



July 15, 2020

**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 Advance 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.

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

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "David P. Zambito", written over a faint blue circular stamp or watermark.

By: David P. Zambito

DPZ/kmg  
Enclosure

cc: Christian McDewell, Esq. (Law Bureau)  
Sean Donnelly (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 :

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

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AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), pursuant to the Advanced Notice of Proposed Rulemaking Order (“Order”) entered in this matter on April 30, 2020, 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 Pennsylvania<sup>1</sup> 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 Order.

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<sup>1</sup> The members of NAWC are: Columbia Water Company, Newtown Artesian Water Company, Pennsylvania-American Water Company, SUEZ Water Pennsylvania Inc., and The York Water Company. In addition to water operations, several of the members operate Commission-regulated wastewater systems throughout the Commonwealth.

## **II. SCOPE OF COMMENTS**

In its Order, the Commission stated:

In addition to the topics listed below, the Commission deems it prudent to explore 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 non-certificated water or wastewater service provider. Particularly, the Commission is interested in comments addressing whether the documentation requirements required of well-established service providers are too extensive. Commentators are requested to address this question and what improvements might be made to Sections 3.501 and 3.502 to improve water and wastewater service to Pennsylvania residents through the regionalization of water and wastewater services.

Order p. 5. NAWC's comments will primarily address 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.

As explained below, well-established utilities should enjoy presumptions on certain issues (such as legal, financial and technical fitness) that the utilities have previously addressed to the satisfaction of the Commission through prior filings and proceedings. Likewise, Commission review of applications should not delve into areas (such as environmental compliance and land use planning) over which the Commission lacks subject matter jurisdiction. By eliminating these unnecessary application filing requirements, the Commission can more efficiently and cost-effectively process applications and, thereby, foster regionalization and consolidation of water and wastewater systems throughout the Commonwealth.

## **III. NEED FOR ADDITIONAL REGULATIONS**

As presently drafted, 52 Pa. Code §§ 3.501 and 3.502 seem primarily intended to apply to the situation in which a new entity seeks to become a public utility or a *de facto* public utility

applies for a certificate of public convenience. There continues to be a need for a regulation addressing these situations.

Rather than modifying Sections 3.501 and 3.502 to more clearly address other situations, however, NAWC recommends that the Commission promulgate additional regulations, including regulations that specifically address the requirements that apply to applications for acquisitions of water or wastewater systems and for expansions of existing service territories pursuant to Chapter 11 of the Pennsylvania Public Utility Code (“Code”). There presently is no regulation specifically addressing such applications.<sup>2</sup>

NAWC recommends that the PUC promulgate three regulations addressing different fact patterns:

1. One that applies if the acquiring or expanding entity is a well-established water or wastewater utility;
2. One that applies if the acquiring or expanding entity is a small water or wastewater utility; and
3. One that applies if the acquiring entity is not an existing water or wastewater utility.

The information that the Commission needs to review and approve each type of application is different. For example, an existing public utility enjoys a rebuttable presumption of legal, technical and financial fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Consequently, the Commission needs less information concerning the fitness of the acquiring company in scenarios 1 and 2 above.

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<sup>2</sup> While NAWC refers to “acquisitions” throughout these comments, NAWC’s statements and recommendations should also be deemed applicable to mergers.

NAWC is primarily interested in the regulation that applies if the acquiring or expanding entity is a well-established water or wastewater utility. Consequently, its comments will focus on a proposed regulation to address this fact pattern.

#### **IV. PROPOSED REGULATION 52 PA. CODE § 3.503**

Attached as **Appendix A** is a draft of a new regulation that would establish requirements for applications by well-established public utilities, pursuant to Chapter 11, for the acquisition of a certificated or non-certificated water or wastewater system or for an expansion of existing service territory. Explanatory comments follow.

##### **A. Introduction**

Similarity to acquisition or expansion proceedings involving other types of utilities. The regulations concerning acquisitions and service territory expansions by existing water and wastewater utilities should not be based on 52 Pa. Code §§ 3.501 and 3.502. Those regulations are primarily intended to ensure the viability of newly-certificated public utilities. Particularly where a well-established water or wastewater utility is acquiring a water or wastewater system or expanding its service territory, the Commission should have little to no concern about the viability of the acquiring entity post-closing.

