to include a cap on the number of customer-owned lines that may be replaced annually, it does not require a cap on the amount a utility may invest per line.¹¹ Concerns regarding the impact of replacement plans on customer rates can be addressed through the annual cap on the number of replacements that is to be established per Act 120.

PWSA does not support the Office of Consumer Advocate's ("OCA") and Office of Small Business Advocate's ("OSBA") suggestions that encourage the Commission to establish a cap on the utility's investment in a customer-owned LSL or DWWL.¹² PWSA agrees with the initial comments of

¹⁰ TUS Directed Question M-15.

¹¹ 66 Pa.C.S. § 1311(b)(2)(vi).

¹² OSBA Initial Comments at A6-A7; OSBA Initial Comments at 5-6.

various water utilities that indicate that a cap on the amount a utility may invest per customer replacement would increase the risk customers would not consent to replacements.¹³ PWSA further agrees that under circumstances where full LSL replacements are needed to address an elevated risk of exposure to lead in drinking water, a cap is not prudent or reasonable.¹⁴

Each water utility should establish its own investment parameters for customer-owned LSL replacements, including the amount it will invest for each customer-owned LSL. The cost of private-side replacements will vary for each utility and for each customer, primarily depending on the length of the service line and not the meter size. As such, PWSA recommends that each utility should set its own investment parameters and that the Commission not impose a cap on the amount a utility may invest per customer.

Warranty Period for Lead Service Line Replacements

Act 120 of 2018 directs the Commission to establish a warranty term for customer-owned LSLs and DWWLs replaced by a water utility.¹⁵ Directed Question M-23 sought feedback regarding standards, processes and procedures for establishing a reasonable LSL or DWWL warranty term. The majority of commenters that weighed in on this issue reported that a 12-month warranty period would be reasonable.¹⁶ PWSA supports the establishment of a 12-month warranty period for Act 120 LSL or DWWL replacements as that warranty term is in accordance with accepted industry practice. In PWSA's experience over the past two years of completing private side service line replacements, most issues

¹³ Pennsylvania-American Water Company ("PAWC") Initial Comments at 15; Columbia Water Company ("Columbia Water Co.") Initial Comments at 5; SUEZ Water Pennsylvania Inc. ("SUEZ") Initial Comments at M-15; and Aqua Pennsylvania, Inc. ("Aqua PA") Response to Directed Question M-15.

¹⁴ PAWC Initial Comments at 15.

¹⁵ 66 Pa.C.S. § 1311(b)(2)(vii)(A).

¹⁶ See Initial Responses to Directed Question M-23 of PAWC, Columbia Water Co., SUEZ, and Aqua PA.

encountered related to the installation arise within the first few days of the installation. Regardless, it is rare for a complaint or issue related to the work to be identified more than a few months after the installation date. Therefore, PWSA believes that a 12-month warranty period would adequately protect the customer while maintaining reasonable costs from the contractors engaged to do the work. PWSA encourages the Commission to establish a requirement that is consistent with current industry standards as well as PWSA's experience over the past two years. As such, PWSA recommends that the Commission require either a water utility or its contractor to provide a 12-month warranty that covers materials and workmanship for Act 120 LSL or DWWL replacements.

C. Allocation of Lead Service Line and Damaged Wastewater Lateral Replacement Costs Between Customer Classes

As indicated in its initial comments, PWSA believes that LSL and DWWL replacement costs should be allocated to all customer classes because the community and members of the public benefit from LSL and DWWL replacements.¹⁷ PWSA supports comments on this issue submitted by OCA and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Green & Healthy Homes Initiative, and Pittsburgh United (collectively "CAUSE-PA et al."). Similar to PWSA's comments, CAUSE-PA et al. recommends that costs be shared across all customer classes.¹⁸ OCA indicated that this issue should not be addressed generically, citing that a utility's specific program design will need to be developed and addressed for each utility in an applicable base rate proceeding.¹⁹ OCA aptly pointed out that if a utility seeks to include LSL or DWWL costs in its DSIC, that it may not allocate the investments among customer classes or attempt to exempt certain classes from paying a

¹⁷ See PWSA's Initial Responses to Directed Questions M-27 and M-30.

¹⁸ CAUSE-PA, et al. Initial Comments at 3.

¹⁹ OCA Initial Comments at A10-A11.

proportionate share of costs.²⁰ While PWSA supports OCA's position that this issue should be addressed on a case-by-case basis, PWSA believes that all LSL and DWWL replacement costs should be allocated to all customer classes due to the significant community benefits that result from replacements.

In its initial comments and at the Act 120 Working Group Meeting, the OSBA expressed its position on cost allocation. OSBA's position is if a rate class is excluded from participating in a replacement program, 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.²¹ PWSA objects to OSBA's recommended approach as it ignores that replacement of residential customer-owned LSLs or DWWLs provide a public benefit that benefits all customer classes, including business and commercial customers.

Many commenters cited the various public benefits of replacing LSLs or DWWLs, including better water quality, less non-revenue water, lower costs for compliance with the Lead and Copper Rule and PA DEP directives, public health benefit of removal of lead from the overall water system, modernization of aging infrastructure, and the benefits of a "healthy, vibrant, and economically stable community."²² These benefits apply to all customer classes. Business and commercial customers will benefit from large-scale replacement efforts as they are likely to encourage residents to continue residing in the service territory, which benefits the local economy and maintains a workforce to fill jobs in the region's businesses and industries. Given the wide range of externalities that benefit all customers on the

²⁰ OCA Initial Comments at A11.

²¹ OSBA Initial Comments at 8-9.

²² See Initial Comments/Responses of CAUSE-PA et al. at 7; PWSA at 9-10; PAWC at 19; NRDC at 5; Columbia Water Co. at 8; Aqua PA Response to Directed Questions M-26 and M-27; and Suez Water Response to Directed Question M-27.

system, PWSA submits that Act 120 LSL and DWWL replacement costs should be allocated to all customer classes.

III. CONCLUSION

PWSA appreciates this opportunity to provide its viewpoint regarding this important proceeding and supports focusing efforts on issues specifically directed by Act 120 of 2018 that are outside the purview of environmental regulations. Due to the distinct challenges each water utility must address, PWSA encourages the Commission to allow utilities flexibility in structuring various aspects of LSL and DWWL replacement programs. Permitting cost recovery under Act 120 for programs that are tailored to each utility will allow utilities to establish programs that are efficient and reasonable based on resources available and other operational priorities.

Respectfully submitted,



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