



October 12, 2022

VIA E-FILING

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

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

Comments of National Association of Water Companies – Pennsylvania Chapter on Notice of Proposed Rulemaking Order

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) in the above-referenced matter are the comments of the National Association of Water Companies – Pennsylvania Chapter. Copies are being served as shown on the attached Certificate of Service.

If you have any question or concern about this filing, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
 Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ/kmg
 Enclosure

cc: Christian McDowell, Esq. (Law Bureau)
 Clinton McKinley (Bureau of Technical Utility Services)
 Paul Zander (Bureau of Technical Utility Services)
 J.T. Hand, President, National Association of Water Companies – Pennsylvania Chapter

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Comments of the National Association of Water Companies – Pennsylvania Chapter on the Notice of Proposed Rulemaking Order**, upon the 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:

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Respectfully,



David P. Zambito, Esq.
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

Date: October 12, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER ON
THE NOTICE OF PROPOSED RULEMAKING ORDER**

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), pursuant to the Notice of Proposed Rulemaking Order (“NOPR Order”) entered in this matter on December 16, 2021, and published in the *Pennsylvania Bulletin* on August 13, 2022, 52 *Pa.B.* 4926, to file these comments with the Pennsylvania Public Utility Commission (“Commission”).

I. INTRODUCTION

NAWC is a trade organization whose members are investor-owned water utilities in Pennsylvania¹ that are regulated by the Commission. Among other functions, NAWC provides members with a vehicle for expressing their position on legislative and regulatory developments before the General Assembly, regulatory agencies, and the courts. NAWC thanks the Commission for this opportunity to express its views on the extensive regulatory changes proposed in the Order.

¹ The members of NAWC are: Aqua Pennsylvania, Inc., Columbia Water Company, Newtown Artesian Water Company, Pennsylvania-American Water Company, Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania Inc.), and The York Water Company. Newtown Artesian Water Company is a Class B water utility; the remaining members of NAWC are Class A water utilities. In addition to water operations, several of the members operate Commission-regulated wastewater systems throughout the Commonwealth.

II. BACKGROUND

On April 30, 2020, the Commission entered an Advanced Notice of Proposed Rulemaking Order and invited comments. NAWC submitted comments on July 15, 2020. NAWC's comments focused on the question of whether a differential treatment of applications for certificates of public convenience is appropriate when a well-established water or wastewater utility seeks to acquire a certificated or non-certificated water or wastewater provider or seeks to expand its existing certificated service territory. NAWC also supported the creation of a fund dedicated to covering the costs incurred by the receiving of a small troubled water or wastewater utility pursuant to Section 529.

The Commission's NOPR Order stated at page 2 that the Commission "proposes to amend its regulations governing the application for certificates of public convenience as to the acquisition of water and wastewater service providers by existing, certificated Class A utilities." The Commission explained that the Commission proposes streamlining some requirements for established utilities, reducing requirements that are no longer needed generally, and making editorial changes. The Commission also proposes to revise Section 3.501 unrelated to acquisitions, to update 52 Pa. Code § 65.16, and to create a new section to modernize the obligations of Class A, B and C water and wastewater utilities.

NAWC commends the Commission on seeking to update its regulations to improve the efficiency of the Commission's procedures. The purpose of the Commission's review of applications is to determine, economically and expeditiously, whether a proposed transaction is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa. C.S. § 1103(a). Sometimes, however, the Commission's procedures seem to frustrate the public

interest rather than promote it – such as by requiring Commission staff to take the time to draft and serve data requests, and requiring the applicant to take the time to draft and file responses, when a simple telephone call can resolve questions quickly and inexpensively in an uncontested proceeding. NAWC is particularly concerned about unnecessary delays that prevent a Class A water or wastewater utility from promptly acquiring a small, troubled utility or extending service to customers without safe and reliable alternatives. These are the types of transactions that should be expedited to promote the public interest. The Commission should consider devising special procedures for such situations, or allowing standard requirements to be waived to facilitate the prompt acquisition of a small, troubled system or extend service to customers who need it.

NAWC encourages the Commission to consider additional changes in its proposal to reduce further the time necessary to prepare and process applications and to ensure that the costs of complying with Commission procedures are warranted by the benefits of those requirements for promoting the public interest. In approaching NAWC’s recommended changes, the Class A members focused on a number of themes.

Foremost is that Class A water and wastewater companies are solution oriented and have a strong desire to solve problems in communities. The proposed changes are targeted at making the process more efficient and streamlined at a time when we recognize that the Commission has a greater workload with more, not less, regulation over the passage of time.

In addition, NAWC believes that context is very important to this discussion. The companies often receive requests for simple extensions for service or routine matters that help customers and communities. As the current regulations are written, these “course of business” requests turn into applications filed at the Commission that receive the same level of review as

more complex matters. Therefore, one of NAWC's goals in its proposed changes is to build flexibility into the process, so that procedures can be adapted when circumstances warrant.

NAWC would also like to discuss and formulate ways to streamline the need to double check and/or correct the work of other agencies and organizations prior to a Commission order. It appears that the Commission has interpreted the current regulations as a "back stop" to address possible incomplete reviews or applications lacking information that is required at other agencies and non-jurisdictional to the PUC. An example of this would involve a small, failing wastewater system that has agreed to sell its assets to a Class A water company. The failing wastewater system may not have kept up with certain DEP permits. It appears that the Commission may be interpreting the current regulations as requiring the Class A utility and the failing system to correct this **prior** to Commission approval. Respectfully, NAWC submits that it makes more sense for the application to proceed with Commission approval as expeditiously as possible so that the Class A utility can correct the issue after taking ownership. However, as noted above, it appears that the opposite is happening creating months of delay, draining finite resources, and creating costs. This has become a **deterrent** for Class A owners to acquire small troubled systems or become involved in solutions in which they would have participated in the past.

