

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CHS. 65 AND 66 ]

### Rulemaking to Implement Act 120 of 2018

Public Meeting held  
September 17, 2020

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson, statement as follows; John F. Coleman, Jr.; Ralph V. Yanora

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

#### Notice of Proposed Rulemaking Order

*By the Commission:*

Act 120 of 2018 (Act 120) amended the Public Utility Code at 66 Pa.C.S. § 1311(b), by addressing the replacement of lead service lines (LSL) and damaged wastewater service laterals (DWSL) and the recovery of associated costs. In order to implement Act 120, the Public Utility Commission (Commission) proposes to modify our regulations at Title 52, 52 Pa. Code §§ 1.1, et seq. In particular, we propose to expand Chapter 65 and establish a new Chapter 66. First, we will designate the existing regulations addressing water service in Chapter 65 as Subchapter A, “Service Generally,” while we set forth new regulations as Subchapter B, “Lead Service Line Replacements.” Then, we will create a new Chapter 66 addressing wastewater service, which sets aside Subchapter A, “Service Generally,” for future use and establishes new regulations as Subchapter B, “Damaged Wastewater Service Laterals.” The proposed regulations are attached hereto as Annexes A and B. The Commission seeks comments from all interested parties on these Annexes and any other pertinent changes to our regulations.

#### *Background*

On October 24, 2018, Governor Wolf signed Act 120 into law, thereby amending the Public Utility Code at 66 Pa.C.S. § 1311(b) to address the accelerated replacement of customer-owned LSLs and DWSLs. Act 120 sets forth a uniform, minimum standard under which public utilities may seek to replace LSLs and DWSLs and recover the costs associated with replacement.

Prior to the passage of Act 120, the Commission and regulated water and wastewater utilities were actively addressing the replacement of LSLs and DWSLs. On March 8, 2017, for instance, the Commission approved The York Water Company’s (York Water) proposal to replace LSLs in their service territory. See Petition of The York Water Company, Docket No. P-2019-2577404 (Order entered March 8, 2017). Nonetheless, Act 120 served to clarify certain legal issues that the Commission, water utilities, and wastewater utilities identified during the course of such proceedings.

On December 23, 2018, when Act 120 became effective, the Commission was in the process of adjudicating Pennsylvania American Water Company’s (PAWC) proposal regarding customer-owned LSLs. In response to Act 120, the Commission remanded the proceeding to the Office of Administrative Law Judge instructing the parties to evaluate the proposal under the new requirements of Act

120 and supplement the record to achieve compliance with 66 Pa.C.S. § 1311(b). See Petition of Pennsylvania American Water Company, Docket No. P-2017-2606100 (Order entered January 4, 2019). On July 17, 2019, the Parties filed a Joint Petition for Settlement on Remand (Joint Settlement), which addressed many issues in accordance with 66 Pa.C.S. § 1311(b). The parties acknowledged and the Commission determined, however, that several issues implicated by Act 120 remain unresolved and required more generic guidance for future proceedings. See Joint Settlement ¶ 23, 41.

Accordingly, on October 3, 2019, Chairman Gladys Brown Dutrieuille and Commissioner John F. Coleman, Jr. issued a Joint Motion directing Commission staff to initiate a further examination of Act 120. Implementation of Act 120 of 2018, Docket No. M-2019-3013286 (Joint Motion issued October 3, 2019). The Joint Motion instructed the Commission’s Bureau of Technical Utility Services (TUS) and Law Bureau to develop recommendations for additional parameters for the replacement of LSLs and DWSLs, especially as part of the LTIIP and the Distribution System Improvement Charge (DSIC). In particular, the Joint Motion directed (1) the entry of an Order consistent with the Joint Motion, (2) the transmission of directed questions to interested stakeholders within 30 days, (3) the assembly of a working group, and (4) the submission of a written staff recommendation to the Commission by March 31, 2020.

Consistent with the Joint Motion, on October 24, 2019, the Commission sent a Secretarial Letter accompanied by directed questions to interested stakeholders for comment on the replacement of LSLs and DWSLs, including parameters for planning and reporting, communication, replacements, refusals, 66 Pa.C.S. § 1311(b), and rates. Implementation of Act 120 of 2018, Docket No. M-2019-3013286 (Secretarial Letter issued October 24, 2019). The Secretarial Letter directed the filing of comments by November 22, 2019.<sup>1</sup> The Secretarial Letter also scheduled a working group meeting to convene on December 19, 2019. Notice of the meeting was published in the *Pennsylvania Bulletin* on November 2, 2019. See 49 Pa.B. 6652.

On November 1, 2019, the Commission issued an Order in accordance with the Joint Motion. Implementation of Act 120 of 2018, Docket No. M-2019-3013286 (Order entered November 1, 2019) (November 1, 2019 Implementation Order). The Order reiterated the steps to be taken by staff to conduct a further examination of Act 120.

On November 19, 2020, the County of Northampton (Northampton County) filed with the Commission comments in response to the October 24, 2019 directed questions. On November 21, 2019, Pennsylvania-American Water Company (PAWC) filed comments. On November 22, 2019, the following stakeholders also filed comments in response to the directed questions: the Coalition for Affordable Utility Service and Energy (CAUSE-PA), Green & Healthy Homes Initiative (GHHI), and Pittsburgh United (UNITED) collectively; the Natural Resources Defense Council (NRDC); the Office of Consumer Advocate (OCA); Aqua Pennsylvania, Inc.

<sup>1</sup> On November 15, 2019, Aqua Pennsylvania Water, Inc. (Aqua) requested that the Commission extend the period for comments in response to the directed questions to December 9, 2019. Suez Water Pennsylvania, Inc. (Suez) and the Office of Consumer Advocate (OCA) filed letters in support of Aqua’s request on November 15, 2019, and November 18, 2019, respectively. On November 19, 2019, the Commission denied Aqua’s request in light of the impending December 19, 2019 working group meeting.

(Aqua); Suez Water Pennsylvania, Inc. (SUEZ); the Office of Small Business Advocate (OSBA); Pittsburgh Water and Sewer Authority (PWSA); and Columbia Water Company (Columbia Water).

On December 3, 2019, the Commission issued a Secretarial Letter containing further details regarding the working group meeting and noted that stakeholders may submit reply comments by January 16, 2020. Implementation of Act 120 of 2018, Docket No. M-2019-3013286 (Secretarial Letter issued December 3, 2019).

The working group meeting convened on December 19, 2019. The following stakeholders attended the meeting: Northampton County; PAWC; CAUSE-PA; GHHI; the NRDC; the OCA; Aqua; SUEZ; the OSBA; PWSA; Columbia Water; PENNVEST; the Public Utility Law Project (PULP); the Bureau of Investigation and Enforcement (BI&E); and York Water. The three-hour working group meeting started with a presentation by TUS staff, including questions for the utilities and other entities in attendance, followed by an open dialogue regarding the replacement of LSLs and DWSLs as it pertains to planning and reporting, communication, replacements, refusals, 66 Pa.C.S. § 1311(b), and rates. TUS staff encouraged the filing of reply comments as a means to further respond to matters raised during the working group meeting. On January 16, 2019, the Commission received reply comments from CAUSE-PA, GHHI, UNITED, and the NRDC collectively; the OSBA; and PWSA.

On March 31, 2020, in consideration of the comments filed in response to the directed questions, the working group meeting, and the reply comments filed thereafter, TUS and Law Bureau staff submitted to the Commission a confidential Staff Report detailing their recommendations regarding additional parameters for the replacement of LSLs and DWSLs. Pursuant to the Commission's November 1, 2019 Implementation Order, the Staff Report addressed proposed requirements for planning and reporting, communication, replacements, refusals, 66 Pa.C.S. § 1311(b), and rates. The Staff Report also addressed options for implementation such as orders, policy statements, and rulemakings. Upon consideration of the Staff Report, the Commission hereby proceeds with this Notice of proposed Rulemaking Order and the proposed regulations in Annexes A and B.

#### Discussion

Given the health hazards associated with lead, the Commission is at a vital juncture to coordinate with jurisdictional water utilities to take significant action to combat and eliminate the adverse effects of lead exposure by requiring the removal of all LSLs. It is well-established that lead is a cumulative poison in humans and is known to cause serious health problems.<sup>2</sup> Injury from lead poisoning is permanent and irreversible. Lead poisoning is a preventable environmental health hazard and, if not addressed, affects customers regardless of race, ethnicity, or socioeconomic status.

The Commission likewise has the opportunity to empower jurisdictional wastewater utilities to replace DWSLs in limited situations where the costs will prudently benefit and improve system reliability, efficiency, and service quality in known problem areas. Wastewater service laterals are typically small-diameter pipes of various material types that convey flow from homes or businesses to a collection system by gravity or by pres-

sure, depending on local site conditions and system characteristics. Service laterals are an integral component of wastewater collection systems and are susceptible to damage by natural material deterioration, tree roots, surface activities, or excavation. DWSLs may create serious environmental and health hazards due to the inherently deleterious composition of wastewater.<sup>3</sup>

In order to address the critical issues presented by LSLs and DWSLs, Act 120 establishes a standard under which public utilities may seek to replace LSLs and DWSLs and recover costs associated with replacement. Act 120 provides for, inter alia, the replacement of LSLs and DWSLs under a Commission-approved program and directs the Commission to establish certain standards, processes, and procedures by regulation. See 66 Pa.C.S. §§ 1311(b)(2)(i)–(vii).

In addition to the authority conferred upon the Commission by Act 120 to address the removal of LSLs and DWSLs, we note that, pursuant to Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, utilities have an affirmative duty to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as may be necessary or proper for the accommodation, convenience and safety of the utility’s customers and the public.” In this regard, Section 102, 66 Pa.C.S. § 102, broadly defines the term “service” to include a wide range of actions, and this statutory definition has been broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Due to the nature of LSLs and DWSLs, the Commission believes that, unlike the replacement of LSLs, the replacement of DWSLs will be an ongoing activity undertaken by jurisdictional wastewater utilities. The replacement of both LSLs and DWSLs, however, will benefit ratepayers, public utilities, and the environment. The proposed regulations set forth in Annexes A and B delineate the components of programs for the replacement of LSLs and DWSLs as described below. The Commission seeks comment on each specific program component as well as the programs as a whole.

#### Lead Service Line Replacements

First, the Commission proposes to divide Chapter 65, 52 Pa. Code Chapter 65, into two subchapters. Subchapter A, “Service Generally,” will encompass our existing water service regulations at 52 Pa. Code §§ 65.1–65.23. Subchapter B, “Lead Service Line Replacements,” will encompass our proposed regulations addressing the replacement of LSLs at 52 Pa. Code §§ 65.51–65.62. While the replacement of LSLs is fundamentally related to water service, our existing regulations address a distinct range of issues. Accordingly, it is appropriate to create a separate subchapter for the proposed regulations.

#### § 65.51. Purpose.

Section 65.51 of the Commission’s proposed regulations sets forth the purpose of Subchapter B, that is, to implement Act 120 governing the standard under which an entity, as defined in Section 65.52, may seek to replace LSLs and recover associated costs. See 66 Pa.C.S.

<sup>2</sup> Salvato, P.E., DEE, Joseph A., Environmental Engineering and Sanitation, Fourth Edition, p. 46, New York: John Wiley & Sons, Inc., 1992.

<sup>3</sup> DWSLs may cause wastewater to backup into a customer’s home or discharge into the environment and may become a source of I&I, contributing to hydraulically overloaded conditions within portions of a wastewater collection system or at a wastewater treatment plant (WWTP). I&I adds to the flow entering the collection system and being treated at the WWTP, reducing capacity and, in extreme cases, may be the largest contributing factor to hazardous overflows.

§ 1311(b). Act 120 provides for the recovery of costs related to lead service line replacements (LSLRs) performed concurrent with a scheduled utility main replacement project or “under a commission-approved program.” 66 Pa.C.S. § 1311(b)(2)(i). To facilitate the replacement of LSLs, the Commission proposes establishing a comprehensive program focused on removing all LSLs from an entity’s distribution system. The program will require, inter alia, that Class A public utilities<sup>4</sup> and authorities undertake replacement efforts separate from those performed in conjunction with its scheduled main replacement projects to ensure the balanced, yet expeditious removal of LSLs from the public water distribution system. The program will also require Class B public utilities, Class C public utilities, and other entities to group and schedule replacements to optimize the use of financial, technical, and managerial resources. Subchapter B establishes the time, manner, form, and content of filings for Commission approval of the requisite program as well as requirements for the replacement of LSLs.

