

CHAPTER 66. WASTEWATER SERVICE

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Authority

The provisions of this Chapter 66 added under 66 Pa.C.S. § 1311(b), unless otherwise noted.

Source

The provisions of this Chapter 66 added July 22, 2022, effective July 23, 2022, 52 Pa.B. 4096, unless otherwise noted.

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

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§ 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 stan-

dard under which an entity 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 DWSL 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).

Customer—A party contracting with an entity for service.

Customer's service lateral—The portion of a service lateral owned by the customer or property owner, if the customer is not the property owner, most often extending from the curb, property line or entity connection to a point 2 feet from the exterior face of the foundation of the structure.

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

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 entity'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 project commencement—Damaged wastewater service lateral project commencement—Installation of the first damaged wastewater service lateral replacement within a damaged wastewater lateral project area.

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) engaged in wastewater collection, treatment or disposal for the public for compensation, a municipal corporation as defined in 66 Pa.C.S. § 102 engaged in wastewater collection, treatment or disposal for the public for compensation beyond its corporate limits as referenced in 66 Pa.C.S. § 1501 (relating to character of service and facilities), and an authority as defined in 66 Pa.C.S. § 3201(2) (relating to definitions).

Entity’s service lateral—The portion of a service lateral owned by the entity, most often extending from a main to the outlet connection of a customer’s service lateral at the curb or property line.

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

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

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

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

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

LTIIP—Long-term infrastructure improvement plan—The term as defined under § 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 from the exterior face 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 under 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.

Cross References

This section cited in 52 Pa. Code § 66.38 (relating to pro forma tariff or tariff supplement requirements).

§ 66.33. DWSL program parameters.

(a) An entity may petition the Commission for approval of a DWSL program to replace, rehabilitate or repair 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 to cause within the next 5 years, 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 in accordance with § 66.35(a) (relating to DWSL 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 DWSL program petition.

(b) An entity that has a Commission-approved LTIP shall include with its DWSL program petition a modified LTIP containing a DWSL plan as a separate and distinct component of the entity’s LTIP.

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

Cross References

This section cited in 52 Pa. Code § 66.37 (relating to periodic review of DWSL plan).

§ 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 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).
- (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.
- (c) After initial Commission-approval of an entity's DWSL program, the DWSL program may 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.

Cross References

This section cited in 52 Pa. Code § 66.34 (relating to petitioning the Commission for a DWSL program).

§ 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 must 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 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 increased costs associated with DWSL replacements, or both, identified in the DWSL plan broken down by capital costs and operation and maintenance costs.
- (8) The entity's processes and procedures to obtain acceptance of a DWSL replacement prior to DWSL project commencement if the customer is the property owner, and the entity's processes and procedures to obtain acceptance prior to DWSL project commencement if the customer is not the property owner.
- (9) The entity's processes and procedures based upon acceptance of a DWSL replacement including:
- (i) A consent agreement form by which the customer or property owner, if the customer is not the property owner, will authorize the DWSL replacement.
 - (ii) A brief description of the entity's process for DWSL replacement 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 property owner, if the customer is not the property owner, and the information the entity will provide to the customer and the property owner throughout the DWSL replacement process.
 - (iv) The entity's process for addressing DWSL replacement completion or closeout, or both, with the customer and property owner, if the customer is not the property owner.
- (10) The procedure for documenting refusal of the offer by the entity to replace a DWSL, including the entity's duty to:
- (i) Provide the customer and property owner, if the customer is not the property owner, with a complete disclosure of the known health hazards from the continued use of a DWSL.
 - (ii) Inform the customer or property owner, if the customer is not the property owner, that refusal will require replacement of the DWSL, at the customer or property owner's expense, within 1 year from DWSL project commencement for the customer or property owner, if the customer is not the property owner, to be eligible for reimbursement.
- (11) The industry-accepted construction practices the entity plans to use to replace both the entity's service lateral and the customer's service lateral.
- (b) *Communications, outreach and education.* An entity's DWSL plan must outline the entity's communication, outreach and education steps to educate customers and property owners, if the customer is not the property owner, 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 customers and property owners, if the customer is not the property owner, 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 or property owners, if the customer is not the property owner, with copies of as-built drawings or similar depictions that indicate the location of the customer-owned portion of the DWSL replacement, if available. An entity shall make a good faith effort to provide customers or property owners, if the customer is not the property owner, with other relevant documents associated with the DWSL replacement and appurtenances, including product manuals, specification sheets and manufacturer brochures.