Another general comment to help frame the thought process for NAWC's recommendations is that the subject applications are not rate case proceedings and there is no requirement in the current regulations to formulate a baseline of information to be utilized in the next base rate proceeding. In addition, there is not a requirement for the Commission to anticipate future litigation regarding these applications. While this may have happened in a few instances, the reality is that it happens very infrequently and should not be a basis for additional scrutiny or delay.

NAWC believes it is important to emphasize the context from which these comments are coming and the public interest at hand. The Class A companies appreciate the difficulty between navigating the current regulation requirements which should be followed and how to create a regulatory process that protects the public interest. Water and wastewater utilities utilize Section 3.501 of the regulations for a variety of everyday, real world issues. These could include extending service to a home with a failed septic system, expanding a certificated area for a new housing development, acquiring a troubled utility or a utility with a poor record of environmental compliance, or promoting regionalization and consolidation by acquiring a utility that is not financially challenged. NAWC believes the Commission should exercise its authority to develop a process to streamline uncontested, non-protested and seemingly uncontroversial applications without multiple rounds of data requests and without engaging and requiring filings from other non-PUC agencies, all being mindful of Commission and utility resources and keeping costs down.

NAWC submits these comments, which represent the consensus position of its members. In addition, several members of NAWC will provide their individual comments on the Commission's proposal.

III. COMMENTS ON PROPOSED AMENDMENTS TO 52 PA. CODE § 3.501

A. Introduction

The Commission has proposed numerous detailed changes in the regulations. In some instances, NAWC believes the Commission's proposal is helpful in streamlining the process. In other cases, however, the detailed changes appear to frustrate the public interest by creating additional burdens, requirements and delays. To elaborate on these issues, NAWC believes the proposal could be improved by the joint efforts of a working group. Being able to have a

conversation about proposed changes in the regulations, rather than exchanging comments and reply comments, would facilitate further improvements in the draft regulations. NAWC encourages the Commission to call together a working group composed of various stakeholders to continue the work of drafting revised regulations. The Commission should appoint staff who are uninvolved in the application process to orchestrate the working group and should set a definitive timeline for recommendations from the working group in order to ensure that the rulemaking moves forward in an expeditious manner.

B. Changes Regarding Non-Acquisition Class A Water and Wastewater Applications

As modified, Section 3.501(a) continues to apply to Class A water and wastewater applications that do not involve acquisitions. It also continues to apply to all applications filed by new applicants and existing Class B and Class C water utilities.

With respect to applications that do not involve acquisitions, NAWC respectfully submits that the Commission should substantially rewrite this section to simplify and expedite the process for what should be relatively simple proceedings. The focus should be on the minimum information that the Commission needs to determine whether an uncontested application is in the public interest; additional information can be requested by way of data requests in a particular case, if circumstances warrant.

The Commission is able to issue a final decision within six months of the date a Section 1329 application is accepted for filing – which can be a fully-litigated proceeding involving multiple parties and numerous contested issues – but uncontested proceedings involving routine utility matters (*e.g.*, line extensions to serve a few homes) or more urgent matters (*e.g.*, addressing a customer whose septic system has failed) take longer than would be anticipated. See **Appendix A** for a few examples of application processing timelines. Unfortunately, some uncontested

proceedings have become almost adversarial in nature between the applicant and Commission staff because of the timing and the extensive nature of data requests – even where the interests of the Commission and the applicant should be aligned in getting safe and reliable service to the public as quickly as possible.

To address this situation, the Commission should consider adopting a policy similar to the Permit Decision Guarantee for the Department of Environmental Protection, Executive Order 2012-11. This policy requires DEP to establish clear guidance that describes permit application requirements and includes predictable processing times for each covered application. Only applications that are complete and technically adequate are eligible for the program. DEP strives to process eligible applications as expeditiously as possible, but no longer than the established processing times. A similar Commission policy would promote transparency and realistic expectations for all participants in the application process and would help Commission management ensure that applications stay “on track” for prompt processing.

In addition, NAWC suggests that the Commission consider additional ways of taking advantage of short-form applications, just as short-form rate filings allow the Commission and utilities to expedite and simplify the rate-making process. For example, if a utility seeks to expand its service territory to include a new development, the Commission should consider a short-form filing that would give the Commission the information it needs to ensure that the transaction promotes the public interest -- without the need for the utility and the Commission to spend tens of thousands of dollars to prepare and process the application.

NAWC also suggests that the Commission allow applicants to submit draft proposed orders with their applications. Such a document would improve efficiency for the Commission by giving staff a head start on preparing a Commission order on the application. Unfortunately, in the

experience of NAWC members, the submission of draft proposed orders has been strongly discouraged.

C. Changes Regarding Class A Water and Wastewater Acquisition Applications

NAWC's proposed changes to the NOPR are shown on **Appendix B**. Changes proposed by NAWC are highlighted in yellow.

1. NAWC's Responses to Commission Proposals.

a. *Section 3.501(b)(1)(i).*

Section 3.501(b)(1)(i) requires a Class A water and wastewater acquisition application to include "an inventory or estimate of lead service lines and damaged wastewater service laterals existing within the system." The utility must also state with particularity a plan for including these lines into the utility's programs for the replacement of such lines (pursuant to the proposed regulations at 52 Pa. Code §§ 65.55 and 66.35). NAWC strongly opposes these requirements in an application.