§ 65.52. *Definitions.*

Section 65.52 of the Commission’s proposed regulations sets forth general definitions pertinent to our regulation of the replacement of LSLs. We define “lead service line” consistent with Act 120 for purposes of continuity. See 66 Pa.C.S. § 1311(b)(5). We also explain the meaning of a “LSLR” and distinguish a “LSLR Program” from a “LSLR Plan.” A LSLR Program is a program submitted to and approved by the Commission for the replacement of LSLs, while a LSL Plan is one component of the LSLR Program that specifies how the program will be implemented. To clarify the parameters of LSLRs, we define terms like “LSLR Project” and “LSLR Project Area.” We further incorporate by reference terms found in other chapters of our regulations, like “LTIP” in Chapter 121, to ensure consistency throughout Title 52.

Of particular importance, among the definitions in Section 65.52 is the term “entity,” which helps to establish the scope of Subchapter B. “Entity” refers to (1) a public utility as defined in 66 Pa.C.S. § 102 that provides water service, (2) a municipal corporation as defined in 66 Pa.C.S. § 102 that provides water service beyond its corporate limits, and (3) an authority as defined in 66 Pa.C.S. § 3201. In this regard, we note that both a municipal corporation providing water service outside of its corporate limits and an authority, i.e., PWSA, are regulated in the same manner as a public utility pursuant to the provisions of the Public Utility Code. See 66 Pa.C.S. § 1102(a)(5), 1301(a), 1501, 3202. The term “entity” is intended to encompass all jurisdictional water utilities.

The Commission welcomes comments regarding its definition of “entity” to include a public utility as well as a municipal corporation and an authority similarly situated to a public utility under the Commission’s jurisdiction. The Commission also seeks comment regarding its additional proposed definitions.

§ 65.53. *Time to replace LSLs.*

Section 65.53 of the Commission’s proposed regulations establishes that the requirement to remove and replace LSLs, whether entity-owned or customer-owned, applies

to all entities. Pursuant to Section 65.53, a Class A public utility or an authority is required to replace all LSLs within or connected to its distribution system within 25 years. A Class B or Class C public utility is required to do the same within 30 years. Likewise, a municipal corporation providing water service beyond its corporate limits is required to replace all LSLs within or connected to its distribution system, beyond its corporate limits, within 30 years. Although entities may be capable of conducting replacements on an accelerated schedule, the timeframe of 25 to 30 years is intended to, inter alia, avoid customer rate shock that could occur within a shortened timeframe.

The Commission seeks comment regarding whether the proposed timeframes for each entity’s removal and replacement of LSLs are reasonable and appropriate given the various considerations that may impact an entity’s ability to conduct LSLRs.

§ 65.54. *Petitioning the Commission for a LSLR Program.*

Section 65.54 of the Commission’s proposed regulations effectuates the mandate of Act 120 that an entity obtain prior approval from the Commission for LSLRs by filing a new tariff or supplement to its existing tariff under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308(d). See 66 Pa.C.S. § 1311(b)(2)(v). Section 65.54 requires all entities to file a LSLR Program petition with the Commission for review and approval.

The LSLR Program petition will vary based on whether the filing entity has a Commission-approved LTIP. For an entity with an LTIP, the Commission believes that a LSLR Plan should be a separate and distinct component of an entity’s LTIP, in part because LSLR Programs are limited in term by nature and entity activities regarding LSLRs, including prioritization, should be transparent. Therefore, if an entity has a Commission-approved LTIP, the entity must file a LSLR Program petition that includes a modified LTIP containing a LSLR Plan as a separate and distinct component of the entity’s LTIP. If an entity does not have an LTIP, the entity must file a LSLR Program petition that includes a LSLR Plan that independently meets the requirements of 52 Pa. Code § 121.3 (relating to LTIP).

The Commission invites stakeholders to comment on this approach. The Commission also seeks comment regarding whether it should direct a shorter notice and protest period than the 60 days provided in 66 Pa.C.S. § 1308(a). Stakeholders are reminded that the Commission, for good cause shown, may allow changes in rates without requiring 60-days’ notice. 66 Pa.C.S. § 1308(a).

§ 65.55. *LSLR Program requirements.*

Section 65.55 of the Commission’s proposed regulations first sets forth the time for establishing and filing a LSLR Program. The Commission will require a Class A public utility or an authority to file a LSLR Program within one year of the effective date of the promulgated regulations, while a Class B or C public utility or a municipal corporation will be required to file a LSLR Program within two years from the effective date of our promulgated regulations. Entities that received prior Commission approval to perform LSLR activities, however, will be treated according to Section 65.61 below.

Section 66.55 also identifies, generally, the components of a LSLR Program: (1) a LSLR Plan as described in Section 65.56; (2) a pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity’s LSLR Program as described in Section 65.58; and

<sup>4</sup> Notwithstanding the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts, utility classes are determined, consistent with Commission regulations, based upon the average annual operating revenue over the last three consecutive years. Class A public utilities have an average operating revenue of \$750,000 or more. Class B public utilities have an average annual operating revenue of \$150,000 or more, but less than \$750,000. Class C public utilities have an average operating revenue of less than \$150,000. See 52 Pa. Code § 65.16.



(3) other information required by the Commission for filings under 66 Pa.C.S. § 1308, including statements required by 52 Pa. Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies). These requirements are discussed in the sections below.

Section 65.55 further specifies the approval process following submission of a LSLR Program. A final Order by the Commission will direct necessary revisions and resubmission of the entity's pro forma tariff or tariff supplement pursuant to 66 Pa.C.S. § 1308 (relating to voluntary changes in rates). After Commission-approval of a LSLR Program, an entity's LSLR Program will be subject to review in all future base rate cases.

The Commission seeks stakeholder comment on the timeframe for establishing and filing a LSLR Program and the components of a LSLR Program.

§ 65.56. *LSLR Plan requirements.*

Section 65.56 of the Commission's proposed regulations outlines the components of a LSLR Plan: service line inventory; planning and replacements; and communications, outreach, and education. The requirements of each component of a LSLR Plan are set forth in Subsections 65.56(a), (b), and (c) respectively. Due to the critical nature of these LSLR Plan components, we discuss each Subsection in detail below.

§ 65.56(a). *Service Line Inventory.*

Subsection 65.56(a) of the Commission's proposed regulations specifies the timeframe for an entity to complete an inventory identifying the material, composition, diameter, and location of each service line connected to its water distribution systems. The Commission will require a Class A public utility, an authority, or a municipal corporation to complete a Service Line Inventory within 60 months of the filing date of a LSLR Program, while a Class B or C public utility will be required to complete a Service Line Inventory within 36 months of the filing date of a LSLR Program. For municipal corporations, the Service Line Inventory need only address service lines beyond its corporate limits. The Commission will also require entities that acquire a water distribution system to complete a Service Line Inventory of that system within 36 months of the acquisition.

Additionally, Subsection 65.56(a) sets forth the requirements of a Service Line Inventory, including that the inventory must be grouped by material type and diameter and detail any lead components. A Service Line Inventory must also include a projection of the annual number of service lines an entity will inventory along with the methods by which it will identify material types. We note that various methods may be used, including: review of tap cards; building permit records and other historical information; curb stop inspections with cameras; traditional or hydro excavations; interior pipe inspections upstream of the water meter; customer service line material testing kits; and predictive machine learning modeling.

Further, an entity will report the status of its Service Line Inventory as part of its annual LSLR Program Report, which is required by Section 65.59. After an entity completes its Service Line Inventory, it will add the inventory to its next LSLR Plan update required by Section 65.57.

The Commission seeks comment from interested stakeholders on the timeframes for entities to complete a Service Line Inventory. The Commission also seeks com-

ment regarding the cost of completing the Service Line Inventory. The Commission encourages the submission of cost-related data, research, and other information used in cost analyses for such projects. Additionally, the Commission invites comment on the methods by which entities will identify material type and complete the inventory process.

§ 65.57(b). *Planning and replacements.*

Subsection 65.57(b) of the Commission's proposed regulations sets forth the minimum requirements for the portion of a LSLR Plan that addresses planning and replacements. This subsection requires an entity to submit with its LSLR Plan information regarding the entity's LSLR criteria, processes, and procedures. The entity will provide, inter alia, its projected annual investment in LSLRs, the anticipated number of LSLRs per year, the criteria used in its LSLR schedule, its lead and material recycling and disposal efforts, and the construction practices to be used in LSLRs. The entity will also address how acquisitions will be integrated into its LSLR efforts with the understanding that it should not re-prioritize existing LSLRs in separate service areas. Further, the entity will detail its procedures for emergency repairs or replacements that reveal LSLs.

Importantly, Subsection 65.56(b) also requires an entity to detail its customer procedures based on acceptance, refusal, or failure to accept, the entity's offer to conduct a LSLR. As it pertains to customer acceptance, the entity must provide with its LSLR Plan a sample consent agreement form and describe its process for LSLRs under normal and atypical conditions. The entity must also provide coordination with the customer during the LSLR installation, and during the closeout of the LSLR. With regard to customer refusals or failure to accept, the entity must address how it will inform the customers that health hazards are associated with LSLs, that the customer must replace the LSL within one year of commencement of the entity's LSLR Project to be eligible for reimbursement, and that failure to allow the entity to complete the LSLR, or failure of the customer to replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL, will lead to termination of service in accordance with the entity's tariff.

The Commission seeks comment regarding the planning and replacement requirements of a LSLR Plan. In particular, the Commission encourages stakeholders to comment on the procedures for customer acceptance or refusal of a LSLR.

§ 65.56(c). *Communications, outreach, and education.*

Subsection 65.56(c) of the Commission's proposed regulations requires an entity to outline the communications, outreach, and education steps it will take to inform customers of the harmful effects of LSLs and the entity's plan to remove LSLs. The Commission will require an entity to, inter alia, detail how it will prioritize LSLR efforts to target certain higher-risk areas, engage advisory committees, coordinate with officials and the community, provide information on lead to customers, and provide copies of LSLR documents to customers.<sup>5</sup> An entity will provide, with its LSLR Plan, copies of all printed and broadcast material to be distributed to customers.

<sup>5</sup> The Commission notes that entities will receive design and permit documents regarding replacements through the LSLR process. We believe that entities must make a good faith effort to provide customers with relevant LSLR documents. At the same time, however, the Commission recognizes that entities are not required to share with customers information that constitutes a security risk to utility infrastructure.

The Commission also proposes a requirement for a Class A public utility or an authority to develop a LSLR Program section on its website, including a tool describing the replacement schedule, a secure tool providing customers the ability to determine whether their property may be eligible for a reimbursement, and a secure map providing customers the ability to determine whether their property has a LSL. The Commission also proposes that the LSLR Program section of a website include information and resources relating to health risks associated with lead and LSLs, the status of current efforts to replace LSLs, community meetings, and advisory committees.

The Commission invites comment regarding the communication, outreach, and education requirements of a LSLR Plan. In particular, the Commission seeks comment regarding types of documents that should be provided to customers and whether certain entities should be required to create a LSLR Program section of their website.

§ 65.57. *Periodic review of LSLR Plan.*

Section 65.57 of the Commission's proposed regulations requires that, after initial approval of a LSLR Plan, an entity must update its LSLR Plan at least once every five years. As an entity better understands the financial and operational requirements of its LSLR Program, and as financial and operational demands change over time, the entity will update its LSLR Plan accordingly. The Commission will review the LSLR Plan of an entity with an LTIP as part of the typical LTIP review and renewal process. Other LSLR Plans will undergo a similar periodic review outside of the LTIP process. Section 65.57 addresses, generally, the focus of the Commission's review of LSLR Plans. We note that the Commission will use the comment process to aid in our periodic review.

The Commission invites comment regarding its proposals for the revision and review of an entity's LSLR Plan.

§ 65.58. *Pro forma tariff or tariff supplement requirements.*

Section 65.58 of the Commission's proposed regulations addresses the minimum requirements, in addition to proposed changes necessary to implement a LSLR Program, that must be contained in an entity's pro forma tariff or tariff supplement. These requirements include: (1) the LSLR Program annual cap; (2) service line demarcation; (3) partial LSLRs; (4) reimbursements; and (5) warranty. These requirements are set forth in detail in Subsections 65.58(a), (b), (c), (d) and (e), respectively. Due to the critical nature of these tariff requirements, we discuss each Subsection in detail below.

§ 65.58(a). *LSLR Program annual cap.*

Subsection 65.58(a) of the Commission's proposed regulations effectuates the mandate of Act 120 that "a new tariff or supplement to an existing tariff approved by the commission. . . shall include a cap on the maximum number of customer-owned lead water services lines. . . that can be replaced annually." 66 Pa.C.S. § 1311(b)(2)(vi). Subsection 65.58(a) requires that an entity's pro forma tariff or tariff supplement set forth a cap on the number of LSLRs completed per year.

The Commission seeks stakeholder comment regarding the manner in which an entity should develop its LSLR Program annual cap.

