



November 10, 2022

**VIA E-File**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street, Filing Room  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta,

Please find the **Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**, which are respectfully submitted for consideration in the above referenced docket, pursuant to the Notice of Proposed Rulemaking published in the *Pennsylvania Bulletin* on August 13, 2022. An electronic copy will be provided to Commission Staff, as indicated below.

Respectfully submitted,

John W. Sweet, Esq.

John W. Sweet, Esq.  
*Counsel for CAUSE-PA*

CC: Christian McDewell, Law Bureau, [cmcdewell@pa.gov](mailto:cmcdewell@pa.gov)  
Clinton McKinley, Bureau of Technical Utility Services, [cmckinley@pa.gov](mailto:cmckinley@pa.gov)  
Paul Zander, Bureau of Technical Utility Services, [pzander@pa.gov](mailto:pzander@pa.gov)

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

REPLY COMMENTS OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY  
IN PENNSYLVANIA (CAUSE-PA)

---

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*

John W. Sweet, Esq., PA ID: 320182  
Elizabeth R. Marx, Esq., PA ID: 309014  
Ria M. Pereira, Esq., PA ID: 316771  
Lauren Berman, Esq., PA ID: 310116

118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088

[pulp@pautilitylawproject.org](mailto:pulp@pautilitylawproject.org)

November 10, 2022

## **I. INTRODUCTION AND BACKGROUND**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) respectfully submits the following Reply Comments consistent with the Commission's Notice of Proposed Rulemaking Order, published in the Pennsylvania Bulletin on August 13, 2022, inviting comments and reply comments on the Commission's Investigation into the Application of 52 Pa. Code § 3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers, and Transfers.

On October 11, 2022, CAUSE-PA, the Office of Consumer Advocate (OCA), the Pennsylvania Municipal Authorities Association (PMAA), the National Association of Water Companies (NAWC), Aqua Pennsylvania, Inc. (Aqua), and Pennsylvania-American Water (PAWC) each submitted initial Comments. In our initial Comments, CAUSE-PA voiced concern about the about the economic impact of water and wastewater acquisitions on low income communities and urged the Commission to explicitly consider these impacts in all acquisition, merger, or transfer proceeding.<sup>1</sup> CAUSE-PA made several recommendations targeted to help the Commission consider these impacts and to help prevent rate shock and hardships among vulnerable consumers.<sup>2</sup>

CAUSE-PA submits the following Reply Comments for the Commission's consideration in response to the initial Comments of the other parties. For the sake of brevity, CAUSE-PA will not reiterate arguments raised in initial Comments but incorporates those arguments by reference. To the extent that any argument raised in any other parties' initial Comments is not addressed, our silence should not be construed as CAUSE-PA's agreement thereto.

---

<sup>1</sup> CAUSE-PA Comments at 4-7.

<sup>2</sup> Id. at 7-10

CAUSE-PA supports the comments submitted by the OCA and the PMAA and urges the Commission to protect the due process rights of members of the public by retaining the existing protest period and *bolstering*, rather than curtailing, the public notice requirements. CAUSE-PA opposes the comments of NAWC, Aqua, and PAWC to the extent those comments sought to shorten the protest period and curtail public notice requirements. CAUSE-PA also supports inclusion of a requirement that the acquiring utility submit an inventory of lead service lines (LSLs) and damaged wastewater service laterals (DWSL).

## II. REPLY COMMENTS

### a. **The Commission should retain the existing 60 day protest period, should *not* curtail public notice requirements, and should add electronic notice requirements.**

In their initial comments, OCA and PMAA each opposed the Commission’s proposed revision to Section 3.501(f), which would shorten the protest period from 60 days to 30 days.<sup>3</sup> OCA and PMAA also each opposed the proposed lessening of public notice requirements in Section 3.501(f).<sup>4</sup> CAUSE-PA shares PMAA and OCA’s concerns and agrees with OCA that “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.”<sup>5</sup> Truncating the public protest period, while at the same time curtailing public notice requirements, could effectively foreclose public participation in these proceedings. The adequacy of the *current* 60-day protest period is questionable given municipal meeting schedules and other potential barriers to receiving public input. As explained in more detail below, limiting the amount of time to file a protest and reducing

---

<sup>3</sup> OCA Comments at 2, PMAA Comments at 1.

<sup>4</sup> OCA Comments at 3, PMAA Comments at 2.

<sup>5</sup> OCA Comments at 2.

the ways in which consumers are notified of an impending change negatively impacts the due process rights of consumers, who will necessarily be impacted by a proposed acquisition.