The Commission explained its proposal as follows:

[T]he Commission recognizes the difficulty in identifying the full extent of LSLs and DWSLs by acquiring utilities prior to operating the facilities. Yet, an experienced utility has sufficient expertise to complete, based upon the age of the system and utilizing available seller system information, an inventory or estimate of potential LSLs and DWSLs as part of its acquisition due diligence and, therefore, we propose that utilities will be required to complete such an assessment and disclosure as part of application filings.

As explained previously as one of the NAWC general concerns, this additional delay **frustrates** the approval process rather than allowing the Class A utility to address the issue after a Commission order and after closing when the Class A utility is in a position to feasibly evaluate the issue. NAWC disputes the assumption that an experienced utility can develop an inventory or estimate of LSLs and DWSLs based upon the age of the system and seller information obtained

during the due diligence process. Due diligence is different than ownership and knowledge about a water and wastewater system comes with running and operating it. Decisions about capital plans and needed changes to a water and wastewater system are not made with due diligence, nor should they be. Respectfully, this seems to be a fundamental disagreement or misunderstanding that should be addressed.

In the experience of NAWC members, sellers frequently have little to no information that would allow an acquiring public utility to develop an inventory or estimate of LSLs and DWSLs at the time an application is filed. Moreover, even a utility with considerable experience in acquisitions cannot make a reliable estimate of LSLs and DWSLs based simply on the age of a system. As a result, the acquiring utility's inventory or estimate would be incomplete and unreliable. Acquiring utilities should not be required to waste time and money developing this information in an application, nor should the application be required to state "with particularity" how the utility will address a problem the scope of which is unknown at the time. Such requirements would delay the filing and processing of applications and put the utility at risk of non-recovery of expenses associated with performing an assessment if the transaction or project does not move forward.

The Commission claims that "understanding the costs of replacement is critical to understanding the public benefits of an acquisition." Again, this seems to be a fundamental area of disagreement about what a Class A utility does during due diligence. In the absence of reliable information on the LSLs and DWSLs, the estimated cost of replacement cannot be given great weight in determining whether the acquisition is in the public benefit. The Commission can, however, require the Class A water utility to comply with the proposed regulations at §§ 65.55 and 66.35 after approval of the application (whereas the entity being acquired probably had no such

obligation). Setting up another barrier to complete this section prior to a Commission order will only frustrate the process and create further delays.

If, however, the Commission decides to maintain this requirement, NAWC recommends that the proposal be revised to only require the disclosure of known lead service lines and known damaged wastewater service laterals. The proposal should also make clear that the lack of information at the time an application is filed will not prevent the Commission from approving the application.

b. *Section 3.501(b)(2)*

NAWC respectfully submits that a map of the proposed service areas is sufficient; a list of bearing angles and distances is unnecessary, as is information about the elevations of major facilities and service areas. Surveys of the proposed service area increase costs to utilities (and their ratepayers) without yielding a corresponding benefit to the public interest.²

c. *Section 3.501(b)(3)*

A Class A utility should be able to submit a statement that there is capacity in the system to provide water or wastewater service to the customers in the proposed service territory; DEP permits should not be required. An existing utility is presumed to be legally, technically, and financially fit – which would include having the capacity to provide service in the area. A statement from the applicant affirming that it has such capacity should be sufficient.

d. *Section 3.501(b)(4)*

NAWC recommends that DEP Sewage Facilities Planning Module approval, or a waiver of that requirement, be sufficient to demonstrate compliance with zoning and comprehensive planning requirements for un-served areas.

² NAWC also recommends that conforming changes be made in Section 3.501(a)(2).

e. *Section 3.501(b)(5)*

The Commission proposed requiring an applicant to project the number of connections during a five-year period in order to align the Commission's regulatory requirements with those of DEP. Although DEP has a reporting requirement for wastewater systems that includes a five-year projection of connections, there is no similar DEP requirement to project connections for water systems. NAWC submits that the Commission should eliminate the need for a water application to include a five-year projection of water connections on the ground that such projections are speculative and unreliable. The Commission should not rely on such "evidence" in determining whether the application promotes the public interest.

This section also discusses the scenario in which the selling entity will continue to provide service to customers after closing on a proposed transaction. NAWC questions whether this language is necessary; it seems like such an unusual situation that it need not be addressed in the regulations.

f. *Section 3.501(b)(6)*

This section also requires an applicant to notify customers of the selling entity of the filing of the application and any proposed rate change. The Commission should clarify that this notice can be the same notice discussed in Section 3.501(f). Requiring the Company to send multiple notices to the same customers would increase costs and could cause confusion among customers.

g. *Section 3.501(b)(7)*

In Section 3.501(a)(7), an applicant is required to confirm that it complies with the mandates of certain government agencies. In Section 3.501(b)(7), in contrast, the acquiring utility is required to prove that the *selling entity* complies with the mandates of certain government agencies. For example, the application must include copies of valid operators' certificates for the

seller appropriate to the facilities being operated. NAWC respectfully submits that this requirement should be removed, since the selling entity will no longer operate the system after the acquisition and the acquiring entity (an existing Class A water utility, which is presumed to be technically fit, *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992)), will no doubt have certified water or wastewater operators on staff.

More importantly, this section requires the applicant to prove that the seller complied with applicable design, construction and operation standards of DEP or the county health department – in part, by producing copies of all applicable NPDES and other DEP permits. NAWC opposes this requirement. NAWC members have recently acquired some aged systems (including some small utilities and some municipal systems) which had poor records. As a result, a legally, technically and financially fit public utility was delayed in taking over the ownership and operation of the system because the applicant could not document that the seller obtained a permit years ago. A Class A water or wastewater utility should be permitted to submit applicable permits,³ if available, and, if they are not available, should be permitted to submit a verification that a search was conducted. The Class A utility acquiring the system is obligated to obtain the transfer of all necessary DEP permits. The Commission should emphasize compliance with this requirement by the acquiring entity and should not unduly delay its consideration of an application based on limited documentation concerning the seller's compliance with DEP standards.