§ 65.58(b). *Service line demarcation.*

Subsection 65.58(b) of the Commission's regulations requires that an entity's pro forma tariff or tariff supplement distinguish entity-owned and customer-owned LSLs for purposes of completing LSLRs. A customer-owned LSL, as defined in Section 65.52, extends from the curb, property line, or entity connection to the water meter or, if the meter is located outside of the structure or there is no meter, at the first shutoff valve within the structure. The Commission proposes to allow an entity to install a shutoff valve, under the provisions of its tariff, as a point of demarcation between a property's service line and the interior water distribution piping, if a shutoff valve is not already located along a specific length of pipe within the structure.

Moreover, Act 120 provides that "the customer shall hold legal title to the replacement water service line." 66 Pa.C.S. § 1311(b)(2)(i). In this regard, we believe that LSLRs should resolve historic ownership ambiguities. An entity should own the portion of the LSLR that is consistent with its tariff. An entity should also use the LSLR process to perfect its ownership of the portion of the service line located within the existing right-of-way. Doing so will ensure that the entity can obtain necessary permits to complete work within the public right-of-way in the future. Further, the requirements of Subsection 65.58(b) will create consistency among all entities' LSLR Programs.

We invite comment on Subsection 65.58(b). Specifically, the parties should address where the customer-owned portion of a LSL begins and terminates. The parties should also address methods of demarcation other than the placement of a shutoff valve. In addition, the parties should discuss the ownership requirements of Act 120 and how an entity's tariff will reflect ownership. See 66 Pa.C.S. § 1311(b)(2)(i). The parties should comment regarding the use of LSLRs to perfect ownership of service lines within rights-of-way, including how certain portions of a service line may be transferred from a customer to an entity, if appropriate. Lastly, the parties are invited to discuss customer notification requirements when an entity encounters lead water distribution pipes in internal plumbing during the demarcation of service lines or installation of shutoff valves.

§ 65.58(c). *Partial LSLRs.*

Section 65.58(c) of the Commission's proposed regulations requires an entity to include in its pro forma tariff or tariff supplement provisions to address the issue of partial LSLRs. In this regard, an entity's tariff will provide that neither a property owner nor a bill paying customer may install a partial LSLR and that notification must be made to an entity prior to replacing the customer-owned LSL so that the entity can concurrently replace the entity-owned LSL. Section 65.68(c) also requires an entity to specify in its tariff that partial LSLRs completed by a property owner or a bill paying customer will lead to termination of service until the entity can replace its LSL. These tariff provisions work in conjunction with Section 65.62, which is discussed in the corresponding section below.

§ 65.58(c). *Partial LSLRs.*

The Commission seeks stakeholder comment regarding these provisions addressing partial LSLRs in conjunction with the provisions in Section 65.62.

§ 65.58(d). *Reimbursements.*

§ 65.58(d). *Reimbursements.*

Act 120 requires the Commission to establish standards, processes, and procedures by which an entity will "[p]rovide a reimbursement to a customer who has replaced the customer's lead water service line. . . within one year of commencement of a project in accordance with a commission-approved tariff." 66 Pa.C.S.

§ 1311(b)(2)(vii)(B). As such, Subsection 65.58(d) of the Commission's proposed regulations requires an entity to offer reimbursements to eligible customers who have replaced their LSLs within one year of commencement of the entity's LSLR Project within a LSLR Project Area.

In particular, Subsection 65.58(d) requires an entity to set forth in its pro forma tariff or tariff supplement the method by which the entity will determine whether a customer is eligible for a reimbursement as well as the amount of the reimbursement. The Commission will require an entity to make reasonable efforts to assist customers throughout the reimbursement process and, to the extent possible, make determinations in favor of the customer when the customer provides reasonable evidence of a LSLR, such as a paid invoice or verified statement from a contractor.

The Commission seeks comment on the proposed provisions regarding reimbursements as well as any additional provisions that stakeholders believe may be required to solidify the reimbursement process required by Act 120.

§ 65.58(e). *Warranty.*

Act 120 requires the Commission to establish standards, processes, and procedures by which to ensure that LSLR work is "is accompanied by a warranty of a term that the commission determines appropriate" and that an entity and its contractor may access the customer's property during that term. 66 Pa.C.S. § 1311(b)(2)(vii)(A). In this regard, the Commission proposes that an entity provide a warranty term of not less than two years. Subsection 65.58(e) of the Commission's proposed regulations sets forth several warranty provisions that must be included in an entity's tariff, including the maximum coverage amount under the warranty. Subsection 65.58(e) also requires an entity to explain any liability that it will have for damages not covered by the warranty.

The Commission invites comment on the proposed warranty term and on whether the suggested warranty provisions will provide appropriate clarity to customers. The parties should also comment on LSLR liability, including actions that can be taken to reduce potential liability for both an entity and a customer. The Commission welcomes additional proposed warranty provisions with supporting rationales.

§ 65.59. *LSLR Program Reports.*

Section 65.59 of the Commission's proposed regulations requires that each entity with an approved LSLR Program file an annual LSLR Program Report by March 1. If an entity is implementing its LSLR Plan as part of its LTIP, the entity will include its LSLR Program Report as part of its annual asset optimization plan (AAO Plan). See 52 Pa. Code § 121.6(b)(3) (relating to AAO Plan filings). In its LSLR Program Report, an entity will detail its annual activities based on 13 metrics identified by the Commission, including, for example, the number of LSLRs, the average costs of LSLRs, and the efforts to obtain additional funding.

The Commission seeks stakeholder comment on the 13 metrics proposed as part of Section 65.59 and whether this information is sufficient for annual reporting purposes.

§ 65.60. *Accounting and financial.*

Section 65.60 of the Commission's proposed regulations sets forth uniform standards for the accounting treatment of LSLR costs. LSLR costs include expenditures associ-

ated with installing LSLRs, including, but not limited to, design, engineering, and construction costs. The Commission proposes to require an entity to record LSLR costs in compliance with the NARUC uniform system of accounts applicable to the entity, in an intangible asset account. The Commission notes that a LSLR is a tangible asset owned by the customer, while the entity owns an intangible asset with a value equal to the amount of funding it provided.

Additionally, in Section 65.60, the Commission proposes to allow the deferral of certain income taxes that are not recovered through base rates or the DSIC for accounting purposes and the deferral of certain expenses that are not recovered through base rates. We note that prudent and reasonable deferred income taxes will be amortized over a reasonable period of time with a return on an entity's investment, whereas other expenses will be amortized over a reasonable period of time without a return on an entity's investment, unless otherwise directed by the Commission.

Further, Act 120 provides that, for purposes of calculating the return of and on an entity's prudently incurred cost for LSLRs, the Commission will employ the equity return rate in Sections 1357(b)(2) and (3) of the Public Utility Code, 66 Pa.C.S. § 1357(b)(2)-(3), which appears to indicate the amortization rate for LSLRs should be the entity's permitted equity return rate. 66 Pa.C.S. § 1311(b)(2)(iii). The Commission notes, however, that Act 120, simultaneously preserves the full extent of the Commission's ratemaking authority. 66 Pa.C.S. § 1311(b)(3).

The Commission seeks comment regarding LSLR accounting generally, both prior to and following an entity's first base rate case where LSLR costs are reviewed. Stakeholders should address the appropriate mechanisms for tracking and recording LSLR costs as well as the capitalization of appropriate costs. Stakeholders should also discuss the applicable rate of return of and on LSLR costs in accordance with accepted utility ratemaking principles and legal precedent, particularly where LSLR costs are recovered through rates prior to an entity's first base rate case where LSLR costs are reviewed. Lastly, stakeholders may comment on financial incentives for an entity to obtain no cost and low-cost sources of funding, including awarding additional return on equity basis points in certain circumstances.

§ 65.61. *Preexisting LSLR activities.*

The Commission acknowledges that certain entities have already undertaken LSLR activities. The Commission notes, however, that consistency among all entities' LSLR Programs is important. Therefore, Section 65.61 of the Commission's proposed regulations requires an entity that is engaged in existing Commission-approved LSLR activities to submit a LSLR Program that, at a minimum, conforms with the requirements set forth in Subchapter B. These LSLR Programs will become effective no later than the filing date of the rates established under the entity's next base rate case or within two years of the effective date of these regulations, whichever occurs first.

The Commission seeks comments regarding aligning the existing LSLR activities of certain entities with the proposed regulations and the timeframe for doing so.

§ 65.62. *Prohibition on Partial LSLRs.*

The final section of the Commission's proposed regulations in Chapter 65, Section 65.62, prohibits partial LSLRs due to the known dangers of partial LSLRs to the



public health.<sup>6</sup> Partial LSLRs result in permanent negative health effects from lead exposure. See *supra*, n. 6.

Accordingly, Section 65.62 requires a full LSLR in all circumstances, including when the customer elects to replace the customer-owned LSL and when an entity is under a Pennsylvania Department of Environmental Protection (DEP) directive to replace a LSL due to a system's action level exceedance of 0.015 mg/L. See 25 Pa. Code § 109.1103 (relating to monitoring requirements). We note that, in the latter instance, the Commission's regulations will work in conjunction with DEP's directives to require a full LSLR. Further, as with Subsection 65.58(c), Section 65.62 provides for the termination of service to a partial LSLR.

Absent a Commission ban on partial LSLRs, a customer could replace the customer-owned LSLR prior to the replacement of the connected entity-owned LSL, resulting in a partial LSLR. Likewise, DEP could direct an entity to replace only the entity-owned portion of a LSL, resulting in a partial LSLR. See 25 Pa. Code § 109.1107(d) (relating to system management responsibilities). Thus, prohibiting partial LSLRs is critical. The provisions prohibiting partial LSLRs will, in conjunction with Subsection 65.58(c), ensure that the replacement of customer-owned and entity-owned LSLs occur concurrently and that water service is not provided through partial LSLRs.

The Commission seeks comment regarding the proposal in Section 65.62 to prohibit partial LSLRs, including the hazards associated with partial LSLs.

#### *Damaged Wastewater Service Laterals*

First, in order to facilitate regulations specific to jurisdictional wastewater utilities, a new chapter addressing wastewater service, Chapter 66, is necessary. In addition to addressing DWSL replacements, the Commission believes that Chapter 66 is timely in conjunction with Act 12 of 2016 which amended Chapter 13 of the Public Utility Code, 66 Pa.C.S. § 1329. Section 1329 enables a public utility or other buyer to utilize fair market valuation when acquiring water and wastewater systems in the Commonwealth that are owned by a municipal corporation or authority. Ultimately, Section 1329 has enabled many jurisdictional water and wastewater utilities to acquire wastewater systems previously outside the Commission's purview, bringing these systems under our jurisdiction. Thus, the number of wastewater facilities and systems under our jurisdiction is increasing; establishing a separate chapter specific to our regulation of wastewater is necessary and appropriate. Subchapter A is reserved for general wastewater regulation, while Subchapter B will address the distinct set of issues relating to DWSL replacements.

#### § 66.31. *Purpose.*

Section 66.31 of the Commission's regulations sets forth the purpose of Subchapter B, that is, to implement Act 120 governing the standard under which an entity, as defined in Section 66.32, may seek to replace, rehabilitate, or repair DWSLs and recover associated costs. To enable an entity to replace DWSLs either in conjunction with scheduled main replacement projects or as a separ-

rate effort to improve system reliability, efficiency, and service quality in known problem areas, the Commission proposes establishing a program outlining optional replacement, rehabilitation and/or repair of DWSLs (DWSL Program). The Commission recognizes that DWSL Programs will likely be an ongoing activity undertaken by entities.

#### § 66.32. *Definitions.*

Section 66.32 proposes general definitions for our regulation of wastewater service as well as specific definitions related to optional DWSL Programs. We incorporate, by reference, multiple definitions adopted by the DEP to maintain uniformity and to ensure that any revisions to these definitions are captured, unless the Commission finds an express, agency-specific reason to not adopt changes. We include definitions for terms like "combined sewer system," "hydraulic design capacity," "inflow and infiltration," "monthly average flow," "sanitary sewer overflow," and "wastewater facilities," among others.

Of particular importance among the definitions in Section 66.32 is the term "entity," which helps to establish the scope of Subchapter B. "Entity" refers to (1) a public utility as defined in 66 Pa.C.S. § 102 that provides wastewater service, (2) a municipal corporation as defined in 66 Pa.C.S. § 102 that provides wastewater service beyond its corporate limits, and (3) an authority as defined in 66 Pa.C.S. § 3201. In this regard, we note that both a municipal corporation providing wastewater service outside of its corporate limits and an authority, i.e., PWSA, are regulated in the same manner as a public utility pursuant to the provisions of the Public Utility Code. See 66 Pa.C.S. § 1102(a)(5), 1301(a), 1501, 3202. The term "entity" is intended to encompass all jurisdictional wastewater utilities.

The Commission also adopts the definition of "wastewater" from 66 Pa.C.S. Section 102, and definitions for "LTIP" and "DSIC" from Subsections 1352(a) and Section 1353 of the Public Utility Code, respectively. Moreover, we define "DWSL Program," "DWSL Plan," "DWSL Project," and "DWSL Project Area," to clarify parameters and requirements of entities' replacement programs.