CAUSE-PA agrees with OCA and PMAA that it is unnecessary and unreasonable to require that the public learn about, understand, deliberate, and respond to an acquisition proposal within just 30 days. Cutting the protest period in half will not provide members of the public sufficient time to review and evaluate the potential impacts of an application, especially for businesses, community groups, and nonprofits who must retain counsel in order to participate in such proceedings. CAUSE-PA therefore respectfully recommends that the Commission retain the existing 60-day protest period consistent with the recommendations of OCA.

CAUSE-PA also agrees with PMAA that the goal should be to ensure that as many members of the public potentially impacted by an application be given timely notice that provides adequate detail and information necessary to understand the application.<sup>6</sup> Reducing the public notice requirements in Section 3.501 could result in affected members of the public missing notice of the application. This problem would be exacerbated if the Commission also shortens the protest period – causing members of the impacted public to learn of the impending transaction only *after* the date to file a protest had passed.

CAUSE-PA recognizes that notification requirements in printed newspapers are perhaps not the most expedient manner by which to distribute information, as printed newspapers have declined in popularity – giving rise to increased reliance on electronic communications. CAUSE-PA thus strongly supports OCA’s recommendation that revisions to the notice requirement include multiple options for distribution to ensure customers are actually informed of a pending acquisition, including “direct notice to the seller’s customers either through bill inserts or notice

---

<sup>6</sup> PMAA Comments at 2.

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.”<sup>7</sup> If the Commission decides to reduce the required newspaper circulation based on the limited reach of printed newspapers, it should replace the newspaper requirement with the electronic publication requirements recommended by OCA.

In sum, CAUSE-PA opposes shortening the public protest period from 60 days to 30 days and respectfully asserts that the Commission should take the steps recommended by the OCA to ensure that members of the public are properly informed about all proposed transactions.

**b. The Commission should require an inventory of LSLs and DWSLs**

In their initial comments, NAWC, Aqua, and PAWC each oppose the Commission's proposed section 3.501(b)(1)(i), which requires acquiring utilities include “an inventory or estimate of lead service lines and damaged wastewater service laterals existing within the system.”<sup>8</sup> CAUSE-PA supports the required inclusion of an inventory of LSLs and DWSLs and strongly disagrees with the position presented by NAWC, Aqua, and PAWC that the acquiring utility should be allowed to complete such inventories after the transaction has been completed.

CAUSE-PA agrees with the Commission's stated rationale in the NOPR that discovering and replacing LSLs and DWSLs and understanding the costs of replacement is critical to understanding the public benefits of an acquisition, and that identifying these public health risks is the first step in their mitigation.<sup>9</sup> Pennsylvania is facing a lead crisis that poses a serious risk to public health and safety throughout the state.<sup>10</sup> Low income families and people of color have a

---

<sup>7</sup> OCA Comments at 4.

<sup>8</sup> NAWC Comments at 8; Aqua Comments at 5; PAWC Comments at 6.

<sup>9</sup> NOPR at 32.

<sup>10</sup> General Assembly of the Commonwealth of Pennsylvania, Lead Exposure Risks and Responses in Pennsylvania: Report of the Advisory Committee and Task Force on Lead Exposure (April 2019) (hereinafter Lead Task Force Report).

higher risk of lead exposure, and are more likely to experience the negative health impacts associated with exposure to lead through drinking water.<sup>11</sup> As one study concluded, “Lead toxicity is a source of ecological inequity by race and a pathway through which inequality literally gets into the body.”<sup>12</sup> It is critical to remove lead from all our water systems. But we cannot do so without also acknowledging the cost and the resulting impact on rates, which also has a disproportionate impact on low income households - many of whom struggle profoundly to keep up with rising cost for water and wastewater services in their homes.

As PAWC acknowledges in its initial comments, a Class A utility is obligated to address LSLs and DWSLs after closing on the acquisition.<sup>13</sup> Thus, when a Class A utility agrees to purchase a water or wastewater system, that utility is committing its existing customers – including its low income customer base – to pay for a portion of the remediation of lead service lines and damaged wastewater service laterals within that system. Notably, publicly owned municipal authorities may have access to public funding and low-cost financing that is not available to private water utilities.<sup>14</sup> Such funds could help remediate lead service lines without passing costs onto consumers through rates - making it particularly important to determine the extent to which there is lead in an acquired utility’s system before a sale is finalized. It is imperative that the acquiring utility understand and disclose the potential cost that will be borne by its ratepayers before being allowed to complete an acquisition.