NAWC also recommends that the Commission only require the applicant to submit evidence of the selling entity's 3-year compliance history with DEP. Violations that occurred more than three years before the application is submitted constitute stale evidence of the seller's ability to comply with environmental requirements.

³ Along similar lines, Commission staff should not engage in making independent determinations that DEP permits are in fact missing. Those determinations are properly within the expertise and discretion of DEP.

This section requires the production of copies of applicable Act 537 Plan documents for all affected municipalities relating to the acquired service area. NAWC recommends that this be modified so the applicant need only produce copies of the DEP Sewage Facilities Planning Module Approval, or a waiver of that requirement.

h. *Section 3.501(b)(8)*

NAWC recommends the addition of a new subsection that allows Class A water and wastewater utilities to include in an application a request that the Commission waive any requirement requesting documents that may not be available, easily accessible, or does not exist.

i. *Section 3.501(c)*

In this proposed new subsection, which apparently applies to all applications discussed in both Subsections 3.501(a) and 3.501(b), the applicant is required to verify that water sources and customers are metered in accordance with 52 Pa. Code § 65.7. Section 65.7 does not presently require the metering of water sources. Moreover, the metering of water sources seems more appropriate for the Delaware River Basin Commission and the Susquehanna River Basin Commission, as opposed to the Public Utility Commission. The proposal to require metering of water sources should be removed.

j. *Section 3.501(f)*

The Commission proposes that “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.” NAWC requests that the Commission confirm in its order that this requirement only applies in cases involving *de facto* public utility service.

k. *Section 3.501(h)(1)(i)*

To reduce the number of copies of applications that are served on entities that do not have a genuine interest in the proceeding, NAWC recommends that the application only be required to be served on utilities, municipal corporations or authorities whose service territories abut the service area proposed in the application.

1. *Commission data requests concerning environmental compliance.*

In the Commission's disposition of Issue E. (relating to the DEP compliance history of affiliates), the Commission stated:

An applicant's DEP compliance history is a necessary part of any application, whether it be for a well-established utility acquiring another water or wastewater service provider or an applicant seeking to expand their service territory. That being said, as the Commission is not seeking a full review of DEP compliance each time a well-established utility acquires another utility, we propose to adopt Aqua's suggestion and issue a data request to seek the compliance history of the applicant for a comparable DEP region when such information is needed.

Many acquisitions by Class A water and wastewater utilities are uncontested, in part, because they clearly promote the public interest for environmental (as well as other) reasons. The existing system may have a poor record of environmental compliance and may have on-going violations that need to be addressed in the near future. Respectfully, the Commission should exercise discretion in its review of applications and should not delay the approval of transactions by requiring information regarding compliance with environmental statutes in other parts of their systems.

As an existing utility, the Class A acquiring utility enjoys a rebuttable presumption that it is technically fit. *South Hills Movers, Inc., supra*. This presumption of technical fitness would apply to the utility's ability to comply with applicable environmental standards. A Class A utility does not need to establish an unblemished record of compliance with environmental requirements;

it need only establish, by a preponderance of the evidence, that it is fit and the proposed transaction will benefit the public.

Applications must be filed with the applicable regional office of DEP. As a result, the Commission can rely on DEP, as the agency with statutory responsibility to enforce environmental laws, to contest an application if it has concerns about the acquiring entity's history of compliance with environmental requirements. Where DEP does not contest an application on environmental compliance grounds, the Commission should not need to spend resources reviewing a Class A applicant's history of environmental compliance.

2. Additional Items for Consideration.

One scenario not addressed in the Commission's draft regulation is the situation in which a Class A utility seeks to acquire a municipal system that is presently providing service outside its boundaries or a utility that is presently providing service outside its Commission-approved service territory, or a system that asserts it is a *bona fide* cooperative association not subject to Commission jurisdiction, but no formal determination has been made by the Commission. NAWC members have encountered these scenarios several times in the recent past.

NAWC respectfully submits that the acquisition of the system by the Class A utility will rectify any claim that the seller is acting as a *de facto* public utility. However, it has been NAWC members' experience that the Commission requires the seller to complete the extra step of applying for a certificate of public convenience ("Certificate") *nunc pro tunc*, or filing a Petition for Declaratory Order seeking a ruling that it is not a *de facto* public utility, before the Class A utility files its application to acquire the system or before a filed application will be considered. If the municipality obtains a Certificate, it then needs to file an application to abandon service as part of the acquisition by the Class A utility. In the interest of efficiency, the Commission should

eliminate these extra steps and simply allow the Class A utility to acquire the system, which renders the issue moot.

Finally, NAWC suggests that the regulations permit a Class A water or wastewater utility to include in its application a request that the Commission waive any requirement to submit an item that is not reasonably available or does not exist.

IV. COMMENTS ON PROPOSED AMENDMENTS TO 52 PA CODE § 3.502

NAWC supports the Commission's proposal to shorten the protest period from the existing sixty-day protest period. Although thirty days is adequate for a protest to be prepared and filed, NAWC supports the continuation of the Commission's current practice of affording discretion to the Commission's Secretary to shorten the protest period when warranted by the circumstances. All protest deadlines should not have to be exactly 30 days.

