

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

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

**Public Meeting February 6, 2020
Docket #: L-2020-3017232
3017232-CMR**

MOTION OF COMMISSIONER RALPH V. YANORA

More than 40 years ago, the Pennsylvania Public Utility Commission (Commission) promulgated Section 3.501 of our Regulations, 52 Pa. Code § 3.501, to provide detailed requirements on what information is necessary for us to evaluate whether applications for Certificates of Public Convenience under 66 Pa. C.S. § 1102 are in the public interest. Shortly after the enactment of Section 3.501, Pennsylvania experienced an increase in land development requiring the construction of numerous small-scale water and wastewater treatment systems throughout the Commonwealth. Unfortunately, many of these small-scale systems did not have the potential to guarantee long-term operational viability. As a result, to discourage the formation of potentially non-viable small-scale systems, the Commission, working in cooperation with the Department of Environmental Protection (DEP), greatly expanded Section 3.501 to require more detailed filings and information over time.¹

In 1993, the Commission and DEP developed and entered into a Memorandum of Understanding (MOU) to coordinate “policies to restrict the formation of new non-viable water systems.”² Both the MOU and subsequent amendments to Section 3.501 represent the cooperative effort between the Commission and DEP to ensure the long-term viability of all new water systems.³

Although the documentation requirements under Section 3.501 effectively worked to discourage the *creation* of non-viable small-scale systems for decades, the Commission now faces new challenges regarding the application of Section 3.501. In light of increasing environmental requirements and emerging contaminants like lead, PFOA, and PFOS, the Commission recognizes that we need to do more to encourage water and wastewater system

¹ In the Commission’s 1997 rulemaking process amending Section 3.501, we explained that “[a]lthough more detail is required, most of the requirements can be met by submitting the same documents to the Commission as must be submitted to DEP.” 27 Pa. B. 414, 419.

² Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Public Utility Commission (entered into December 2, 1993).

³ During the 2006 amendment process to Section 3.501, the Commission recognized that the amendment “reflects our agreement with IRRC and DEP about important considerations that should be considered when evaluating an application. 36 Pa. B. 2097, 2098-2099.

*consolidation and regionalization.*⁴ The Commonwealth Court has also recently acknowledged that consolidation and regionalization of water and wastewater assets are a public benefit to Pennsylvania ratepayers.⁵ Further, the General Assembly has specifically encouraged an ongoing policy of system consolidation by virtue of its passage of 66 Pa. C.S. § 1329 (providing for the sale of public water and wastewater assets at fair market value).⁶

In light of these policy goals, the documentation requirements under Section 3.501 for certificated applicants in good standing may be too extensive and have the undesired effect of acting as an impediment to water and wastewater system consolidation and regionalization. Additionally, Section 3.501 seeks information related to the types of financial and managerial fitness that certificated utilities are assumed to possess.⁷ Further, Section 3.501 does not distinguish among the various classes of utility water service providers recognized by the Commission.⁸

To that end, I understand that the Commission’s Law Bureau and Bureau of Technical Utility Services have informally examined some of these issues. To continue this work, I believe that the Commission should formally initiate a rulemaking process regarding Section 3.501 consistent the policy goals outlined herein. The rulemaking should address:

- Exemptions for Class A water and wastewater service providers to remove requirements that are not necessary for these companies;
- The Commonwealth’s long-standing goals of regionalization and consolidation in a manner that reflects efficiencies in terms of cost and time;
- How acquiring providers will work to mitigate contaminants such as lead, PFOA/PFOS, and Legionella from the drinking water supplies of acquired systems and the Commission’s tariff approval obligations related to DEP cross-connection control and backflow prevention requirements concerning these contaminants; and
- Recognition of the joint regulatory compact between the Commission and DEP and consideration of how the agencies might periodically update the 1993 MOU to reflect the most recent water, wastewater, and stormwater service and safety standards the Commission is obligated to enforce.
- Any related matters that would serve to advance the goals of 52 Pa. Code § 3.501.

⁴ The Commission has stated that “[t]he regionalization of water and wastewater systems through mergers and acquisitions will allow the water industry to institute better management practices and achieve greater economies of scale.” 52 Pa. Code § 69.721(a) (*adopted* September 29, 2006).

⁵ *McCloskey v. Pa. PUC*, 195 A.2d 1055 (Pa. Cmwth. 2018).

⁶ Act 12 of 2016.

⁷ See *Chester Water Authority v. Pa. PUC*, 868 A.2d 384 (Pa. 2005); *Seaboard Tank Lines, Inc. v. Pa. PUC*, 502 A.2d 262 (Pa. Cmwth. 1985).


⁸ These are Class A with more than \$750,000 in average annual operating revenue, Class B with more than \$150,000 but less than \$750,000, and Class C with less than \$150,000. 52 Pa. Code § 65.16.

I look forward to reviewing the comments filed by interested stakeholders during the rulemaking process.

THEREFORE, I MOVE THAT:

1. The Law Bureau, in conjunction with the Bureau of Technical Utility Services, prepare an Advance Notice of Proposed Rulemaking Order regarding 52 Pa. Code § 3.501, consistent with this Motion, no later than May 1, 2020.

Date: February 6, 2020



RALPH V. YANORA
COMMISSIONER