---

<sup>11</sup> See Coty Montag, Water/Color: A Study of Race and the Water Affordability Crisis in America’s Cities, NAACP Legal Defense and Educational Fund, Inc, May 2019, at 58-59, (hereinafter “Water/Color Report”) available at: [https://www.naacpldf.org/wp-content/uploads/Water\\_Report\\_FULL\\_5\\_31\\_19\\_FINAL\\_OPT.pdf](https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf).

<sup>12</sup> Robert J. Sampson, Alix S. Winter, The Racial Ecology of Lead Poisoning. Toxic Inequality in Chicago Neighborhoods, 1995-2013, Du Bois Review, at 19 (2016), available at: [https://scholar.harvard.edu/files/alixwinter/files/sampson\\_winter\\_2016.pdf](https://scholar.harvard.edu/files/alixwinter/files/sampson_winter_2016.pdf).

<sup>13</sup> PAWC Comments at 6.

<sup>14</sup> See, e.g., EPA, Clean Water State Revolving Fund: CWSRF Project Eligibilities, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf#eligibilities> (while some funds are available for private water system projects, most funds are limited to supporting water, wastewater, and stormwater projects of publicly owned systems.)

In their initial comments, NAWC, Aqua, and PAWC each assert that prior to ownership the acquiring utility would not have access to the information needed to develop an inventory of LSLs and DWSLs and that sellers often have limited knowledge about the amount of LSLs and DWSLs in their system.<sup>15</sup> They claim that lack of ownership would make an estimate of LSLs and DWSLs unreliable.<sup>16</sup> However, given the current rulemaking is focused on streamlining applications based on the expertise of Class A utilities, acquiring Class A utilities should use that stated expertise to help complete the inventory *prior to* acquisition. If an acquiring utility lacks the in-house expertise to complete this portion of the application, they could employ water analytics companies that specialize in using predictive machine learning software to locate lead service lines and can help utilities develop an estimate. There may be public funds available to small, publicly owned water utilities that can assist with technical capacity for lead inventory and contamination response, among other necessary lead removal activities.<sup>17</sup> Methods for conducting a service line inventory are well established and acquiring utilities can use available information and existing services to complete the required inventories.

It is impossible for any utility, or the Commission, to understand the full cost of an acquisition without having this key piece of information available. The cost of identifying and remediating LSLs and DWSLs will be passed onto ratepayers.<sup>18</sup> Under Act 120, utilities are authorized to recover the costs of LSLs and DWSLs from ratepayers;<sup>19</sup> therefore, the increased rates as a result of the acquisition could be compounded by the additional costs of repairing and replacing LSLs and DWSLs that were not previously identified before entering the transaction.

---

<sup>15</sup> NAWC Comments at 8; Aqua Comments at 5; PAWC Comments at 6.

<sup>16</sup> NAWC Comments at 9.

<sup>17</sup> See, e.g., PENNVEST, Funding Programs, <https://www.pennvest.pa.gov/Information/Funding-Programs/Pages/default.aspx>.

<sup>18</sup> See Rulemaking to Implement Act 120 of 2018 at 52 Pa. Code Ch. 65 and 66, L-2020-3019521, Final Order entered Mar. 14, 2022.

<sup>19</sup> Id.

CAUSE-PA is concerned that lacking the full cost of the acquisition prior to Commission approval could result in an additional increase to consumer costs, rendering water and wastewater services unaffordable and inaccessible for low income consumers. Consumers most impacted by environmental health effects of LSLs and DWSLs will also be the most impacted by the cost of replacing them, and that cost can and will be detrimental to their ability to afford safe and stable water and wastewater service to their homes.

For these reasons, CAUSE-PA supports the Commission's proposed requirement that an inventory of LSLs and DWSLs must be completed *before* an acquisition is approved. This would help ensure the transaction has a public benefit by ensuring that LSLs and DWSLs are identified, and that the acquiring utility and its customers understand the potential cost of replacing them.

### **III. CONCLUSION**

CAUSE-PA acknowledges that safe drinking water is of the utmost importance, and we recognize in equal measure that safe drinking water must also be accessible and affordable for all residents. CAUSE-PA thanks the Commission for the opportunity to comment on this critically important issue and respectfully requests that, if the acquisition application requirements are simplified, the Commission take additional steps to ensure that any such acquisition does not harm low income consumers.

Respectfully Submitted,  
*Counsel for CAUSE-PA*



---

John W. Sweet, Esq., PA ID: 320182  
Elizabeth R. Marx, Esq., PA ID: 309014  
Ria M. Pereira, Esq., PA ID: 316771  
Lauren Berman, Esq., PA ID: 310116  
PENNSYLVANIA UTILITY LAW PROJECT  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
[pulp@pautilitylawproject.org](mailto:pulp@pautilitylawproject.org)

November 10, 2022