The Commission recognizes that the term "damaged" can be rather ambiguous and does not, in and of itself, create a standard of measurement or enable a determinable criterion for defining the factors for inoperability. The development of a common understanding and basis for what may be defined as a "damaged wastewater service lateral" is imperative for consistency in DWSL Programs among utilities. Every service lateral will develop some degree of damage or reduced functionality over time, typically due to external means such as subsidence of supporting soil, tree root or other vegetative material hoop pressure, mechanical loading, building structure settlement, chemical damage, etc. Cracks or open joints in service laterals do not necessarily rise to the level of being considered damaged. Service laterals in their entirety may have a range of defects and may still be able to function properly. Therefore, we propose that "damaged wastewater service lateral" be defined as "a single area or a combination of several areas, acting collectively, identified by visual or other means, along a length of lateral which has or have been determined to significantly impair the intended function of a wastewater service lateral to convey wastewater flow to mains and keep inflow and infiltration (I&I) flows, within reason, out of the service lateral."

Additionally, we note that "damaged wastewater service lateral replacement" is defined broadly to encompass

<sup>6</sup> Recently, in Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority—Stage 1, Docket No. M-2018-2640802 (Order entered June 18, 2020), the Commission determined that partial LSLRs are not in the public interest and are not consistent with the statutory requirements of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. *Id.* at 93-94. The Commission noted that "[t]he negative effects of partial service line replacements are well documented in scientific literature" and that "[t]he permanent negative health effects from lead exposure, especially to uniquely vulnerable populations of developing fetuses, infants and children, is explained in the unrebutted testimony of [UNITED's expert witness] Dr. Lanphar." *Id.* at 92 (citing March 2020 Order at 117).

approved methods under an entity's DWSL Plan to not only replace, but also rehabilitate or repair DWSLs. Stakeholders should be cognizant of this expansive definition of replacements throughout this Order and in Annex B; entities may propose when these alternatives, still within the scope of DWSL Programs, may be prudent or appropriate.

The Commission welcomes comments on its definition of "entity" to include companies and authorities similarly situated to public utilities that are under the Commission's jurisdiction. We also invite comment on the definition of "DWSL" as well as rationales for proposed alternatives. The Commission also seeks comment about the additional proposed definitions and those defined by the Pennsylvania Department of Environmental Protection and incorporated herein at Section 66.32 of Annex B.

*§ 66.33. DWSL Program parameters.*

Pursuant to the proposed 52 Pa. Code § 66.33, all entities may file a petition with the Commission for approval of a DWSL Program to repair, rehabilitate or replace DWSLs under certain circumstances. Proposed elements of the petition, including the components of an initial DWSL Plan, are discussed below; however, 66 Pa.C.S. § 1311(b)(2)(v) mandates that an entity obtain prior approval from the Commission for the replacement of customer-owned DWSLs by filing a new tariff or supplement to existing tariffs under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

Act 120 appears to be purpose driven and not intended to support broad application of the replacement of any and all DWSLs by an entity, which might abdicate a customer of the responsibility to maintain his or her service lateral in serviceable condition. Thus, the Commission proposes to limit approval of DWSL Programs to instances where the DWSL Programs' purpose can be specifically linked to an entity's efforts to address the following two objectives, which are also included in the proposed regulation:

1. Excessive I&I causing, or which is reasonably expected within the next five years to cause, a hydraulically overloaded condition, wastewater overflows, and/or additional flow which is prudent for the entity to avoid; or
2. Other design or construction conditions causing, or which are reasonably expected within the next five years to cause, wastewater overflows.

A Commission-approved DWSL Program is intended to allow entities to prudently invest in repairing, rehabilitating and/or replacing DWSLs as opposed to the more costly investment in upsizing other infrastructure to accommodate the increased flows attributable to I&I. The amount of entity funding generally should not exceed the cost of investments the entity could make in its infrastructure to offset I&I.

The Commission seeks comment on this proposed process for approval of DWSL Programs.

*§ 66.34. Petitioning the Commission for a DWSL Program.*

As noted above, DWSL Programs are optional; however, 66 Pa.C.S. § 1311(b)(2)(v) mandates that an entity obtain prior approval from the Commission for the replacement of customer-owned DWSLs by filing a new tariff or supplement to existing tariffs under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates). Section 66.34 of our proposed regulation describes the process for an entity to petition the Commission for a DWSL Program.

The DWSL Program petition will vary based on whether the filing entity has a Commission-approved LTIIP. An entity with a Commission-approved LTIIP must file a DWSL Program petition that includes a modified LTIIP containing a DWSL Plan as a separate and distinct component of the entity's LTIIP. An entity that does not have an approved LTIIP must file a DWSL Program Petition that includes a DWSL Plan that independently meets the requirements of 52 Pa. Code § 121.3 (relating to LTIIP).

The Commission invites stakeholders to comment on this approach as well as whether the Commission should direct a shorter notice and protest period than the 60-days provided in 66 Pa.C.S. § 1308(a). Stakeholders are reminded that the Commission, for good cause shown, may allow changes in rates without requiring the 60 days notice. 66 Pa.C.S. § 1308(a).

*§ 66.35. DWSL Program requirements.*

The Commission's proposed regulation, at Section 66.35 identifies, generally, the components of a DWSL Program: (1) a DWSL Plan; (2) a pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity's DWSL Program; and (3) other information required by the Commission for filings under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates), including statements as required by 52 Pa. Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies).

Section 66.35 further specifies the approval process following submission of a DWSL Program. A final Order by the Commission will direct necessary revisions and resubmission of the entity's pro forma tariff or tariff supplement pursuant to 66 Pa.C.S. § 1308. After Commission-approval of a DWSL Program, an entity's DWSL Program will be subject to review in all future base rate cases.

The Commission seeks stakeholder comment on the components of a DWSL Program.

*§ 66.36. DWSL Plan requirements.*

The Commission's proposed regulation, at Section 66.36 outlines the components of a DWSL Plan: (1) planning and replacements; and (2) communications, outreach and education. Unlike LSLR Plans, an upfront inventory of all service laterals within a wastewater system is not necessary.

*§ 66.36(a). Planning and replacements.*

Presumably, entities have general knowledge of the condition of their collection system, developed by regular cleaning, inspection, and investigation of customer reporting. The Commission believes this knowledge should be used to create a plan to prioritize and efficiently address DWSL Project Areas, as defined in Section 66.32. As part of the proposed regulation, at Subsection 66.36(a), the Commission includes certain information that entities must provide in the Planning and Replacements portion of their DWSL Plans. Among other things, these minimum requirements include (1) the projected annual investment in DWSL replacements with an explanation of the anticipated sources of financing, (2) the standard to be used to determine whether a customer's service lateral is damaged and is impacting the entity's system, (3) the prioritization criteria considered by the entity in developing its DWSL replacement schedule, and (4) the processes and procedures to be followed based upon a customer's acceptance or refusal of a DWSL replacement.



Under a DWSL Plan, an entity will designate portions of its collection systems as focused areas for DWSL Projects (Project Areas). The Commission proffers that Project Areas will be restricted to areas experiencing wastewater overflows or hydraulic overloading. Entities seeking approval of a DWSL Program will be required to fund DWSL replacements at a level not less than the net present value of the future avoided marginal costs the entity would realize from DWSL replacements.

The Commission seeks comment regarding the planning and replacement requirements of a DWSL Plan. In particular, the Commission encourages stakeholders to comment on the procedures for customer acceptance or refusal of a replacement.

§ 66.36(b). *Communications, outreach, and education.*

Subsection 66.36(b) of the proposed regulations requires an entity to outline the communication, outreach, and education steps it will take to ensure customers are educated about the impact of DWSLs and the entity's plan to address DWSL replacements. An entity's DWSL Plan will include, among other things, how it will prioritize DWSL replacement efforts to areas of the entity's collection system which have known wastewater overflows, basement backups, or I&I issues, coordinate with officials and the community, provide information to customers including the steps consumers can take to find DWSLs, and provide copies of DWSL documents to customers. An entity will provide with its DWSL Plan copies of all printed and broadcast material to be distributed to customers.

The Commission also proposes a requirement for a Class A public utility or an authority to develop a DWSL Program section on their website including tools that provide customers the ability to determine whether their property is eligible for a reimbursement and the ability to determine whether the entity's records reflect that the customer's property of record has a DWSL, as well as a copy of any static maps or graphical representation depicting the entity's Project Areas, and information and resources relating to the health risks associated with DWSLs, the status of current efforts to replace DWSLs, community meetings, and advisory committees.

The Commission invites comment regarding communication, outreach, and education requirements of a DWSL Plan. Specifically, the Commission seeks stakeholder comment regarding the types of documents that should be provided to customers and whether a Class A public utility or an authority should be required to develop an easily discoverable, distinct DWSL Program section on their website.

§ 66.37. *Periodic review of DWSL Plans.*

Section 66.37 of the Commission's proposed regulations requires that, after initial approval of a DWSL Plan, an entity must update its DWSL Plan at least once every five years. As an entity better understands the financial and operational requirements of its DWSL Program, and as financial and operational demands change over time, the entity will update its DWSL Plan accordingly. The Commission will review the DWSL Plan of an entity with an LTIIP as part of the typical LTIIP review and renewal process. Other DWSL Plans will undergo a similar periodic review outside of the LTIIP process. Section 66.37 addresses, generally, the focus of the Commission's review of DWSL Plans. Additionally, in Subsection 66.37(b), we outline service requirements as well as how we will permit comments to aid in our periodic review.

The Commission invites comment regarding its proposals for the revision and review of an entity's DWSL Plan.

§ 66.38. *Pro forma tariff or tariff supplement requirements.*

Section 66.38 of our proposed regulation addresses elements that must be contained, including proposed changes necessary to implement a DWSL Program, in an entity's pro forma tariff or tariff supplement. At a minimum, these elements include: (1) a DWSL Program annual cap; (2) service line demarcation; (3) Frequency of DWSL replacements; (4) reimbursement, and (5) warranty. These requirements are set forth in detail in Subsections 66.38(a), (b), (c), (d) and (e), respectively. Due to the critical nature of these tariff requirements, we discuss each Subsection in detail below.

§ 66.38(a). *DWSL Program annual cap.*

Pursuant to 66 Pa.C.S. § 1311(b)(2)(vi), an entity's pro forma tariff or tariff supplement must include a cap on the maximum number of customer-owned DWSLs that can be replaced annually.

We seek comment on how entities might develop this cap as part of their DWSL Program and include this information in a pro forma tariff or tariff supplement.

§ 66.38(b). *Service line demarcation.*

The Commission directs entities to provide clear demarcation between customer-owned and company-owned service laterals as well as to require entities to use the replacement process to perfect their ownership of the portion of service laterals located within the existing public right-of-way to ensure utilities can obtain necessary permits to complete work within the public right-of-way in the future. These measures will create consistency across utilities' DWSL programs. The Commission proposes to require each utility to include in its petition for a DWSL Program pro forma tariff or tariff supplement a definition that clarifies where the customer-owned portion of a service lateral begins and terminates. Also, the Commission is proposing to take steps to ensure that utilities use approved DWSL programs to resolve historic ownership ambiguities.

We invite comment on our proposed regulation at Subsection 66.38(b) and comment on an entity's use of the DWSL replacement process to perfect ownership of service laterals within the public right-of-way. The parties should discuss 66 Pa.C.S. § 1311(b)(2)(i) (relating to method of valuation). Stakeholders should also be mindful of where existing utility rights-of-way are located. The parties should further address how entities' tariffs will reflect ownership.

§ 66.38(c). *Frequency of DWSL replacements.*

To meet the objective of limiting DWSL replacements to circumstances where the costs will reasonably and prudently benefit and improve system reliability, efficiency, and service quality in specifically identified problem areas, the Commission proposes to limit the frequency of DWSL replacements as prescribed in the proposed regulation at Subsection 66.38(c).

The Commission welcomes comment on its proposal regarding the frequency of DWSL replacements.

§ 66.38(d). *Reimbursements.*

Act 120 requires the Commission to establish standards, processes, and procedures by which an entity will "[p]rovide a reimbursement to a customer who has replaced the customer's lead water service line...with-in one year of commencement of a project in accordance

with a commission-approved tariff.” 66 Pa.C.S. § 1311(b)(2)(vii)(B). As such, Subsection 66.38(d) of the Commission’s proposed regulations requires an entity to offer reimbursements to eligible customers who have replaced, rehabilitated, or repaired DWSLs within one year of commencement of the entity’s DWSL Project within a DWSL Project Area.

In particular, Subsection 66.38(d) requires an entity to set forth in its pro forma tariff or tariff supplement the method by which the entity will determine whether a customer is eligible for a reimbursement as well as the amount of the reimbursement. The Commission will require an entity to make reasonable efforts to assist customers throughout the reimbursement process and, to the extent possible, make determinations in favor of the customer when the customer provides reasonable evidence of a DWSL replacement, such as a paid invoice or verified statement from a contractor.