NAWC nevertheless disagrees with the proposal to allow protests to be filed late, as long as due cause is shown. Under the proposal as presently drafted, a protest can be filed at any time, subject only to the requirement that the protestant establish good cause for filing the protest after thirty days. NAWC is concerned that protests could be filed well after the thirty-day deadline, when Commission staff may be almost done with their review of the application.

Allowing a protest to be filed late requires the application to be referred to an Administrative Law Judge for a determination of whether the protestant had good cause for filing the protest late. If the judge determines that the protestant did not have good cause for filing the protest late, the proceeding would need to be referred back to the Bureau of Technical Utility Services for further processing as an uncontested application. Transferring the matter back and forth among Commission bureaus would unnecessarily delay processing the application, as

Commission staff stops and re-starts its review of the application. To avoid this situation, the regulations should establish a firm due date for protests (as does the current regulation at 52 Pa. Code § 5.53).⁴

V. COMMENTS ON PROPOSED NEW REGULATION AT 52 PA. CODE § 3.503

NAWC has no comments regarding the proposed new regulation regarding system of accounts for wastewater utilities.

VI. COMMENTS ON PROPOSED AMENDMENTS TO 52 PA. CODE § 65.16

NAWC has no comments on the proposed amendment to 52 Pa. Code § 65.16 (regarding system of accounts for water utilities).

VII. CONCLUSION

NAWC thanks the Commission for the opportunity to submit these comments on the NOPR Order. NAWC looks forward to working with the Commission and other stakeholders on the issues raised in the NOPR Order.

[Signature appears on next page.]

⁴ NAWC further notes that municipal entities are able to schedule special meetings and executive sessions in order to ensure that they are able to meet protest deadlines. Granting special privileges to municipal entities could result in equal protection violations.

Respectfully submitted,



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Date: October 12, 2022

APPENDIX A

Appendix A to the Comments of the Nation Association of Water Companies – Pennsylvania Chapter

Docket No.	Company	Application Type	Chronology	Comments/Concerns
A-2022-3030651	Pennsylvania-American Water Company	Extension of service to serve a new development and 18 existing homes.	Filed: 1/27/22 Data Request Set I: 7/6/22 (19 questions) Approved: 9/15/22	More than five months passed before any data requests were issued. Data requests included requests for Commission Orders and other documents from specified Commission docket numbers.
A-2021-3026208	Aqua Pennsylvania Wastewater, Inc.	Extension of service to one commercial property	Filed: 6/2/21 Data Request Set I: 7/16/21 (4 questions) Approved: 11-8-21	Data requests concerned DEP filings pertaining to the Avondale Borough system, which is not PUC jurisdictional.
A-2021-3025160	Pennsylvania-American Water Company	Extension of service territory and approval of emergency interconnection agreement with municipal authority.	Filed: 4/9/21 Data Request Set I: 8/9/21 (13 questions) Data Request Set II: 9-15-21 (2 questions) Approved: 11-18-21	Four months passed before any data requests were issued, and these included requests for the rates and board resolutions of the municipal authority.

A-2020-3023369	Pennsylvania-American Water Company	Acquisition of an existing provider that served 8 commercial customers in an industrial park.	Filed: 12/18/20 Data Request Set I: 2/4/21 (22 questions) Data Request Set II: 3/9/21 (10 questions) Data Request Set III: 6/8/21 (7 questions) Approved: 11/15/21	Data requests included requests for a list of all assets of the acquired entity by plant category, requests for information about grants used to build the system being acquired, and proof that PAWC complied with an ordering paragraph from a 2019 Commission decision regarding its quarterly DSIC filings.
A-2019-3008204	Aqua Pennsylvania Wastewater, Inc.	Extension of service to 2 existing homes and 6 proposed new homes	Filed: 2/27/19 Data Request Set I: 3/15/19 (18 questions) Approved: 4/25/19	Data requests related to size and material of an existing force main and what side of the road it was on. Also requested a copy of a DEP permit that was not required.
A-2019-3013427	Aqua Pennsylvania, Inc.	Request for territory for a new residential development (37 homes) and 16 additional residential properties.	Filed: 10/9/19 Data Request Set I: 10/22/19 (22 questions) Data Request Set II: 11/15/19 (1 question) Data Request Set III: 11/21/19 (3 questions) Approved: 12/19/19	Data requests focused on a small discrepancy in project costs, requested an explanation of why certain DEP permits were not required, and questioned the need for and cost of easements.

A-2014-2446227	Aqua Pennsylvania, Inc.	Request for an additional service territory, mainly in a new development.	Filed: 10/6/14 Data Request Set I: 8 questions Data Request Set II: 12 questions Approved: 6/11/15	Data requests focused on who was financing a wastewater treatment plant to serve the property (Aqua only provided water service), a preliminary estimate of pipe totals by size, and information about revenue from fire hydrants.
A-2014-2455989	Aqua Pennsylvania, Inc.	Request to extend main 1,400 feet to connect to a new school.	Filed: 12/3/14 Data Request Set I: 16 questions Data Request Set II: 12 questions Approved: 5/7/15	Data requests focused on why a private road was not shown on maps, information about a minor stream crossing and land development plans for the school (although the utility's meters were along the state highway).