Instead, the model for the new regulation should be the Commission's requirements for acquisitions or expansions in other utility industries. There is no reason why the application requirements for acquisitions or expansions by well-established water and wastewater utilities should be more onerous than the application requirements for acquisitions or expansions by well-established electric distribution companies or well-established natural gas distribution companies. No regulation requires well-established electric distribution companies and well-established

natural gas distribution companies to file copies of existing permits, certificates, or comprehensive plans with the Commission when they file an application for an acquisition or expansion. Similarly, there is no reason why those documents should be required when a well-established water or wastewater utility files an acquisition or expansion application.

Nor should the application requirements for a Chapter 11 acquisition or service territory expansion be based on the application requirements for a Section 1329 acquisition. There is a significant additional issue in Section 1329 acquisition proceedings – *i.e.*, the determination of fair market value rate base. In a Chapter 11 acquisition or service territory expansion proceeding, a determination of fair market value rate base is not required. Consequently, there is no need for the extensive documentation required for a Section 1329 acquisition application.

In fact, many Chapter 11 acquisition and service territory expansion proceedings are uncontested. Requiring the submission of numerous documents to support such a filing is particularly wasteful – unnecessarily increasing costs and delaying the resolution of the proceeding. The Commission should also recognize that timely processing of an application is important to the parties involved (including municipalities in need of sale proceeds to perform critical public functions and avoid distressed community status, customers in need of improved quality of service, developers who must sell lots to satisfy debt covenants, homeowners looking to move into their new homes, etc.). There are real life consequences to burdensome application filing requirements and a prolonged review process.

Some recent examples illustrate the point. One NAWC member was recently involved in an uncontested application that required three rounds of data requests, totaling thirty-four discovery questions, and resulted in a total docketed application exceeding 1,200 pages. This transaction involved a struggling municipal system serving approximately 125 customers.

Another NAWC member had an uncontested application delayed because it was required to locate copies of municipal ordinances and meeting minutes from the 1970s. The burdensome paperwork and documentation requirements added little value for the applicants, their customers or the Commission's decision-making process. The public interest would have been better served by a less expensive and more expeditious process for obtaining regulatory approval.

NAWC respectfully submits that the Commission can fulfill its statutory function by reviewing acquisitions and service territory expansions by well-established water and wastewater utilities in much the same way that it reviews applications by well-established electric distribution companies and well-established natural gas distribution companies. With a presumption of legal, technical and financial fitness, the Commission need only review the scope of the requested service territory, the justness and reasonableness of the proposed initial rates, and whether there is an affirmative public benefit of a substantial nature in an acquisition or public need in an expansion.

Purpose. The purpose of the new regulation is to promote efficiency and economy for the parties and the Commission, in part, by limiting the documents that must be filed with the application. The new regulation is also intended to expedite the resolution of acquisition and service territory expansion proceedings. By achieving these goals, the Commission will promote its policy favoring consolidation and regionalization, *see, e.g.*, 52 Pa. Code §§ 69.711 and 69.721, because lengthy, expensive acquisition proceedings (especially in uncontested cases) deter well-established water or wastewater utilities from acquiring other water or wastewater systems and expanding service to other residents of the Commonwealth.

The new regulation is also intended to help the Commission keep stakeholders focused on the critical issues in the case pursuant to Chapter 11. The Commission has only the authority given

to it by the legislature, *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977), and should not be distracted by issues beyond its jurisdiction.

In the case of acquisition proceedings, Section 1103 of the Code, 66 Pa. C.S. § 1103, provides that the Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” The applicant must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The new regulation is intended to keep stakeholders focused on these issues, in part, by preventing the filing of irrelevant documents and by requiring the disposition of acquisition proceedings in a reasonable time frame.

In the experience of NAWC members, acquisition proceedings have, in recent years, tended to become bogged down because stakeholders became focused on whether the parties to the acquisition are in compliance with laws that are properly enforced by other state agencies, such as the Pennsylvania Department of Environmental Protection (“DEP”) or the Pennsylvania Department of Transportation (“PennDOT”). The proposed regulation would require notice of the application to be served on DEP and each municipality in the proposed service area.<sup>3</sup> If these entities believe that the acquisition or expansion raises an environmental concern, or could adversely impact a comprehensive plan, those entities can file a responsive pleading. If they do not, the Commission should focus on the issues under its jurisdiction, like service and rates.

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<sup>3</sup> The proposed regulation would require notice of the application to be served on each municipality in the proposed service area, but not each related planning office; more than once, an NAWC member has been contacted by a municipality asking: “Why did we receive two of these applications?”



