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Elizabeth Rose Triscari
Director, Corporate Counsel
852 Wesley Drive | Mechanicsburg, PA 17055
Phone: 717-550-1574 | Fax: 717-
elizabeth.triscari@amwater.com

October 12, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

In re: Application of 52 Pa. Code §3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers and Transfers

Docket No. L-2020-3017232

Dear Secretary Chiavetta:

Enclosed please find Pennsylvania-American Water Company's Comments to the Notice of Proposed Rulemaking which was published in the *Pennsylvania Bulletin* on August 13, 2022.

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

Sincerely,

Elizabeth Rose Triscari

Enclosure
cc: Christian McDewell, Assistant Counsel, Law Bureau *(via electronic mail)*
Clinton McKinley, Bureau of Technical Utility Services *(via electronic mail)*
Paul Zander, Bureau of Technical Utility Services *(via electronic mail)*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of 52 Pa. Code § 3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers, and Transfers	: : :	L-2020-3017232

PENNSYLVANIA-AMERICAN WATER COMPANY'S COMMENTS IN RESPONSE TO THE NOTICE OF PROPOSED RULEMAKING ORDER

I. INTRODUCTION AND GENERAL COMMENTS

Pennsylvania-American Water Company ("PAWC" or the "Company") appreciates the opportunity provided by the Pennsylvania Public utility Commission's ("Commission") Notice of Proposed Rulemaking Order ("NOPR Order") to offer comments on how to improve the process for experienced and capable water and wastewater public utilities to obtain certificates of public convenience.[1]

II. BACKGROUND

On July 15, 2020, PAWC submitted comments on the Commission's April 30, 2020, Advanced Notice of Proposed Rulemaking Order ("ANOPR"). PAWC incorporates those comments by reference.

[1] PAWC joins in the comments submitted by the National Association of Water Companies – Pennsylvania Chapter ("NAWC"), but submits these additional comments, which may or may not reflect the position of other members of NAWC. For the sake of brevity, PAWC does not address all of the issues that were addressed by NAWC in its comments.

III. PAWC RESPONSE TO COMMISSION PROPOSAL

PAWC will focus its comments on the Commission's dispositions of the comments submitted in response to the ANOPR.

C. As an alternative compliance to providing municipal and county comprehensive plans as well as zoning designations under section 3.501(a)(2)(vi), what other documentation can be provided? And what are the costs and benefits of those alternatives?

The Commission's disposition states: "Under the proposed regulations, if any county or municipality does not provide a certification regarding compliance with comprehensive plans or zoning ordinances, . . . the applicant must still provide such comprehensive plans and zoning ordinances *and verify compliance through an alternative method*." (emphasis added). PAWC submits that one acceptable method of verifying compliance should be a company response to a data request, in which the applicant confirms, through a qualified company representative, that the transaction complies with county and municipal comprehensive plans and zoning ordinances.

Another acceptable alternative should be supplements to the application. In several cases, PAWC submitted the application before the Company received responses to letters that had been sent to local officials, asking them to verify that the application complied with municipal and county comprehensive plans and zoning ordinances. When PAWC subsequently received responses to these letters, the Company filed them as a supplement to the application.

Finally, PAWC submits that an application should be able to include links to websites where the applicable municipal and county comprehensive plans and zoning ordinances can be found; hard copies of the sometimes-lengthy ordinances should not be required.

E. As alternative compliance to providing a DEP 5-year compliance history of affiliated utilities, what other information can be provided? And what are the costs and benefits of those alternatives?

An existing utility is presumed to be technically fit, *South Hills Movers, lnc. v. Pa. Pub. Util. Comm'n,* 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). PAWC specifically joins the comments of NAWC that the presumption of technical fitness should apply to the utility's ability to comply with applicable environmental standards. An existing utility should not be required to establish a perfect record of compliance with environmental requirements; it need only establish, by a preponderance of the evidence, that it is fit and that the proposed transaction is in the public interest. Additionally, the Commission can rely on DEP, as the agency statutorily charged with enforcing environmental laws, to protest an application if it has concerns about the acquiring entity's history of environmental compliance. If DEP does not file a protest, Commission staff should conclude that the applicant's history of environmental compliance is satisfactory.

F. What are the potential costs and benefits to the addition of a requirement to Section 3.501(a)(6) requiring the applicant to provide a copy of any DEP-approved Sewage Facilities Planning Modules and/or the current Act 537 Official Sewage Facilities Plan, if applicable? What alternative documentation could be provided to show that an application complies with Act 537 and what are the costs and benefits of these alternatives?

The Commission proposed requiring the submission of Act 537 documents for all affected municipalities relating to the acquired service territory. PAWC joins the NAWC in recommending that this proposal be modified so the applicant need only produce copies of the DEP Sewage Facilities Planning Module Approval, or a waiver of that requirement. In the alternative, PAWC recommends that the Commission clarify what documents should be submitted – current plans or updates to reflect the acquisition. PAWC submits that the Commission should not require the submission of existing Act 537 documents, which will change, in order for the Commission to approve an application. Instead, the Commission should require the acquiring utility to obtain approval of a new or updated Act 537 Plan by closing of the transaction. At that time, the applicant could submit the approved new or updated plan to the Commission, or the applicant could file a

verification that a new or updated plan has been approved. This approach would reasonably allocate regulatory responsibilities between DEP and the Commission and would not allow an applicant to evade DEP review.

K. Should Section 3.501(d) be revised to use less than a 60-day protest period for an application either in limited circumstances or in all circumstances?