APPENDIX B

**APPENDIX B TO THE COMMENTS OF THE
NATIONAL ASSOCIATION OF WATER COMPANIES – PENNSYLVANIA
CHAPTER**

**ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 64. SPECIAL PROVISIONS
Subchapter G. WATER OR WASTEWATER UTILITY PROCEEDINGS**

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

(a) *[Applicant.] New applicant, Class B, Class C, and non-acquisition Class A water and wastewater applications. A new applicant, an applicant that uses the system of accounts for Class A utilities under § 65.16 whose application does not qualify under subsection (b), or an applicant that uses the system of accounts for Class B or C water utilities under § 65.16 (relating to system of accounts) or Class B or C wastewater utilities under § 3.503 (relating to system of accounts), which seeks a certificate of public convenience as a public water **distribution** or wastewater collection, treatment or disposal provider, including noncertificated utilities, shall provide a copy of the business plan required by the Department of Environmental Protection (DEP) in 25 Pa. Code § 109.503(a)(3) (relating to public water system construction permits).**[The Commission may reject an application which fails to include the required information and documents.]*** The following additional information, or documents, if not included in the business plan, shall also be included in the application, using the current forms and schedules specified by the Commission.

(1) *Plant in service.*

(i) Proposed utilities shall provide:

(A) A full description of the proposed waterworks or wastewater collection, treatment and disposal facilities and the manner, including the timing, in which the proposed service area and utility will be constructed.

(B) A breakdown of the cost of construction, by major plant category, including the sources of funds used to construct the facilities.

(ii) Utilities that have been providing service shall provide **the following**:

(A) The original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations.

(B) A breakdown of the sources of funds used to finance the construction of the facilities.

(iii) Applicants acquiring existing water or wastewater systems shall provide:

(A) An inventory or estimate of lead service lines and damaged wastewater service laterals existing within the system, as applicable. The applicant shall state with particularity how potential lead service lines and wastewater service laterals will be included in utility programs for the replacement of these lines as required by § 65.55 and 66.35.

(B) An original cost plant-in-service valuation of the acquired system shall be prepared and filed for the applicant's next base rate case in accordance with 52 Pa. Code § 69.711(e) (Time to submit original cost valuation).

(2) *Map of service area **and general system information**.* A map or plan of suitable scale **and detail** highlighting the boundaries of the proposed service area, including:

(i) A ~~courses and distances or metes and bounds~~ **bearing angles and distances** description.

~~(ii)~~—The location or route of the proposed waterworks or wastewater collection, treatment or disposal facilities.

~~(iii)~~ The approximate time schedule for installation of the various component facilities.

~~(iv)~~ ~~The elevations of major facilities and service areas.~~

~~(iii)~~ The DEP-permitted productive or treatment capacity of sources, treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.

[(vi) A copy of the county comprehensive plan, municipal comprehensive plan and applicable zoning designations.]

(3) *Customers.*

(i) Proposed utilities shall provide an estimate of the number of customer connections by class in the first, fifth and tenth years, and completed development anticipated, as well as estimated water usage or gallons of wastewater treated in each of those years.

(ii) Utilities that have been providing service shall submit the actual number of customers by class and related consumption or gallons treated, **or conveyed where a utility does not provide treatment,** in the current calendar year and future number of connections anticipated for the next [10]5 years.

(iii) Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands.

(4) *Rates.*

(i) Proposed utilities shall provide a proposed initial tariff which includes rates, proposed rules, and conditions of service in the format specified by the Commission (classified rate schedule).

(ii) Utilities which have been providing service shall provide a proposed initial tariff which includes rates, proposed rules, and conditions of service. The utility shall notify the customers of the utility of the filing of the application and the rates filed.

(5) *Cost of service.*

(i) Proposed utilities shall provide a 1, 5 and 10-year estimate of operating revenues, operation and maintenance expenses, annual depreciation and taxes. If operating income reflects a loss, proposed utilities shall provide a detailed explanation of the source of funds to be used to subsidize the estimated losses in support of future viability.

(ii) Utilities that have been providing service shall file **[the two most recent Federal Income Tax Returns (corporation) or related Schedule C forms (partnership or individual). If tax returns reflect an operating loss, utilities shall describe in detail how the operating losses are subsidized, supported by an analysis of the future viability of the utility.]its most recent balance sheet and income statement and, where applicable, the acquired public utility's most recent financial statements. The applicant shall also state the projected first-year revenue and operating expenses of the system. If the projected first-year revenue and operating expenses of the system project a net operating loss, the applicant shall describe in detail how the operating loss is to be subsidized, supported by an analysis of the future viability of the public utility.**

(6) *Proof of compliance.* Proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:

(i) Copies of public water supply/water quality management or National Pollution Discharge Elimination System (NPDES) permits if applicable.

(ii) Valid certified operators' certificates appropriate to the facilities being operated.

(iii) A 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service.

(iv) A DEP 5-year compliance history of other utilities owned or operated, or both, by the applicant, including affiliates, and their officers and parent corporations with regard to the provision of utility service.

(7) *Additional documentation.* **[In addition to a copy of the documents submitted under paragraphs (1)--(6), the applicant] (i) An applicant** shall submit a letter[**addressing all the applicable requirements or mandates of the following governmental entities. The letter must also append copies of certification**] issued by the following governmental entities confirming that the applicant does or does not meet all the applicable requirements or mandates of the following:

([i]A) DEP, including but not limited to 25 Pa. Code § 109.709 (regarding cross-connection control programs) and 25 Pa. Code § 109.702 (regarding operation and maintenance plan).

([ii]B) The Delaware River Basin Commission, the Susquehanna River Basin Commission, the Ohio River Basin Commission and the Great Lakes Commission.

([iii]C) The requirements of any Statewide water plan, including any local watershed areas.

([iv]D) The requirements of any officially adopted county comprehensive plans, municipal comprehensive plans, and applicable zoning designations, including any necessary amendments.

(ii) An applicant which is unable to obtain the letters described in subsection (i) shall include with its application the requirements of the governmental entities that are applicable and shall certify that it is in compliance with these requirements. The applicant shall submit copies of applicable county comprehensive plans, municipal comprehensive plans, and applicable zoning designations, including any necessary amendments.