Limited scope of the regulation. The new regulation would apply only to an acquisition of a certificated or non-certificated water or wastewater system by a well-established water or wastewater utility, as well as an expansion of service territory, pursuant to Chapter 11 of the Code. The new regulation would not apply to applications for acquisitions pursuant to Section 1329 of the Code, 66 Pa. C.S. § 1329. The Commission has already established extensive, detailed requirements for acquisitions of a water or wastewater system pursuant to Section 1329. *See, e.g., Implementation of § 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered February 28, 2019). There is no need to create additional requirements for such applications. Similarly, the new regulation would not apply to acquisitions pursuant to 66 Pa. Code § 529 (“[p]ower of commission to order acquisition of small water and sewer utilities”).

Definition of Capable Water or Wastewater Utility. To distinguish acquisitions and service territory expansions by well-established public utilities from acquisitions and service territory expansions by other water and wastewater utilities, NAWC recommends that the Commission use a definition similar to the definition of a capable public utility in Section 529(m) (“[a] public utility which regularly provides the same type of service as the small water utility or the small sewer utility to 4,000 or more customer connections, which is not an affiliated interest of the small water utility or the small sewer utility and which provides adequate, efficient, safe and reasonable service.”). Some well-established public utilities regularly provide water service to more than 4,000 customer connections, but regularly provide wastewater service to fewer than 4,000 customer connections. NAWC respectfully submits that these utilities should be considered a capable public utility with respect to both water and wastewater service because of the similarities of water and wastewater operations. Consequently, NAWC proposes that the term be defined as

“a public utility which regularly provides water and/or wastewater service to 4,000 or more customer connections which is not an affiliated interest of the water or wastewater system being acquired and which provides adequate, efficient, safe and reasonable service.” The PUC should draft a separate regulation that applies to acquisitions, mergers, or expansions of territory by existing water or wastewater utilities that do not meet this definition.

## **B. Contents of the Application**

Focus on the issues before the Commission. The proposed regulation requires the applicant to provide the Commission with the basic information it needs to determine whether to grant the application. The application must, as applicable:

- describe the system being acquired,<sup>4</sup> its service territory and approximate number of current customers;
- identify the seller(s) and the buyer(s);
- state the purchase price for the assets being transferred and indicate the source of funds for the Capable Water or Wastewater Utility to pay this amount (e.g., cash reserves, loans or stock offerings);
- identify any post-closing capital improvements expected during the five years post-closing;
- describe the service territory being requested (if different from the system’s existing service territory) and state the rates that will be charged in that service territory;
- describe the substantial public benefits that will result from the acquisition or service territory expansion; and
- include a commitment by the applicant to obtain any other necessary governmental approvals prior to closing or by express permission of the appropriate agency.

Documentation to be submitted with the application. The proposed regulation recognizes that filing an application starts a process, which frequently includes both extensive data requests from the Bureau of Technical Utility Services (“TUS”) and litigation by sophisticated parties

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<sup>4</sup> The description should be based on the transaction documents and the due diligence of the parties negotiating the transaction; it should not be required to correspond with the most recent DEP Community Water System Inventory. The applicant should not be required to provide a copy of the most recent filing with DEP, nor should it be required to explain the difference between the most recent DEP filing and the description of the system in the application.

(including well-funded public advocates) with discovery rights.<sup>5</sup> The unique issues raised by each particular case can be explored in depth during those proceedings, if necessary. There is no need to require every application to address every issue that conceivably could arise in an acquisition proceeding. Again, NAWC advocates that the Commission model the approach used for acquisitions and service territory expansions by well-established water and wastewater utilities on the approach used in acquisition proceedings in other utility industries.

The proposed regulation requires the applicants to attach the asset purchase agreement or other transaction document (which can be filed as a confidential document) to the application. The applicants must also provide basic financial information about the parties, such as a balance sheet and income statement (to the extent the information is available).

The applicants would also be required to include forms of the agreements for which Commission approval is required by 66 Pa. C.S. § 507 (regarding agreements between a public utility and a municipal corporation). Due to the fact that municipalities generally hold their meetings once each month, it can be difficult to include a fully-executed agreement. Consequently, the Commission should accept a form of the agreement with the application.