The Commission seeks comment on the proposed provisions regarding reimbursements as well as any additional provisions that stakeholders believe may be required to solidify the reimbursement process required by Act 120.

§ 66.38(e). *Warranty.*

Act 120 requires the Commission to establish standards, processes, and procedures to ensure that DWSL replacement work is “accompanied by a warranty of a term that the commission determines appropriate” and that an entity and its contractor may access the customer’s property during that term. 66 Pa.C.S. § 1311(b)(2)(vii)(A). In this regard, the Commission proposes that an entity provide a warranty term of not less than two years. Subsection 66.38(e) of the Commission’s proposed regulations sets forth several warranty provisions that must be included in an entity’s tariff, including the maximum coverage amount under the warranty. Subsection 66.38(e) also requires an entity to explain any liability that it will have for damages not covered by the warranty.

The Commission invites comment on the proposed warranty term and on whether the suggested warranty provisions will provide appropriate clarity to customers. The parties should also comment on DWSL replacement liability, including actions that can be taken to reduce potential liability for both an entity and a customer. The Commission welcomes additional proposed warranty provisions with supporting rationales.

§ 66.39. *DWSL Program Reports.*

Section 66.39 of the Commission’s proposed regulations requires that each entity with an approved DWSL Program file an annual DWSL Program Report by March 1, either on its own or as a distinct element of its AAO Plan, for the preceding year’s activities, including supporting spreadsheets. The Commission requires, among other things, the number of DWSLs replaced, the length of DWSLs removed by pipe diameter, and a breakdown of actual cost of each DWSL replacement.

The Commission seeks stakeholder comment on the proposed sixteen metrics and whether this information is sufficient for annual reporting purposes.

§ 66.40. *Accounting and financial.*

Section 66.40 of the Commission’s proposed regulations sets forth uniform standards for the accounting treatment of DWSL replacement costs. DWSL replacement costs include expenditures associated with installing DWSL replacements, including, but not limited to, design, engineering, and construction costs. The Commission proposes

to require an entity to record DWSL replacement costs in compliance with the NARUC uniform system of accounts applicable to the entity, in an intangible asset account. The Commission notes that a DWSL replacement is a tangible asset owned by the customer, while the entity owns an intangible asset with a value equal to the amount of funding the entity provided to replace the DWSL.

Additionally, in Section 66.40, the Commission proposes to allow the deferral of certain income taxes that are not recovered through base rates or the DSIC for accounting purposes and to allow the deferral of certain expenses that are not recovered through base rates. We note that prudent and reasonable deferred income taxes will be amortized over a reasonable period of time with a return on an entity’s investment, whereas other expenses will be amortized over a reasonable period of time without a return on an entity’s investment, unless otherwise directed by the Commission.

Further, Act 120 provides that, for purposes of calculating the return of and on an entity’s prudently incurred cost for DWSL replacements, the Commission will employ the equity return rate in Subsections 1357(b)(2) and (3) of the Public Utility Code, 66 Pa.C.S. § 1357(b)(2)-(3) (relating to computation of charge, depreciation calculation), which appears to indicate the amortization rate for DWSL replacements should be the entity’s permitted equity return rate. 66 Pa.C.S. § 1311(b)(2)(iii). The Commission notes, however, that Act 120, simultaneously preserves the full extent of the Commission’s ratemaking authority. 66 Pa.C.S. § 1311(b)(3).

The Commission seeks comment regarding DWSL replacement accounting generally, both prior to and following an entity’s first base rate case where DWSL replacement costs are reviewed. Stakeholders should address the appropriate mechanisms for tracking and recording DWSL replacement costs as well as the capitalization of appropriate costs. Stakeholders should also discuss the applicable rate of return of and on DWSL costs in accordance with accepted utility ratemaking principles and legal precedent, particularly where DWSL costs are recovered through rates prior to an entity’s first base rate case where DWSL costs are reviewed. Lastly, stakeholders may comment on financial incentives for an entity to obtain no cost and low-cost sources of funding, including awarding additional return on equity basis points in certain circumstances.

§ 66.41. *Unpermitted connections.*

The Commission recommends that DWSL program eligibility be conditioned upon the elimination of any existing unpermitted connections in compliance with its tariff provisions. As an example, entities often have tariff provisions that prohibit customers from connecting roof drains to a service lateral; however, customers may install such connections without the entity’s consent or knowledge. Subsection 66.41(b) does allow for the continued use of previously unpermitted connections where other applicable laws, including the entity’s tariff, makes it permissible and both the entity’s permission and the existence of the connection are documented.

The Commission invites comment on its proposal to authorize entities to disconnect unpermitted connections as prescribed in Section 66.41 and seeks input on how entities should be required to document connections they allow to remain. Also, the Commission seeks comments regarding whether additional permitted connections should impact the rate a customer pays for wastewater service.

§ 66.42. *Competitive advantage.*

As stated above, Act 120 appears to be purpose driven and not intended to be broadly applied to replace any and all DWSLs by an entity. The Act is not intended to waive a customer's responsibility to maintain his or her service lateral in serviceable condition. The Commission recognizes that DWSL Programs may compete with existing optional insurance and warranty products that cover DWSL repair, replacement and/or rehabilitation. Unlike these products, however, customers will likely be required to subsidize DWSL Programs through wastewater rates. Thus, the Commission proposes that entities be required to make good faith efforts in structuring DWSL Programs to prevent competition with these products. DWSL Programs should not disincentivize the personal accountability of customers. This potential competitive advantage reinforces the limited scope of circumstances the Commission will use to approve DWSL plans.

The Commission seeks comment on its proposed regulation regarding the potential for competitive advantage at Section 66.42.

*Conclusion*

For the reasons set forth above, the Commission commences the rulemaking process. The Commission seeks comments from all interested parties regarding the proposed regulations in Annexes A and B to this Notice of Proposed Rulemaking as well as regarding the need for any additional provisions addressing the replacement of LSLs or DWSLs to implement Act 120.

Accordingly, under Sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we are considering adopting the proposed regulations set forth in Annexes A and B, attached hereto; *Therefore,*

*It Is Ordered:*

1. That a proposed rulemaking be opened to consider the regulations set forth in Annexes A and B.
2. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and Annexes A and B to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review for fiscal impact.
3. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and Annexes A and B for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.
4. That the Law Bureau shall deposit this Notice of Proposed Rulemaking Order and Annexes A and B with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. That interested parties may submit written comments, via the Commission's electronic filing system, referencing Docket No. L-2020-3019521 within sixty (60) days from the date the Notice of Proposed Rulemaking Order is published in the *Pennsylvania Bulletin*, and reply comments thirty (30) days thereafter. Comments shall be filed consistent with the Commission's July 27,

2020 Secretarial Letter. Modification to Filing and Service Requirements Emergency Order, Docket No. M-2020-3019262 (Secretarial Letter issued July 27, 2020). Pursuant to this Secretarial Letter, all filings are to be made by e-filing or by electronic mail. This information can be found on the Commission's website at [www.puc.state.pa.us/efiling/default.aspx](http://www.puc.state.pa.us/efiling/default.aspx).

6. That the Secretary shall serve this Notice of Proposed Rulemaking Order upon all jurisdictional water and wastewater utilities and the Pennsylvania Chapter of the National Association of Water Companies; the Office of Consumer Advocate; the Office of Small Business Advocate; the Commission's Bureau of Investigation and Enforcement; and the Department of Environmental Protection.

7. The contact persons for this matter are Assistant Counsel Colin W. Scott, (717) 783-5949, [colin.scott@pa.gov](mailto:colin.scott@pa.gov); Hayley E. Dunn, (717) 214-9594, [haydunn@pa.gov](mailto:haydunn@pa.gov); and Rhonda L. Daviston, (717) 787-6166, [rdaviston@pa.gov](mailto:rdaviston@pa.gov) in the Law Bureau, and Fixed Utility Valuation Engineer Matthew T. Lamb, (717) 783-1001, [mlamb@pa.gov](mailto:mlamb@pa.gov) in the Bureau of Technical Utility Services.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: September 17, 2020

ORDER ENTERED: September 17, 2020

**Fiscal Note:** 57-330. No fiscal impact; (8) recommends adoption.

**Statement of Vice Chairperson David W. Sweet**

Before the Commission is the Notice of Proposed Rulemaking to implement the provisions of Act 120 of 2018, which addresses the financial aspects of a utility's replacement of customer-owned lead service lines and damaged wastewater laterals. There is an extensive Annex A, which proposes specific language to facilitate this implementation.

The Notice of Proposed Rulemaking invites comments of interested entities regarding the proposed language. In addition, I ask that those filing comments respond to the following questions:

1. Does the NOPR adequately carry out the directives in the statute? If not, how should it be changed?
2. Should all water utilities be required to develop and file a lead service line replacement plan? If not, under what circumstances should a plan be required?
3. Does this NOPR conflict with Act 44 of 2017 that prevents the imposition of obligations upon municipal authorities regarding replacement of LSLs by municipal authorities?
4. Does the requirement that the filed plan include the location of customer refusals adequately protect customer information?
5. Does the NOPR grant the utilities and entities with preexisting LSLR activities the flexibility to continue replacing affected lines under already approved terms?
6. Does the NOPR adequately provide due process to both utility and customer?
7. Does the NOPR adequately provide information regarding the process to be used when a filed plan is contested?
8. Should this NOPR be streamlined, and if so, how?



I ask that these questions be included in the publication of the Notice of Proposed Rulemaking.

DAVID W. SWEET,  
Vice Chairperson

**Annex A**

**TITLE 52. PUBLIC UTILITIES  
PART I. PUBLIC UTILITY COMMISSION  
Subpart C. FIXED SERVICE UTILITIES  
CHAPTER 65. WATER SERVICE**

**Subchap.**

**A. SERVICE GENERALLY**

**B. LEAD SERVICE LINE REPLACEMENTS**

**Subchapter A. SERVICE GENERALLY**

- Sec. 65.1. Definitions.
- 65.2. Accidents.
- 65.3. Complaints.
- 65.4. Records.
- 65.5. Interruptions of service.
- 65.6. Pressures.
- 65.7. Metered service.
- 65.8. Meters.
- 65.9. Adjustment of bills for meter error.
- 65.10. Disputed bills.
- 65.11. Mandatory conservation measures.
- 65.12. Notice of desire to have service discontinued.
- 65.13. Temporary service.
- 65.14. Measurement.
- 65.15. Refusal to serve applicants.
- 65.16. System of accounts.
- 65.17. Standards of design.
- 65.18. Standards of construction.
- 65.19. Filing of annual financial reports.
- 65.20. Water conservation measures—statement of policy.
- 65.21. Duty of public utility to make line extensions.
- 65.22. Customer advance financing, refunds and facilities on private property.
- 65.23. Special utility service.

*(Editor’s Note: The following subchapter is proposed to be added and printed in regular type to enhance readability.)*

**Subchapter B. LEAD SERVICE LINE REPLACEMENTS**

- Sec. 65.51. Purpose.
- 65.52. Definitions.
- 65.53. Time to replace LSLs.
- 65.54. Petitioning the Commission for a LSLR Program.
- 65.55. LSLR Program requirements.
- 65.56. LSLR Plan requirements.
- 65.57. Periodic review of LSLR Plan.
- 65.58. Pro forma tariff or tariff supplement requirements.
- 65.59. LSLR Program Reports.
- 65.60. Accounting and financial.
- 65.61. Preexisting LSLR activities.
- 65.62. Prohibition on partial LSLRs.

**§ 65.51. Purpose.**

The purpose of this subchapter is to implement 66 Pa.C.S. § 1311(b) (relating to valuation of and return on the property of a public utility) governing the standard under which jurisdictional water utilities may seek to replace LSLs and recover associated costs. This subchapter establishes the time, manner, form and content of filings for Commission approval of LSLRs. This subchapter also sets forth the minimum requirements of LSLRs.

**§ 65.52. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*AAO plan—Annual asset optimization plan*—The term as defined in § 121.2 (relating to definitions).

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

*DSIC—Distribution system improvement charge*—The term as defined in § 121.2.

*Entity*—A public utility as defined in 66 Pa.C.S. § 102 (relating to definitions) that provides water service, a municipal corporation as defined in 66 Pa.C.S. § 102 (relating to definitions) that provides water service beyond its corporate limits, and an authority as defined in 66 Pa.C.S. § 3201 (relating to definitions).

*LSL—Lead service line*—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.

*LSLR—Lead service line replacement*—A service line, whether entity-owned or customer-owned, installed to replace a lead service line.

*LSLR Plan—Lead service line replacement plan*—A plan and supporting documents submitted to and approved by the Commission that specify how an entity intends to implement its lead service line replacement program.