(8) *Affected persons.* The identity of public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water supply service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adjacent to the municipalities, in which the applicant seeks to provide service that abuts or is situated within 1 mile of the applicant's proposed facilities.

(9) *Other requirements.* Demonstrate compliance with DEP regulations in 25 Pa. Code § 109.503(a)(3) or section 5 of the Pennsylvania Sewage Facilities Act requirements (35 P.S. § 750.5), whichever is applicable; or whether the applicant has contacted each public

water supplier or wastewater collection, treatment or disposal supplier in paragraph (8), and one of the following applies:

(i) Whether a supplier is willing and able to serve the area which the applicant seeks to serve either directly or through the bulk sale of water to the applicant, or treatment of wastewater to the applicant.

(ii) If one or more supplier is willing to serve the area (either directly or through the bulk sale of water to applicant), the applicant should demonstrate that, when considering both the cost of service and the quality of service, the ultimate consumer would be better served by the applicant than by the other water suppliers.

(10) **[Verification. A verification that the water sources and customers are metered in accordance with § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.]**

Service area extensions for planned developments. If an application is filed 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.

(b) Class A water and wastewater acquisition applications. An applicant that currently provides service in the Commonwealth utilizing the system of accounts for Class A water utilities under § 65.16(a) (relating to system of accounts) or Class A wastewater utilities under § 3.503 (relating to system of accounts) which seeks a certificate of public convenience to acquire a public water distribution or wastewater collection, treatment, or disposal system shall provide the following information with the application, using forms and schedules of the Commission if specified.

(1) Plant in service. A full-description of the waterworks or wastewater collection, treatment and disposal facilities. If any of this information is unavailable from the acquired public water distribution or wastewater collection, treatment or disposal system operator the applicant shall so state and explain why.

(i) An inventory or estimate of known lead service lines and damaged wastewater service laterals existing within the system, as applicable. The applicant shall state with particularity how potential lead service lines and wastewater service laterals will be included in utility programs for the replacement of these lines as required by § 65.55 and 66.35. It is understood that both lead service lines and damaged wastewater laterals are not the property of either the selling entity or the acquiring public utility. The lack of this information at the time of the application filing will not prevent the Commission from approving an application. The

Commission can require compliance with § 65.55 and 66.35 after approval of the application.

(ii) An original cost plant-in-service valuation of the acquired system shall be prepared and filed for the applicant's next base rate case in accordance with 52 Pa. Code § 69.711(e) (Time to submit original cost valuation).

(2) Map of service area. A map or plan of suitable scale and detail, highlighting the boundaries of the proposed service area:

~~(i) A bearing angles and distances description, and~~

~~(ii)~~

(i) The location or route of the waterworks or wastewater collection, treatment or disposal facilities, and.

~~(iii) The elevations of major facilities and service areas.~~

(3) Capacity. The

(i) DEP-permitted productive Sewage Facilities Planning Module Approval or Waiver, or a statement that there is capacity in the water or wastewater treatment capacity of sources, treatment facilities, major distribution or collection facilities, and, plant to provide service to the additional customers of the subject application.

(ii) To the extent known at the time of filing, a general description of the pipe sizes and material used for construction for all transmission and distribution or collection facilities.

(4) Zoning and additional compliance certifications for un-served service area. A certification that the un-served requested service area complies with the county comprehensive plan, municipal comprehensive plan, and applicable zoning designations. DEP Sewage Facilities Planning Module Approval or Waiver will suffice for compliance with zoning and comprehensive planning.

(5) Customers. The actual number of customers of the selling entity by class, related consumption or gallons treated in the previous calendar year, if available, and the future number of estimated wastewater connections for the next 5 years. If the selling entity will continue to provide service to customers after closing on a proposed transaction, values for the number of customers of the selling entity by class and related consumption or gallons treated before and after closing shall be provided.

(6) Rates. A proposed initial tariff which includes rates, proposed rules, and conditions of service. The applicant shall notify the customers of the selling entity of the filing of the application and any proposed rate changes. This notification may be included in the notice required by Section 3.501(f).

(7) ~~Selling entity's proof of compliance~~ DEP Historical Compliance Record. Proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including An Applicant will provide the following information with an application, if available and if not available an applicant will provide an explanation:

(i) Copies of public water supply/water quality management, Chapter 105 Dams and Reservoirs or National Pollution Discharge Elimination System (NPDES) permits if applicable. If such information is unavailable after research, Class A Water/Wastewater utilities can proceed with the application by verification that a search was conducted.

~~(ii) Valid certified operators' certificates appropriate to the facilities being operated.~~

(iii) The selling entity's 53-year compliance history with DEP with a brief explanation of each violation, if any.

~~(iv) The applicant shall identify applicable requirements of the governmental entities listed in subsection (a)(7)(i), and shall certify that the applicant complies with the applicable requirements of those entities.~~

(iiiv) Copies of the applicable Act 537 Plan documents for all affected municipalities relating to the acquired service area, as required by section 5 of the Pennsylvania DEP Sewage Facilities Act (35 P. S. § 750.5). Planning Module Approval or Waiver.

(8) For Class A water or wastewater companies, the applicant may include a request for waiver of any of the requirements that may not be available, easily accessible, or does not exist.

(c) Metering verification. An application to provide water service must include a verification that the water sources and customers are metered in accordance with 52 Pa. Code § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.

[(b)] (d) Additional considerations. The Commission will consider and may rely upon the comprehensive plans, multimunicipal plans, zoning ordinances and joint municipal zoning ordinances, consistent with the authority in sections 619.2 and 1105 of the Municipalities Planning Code (53 P. S. §§ 10619.2 and 11105), when reviewing applications for a certificate of public convenience as a public water supplier or wastewater collection, treatment or disposal provider.