The application should not be required to attach unnecessary documentation. For example, the Commission has reasonable assurances that a Capable Water or Wastewater Utility employs certified water and wastewater operators, as required by 25 Pa. Code Chapter 302. The Commission does not need a copy of John Smith's operator's certificate to decide whether to

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<sup>5</sup> The Commission should direct that, once a protest is filed, TUS's involvement in the proceeding should immediately cease and any pending data requests do not require responses. Once a case becomes a litigated proceeding, responses to TUS data requests unnecessarily waste time and resources (including legal and consulting fees). Additionally, responses to TUS data requests create an increased risk that TUS, when subsequently acting in an advisory capacity to the Commission in a litigated proceeding, will rely on non-record evidence. NAWC further notes that there are four public advocates that routinely participate in Commission proceedings: the Office of Consumer Advocate, the Commission's Bureau of Investigation & Enforcement, the Office of Small Business Advocate, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania.

approve the acquisition. Consequently, the Commission should not require the applicant to file copies of operators' certificates with the application. Similarly, there is no need for the Commission to receive copies of DEP permits held by either the acquiring Capable Water or Wastewater Utility or the system being acquired.

There is no need for the Commission to review competitive bid documents or other offers to purchase the system being acquired. Additionally, as long as the transaction is an arm's length transaction between unaffiliated parties, there is no need for discovery as to the basis for arriving at an acceptable purchase price. The negotiation of an appropriate purchase price is a matter for the management of the buyer and the seller. The document that the Commission needs to review is the final agreement between the parties, which the new regulation would require to be submitted with the application.

Similarly, the distance between the acquiring Capable Water or Wastewater Utility's closest asset and the system to be acquired is inconsequential to the application and should not be required, either as part of the application or in discovery. Even a system that is near to an existing utility asset might be run as a stand-alone system rather than being interconnected to the Capable Water or Wastewater Utility's existing system. The distance between assets is therefore irrelevant.

Finally, since there is no need for the Commission to determine whether a Capable Water or Wastewater Utility is in compliance with laws enforced by DEP or other agencies, the proposed regulation would not require the applicant to submit Act 537 Plans and other documents that are approved by DEP or other governmental agencies. The regulation would instead require the applicant to make a commitment to obtain all necessary approvals from DEP or other state agencies prior to closing or by express permission of the appropriate agency.<sup>6</sup> When the acquiring Capable

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<sup>6</sup> DEP requires completion of an Act 537 Special Study. It is difficult for some small municipalities to finance and complete these studies before closing. DEP has allowed some NAWC Members to assume existing permits/permit

Water or Wastewater Utility notifies the Commission that closing has occurred, it can notify the Commission whether it has obtained all necessary DEP and other approvals.

### **C. Commission Processing of the Application**

Incorporation of other Commission regulations. Section 3.501(c), (d) and (f) contain special requirements for filing, notice and copies pertaining to applications by a water or wastewater utility. In contrast, an application by a well-established electric distribution company to acquire another electric distribution company or to extend service territory would be governed by the Commission's general procedural regulations, including 52 Pa. Code §§ 1.51 (“[i]nstructions for service, notice and protest”), and 5.14 (“[a]pplications requiring notice”). NAWC sees no reason why applications for acquisitions by a well-established water or wastewater utility should be subject to different requirements, other than to require that applications be served on the statutory advocates, and notice be given to DEP and municipalities in the proposed service area.

For example, the existing regulation at 52 Pa. Code § 3.501(d) states “the utility or applicant shall individually notify existing customers of the filing of the application.” Individual customer notice is required in a Section 1329 acquisition proceeding, in which the Commission's decision on the application will determine rate base and thereby have a direct impact on customers' rates. *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.2d 1055 (Pa. Cmwlth. 2018) (“*New Garden*”). However, individual customer notice is not required in a Chapter 11 acquisition or service territory expansion proceeding. There is no reason to establish a different notice requirement for water and wastewater acquisitions or service territory expansions as compared to other Chapter 11

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conditions, rather than transferring the permits to the acquiring company, until the Act 537 Special Study is complete. This approach allows the parties to close on the transaction, enabling the acquiring company to initiate service and assist with preparing the study.

proceedings. Consequently, NAWC recommends that the Commission apply most of its standard procedural rules to water and wastewater applications.<sup>7</sup>

The new regulation would be different from Section 1329 application proceedings in that the date of filing an application would be governed by 52 Pa. Code § 1.11. Since there is no need for individualized customer notice in a Chapter 11 application proceeding, the filing date does not need to be delayed to give Commission staff an opportunity to review the filing to determine whether it should be accepted.