*LSLR Program—Lead service line replacement program*—A program submitted to and approved by the Commission for the replacement of lead service lines by an entity.

*LSLR Program Report—Lead service line replacement program report*—The annual report, including a plan and supporting documents, providing information for lead service line replacements completed by an entity under its lead service line replacement program.

*LSLR Project—Lead service line replacement project*—An entity-scheduled lead service line replacement activity either in conjunction with main replacements or as part of a lead service line replacement program.

*LSLR Project Area—Lead service line project area*—The area served by an entity located within a 1-mile radius of a lead service line replacement project.

*LTIP—Long-term infrastructure improvement plan*—The term as defined in § 121.2.

*Partial LSLR—Partial lead service line replacement*—A lead service line replacement that does not replace both the entity-owned and customer-owned portions of a lead service line.

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

*Service Line Inventory*—The process of identifying each service line’s material, composition, diameter and location.

**§ 65.53. Time to replace LSLs.**

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

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

**§ 65.54. Petitioning the Commission for a LSLR Program.**

(a) An entity shall file a LSLR Program petition in accordance with § 65.55(a) (relating to LSLR Program requirements) with the Commission's Secretary's Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and the parties of record in the entity's most recent base rate case. Service is evidenced by a certificate of service filed with the LSLR Program petition.

(b) An entity that has a Commission-approved LTIIP shall include with its LSLR Program petition a modified LTIIP containing a LSLR Plan as a separate and distinct component of the entity's LTIIP.

(c) An entity that does not have a Commission-approved LTIIP when filing its LSLR Program petition shall include a LSLR Plan meeting the requirements of § 121.3 (relating to LTIIP).

**§ 65.55. LSLR Program requirements.**

A LSLR Program must comply with the following:

(a) A Class A public utility or authority shall file a LSLR Program within 1 year of the effective date of this section. A Class B public utility, Class C public utility, or municipal corporation shall file a LSLR Program within 2 years of the effective date of this section.

(b) An entity's LSLR Program must include:

(1) A LSLR Plan as described in § 65.56 (relating to LSLR Plan requirements).

(2) A pro forma tariff or tariff supplement containing the proposed changes necessary to implement the entity's LSLR Program as described in § 65.58 (relating to pro forma tariff or tariff supplement requirements).

(3) Information required by the Commission for filings under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates), including statements required by § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies).

(c) A final Commission Order approving an entity's LSLR Program will direct the entity to make any necessary revisions to the pro forma tariff or tariff supplement and resubmit the tariff or tariff supplement under 66 Pa.C.S. § 1308.

(d) After initial Commission 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.

**§ 65.56. LSLR Plan requirements.**

An entity's LSLR Plan must contain, at a minimum:

(a) *Service Line Inventory.*

(1) A Class A public utility or authority shall complete a Service Line Inventory within 60 months of the filing date of the public utility or authority's LSLR Program. A Class B public utility or Class C public utility shall complete a Service Line Inventory within 36 months of the filing date of the public utility's LSLR Program.

(2) A municipal corporation providing water service beyond its corporate limits shall complete a Service Line Inventory beyond its corporate limits within 60 months of the filing date of the municipal corporation's LSLR Program.

(3) An entity completing an acquisition of a water distribution system shall complete a Service Line Inventory of the acquired system within 36 months of the date of the acquisition.

(4) An entity's Service Line Inventory must:

(i) Identify the material type of all entity-owned and customer-owned service lines within and connected to the entity's distribution system.

(ii) Be grouped by material type and diameter.

(iii) Detail any known or discovered lead components.

(iv) Include the entity's projection of the annual number of service lines to be inventoried and the means by which the entity will identify material types. An entity may utilize several methods to properly identify material types.

(5) Until inventorying is complete, an entity shall provide detailed information regarding the progress of its Service Line Inventory as part of its annual LSLR Program Report under § 65.59 (relating to LSLR Program Reports).

(6) After an entity's Service Line Inventory is complete, it must be incorporated into the entity's next LSLR Plan update under § 65.57 (relating to periodic review of LSLR Plan).

(b) *Planning and replacements.* The Planning and Replacements section of an entity's LSLR Plan must include:

(1) The entity's projected annual investment in LSLRs with an explanation of the entity's anticipated sources of financing.

(2) The entity's projected number of LSLRs per calendar year with an explanation of how the entity's projection was determined and a statement that this number is consistent with the entity's annual cap on LSLRs.

(3) The prioritization criteria considered by the entity when developing its LSLR schedule.

(4) An explanation of the entity's processes and procedures to address emergency repairs or replacements which reveal LSLs.

(5) The entity's processes and procedures to obtain customer acceptance of a LSLR prior to commencement of a LSLR Project.

(6) The entity's processes and procedures based upon a customer's acceptance of a LSLR, including:

(i) A consent agreement form by which the customer will authorize the completion of the LSLR.

(ii) A brief description of the entity's process for LSLRs under normal conditions and under atypical conditions.

(iii) An explanation of the entity's process for coordination with the customer and the information the entity will provide to the customer throughout the LSLR process.

(iv) The entity's process for addressing LSLR completion or closeout, or both, with customers.

(7) The entity's lead/material recycling and disposal efforts, including a description of what the entity will do with proceeds from recycling and disposal efforts.

(8) The industry-accepted practices that the entity plans to utilize to replace entity-owned and customer-owned LSLs.

(9) A detailed explanation of how the entity's acquisition of water distribution systems will be integrated into the entity's efforts to complete LSLRs throughout its water distribution system; and

(10) The procedure for documenting a customer's refusal of, or failure to accept, the offer by the entity to replace a LSL, including the entity's duty to:

(i) Provide to the customer with a complete disclosure of the known health hazards from the continued use of a LSL.

(ii) Inform 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.

(iii) Communicate 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.

(c) *Communications, outreach, and education.* An entity's LSLR Plan must outline the entity's communication, outreach and education steps to educate customers about the harmful effects of lead and the entity's plan to address LSLRs.

(1) An entity's LSLR Plan must describe, at a minimum, how the entity will:

(i) Prioritize LSLR efforts to target sensitive populations as defined by the Environmental Protection Agency or Pennsylvania Department of Environmental Protection, areas with elevated levels of lead in tap water, areas with high concentrations of LSLs and areas of the entity's distribution system which have elevated corrosion rates.

(ii) Establish or participate in, or both, voluntary lead advisory committees, either individually or on an industry-wide basis.

(iii) Coordinate LSLR Program efforts with State, county and local governments and agencies, community organizations and public works departments.

(iv) Ensure that relevant information will be provided to all bill-paying customers and persons that receive drinking water from the entity, in plain language that can be understood by the general public, including:

(A) An explanation of the health effects of lead in accordance with the language established by the Environmental Protection Agency under 40 CFR 141.85(a)(1)(ii) (relating to public education and supplemental monitoring requirements).

(B) A notice explaining sources of lead, following the language established by the Environmental Protection Agency under 40 CFR 141.85(a)(1)(iii).

(C) A description of steps the consumer may take to reduce lead exposure, following the language established by the Environmental Protection Agency under 40 CFR 141.85(a)(1)(iv).

(v) Provide customers with copies of as-built drawings or similar depictions that indicate the location of the LSLR on the property between the customer's structure

and the curb stop. An entity shall make a good faith effort to provide customers with relevant documents associated with the LSLR.

(2) The entity's LSLR Plan must include copies of all printed and broadcast material to be distributed under the entity's LSLR Program.

(3) A Class A public utility or an authority shall develop a LSLR section of the public utility or authority's web site within 12 months of Commission approval of its LSLR Program. The web site must contain, at a minimum:

(i) An online tool describing the replacement schedule by geographic location, at least 6 months into the future.

(ii) Information regarding the reimbursement requirements and a secure online tool that provides customers the ability to determine whether they may be eligible for a reimbursement.

(iii) A secure online map that provides customers the ability to determine whether records reflect that the property has a LSL, delineating the known or reasonably anticipated material types for the utility-owned and customer-owned portions of the service line.

(iv) Information and resources relating to health risks associated with lead and LSLs, the status of current efforts to replace LSLs, community meeting and advisory committees.

#### § 65.57. Periodic review of LSLR Plan.

After initial Commission-approval of an entity's LSLR Plan, the entity shall update the LSLR Plan for Commission review at least once every 5 years. The Commission will, to the extent possible, coordinate the review of the updated LSLR Plan with the periodic review of an entity's LTIP under § 121.7 (relating to periodic review of an LTIP).

(a) The Commission's review will determine:

(1) If the entity has adhered to its LSLR Plan;

(2) If changes to the entity's LSLR Plan are necessary to maintain and improve the efficiency, safety, adequacy and reliability of its LSLR Program; and

(3) If the updated LSLR Plan is consistent with the parameters of the entity's LSLR Program.

(b) Service of the updated LSLR Plan must be made consistent with the requirements of § 65.54(a) (relating to petitioning the Commission for a LSLR Program). The Commission will issue a Secretarial Letter establishing a schedule for the submission of comments and reply comments to aid in its periodic review. If the Commission determines that the entity's approved LSLR Plan is no longer sufficient to ensure and maintain efficient, safe, adequate, reliable and reasonable service, the Commission will direct the entity to revise, update or resubmit its LSLR Plan as appropriate.

#### § 65.58. Pro forma tariff or tariff supplement requirements.

An entity's pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity's LSLR Program must address, at a minimum:

(a) *LSLR Program annual cap.*

(1) 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.



(b) *Service line demarcation.*

(1) An entity's pro forma tariff or tariff supplement must include a definition for customer-owned lead service line consistent with § 65.52 (relating to definitions).

(2) An entity may specify in its tariff or tariff supplement that, if a shutoff valve is not located along a specific length of pipe within a structure, the entity may install a shutoff valve to serve as a point of demarcation between the property's service line and the property's interior water distribution piping.

(3) 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.

(c) *Partial LSLRs.* An entity shall specify as follows in its pro forma tariff or tariff supplement:

(1) 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 § 65.62 (relating to prohibition on partial LSLRs).

(2) Where a customer elects to replace the customer-owned LSL, the customer shall replace the customer-owned LSL concurrent with the entity replacing the entity-owned LSL, subject to the following:

(i) For a Class A public utility or an authority, the customer shall provide the public utility or authority at least 90 days' notice prior to replacing the customer-owned LSL.

(ii) For a Class B or Class C public utility or a municipal corporation, the customer shall provide the public utility or municipal corporation at least 180 days' notice prior to replacing the customer-owned LSLs.

(3) 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.

(d) *Reimbursements.* An entity shall provide a reimbursement to an eligible customer who replaced their LSL within 1 year of commencement of an entity's LSLR Project within a LSLR Project Area.

(1) An entity's pro forma tariff or tariff supplement must include language explaining its reimbursement terms and conditions which shall contain, at a minimum:

(i) An explanation of the entity's method for determining the amount of reimbursement, including any restrictions on reimbursements.

(ii) An explanation of the entity's reimbursement methods, including the forms of payment to be used by the entity to distribute reimbursements and the length of time by which the utility will issue a reimbursement for an eligible reimbursement request.

(iii) An explanation of the entity's method for determining customer eligibility, providing that:

(A) 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.

(B) Customers shall submit to the entity, a detailed estimate and paid invoice from a contractor licensed to perform LSLR work in the Commonwealth where applicable, verifying the replacement of the customer-owned LSL. Instead of a detailed estimate, a verified statement from the contractor attesting to completion of a LSLR may be sufficient.

(2) 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.

(3) An entity shall make reasonable best efforts to assist customers through the reimbursement process and, to the extent possible, make determinations in favor of the customer where the customer has provided reasonable evidence of a LSLR to the entity.

(e) *Warranty.* 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. The entity's warranty provisions must:

(1) Define the start date of the 2-year term.

(2) Ensure that the materials and workmanship of the replacement and restoration of surfaces are covered.

(3) Define the maximum coverage amounts under the warranty.

(4) Explain any liability an entity will have for damages not covered by the warranty.

(5) Ensure entity access to the property to correct any deficiencies.

#### § 65.59. LSLR Program Reports.

(a) An entity with an approved LSLR Program shall file with the Commission a LSLR Program Report by March 1 of each year, in both print and electronic formats, including supporting spreadsheets. If an entity is implementing its LSLR Plan as part of a Commission-approved LTIP, the entity shall include a LSLR Program Report as part of the entity's AAO plan under § 121.6(b)(3) (relating to AAO plan filings).

(b) An entity's LSLR Program Report must identify the preceding year's activities, including:

(1) The number of LSLs replaced in the preceding year by county.

(2) The length of LSLs removed, by pipe diameter, in each county.

(3) The length, pipe diameters and material types of LSLRs by county.

(4) The actual cost of each LSLR by county.

(5) The average cost of a LSLR by county.

(6) The total annual LSLR expenditures for the calendar year by customer class.