[(c)] (e) Filing. Applications under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and filing specifications), and include a mode of payment as prescribed by § 1.42 (relating to mode of payment of fees) and in the

amount delineated in § 1.43 (relating to schedule of fees payable to the Commission). The applicant shall file with the Commission the original of the application. An application which fails to include the information and documents outlined in subsections (a) ~~and~~, (b) ~~and~~ (c), as specified by the Commission for water and wastewater collection, treatment or disposal companies, is subject to rejection by the Commission. The original must contain exhibits. An affidavit of service showing the identity of those served under subsection ~~(f)~~ (g) shall accompany the original application filed with the Commission.

~~(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 notify acquired customers of the filing of the application. 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 newspaper notice provided under this section shall include conspicuous notice that such an ordinance applies.

~~(e)~~ (g) *Application form.* The Commission may provide [a] standard application ~~[form]~~ forms for use by an applicant for this section and will, to the extent practicable, provide the application ~~[form]~~ forms on the Commission's website.

(1) Any standard application form developed for purposes of this section that involves a matter of an interagency nature will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with interested persons or agencies is conducted.

(2) Any standard application form developed for purposes of this section that involves matters other than those governed by paragraph (1) will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with any interested persons or agencies is conducted.

(3) Any standard application form developed for purposes of this section will be developed by the Commission staff and may be subject to formal approval by the Commission. Any standard application form developed for purposes of this section not formally approved by the Commission shall be subject to § 5.44 (relating to petitions for [appeal] reconsideration from actions of the staff).

[(f)] **(h)** *Copies.*

(1) At the time of filing, the applicant shall cause a complete copy of the application with exhibits to be served by registered or certified mail, return receipt requested, upon:

(1) **(i)** Each city, borough, town, township, county and related planning office which is included, in whole or in part, in the proposed service area.

(ii) The statutory advocates and DEP's central and regional offices.

(2) A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts ~~or is within 1 mile of~~ the service area proposed in the application.

[**(3) The statutory advocates and DEP's central and regional offices.**]

[(g)] **(i) References.** [Subsection] **Subsections (a) and (b) [supplements] supplement** § 5.11 (relating to applications generally).

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

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(d) *Protests: time of filing.* A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be ~~not more than~~ at least [60] 30 days from the date of publication ~~thereof except [when the need for the proposed service or other exigent circumstances supports a request for a shorter protest period] upon good cause shown.~~ Failure to file the protest in accordance with this subsection shall be a bar to subsequent participation in the proceeding, except if permitted by the Commission for good cause shown or as provided in § 5.71 (relating to initiation of intervention). ~~In determining whether good cause has been shown for a protest beyond the period set forth in this section, the Commission will take into account whether the scheduling of a municipal meeting has caused hardship for a timely protest.~~

§ 3.503. System of accounts for wastewater utilities

(a) A public utility having annual jurisdictional operating revenue of \$1,000,000 or more (average of the last 3 consecutive years) for wastewater service shall keep its accounts in conformity with the most recent Uniform System of Accounts for Class A Wastewater Utilities prescribed by the National Association of Regulatory Utility Commissioners (N.A.R.U.C.) published prior to the effective date of this section.

(b) A public utility having annual jurisdictional operating revenues of \$200,000 or more but less than \$1,000,000 (average of the last 3 consecutive years) for wastewater service shall keep its accounts in conformity with the most recent Uniform System of Accounts for Class B Wastewater Utilities prescribed by N.A.R.U.C published prior to the effective date of this section.

(c) A public utility having annual jurisdictional operating revenues of less than \$200,000 (average of the last 3 consecutive years) for wastewater service shall keep its accounts in conformity with the most recent Uniform System of Accounts for Class C Wastewater Utilities prescribed by N.A.R.U.C published prior to the effective date of this section.

(d) Public utilities subject to this section shall have until one year from the effective date of this section to convert to the most recent Uniform System of Accounts for Class A, Class B, or Class C Wastewater Utilities prescribed by N.A.R.U.C.

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**Subpart C. GENERAL PROVISIONS
CHAPTER 65. WATER SERVICE**

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§ 65.16. System of accounts for water utilities

(a) A public utility having annual **jurisdictional** operating revenue of ~~[\$750,000]~~**\$1,000,000** or more (average of the last 3 consecutive years) **for water service** shall keep its accounts in conformity with the most recent Uniform System of Accounts for Class A Water Utilities prescribed by the National Association of Regulatory Utility Commissioners (N.A.R.U.C.) **published prior to the effective date of this section.**

(b) A public utility having annual **jurisdictional** operating revenues of ~~[\$150,000]~~**\$200,000** or more but less than ~~[\$750,000]~~**\$1,000,000** (average of the last 3 consecutive years) **for water service** shall keep its accounts in conformity with the **most**

recent Uniform System of Accounts for Class B Water Utilities prescribed by N.A.R.U.C **published prior to the effective date of this section.**

(c) A public utility having annual **jurisdictional** operating revenues of less than **[\$150,000]\$200,000** (average of the last 3 consecutive years) **for water service** shall keep its accounts in conformity with the most recent Uniform System of Accounts for Class C Water **[Companies]Utilities** prescribed by N.A.R.U.C **published prior to the effective date of this section.**

(d) Public utilities subject to this section shall have until **[January 1, 2000,]one year** **from the effective date of this section** to convert to the most recent Uniform System of Accounts for Class A, Class B, or Class C Water Utilities prescribed by N.A.R.U.C.