TUS Procedures. TUS reviews acquisition and service territory expansion applications immediately upon their filing with the Commission. If the application is uncontested, TUS prepares a recommendation for Commission consideration on whether the application should be approved. If the application is contested, however, the application is referred to the Office of Administrative Law Judge (“OALJ”) for hearings.

TUS staff should focus its efforts on timely processing of uncontested cases and advising the Commission on cases in which an administrative law judge has issued a recommended decision. It should not venture into areas over which the Commission lacks subject matter jurisdiction (such as environmental and land use approvals). Once an application has been protested and assigned to OALJ, TUS’s involvement should immediately cease and any pending data requests should be withdrawn for the reasons stated in footnote 5 above.

NAWC members have, in recent years, experienced considerable delays in TUS’s processing of uncontested acquisition and service territory expansion applications. Through greater efficiencies, NAWC believes that the Commission could (absent an unusual circumstance)

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<sup>7</sup> However, NAWC suggests that the Commission’s Secretary should set a protest deadline of at least 15 days, but not to exceed 30 days, from the date of publication of notice of the application in the Pennsylvania Bulletin. Such a protest deadline is consistent with prior practice and affords interested parties sufficient time to prepare and file a protest.

issue final orders on uncontested applications within three months of the expiration of the protest period. NAWC therefore recommends that the new regulation include such a deadline for processing an uncontested application.

Time Limit on Processing of Contested Applications. Because the processing of a Capable Water or Wastewater Utility's application involves a limited number of issues, the Commission should set a goal of issuing a final order in a contested application proceeding within six months of the end of the protest period.<sup>8</sup> The Commission has successfully met the six-month statutory deadline in Section 1329 application proceedings and those proceedings involve additional and more complex issues – namely, the determination of fair market value rate base.

#### **D. Benefits of this Approach**

By simplifying the application process, the Commission and the industry can save significant resources. Applicants would not need to obtain and copy as many documents as they are currently required to file with the Commission. This saves utility employees' time, consultants' time, copying costs, and other expenses. These savings could be passed on to ratepayers.

For those applications that are protested and subject to litigation, the parties can explore the issues in each case through discovery. Commission staff can save time by not reviewing applications that are ultimately referred to OALJ, freeing them to focus on uncontested matters and cases in which the administrative law judge has issued a recommended decision. They can thoroughly review those matters, and make a recommendation to the Commission, so the Commission can decide uncontested matters within three months of the expiration of the protest

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<sup>8</sup> A processing deadline would certainly be appropriate should the Commission elect to require filing requirements beyond those recommended in these comments.

period. In addition, the Commission can set a goal of deciding contested matters within six months of the expiration of the protest period.

By streamlining the process of filing an application, yet providing the Commission with the information it needs to determine whether an acquisition benefits the public in a substantial way, NAWC's proposal would save costs for all stakeholders and expedite Commission decisions. These results would promote regionalization and consolidation in the water and wastewater industries because well-established utilities would be more willing to engage in acquisitions and service territory expansions.

## **V. THE COMMISSION'S GOALS OF REGIONALIZATION AND CONSOLIDATION**

The Commission asked the following question:

2. Parties should discuss the development of safety net programs to deal with nonviable or abandoned water systems as referenced in 52 Pa. Code § 69.701(b)(5). Specifically, parties should address the prospect of creating a fund dedicated to covering costs associated with receivership proceedings conducted pursuant to Section 529 of Public Utility Code, 66 Pa. C.S. § 529.

NAWC supports the creation of a fund dedicated to covering the costs incurred by a receiver of a troubled water or wastewater utility pursuant to Section 529. Troubled utilities are an issue of statewide concern. Additionally, some of them (particularly wastewater utilities) have environmental issues. Remedying pollution is an issue of statewide concern. PA. CONST. Art. 1, § 27 ("Environmental Rights Amendment"). The costs of remedying these statewide problems should not be borne by the ratepayers and shareholders of a few well-established water or wastewater utilities; they should be borne by the public at large.