(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 its web site within 12 months of the Commission approval of its DWSL program. The web site must contain, at a minimum:

(i) Information regarding the reimbursement requirements and a secure online tool that provides customers, or property owners, if the customer is not the property owner, the ability to determine whether the customer or property owner may be eligible for a reimbursement.

(ii) An online tool that provides the ability to determine whether records reflect that the property has a DWSL.

(iii) A copy of any static map or graphic representation depicting DWSL project areas.

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

Cross References

This section cited in 52 Pa. Code § 66.35 (relating to DWSL program requirements).

§ 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 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 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 number of DWSL replacements that can be completed annually.

(b) *Service line demarcation.*

(1) An entity's pro forma tariff or tariff supplement must include a definition for customer's service lateral for purposes of the entity's DWSL program that is consistent with § 66.32 (relating to definitions).

(2) An entity shall perfect its ownership of the portion of the service lateral located within the then-existing right-of-way in conformance with its Commission-approved tariff 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 an eligible customer or property owner, if the customer is not the property owner, who completed a DWSL replacement within 1 year before or from DWSL project commencement.

- (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 eligibility, providing that:
 - (A) A customer or property owner, if the customer is not the property owner, located within a DWSL project area is 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 service lateral, not to exceed the actual cost.
 - (B) A customer or property owner, if the customer is not the property owner, shall submit to the entity a detailed estimate and paid invoice from a licensed contractor where applicable, verifying the completion of a DWSL replacement. Instead of a detailed estimate, a verified statement from a licensed contractor attesting to completion of a DWSL replacement may be sufficient.
- (2) Notwithstanding the DWSL program annual cap in subsection (a), an entity must provide a reimbursement to an eligible customer or property owner, if the customer is not the property owner, within the length of established under subsection (d)(1)(ii). If the reimbursement would cause the entity to exceed its annual cap under subsection (a), the entity must increase its current annual cap by the amount of the reimbursement and decrease its next annual cap by this amount.
- (3) An entity shall make reasonable best efforts to assist a customer or property owner, if the customer is not the property owner, through the reimbursement process and, to the extent possible, make determinations in favor of the customer or property owner where the customer or property owner has provided reasonable evidence of a DWSL replacement to the entity.
- (e) *Warranty.* An entity's pro forma tariff or tariff supplement must provide a warranty on DWSL replacement work performed by the entity or its contractor 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.

Cross References

This section cited in 52 Pa. Code § 66.35 (relating to DWSL program requirements).

§ 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 LTIP, the entity shall include a DWSL program report as part of the entity's AAO plan under § 121.6 (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 wastewater system.
- (2) The length of DWSL replacements completed, by pipe diameter and by replacement, rehabilitation or repair method, in each wastewater system.
- (3) The pipe lengths, diameters and material types of DWSL replacements, broken down as follows:
 - (i) By wastewater system.
 - (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 wastewater system.
 - (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) A calculation of the average marginal cost of I&I for each of the entity's wastewater systems, by individual sewer shed, 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.
- (6) The entity's total annual DWSL replacement expenditures for the calendar year by customer class.
- (7) The entity's total projected DWSL replacement expenditures for the following calendar year.

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

(9) The number of DWSL replacement refusals for the calendar year, including municipality and reason for refusal.

(10) 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.

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

(12) 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.

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

§ 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. DWSL replacement costs recorded as assets shall be maintained under separate and distinct subaccounts.

(b) For subaccounting purposes an entity may defer 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, DWSL program development, DWSL plan, DWSL program report, and reimbursement expenses to the extent that such costs are not recovered through the entity's existing base rates or DSIC.

§ 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 or property owner's service lateral, if the customer is not the property owner, 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 or property owner's service lateral, if the customer is not the property owner, 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.

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