The Commission proposed shortening the protest period to thirty days. PAWC respectfully submits that the protest period should be *not more than thirty days*, but the Secretary of the Commission should have the discretion to establish a fifteen-day to thirty-day protest period, if circumstances warrant a shorter protest period. The Secretary currently has discretion in setting an appropriate protest period and such discretion should not be taken away as a result of this rulemaking. The current process works and the regulations should simply be updated to reflect the current process.

Also, with regard to the protest period, municipal entities should not be granted preferential treatment in filing late protests. All parties should be treated equally under the law. A late protest should be accepted only for good cause. To the extent necessary, municipal entities can hold special meetings or executive sessions (which are used to discuss legal and litigation matters) in order to comply with the published protest period. Municipal entities have solicitors who are paid to, among other things, ensure that their clients meet legal deadlines.

M. Should applicants be required to provide evidence that anticipated subdivisions and land developments to be served by the utility in the requested service territory have been granted preliminary and final plan municipal approval?

In Section 3.501(a)(10), the Commission proposed that, where an application is primarily intended to extend service territory to a planned development, the applicant shall provide evidence of preliminary plan approval for anticipated subdivisions and final plan approval whenever such approval is granted. PAWC continues to oppose these requirements. These requirements are

onerous for utilities because developers do not generally inform utilities until after such approvals have been granted.

The Commission contends that, without providing evidence of conditional plan approval, service territory requests may become too speculative, increasing the need for future applications to clean up faulty service territory requests. PAWC respectfully submits that the Commission's concern is overstated. Utilities want to avoid the cost of submitting an application and completing the Commission's approval process for a development that is never built. Although some applications may need to be cleaned up in the future, PAWC respectfully submits that this will be an infrequent occurrence. As a result, the risk of such an event should not drive public policy.

N. Parties should discuss the extent to which Section 3.501 should apply to applications filed pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, and the Commission's Section 1329 Application Filing Checklist, and what changes to Section 3.501 might be made in order to better comport with 66 Pa. C.S. § 1329.

Section 3.501 should not be applied to Section 1329 because the Commission has already developed an extensive filing checklist for Section 1329 applications. PAWC, however, joins NAWC's comments, which express concern about the length of time that uncontested applications filed pursuant to 66 Pa. C.S. § 1102 can linger at the Commission. Section 1329 proceedings are frequently fully litigated by multiple parties, yet final decisions are issued in less time than many uncontested proceedings. Although PAWC does not recommend that the Commission establish a six-month deadline for the Commission to issue an order on all uncontested applications, PAWC joins NAWC in encouraging the Commission to use creative approaches to make the application process faster and more efficient while still ensuring that approved applications are in the public interest.

O. Parties should discuss whether applicants should follow additional processes and procedures regarding property owners that would be required to connect to an applicant's system upon application approval but which have not requested service

from the utility, including, but not limited to, property owners located in municipalities which have adopted a mandatory connection ordinance.

In Section 3.501(f), the Commission proposes to require that, if the application includes a request to provide service in an area covered by a mandatory connection ordinance, the notice provided to customers and to the general public must include conspicuous notice that such an ordinance applies. The Commission specifically requested input from commenters as to what form such notice should take.

PAWC continues to oppose this requirement as unnecessary because property owners have already had an opportunity to participate in the political process when the mandatory connection ordinance was adopted. In terms of what form the notice should take if required, PAWC recommends that the notice should be bold-face type included in the newspaper notice of the application, also required by Section 3.501(f). The utility (and its ratepayers) should not be required to pay for a second notice addressed only to a particular segment of the population affected by the application.

P. Should an acquiring utility identify the existence of lead service lines (LSLs) or damaged wastewater service laterals (DWSLs) and the projected costs to remove LSLs or replace DWSLs within the territory to be acquired.

The Commission proposes that utilities be required to complete an assessment and disclosure of LSLs and DWSLs as part of application filings. PAWC reiterates its opposition to this requirement, as expressed in the Company's comments on the ANOPR. PAWC also joins in the comments of NAWC. The Commission's proposal is not feasible because of the lack of information by either the buyer or the seller at the time an application is filed. In any event, a Class A utility is obligated to address LSLs and DWSLs after closing on the acquisition – an obligation not shared by other potential acquirers, which means the acquisition is in the public

interest despite the lack of reliable information about the projected costs to address LSLs and DWSLs.

The Commission should focus on the big picture: every additional document required in an application imposes costs on an applicant – the cost to find it or to prepare it, copy it, submit it to the Commission, answer questions from Commission staff about it, etc. The overall burden of applying for a Certificate should not be so great as to discourage utilities from undertaking acquisitions that are in the public interest for reasons that include, but are not limited to, promoting regionalization and consolidation. Moreover, the overall costs of applying for a Certificate are eventually placed on ratepayers, increasing concerns about the affordability of utility service. The Commission should remember that each additional requirement in the application process increases the total cost. At some point, those costs simply become too great when balanced against the value they bring to the review process.

IV. CONCLUSION

PAWC thanks the Commission for this opportunity to comment on the NOPR Order and for considering the comments contained herein. The Company would also welcome the opportunity to participate in a working group to discuss the issues presented in stakeholder comments prior to the issuance of a rulemaking order.

Respectfully submitted,

Elizabeth Rose Triscari (Pa. No. 306921)
Director, Corporate Counsel
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
E-mail: elizabeth.triscari@amwater.com

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