The creation of a fund dedicated to covering the costs of receivership proceedings, however, may require legislation.<sup>9</sup> As a result, a considerable time period may be required to implement this solution to the problem. To address the problem of non-viable or abandoned water or wastewater systems in the near term, NAWC recommends that the Commission explore alternatives that would give public utilities greater incentives to acquire such systems voluntarily. For example, the Commission could allow a water or wastewater utility acquiring a non-viable or abandoned water or sewer utility to use Act 58 alternative ratemaking, 66 Pa. C.S. § 1330, to recoup the purchase price of the system and related capital improvements -- sooner than would be the case under traditional ratemaking procedures -- through the use of a surcharge mechanism. The Commission could also consider an increased cap on the acquiring utility's distribution system improvement charge ("DSIC"). These approaches would allow the Commission to avoid the use of Section 529 Investigations, which have proved to be lengthy and expensive proceedings -- even where the system to be acquired did not oppose the acquisition. NAWC strongly recommends that the Commission promote voluntary acquisitions, rather than finding means of promoting the forced sale of public utilities.

## **VI. REQUEST FOR A WORKING GROUP**

NAWC anticipates that the Commission will receive a wide variety of comments in response to its Order. NAWC suggests that the Commission convene a working group of stakeholders to help draft regulations based on the comments submitted in response to the Order.

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<sup>9</sup> If the Commission pursues legislation to improve Section 529, NAWC also recommends that the Commission pursue legislation that would allow municipal and authority water and wastewater systems to be forced to buy troubled water and wastewater systems. In some recent cases, the policy of regionalization and consolidation would have been promoted better by requiring a municipal or authority system to acquire a troubled utility, rather than requiring a proximate capable public utility to do so.

## VII. CONCLUSION

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

Respectfully submitted,



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Date: July 15, 2020

## APPENDIX A

### Proposed new regulation: 52 Pa. Code § 3.503

#### Applications by a Capable Water or Wastewater Utility Pursuant to Chapter 11 of the Public Utility Code

(a) Purpose. This regulation is to establish requirements for an application submitted either individually or jointly by a Capable Water or Wastewater Utility, pursuant to Chapter 11 of the Pennsylvania Public Utility Code (“Code”), to acquire a certificated or non-certificated water or wastewater system or to expand its certificated service territory. The Commission seeks to reduce costs for applicants, and enhance efficiency for the Commission, by clarifying the requirements for such applications. By limiting the number of documents that must be submitted at the time of filing an application, the Commission can reduce costs and improve administrative efficiency, while focusing on the issues under the Commission’s jurisdiction. Additionally, by providing deadlines for the Commission to process such applications when contested and uncontested, the Commission can expedite the resolution of such cases.

(b) Scope. This section shall not apply to an application submitted pursuant to Section 1329 of the Code, 66 Pa. C.S. § 1329, nor shall it apply to acquisitions pursuant to Section 529 of the Code, 66 Pa. C.S. § 529.

(c) Definitions.

(1) “Capable Water or Wastewater Utility.” A public utility which regularly provides water and/or wastewater service to 4,000 or more customer connections, which is not an affiliated interest of the water or wastewater system being acquired and which provides adequate, efficient, safe and reasonable service.

(d) Contents of an Application for Acquisition or Merger

(1) Parties to the transaction. The application shall identify all parties to the transaction and their interests in the system to be acquired or merged.

(2) System to be acquired or merged. The application shall describe the system to be acquired or merged, including the assets that are included in and excluded from the transaction. A copy of the asset purchase agreement, or other transaction document, shall be included with the application. The applicant may request confidential treatment of the asset purchase agreement or other transaction document.

(3) Customers. The application shall state the approximate number of customers, by customer class, currently being served by the system being acquired or merged.

(4) Service territory. The application shall include a map of the existing service territory of the system to be acquired or merged. The application shall also include a map and legal description of the service territory being requested by the Capable Water or Wastewater Utility, if different from the existing service territory of the system being acquired or merged.

(5) Purchase price. The application shall state the purchase price for the assets being transferred to the Capable Water or Wastewater Utility in connection with the transaction. The application shall also describe the source of the funds for paying the purchase price.

(6) Rates. The application shall describe the rates presently charged by the system to be acquired or merged and the rates to be charged by the Capable Water or Wastewater Utility after closing. The application shall include a *pro forma* tariff of the rates that the Capable Water or Wastewater Utility will charge in the service territory after closing.<sup>10</sup>

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<sup>10</sup> The cover page and list of changes should not be required because they are not substantive.

(7) Capital improvements. The application shall list the capital improvements (if any) that the Capable Water or Wastewater Utility expects to make in the system to be acquired or merged during the first five years after closing, and the expected costs of each.