(7) The total projected LSLR expenditures for the following calendar year.

(8) The entity's outreach and coordination activities with other utilities, the Department of Transportation, local governments and customers.

(9) The number and geographic location of LSLR customer refusals for the calendar year.

(10) Applicable lead monitoring requirements established by the Department of Environmental Protection for each of the entity's water distribution systems.

(11) The entity's compliance with the regulatory requirements established by the United States Environmental Protection Agency and the Department of Environmental Protection, including a description of any violations thereof associated with lead.

(12) The current status of the entity's Service Line Inventory efforts, including the known material types and pipe diameters of customer service lines.

(13) The entity's efforts to obtain grants, low interest loans and donations for LSLRs.

**§ 65.60. Accounting and financial.**

(a) An entity shall record LSLR costs in compliance with the National Association of Regulatory Utility Commissioners uniform system of accounts applicable to the entity as intangible assets.

(b) 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 DSIC. 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 Commission, 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.

**§ 65.61. Preexisting LSLR activities.**

An entity that received prior Commission approval to perform LSLR activities shall submit for Commission approval a LSLR Program that, at a minimum, conforms with the requirements of this subchapter and takes effect no later than the effective date of the rates established under the entity's next base rate case following the effective date of this section or within 2 years of the effective date of this section, whichever comes first.

**§ 65.62. Prohibition on partial LSLRs.**

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.

(b) An entity may not install, or cause to be installed, a partial LSLR and may not furnish water service using a partial LSLR that is installed by a customer after the effective date of this section.

(c) 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.

(d) Where an entity has reasonable evidence indicating that a customer is being served by a partial LSLR installed by the customer after the effective date of this section, the entity shall terminate service to the customer in accordance with the entity's tariff.

(e) An entity shall install, or cause to be installed, entity-owned and customer-owned LSLRs even where an entity is under a Department of Environmental Protection directive to replace LSLs due to a water system's action level exceedance of 0.015 mg/L as defined in 25 Pa. Code § 109.1103 (relating to monitoring requirements).

**Annex B**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 66. WASTEWATER SERVICE**

**Subchap.**

**A. SERVICE GENERALLY**

**B. DAMAGED WASTEWATER SERVICE LATERALS**

*(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)*

**Subchapter A. SERVICE GENERALLY**

Sec.

66.1. Definitions.

**§ 66.1. Definitions.**

*Public utility*—Persons or corporations owning or operating equipment or facilities in this Commonwealth for wastewater collection, treatment, or disposal for the public for compensation. The term does not include a person or corporation not otherwise a public utility who or which furnishes service only to himself or itself, or a bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.

**Subchapter B. DAMAGED WASTEWATER SERVICE LATERALS**

Sec.

66.31. Purpose.

66.32. Definitions.

66.33. DWSL Program parameters.

66.34. Petitioning the Commission for a DWSL Program.

66.35. DWSL Program requirements.

66.36. DWSL Plan requirements.

66.37. Periodic review of DWSL Plan.

66.38. Pro forma tariff or tariff supplement requirements.

66.39. DWSL Program Reports.

66.40. Accounting and financial.

66.41. Unpermitted connections.

66.42. Competitive advantage.

**§ 66.31. Purpose.**

The purpose of this subchapter is to implement 66 Pa.C.S. § 1311(b) (relating to valuation of and return on the property of a public utility) governing the standard under which jurisdictional wastewater utilities and certain other entities may seek to replace, rehabilitate or repair damaged wastewater service laterals and recover associated costs. This subchapter sets forth the scope of and provides minimum requirements for damaged wastewater service lateral replacements.

### § 66.32. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*AAO plan—Annual asset optimization plan*—The term as defined in § 121.2 (relating to definitions).

*Combined sewer system*—As defined by the Department of Environmental Protection under 25 Pa. Code § 94.1 (relating to definitions).

*Company's service lateral*—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.

*Customer*—A party contracting with a public utility for service.

*Customer's service lateral*—The portion of a service lateral owned by the customer, most often extending from the curb, property line or utility connection to a point 2 feet away from the face of the foundation of the structure.

*DSIC—Distribution system improvement charge*—The term as defined in § 121.2 (relating to definitions).

*DWSL—Damaged wastewater service lateral*—A customer's service lateral containing a single area or a combination of several areas, acting collectively, identified by visual or other means, along the length of the lateral which has or have been determined to significantly impair the intended function of the customer's service lateral to convey wastewater flow to the company's service lateral and keep inflow and infiltration flows, within reason, out of the customer's service lateral.

*DWSL Plan—Damaged wastewater service lateral plan*—A plan and supporting documents submitted to and approved by the Commission that specify how an entity intends to implement its damaged wastewater service lateral program.

*DWSL Program—Damaged wastewater service lateral program*—A program submitted to and approved by the Commission for the replacement, rehabilitation or repair, or both, of damaged wastewater service laterals by an entity.

*DWSL Program Report—Damaged wastewater service lateral program report*—The annual report, including a plan and supporting documents, providing information for damaged wastewater service lateral replacements completed by an entity under its damaged wastewater service lateral program.

*DWSL Project—Damaged wastewater service lateral project*—An entity's scheduled damaged wastewater service lateral activity either in conjunction with main replacements or as part of a damaged wastewater service lateral program.

*DWSL Project Area—Damaged wastewater service lateral project area*—The area of a sewershed described by an entity as being eligible for the entity's damaged wastewater service lateral plan.

*DWSL Replacement—Damaged wastewater service lateral replacement*—A service lateral installed to replace a damaged wastewater service lateral or an approved method under the entity's damaged wastewater service lateral plan to rehabilitate or repair, or both, a damaged wastewater service lateral.

*Entity*—A public utility as defined in 66 Pa.C.S. § 102 (relating to definitions) that provides wastewater service, a municipal corporation as defined in 66 Pa.C.S. § 102

(relating to definitions) that provides wastewater service beyond its corporate limits, and an authority as defined in 66 Pa.C.S. § 3201 (relating to definitions).

*Hydraulic design capacity*—The term as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1 (relating to definitions).

*Hydraulic overload*—The term as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1.

*Inflow*—The term as defined by the Department of Environmental Protection under 25 Pa. Code § 965.1 (relating to definitions).

*Infiltration*—The term as defined by the Department of Environmental Protection under 25 Pa. Code § 965.1.

*I&I—Inflow and infiltration*—The total quantity of water from both infiltration and inflow.

*LTIIP—Long-term infrastructure improvement plan*—The term as defined in § 121.2.

*Main*—The pipe of a public utility system, excluding service laterals, located in a public highway, street, alley or private right-of-way which pipe is used in collecting and conveying wastewater.

*Monthly average flow*—The term as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1.

*Sanitary sewer system*—"Separate sanitary sewer system" as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1.

*Service lateral*—The pipe and appurtenances that connect any main to a point 2 feet away from the surface of the foundation of the structure.

*Sewershed*—A delineated area contributing wastewater flows to a single downstream point in a wastewater system.

*Wastewater*—The term as defined in 66 Pa.C.S. § 102.

*Wastewater facilities*—Sewerage facilities as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1.

*Wastewater system*—Sewer system as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1.

*Wastewater overflow*—Includes the terms "CSO—Combined sewer overflow" and "Sanitary sewer overflow" as defined by the Department of Environmental Protection under 25 Pa. Code § 94.1.

### § 66.33. DWSL Program parameters.

(a) Any entity may petition the Commission for approval of a DWSL Program to replace, rehabilitate or repair, or both, DWSLs where its purpose can be specifically linked to the entity's efforts to address either of the objectives set forth in subsection (b).

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

(1) Excessive I&I causing or which is reasonably expected within the next 5 years to cause a hydraulically overloaded condition, wastewater overflows or additional flow which is prudent for the entity to avoid.

(2) Design or construction conditions causing or which are reasonably expected to cause within the next 5 years wastewater overflows.



**§ 66.34. Petitioning the Commission for a DWSL Program.**

(a) An entity may file a DWSL Program petition with the Commission's Secretary's Bureau with copies served upon the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties of record in the entity's most recent base rate case. Service is evidenced by a certificate of service filed with the DWSL Program petition.

(b) An entity that has a Commission-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.

(c) An entity that does not have a Commission-approved LTIIP when filing its DWSL Program petition shall include a DWSL Plan meeting the requirements of § 121.3 (relating to LTIIP).

**§ 66.35. DWSL Program requirements.**

(a) A DWSL Program must include the following:

(1) A DWSL Plan as described in § 66.36 (relating to DWSL Plan requirements).

(2) A pro forma tariff or tariff supplement containing the proposed changes necessary to implement the entity's DWSL Program as described in § 66.38 (relating to pro formal tariff or tariff supplement requirements).

(3) Information required by the Commission for filings under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates), including statements required by 52 Pa.Code § 53.52(a) (relating to applicability; public utilities other than canal, turnpike, tunnel, bridge and wharf companies).

(b) A final Commission Order approving an entity's DWSL Program will direct an entity to make any necessary revisions to the pro forma tariff or tariff supplement and resubmit the tariff or tariff supplement under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates).

(c) After initial Commission-approval of an entity's DWSL Program, the DWSL Program shall be subject to review in all future base rate cases. An entity shall submit any modification to the DWSL Program for review with its base rate case.

**§ 66.36. DWSL Plan requirements.**

An entity's DWSL Plan must contain, at a minimum:

(a) *Planning and replacements.* The Planning and Replacements section of an entity's DWSL Plan shall include:

(1) The entity's projected annual investment in DWSL replacements with an explanation of the entity's anticipated sources of financing.

(2) The entity's projected number of DWSL replacements per calendar year with an explanation of how the entity's projection was determined, and a statement that this number is consistent with the entity's annual cap on DWSL replacements.

(3) The identification criteria or standard to be used by the entity to determine whether a customer's service lateral is damaged and is impacting the entity's wastewater system.

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

(5) The prioritization criteria considered by the entity when developing its DWSL replacement schedule.

(6) A benefit analysis detailing the expected improvements in the entity's wastewater system functionality.

(7) An estimate of the net present value of the entity's future reduced or, or both, increased costs associated with DWSL replacements identified in the DWSL Plan broken down by capital costs and operation and maintenance costs.

(8) The entity's processes and procedures based upon a customer's acceptance of a DWSL replacement including:

(i) A consent agreement form by which the customer will authorize the completion of the DWSL replacement.

(ii) A brief description of the entity's process for DWSL replacements under normal conditions and atypical conditions for gravity and pressurized DWSLs.

(iii) An explanation of the entity's process for coordination with the customer and the information the entity will provide to the customer throughout the DWSL replacement process.

(iv) The entity's process for addressing DWSL replacement completion or, or both, closeout with a customer.

(9) The procedures for documenting a customer's refusal of the offer by the entity to replace a DWSL including the entity's duty to:

(i) Provide the customer with a complete disclosure of the known health hazards from the continued use of a DWSL.

(ii) Inform the customer that refusal will require the customer to complete a DWSL replacement, at the customer's expense, within 1 year of commencement of an entity's DWSL Project within a DWSL Project Area in order to be eligible for reimbursement.

(10) The industry-accepted construction practices the entity plans to utilize to replace both entity-owned and customer-owned service laterals.

(b) *Communications, outreach and education.* An entity's DWSL Plan must outline the entity's communication, outreach and education steps to educate customers about the harmful effects of DWSLs and the entity's plan to address DWSL replacements.

(1) An entity's DWSL Plan must describe, at a minimum, how the entity will:

(i) Prioritize DWSL replacement efforts to areas of the entity's collection system that have known wastewater overflows, basement backups or I&I issues.

(ii) Coordinate DWSL Program efforts with State, county and local governments and agencies, community organizations and public works departments.

(iii) Ensure that relevant information will be provided to all bill-paying customers and persons that receive wastewater service from the entity, in plain language that can be understood by the general public; including a description of steps the consumer may take to identify DWSLs.

(iv) Provide customers with copies of as-built drawings or similar depictions that indicate the location of the DWSL replacement on the property between the customer's structure and the edge of the existing right-of-way. An entity shall make a good faith effort to provide customers with relevant documents associated with the DWSL replacement.

(2) The entity's DWSL Plan must include copies of all printed and broadcast material to be distributed under the entity's DWSL Program.

(3) A Class A public utility or authority shall develop a DWSL section on the public utility's web site within 12 months of the Commission approval of its DWSL Program. The web site shall contain, at a minimum:

(i) A secure online tool that provides customers the ability to determine whether their property is eligible for a reimbursement.

(ii) A secure online tool that provides customers the ability to determine whether records reflect that the property of record has a DWSL.

(iii) A copy of any static map or graphic representation depicting Project Areas.

(iv) Information and resources relating to the health risks associated with DWSLs, the status of current efforts by the public utility to replace DWSLs, and community meetings and advisory committees hosted by the public utility.

