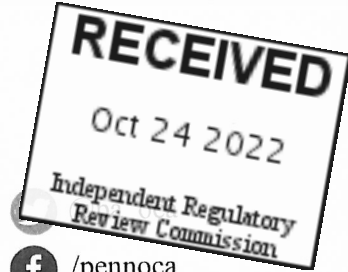



COMMONWEALTH OF PENNSYLVANIA



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October 12, 2022

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

Re: Application of 52 Pa. Code Section 3.501 to
Certificated Water and Wastewater Utility
Acquisitions, Mergers, and Transfers
Notice of Proposed Rulemaking
Docket No. L-2020-3017232

Dear Secretary Chiavetta:

Attached for electronic filing are the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Very truly yours,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Deputy Consumer Advocate
PA Attorney I.D. # 50026
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Certificate of Service

*336529

CERTIFICATE OF SERVICE

Application of 52 Pa. Code Section 3.501 :
to Certificated Water and Wastewater Utility : Docket No. L-2020-3017232
Acquisitions, Mergers, and Transfers :
Notice of Proposed Rulemaking :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 12th day of October 2022.

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Dated: October 12, 2022
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of 52 Pa. Code § 3.501 :
to Certificated Water and Wastewater : Docket No. L-2020-3017232
Utility Acquisitions, Mergers, :
and Transfers :

THE OFFICE OF CONSUMER ADVOCATE'S
COMMENTS TO THE
NOTICE OF PROPOSED RULEMAKING

The Office of Consumer Advocate (OCA) submits these Comments in response to the Public Utility Commission's (PUC or Commission) December 16, 2021 Order initiating a Notice of Proposed Rulemaking (NOPR). The Commission's Order was published in the Pennsylvania Bulletin on August 13, 2022. 52 Pa.B. at 4926-45. The NOPR follows the Commission's April 30, 2020 Order initiating an Advanced Notice of Proposed Rulemaking (ANOPR). The Commission's Order initiating the ANOPR was published in the Pennsylvania Bulletin on May 16, 2020. 50 Pa.B. at 2521-23. The Commission received Comments from a variety of stakeholders, including the OCA, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), the Pennsylvania Chapter of the National Association of Water Companies (NAWC), Pennsylvania State Association of Township Supervisors (PSATS) and individual water and wastewater utilities. *See* 52 Pa.B. at 4928.

In the NOPR, the Commission proposes revisions to 52 Pa. Code §§ 3.501, 3.502, and 65.16 and creates Section 3.503. 52 Pa.B. at 4937. The OCA provides its Comments below.

I. COMMENTS

Proposed Section 3.501(f) (52 Pa.B. at 4942-44)

Regarding proposed Section 3.501(f), the OCA will address the shortened protest period and the notice requirements. As discussed below and in the OCA's Comments on the ANOPR, the Commission's proposal to combine less frequent publishing, along with the proposed shortened protest period, is not reasonable because it adversely impacts the ability to be informed and to participate by those impacted by the proposed application. *See* OCA Comments on ANOPR at 7-8; 52 Pa.B. at 4933.

Protest Period

One of the Commission's proposed revisions to proposed Section 3.501(f) is to shorten the protest period from 60 days to 30 days. 52 Pa.B. at 4942-4944. The OCA continues to support the existing 60-day period because the circumstances presented in an application could have a large impact on individuals and businesses. It is both unnecessary to shorten the time frame and unreasonable to expect the general public to be able to respond in 30 days. The OCA understands that the Commission weighed the comments of the utilities proposing a 15-day protest period with those of the OCA urging it to keep the existing 60-day protest period. 52 Pa.B. at 4932-33. The OCA appreciates that the Commission did not shorten the protest period to 15 days, as some commenters proposed. *Id.* The Commission's concerns are well-founded that "overly shortening the protest period coupled with reducing notice requirements, as discussed below, will result in reduced awareness of applications among the public." *Id.* at 4933. These concerns are equally applicable to a 30-day protest period. It is important to note that not all protests are filed by "sophisticated protesters", as the Commission recognizes in its discussion. 52 Pa.B. at 4933. Retaining a protest period that is 60 days is a reasonable accommodation to ensure that affected

persons, especially those directly impacted by the application, and interested stakeholders have sufficient time to understand the impacts of the application and determine whether it is necessary to file a protest.¹ In addition, as the OCA recommends that notice be provided to directly impacted customers, retaining the 60-day protest period would allow for adequate time from when a customer receives mailed notice by way of bill insert or otherwise to respond to the application. The impact on individuals and businesses is especially concerning in situations where they are being required to connect to the system, *e.g.*, due to a local mandatory connection ordinance. *See* OCA Comments on ANOPR at 7. The OCA is not aware of any additional costs that would be incurred by retaining the current 60-day protest period.