(8) Financial information about the parties. The application shall include a balance sheet and income statement for the Capable Water or Wastewater Utility and the system being acquired or merged (to the extent possible). The Commission recognizes, however, that some water or wastewater systems may have poor records. Consequently, unaudited financial statements may be submitted for the system being acquired.

(9) Form of agreements requiring approval pursuant to Section 507. The application shall include a form of all agreements with municipal corporations that require Commission approval in connection with the transaction, pursuant to 66 Pa. C.S. § 507.

(10) Requested Commission approvals. The application shall identify all approvals that the parties to the transaction are requesting from the Commission.

(11) Substantial affirmative public benefits. The application shall describe how the acquisition or merger will affirmatively promote the public interest in a substantial way.

(12) Commitment by applicant to obtain any other necessary governmental approvals. The Commission recognizes that the transaction may require approvals from the Department of Environmental Protection (“DEP), the Pennsylvania Department of Transportation, and other agencies, in addition to receiving Commission approval. In the Application, the Capable Water or Wastewater Utility shall make a commitment to obtain all other necessary governmental approvals prior to closing or by express permission of the appropriate agency. The Commission may condition its issuance of a certificate of public convenience upon the Capable Water or

Wastewater Utility obtaining all required DEP or other approvals prior to closing or by express permission of the appropriate agency.

(13) Other water or wastewater providers in the service territory. The application shall state whether any other utility or municipal corporation provides service within one mile of the requested service territory.

(e) Contents of Application for Service Territory Expansion

(1) Identification of Applicant. The application shall identify the applicant and its interest in the requested service territory.

(2) Customers. The application shall state the approximate number of customers, by customer class, in the requested service territory.

(3) Service territory. The application shall include a map and legal description of the requested service territory.

(4) Rates. The application shall include a *pro forma* tariff of the rates that the Capable Water or Wastewater Utility will charge in the requested service territory.

(5) Capital improvements. The application shall list the capital improvements (if any) that the Capable Water or Wastewater Utility expects to make in the requested service territory during the first five years after closing, and the expected costs of each.

(6) Financial information about the parties. The application shall include a balance sheet and income statement for the Capable Water or Wastewater Utility.

(7) Form of agreements requiring approval pursuant to Section 507. The application shall include a form of all agreements with municipal corporations that require Commission approval, pursuant to 66 Pa. C.S. § 507.

(8) Requested Commission approvals. The application shall identify all approvals that the applicant is requesting from the Commission.

(9) Need for service. The application shall describe the need for service in the requested service territory.

(10) Commitment by applicant to obtain any other necessary governmental approvals. The Commission recognizes that the transaction may require approvals from the Department of Environmental Protection (“DEP”), the Pennsylvania Department of Transportation (“PennDOT”) and other agencies, in addition to receiving Commission approval. In the Application, the Capable Water or Wastewater Utility shall make a commitment to obtain all other necessary governmental approvals prior to closing or by express permission of the appropriate agency. The Commission may condition its issuance of a certificate of public convenience upon the Capable Water or Wastewater Utility obtaining all required DEP or other approvals prior to closing or by express permission of the appropriate agency.

(11) Other water or wastewater providers in the service territory. The application shall state whether any other utility or municipal corporation provides service within one mile of the requested service territory.

(f) Commission Review of the Application

(1) Service. The application shall be served on the statutory advocates. Notice of the application shall be served on each city, borough, town, township and county that is included, in whole or in part, in the proposed service area. Notice of the application shall also be served on DEP’s central and applicable regional offices with jurisdiction over the service territory requested in the application. Notice of the application shall also be served on all public utilities or

municipal corporations or authorities providing water or wastewater service (as appropriate) within one mile of the requested service territory.

(2) Filing and notice. The application shall be filed, and notice shall be published, in accordance with Chapters 1 and 5 of the Commission's regulations; provided however that the Commission's Secretary shall set a protest deadline of at least 15 days, but not to exceed 30 days, from publication of notice of the application in the Pennsylvania Bulletin.

(3) Filing date. The application shall be deemed filed as stated in 52 Pa. Code § 1.11.

(4) Data requests by Commission staff. The Bureau of Technical Utility Services shall immediately withdraw any pending data requests upon the filing of a protest and responses shall not be required from the applicant.

(5) Deadline for Commission action on unprotested applications. For any application that is not protested, the Commission will enter a final order on the application within three months after the expiration of the protest period.

(6) Deadline for Commission action on protested applications. For any protested application, the Commission will enter a final order on the application within six months after the expiration of the protest period.