**§ 66.37. Periodic review of DWSL Plan.**

After initial Commission approval of an entity's DWSL Plan, the entity shall update the DWSL Plan for Commission review at least once every 5 years. The Commission will, to the extent possible, coordinate the review of the updated DWSL Plan with the periodic review of an entity's LTIIP under § 121.7 (relating to periodic review of an LTIIP).

(a) The Commission's review will determine:

(1) If the entity has adhered to its DWSL Plan.

(2) If changes to the entity's DWSL Plan are necessary to maintain and improve the efficiency, safety, adequacy and reliability of its DWSL Program.

(3) If the updated DWSL Plan is consistent with the parameters of the entity's DWSL Program.

(b) Service of the updated DWSL Plan shall be made consistent with the requirements of § 66.34(a) (relating to petitioning the Commission for a DWSL Program). The Commission will issue a Secretarial Letter establishing a schedule for the submission of comments and reply comments to aid in its periodic review. If the Commission determines that the entity's approved DWSL Plan is no longer sufficient to ensure and maintain efficient, safe, adequate, reliable and reasonable service, the Commission will direct the entity to revise, update or resubmit its DWSL Plan as appropriate.

**§ 66.38. Pro forma tariff or tariff supplement requirements.**

An entity's pro forma tariff or tariff supplement containing proposed changes necessary to implement the entity's DWSL Program must address at a minimum:

(a) *DWSL Program annual cap.* An entity's pro forma tariff or tariff supplement must include a cap on the maximum number of DWSL replacements that can be completed annually.

(b) *Service line demarcation.*

(1) Each entity's pro forma tariff or tariff supplement must include a definition for customer's service lateral that is consistent with § 66.32.

(2) Each entity shall use the DWSL replacement process to perfect the entity's ownership of the portion of the service lateral located within the then-existing right-of-

way to ensure that the entity can obtain necessary permits to complete work within the public right-of-way in the future.

(c) *Frequency of DWSL replacements.* An entity's pro forma tariff or tariff supplement must include a restriction where the entity may not complete more than one DWSL replacement for a customer at a property that previously received a DWSL replacement for a length of time equal to the lesser of the average service life for DWSL replacements established in the entity's most recent base rate case or the average service life for Account No. 363—Services to Customers in the entity's most recent Service Life Study filed with the Commission under § 73.5 (relating to service life study report).

(d) *Reimbursements.* An entity shall provide a reimbursement to a customer who completed a DWSL replacement within 1 year of commencement of the entity's DWSL Project within a DWSL Project Area.

(1) An entity shall include in its required pro forma tariff or tariff supplement language explaining its reimbursement terms and conditions, including the following:

(i) An explanation of the entity's methods for determining the amount of reimbursements, reimbursement methods and any restrictions on reimbursements.

(ii) An explanation of the entity's reimbursement methods, including the forms of payment to be used by the entity to distribute reimbursements and the length of time by which the utility will issue a reimbursement for an eligible reimbursement request.

(iii) An explanation of the entity's method for determining customer eligibility, providing that:

(A) Customers located within a DWSL Project Area are eligible for a reimbursement of DWSL replacement expenses up to 125% of the average cost the entity would have incurred to perform a DWSL replacement of a similarly-sized customer's service lateral, not to exceed the customer's actual cost.

(B) Customers must submit to the entity a detailed estimate and paid invoice from a contractor, licensed to perform the work in the Commonwealth where applicable, verifying the completion of a DWSL replacement. Instead of a detailed estimate, a verified statement from the contractor attesting to completion of a DWSL replacement may be sufficient.

(2) If the value of reimbursements causes the entity to exceed its annual budgeted cap on the number of DWSL replacements, the entity's annual budgeted cap for the following year shall be reduced by this amount.

(3) An entity shall make reasonable best efforts to assist customers through the reimbursement process and, to the extent possible, make determinations in favor of the customer where the customer has provided reasonable evidence of a DWSL replacement to the entity.

(4) 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.

(e) *Warranty.* An entity's pro forma tariff or tariff supplement must provide a warranty on DWSL replacement work performed of a term of not less than 2 years. The entity's warranty provisions must:

- (1) Define the start date of the 2-year term.
- (2) Ensure that the materials and workmanship of the DWSL replacement and restoration of surfaces are covered.
- (3) Define the maximum coverage amounts under the warranty.
- (4) Explain any liability an entity will have for damages not covered by the warranty.
- (5) Ensure entity access to the property to correct any deficiencies.

**§ 66.39. DWSL Program Reports.**

(a) An entity with an approved DWSL Program shall file with the Commission a DWSL Program Report by March 1 of each year, in both print and electronic format, including all supporting spreadsheets. 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 AAO plan under § 121.6(b)(3) (relating to AAO plan filings).

(b) An entity's DWSL Program Report must identify the preceding year's activities, including:

- (1) The number of DWSL replacements completed in the preceding year by county.
- (2) The length of DWSL replacements completed, by pipe diameter and by replacement, rehabilitation or repair method, in each county.
- (3) The pipe lengths, diameters and material types of DWSL replacements, broken down as follows:
  - (i) By county.
  - (ii) By DWSL replacement flow type (that is, gravity or pressurized).
  - (iii) By wastewater system type serving the properties that received the DWSL replacements (that is, sanitary sewer system or combined sewer system).
- (4) The actual cost of each DWSL replacement, broken down as follows:
  - (i) By county.
  - (ii) By DWSL replacement flow type (that is, gravity or pressurized).
  - (iii) By wastewater system type serving the properties that received the DWSL replacements (that is, sanitary sewer system or combined sewer system).

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

- (i) Monthly average flow for, at a minimum, a 2-year period prior to DWSL replacements being installed.
  - (ii) Three-month maximum flow for, at a minimum, a 2-year period prior to DWSL replacements being installed.
  - (iii) Monthly average flow for, at a minimum, a 2-year period after DWSL replacements have been installed.
  - (iv) Three-month maximum flow for, at a minimum, a 2-year period after DWSL replacements have been installed.
- (6) A calculation of the average marginal cost of I&I for each of the entity's wastewater systems, by individual sewershed, broken down by the following types:

(i) Wastewater systems where wastewater treatment is provided by the entity.

(ii) Wastewater systems where wastewater treatment is not provided by the entity.

(7) The average cost of a DWSL replacement by county.

(8) The entity's total annual DWSL replacement expenditures for the calendar year by customer class.

(9) The entity's total projected DWSL replacement expenditures for the following calendar year.

(10) The entity's outreach and coordination activities with other entities, the Department of Transportation, local governments and customers.

(11) The number and geographic locations of DWSL replacement customer refusals for the calendar year.

(12) The number of customers that had water or wastewater service, or both, terminated due to refusal to replace or to accept the entity's offer to replace a DWSL by wastewater system.

(13) Applicable wastewater system monitoring requirements established by the Department of Environmental Protection as part of a corrective action plan or consent order and agreement.

(14) The entity's compliance with the regulatory requirements established by the United States Environmental Protection Agency and the Department of Environmental Protection, including a description of any violations associated with wastewater overflows and any connection management plans.

(15) The entity's efforts to obtain grants, low and no interest loans and donations for DWSL replacements.

(16) A benefit analysis comparing the cost of DWSL replacement work performed to the observed benefits which may include measurable cost savings, a measurable increase in available wastewater system capacity, a reduction in the number of service interruptions, and/or a reduction in the number of observed wastewater overflows.

**§ 66.40. Accounting and financial.**

(a) An entity shall record DWSL costs in compliance with the National Association of Regulatory Utility Commissioners uniform system of accounts applicable to the entity as intangible assets.

(b) An entity may defer:

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

(2) DWSL program development, DWSL Plan, DWSL 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 Commission, 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.



### § 66.41. Unpermitted connections.

(a) As part of an entity's DWSL Program, an entity shall disconnect any unpermitted connection to a customer's service lateral in compliance with its tariff provisions.

(b) Notwithstanding subsection (a), where the continued use of any previously unpermitted connection to a customer's service lateral is permissible under other applicable laws, including the entity's tariff, an entity may permit the continued use of these connections as long as the entity's permission and existence of additional connection(s) is documented.

### § 66.42. Competitive advantage.

An entity shall make a good faith effort to structure its DWSL Program to prevent competition with optional insurance and warranty products that cover DWSL replacements.

[Pa.B. Doc. No. 21-512. Filed for public inspection April 2, 2021, 9:00 a.m.]

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 65 ]

### Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the harvest requirements relating to all-tackle trophy trout and trophy trout artificial lures only regulations.

#### A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2022.

#### B. Contact Person

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fishandboat.com](http://www.fishandboat.com).

#### C. Statutory Authority

The proposed amendments to §§ 65.4a and 65.7 (relating to all-tackle trophy trout; and trophy trout artificial lures only) are published under the statutory authority of section 2102(a) of the code (relating to rules and regulations).

#### D. Purpose and Background

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

#### E. Summary of Proposal

Per Issue 15 detailed in the *Strategic Plan for the Management of Trout Fisheries in Pennsylvania 2020—2024*, Commission staff evaluated the all-tackle trophy trout and trophy trout artificial lures only programs to determine if refinements were needed. Currently, both regulations allow for the harvest of two trout, per day, greater than or equal to 14 inches in length, from opening day of trout season through Labor Day, with catch-and-release angling for the remainder of the year. Trophy

trout regulations are applied to some wild trout and fingerling-stocked waters and were established decades ago when a 14-inch trout was substantially larger than an average-sized hatchery fish and perhaps was considered a "trophy" at that time. These regulations provide inadequate protection to the largest trout in the population, as harvest of trout greater than or equal to 14 inches in length is permitted in streams managed with these regulations. Given that a 14-inch trout no longer constitutes a "trophy" fish for most anglers, and these regulations focus harvest on the largest fish in the population which are most desired by anglers and are biologically important to maintaining in the population, the Commission proposes an adjustment to the minimum size and daily creel limit that will allow anglers to harvest a large trout if they so choose, but also provides increased protection to a majority of the larger trout in streams managed with trophy trout regulations.

The Commission recommends amending the all-tackle trophy trout and trophy trout artificial lures only regulations to allow the harvest of one trout per day, greater than or equal to 18 inches in length from opening day of trout season through Labor Day, with catch-and-release angling for the remainder of the year. This size and creel limit were thoroughly researched by Commission staff through analysis of Commission data, review of trout regulations in other states, and discussions among fisheries managers in this Commonwealth and elsewhere. The proposed changes received strong support during previous wild trout workgroups, were supported by the results of a survey conducted at the 2017 Wild Trout Summit and are supported biologically through Commission data. Implementation of a size restriction above 18 inches would essentially equate to catch-and-release regulations based on the size distribution of fish in these streams. A total of 11 waters are currently included in the trophy trout regulation program and most are destination waters that receive high angler use from resident and non-resident anglers.

The Commission proposes that §§ 65.4a and 65.7 be amended to read as set forth in Annex A.

#### F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

#### G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,  
Executive Director

**Fiscal Note:** 48A-311. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 58. RECREATION

## PART II. FISH AND BOAT COMMISSION

## Subpart B. FISHING

## CHAPTER 65. SPECIAL FISHING REGULATIONS

## § 65.4a. All-tackle trophy trout.

(a) The Executive Director, with the approval of the Commission, may designate waters as all-tackle trophy trout. The designation of waters as all-tackle trophy trout shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted all-tackle trophy trout areas except in compliance with the following requirements.

- (1) Open to fishing year-round.
- (2) There are no tackle restrictions.
- (3) Minimum size is [ 14 ] 18 inches, caught on, or in possession on, the waters under regulation.
- (4) The daily creel limit is: [ two trout-combined species ] one trout except for the period from the day after Labor Day to 8 a.m. of the first Saturday after April 11 of the following year, when trout may not be killed or had in possession.

(5) A current trout/salmon permit is required.

(c) This section applies to trout only. Inland regulations apply to all other species.

(d) Notwithstanding the requirements of this section, an angler in a boat may possess fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the all-tackle trophy trout area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the all-tackle trophy trout area.

## § 65.7. Trophy trout artificial lures only.

(a) The Executive Director, with the approval of the Commission, may designate waters as trophy trout artificial lures only. The designation of waters as trophy trout artificial lures only shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in areas designated and posted trophy trout artificial lures only except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly-fishing gear. Use or possession of other lures or substances is prohibited.

(2) Open to fishing year round.

(3) The minimum size is [ 14 ] 18 inches, caught on or in possession on the waters under regulation.

(4) The daily creel limit is [ two trout-combined species— ] one trout except during the period from the day after Labor Day to 8 a.m. of the first Saturday after April 11 of the following year, when no trout may be killed or had in possession on the waters under regulation.

(5) Taking of bait fish or fish bait is prohibited.

(6) A current trout/salmon permit is required.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the trophy trout area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the trophy trout area.

[Pa.B. Doc. No. 21-513. Filed for public inspection April 2, 2021, 9:00 a.m.]