Notice Requirements

Another revision included in proposed Section 3.501(f) is to reduce publication of the notice of an application to once a week for two consecutive weeks in a newspaper of general circulation located in the territory covered by the application, rather than to publish daily for two consecutive weeks. 52 Pa.B. at 4933, 4942-44. The OCA recognizes that newspapers in daily circulation are harder to find and that weekly requirements might be more realistic (*see* 52 Pa.B. at 4933) but supports the use of additional methods of notice to accompany the less frequent publishing proposal. PSATS also commented that additional means of reaching impacted persons should be added if the Commission reduced newspaper publication requirements. 52 Pa.B. at 4933. The Commission did not address any notice issues other than the newspaper publication in this section. However, it discussed notice later in its Order, as discussed below. *See* 52 Pa.B. at 4934-35.

¹ It is important to recognize that no individuals, or even “sophisticated protesters” have access to discovery before filing a protest. To the extent stakeholders are seeking information informally, a shorter protest period would cut short any informal process to address initial issues identified with the filing.

Revisions to the notice requirement should include multiple options to ensure customers receive sufficient notice when the water and/or wastewater system that serves them is being acquired. Those multiple notice methods should include direct notice to the seller's customers either through bill inserts or notice sent to the seller's customers via mail or electronically if the customer has opted for electronic billing, as well as information posted on websites and social media of the buyer and seller. The OCA submits that the specific notice requirements should be included in proposed Section 3.501(f).

Regarding property owners in the service territory proposed to be acquired, specifically in municipalities that have mandatory connection ordinances, the Commission addresses that situation by adding an additional sentence that requires "the notice provided under this section shall include conspicuous notice that such an ordinance applies." 52 Pa.B. 4934-35, 4944. The OCA supports the conspicuous notice requirement for those property owners. The proposed regulation should require the seller water or wastewater system² to send direct notice to property owners in municipalities where there is a mandatory connection requirement.

The Commission seeks input as to what form such notice should take. *Id.* at 4935. The notice should be a plain language notice that informs customers of the application and the proposed acquisition. The notice also should inform customers of the impact on their rates and service resulting from the proposed acquisition. For example, the acquired utility may bill quarterly, while the buyer may change the billing to monthly billing. Another important piece of information for the acquired customers would be information related to any bill discount programs provided by the buyer. Finally, the notice should inform the customers how they can get additional information and how they can take additional action.

² The OCA has made a simplifying assumption that these are municipal systems.

The delivery of the notice is important. The OCA supports direct notice to the customers of the seller. In addition, direct notice to the property owners in the acquired service territory should be provided if there are mandatory connection ordinances. Additional notice information posted on websites and social media of the buyer and seller can supplement the direct notice requirement but should not be a substitute for direct notice. The OCA's revisions to proposed 3.501(f) are set forth in Appendix A to these comments.³

Proposed Section 3.502 (52 Pa.B. 4944)

Protest Form

In its Comments on the ANOPR, the OCA proposed that a protest form could be provided on the Commission's website. OCA Comments on ANOPR at 9-10; 52 Pa.B. at 4935. The Commission appears to agree to having a protest form available on the website that is optional, and not required to be used to have a valid protest,⁴ calling it a "valuable addition to make filing a protest easier to understand." 52 Pa. B. at 4935. The Commission noted that it "seeks not only to reduce unnecessary complexity for well-established utilities but also among stakeholders and other interested parties." *Id.* A review of proposed Section 3.502 in Annex A does not provide new language to reflect the Commission's discussion of having a protest form available on the Commission's website. The OCA provides the additional language for proposed Section 3.502 in Appendix A.

Protest Period

For the reasons set forth above, the OCA does not support the proposed reduction of the protest period from 60 to 30 days.

³ The OCA's edits are in red type.

⁴ There is currently a Protest to Application form on the Commission's website.
<https://www.puc.pa.gov/media/1394/protest-to-application-form.pdf>

II. CONCLUSION

The OCA appreciates the opportunity to provide these comments on the Commission's Notice of Proposed Rulemaking regarding 52 Pa. Code §§ 3.501, 3.502, 3.503, and 65.16.

Respectfully Submitted,

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DATED: October 12, 2022
336373

APPENDIX A

§ 3.501. Certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider

* * * * *

[(d)] **(f)** *Notice.*

The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a [60-day] **30-day** protest period. [The applicant shall also publish notice of application as supplied by the Secretary, daily for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. In addition, the utility or applicant shall individually notify existing customers of the filing of the application.] ~~The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a 30-day protest period.~~ At the time of filing with Commission, the applicant shall provide individual notice to notify acquired customers of the filing of the application by bill insert or direct mailing. An applicant which has been providing service to customers without a certificate of public convenience to serve those customers shall individually notify existing customers of the filing of the application. The applicant shall also publish notice of application as supplied by the Secretary, once a week for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. If the application includes a request to provide service in an area covered by a mandatory connection ordinance, the notice provided under this section shall include conspicuous notice that such an ordinance applies.

* * * * *

§ 3.502. Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.

(a) *Protests generally.* A person objecting to the application shall file with the Secretary and serve upon the applicant or applicant's attorney, if any, a written protest which must contain the following:

- (1) The applicant's name and the docket number of the application.
- (2) The name, business address and telephone number of the protestant.

(3) The name, business address, Pennsylvania attorney identification number and telephone number of the protestant's attorney or other representative.

(4) A statement of the nature of the protestant's interest in the application.

A standard protest form is provided on the Commission's website. Use of this specific form is not required.