



VIA E-FILING

July 15, 2020

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

**RE: Comments of Aqua Pennsylvania, Inc.
Section 3.501 Advance Notice of Proposed Rulemaking
Docket No. L-2020-3017232**

Dear Secretary Chiavetta:

Enclosed please find the Comments of Aqua Pennsylvania, Inc. to the Pennsylvania Public Utility Commission's ("PUC" or the "Commission") April 30, 2020 Advanced Notice of Proposed Rulemaking Order concerning Section 3.501 of the Commission's regulations, 52 Pa. Code § 3.501.

If you have any questions regarding this filing, please contact me at 610-645-1130.

Sincerely,

A handwritten signature in blue ink that reads "Alex Stahl". The signature is stylized and cursive.

Alexander R. Stahl
Regulatory Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Comments of
Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF AQUA PENNSYLVANIA, INC.
TO THE
APRIL 30, 2020 ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Advance Notice of Proposed Rulemaking order entered April 30, 2020 in Docket No. L-2020-3017232, regarding the information required to be submitted to the Commission in an application under Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, seeking Certificate of Public Convenience (“CPC”) in compliance with Section 3.501 of the Commission’s regulations, 52 Pa. Code § 3.501.

At the Commission’s February 6, 2020 public meeting, the Commission directed the Law Bureau and the Bureau of Technical Utility Services to prepare an advanced notice of proposed rulemaking (“ANOPR”) order regarding Section 3.501.¹ The Commission issued its ANOPR Order on April 30, 2020, seeking comment from certificated water and wastewater utilities, the Pittsburgh Water and Sewer Authority, the Pennsylvania Department of Environmental Protection (“DEP”), the Office of Consumer Advocate, and the Office of Small Business Advocate. The Commission sought comments on specific questions in the ANOPR Order to improve the information provided to the Commission in a CPC application.

¹ Motion of Commissioner Ralph V. Yanora., Docket No. L-2020-3017232 (Feb. 6, 2020).

Aqua serves approximately 443,000 water customers in Pennsylvania. Aqua's water systems include approximately 5,800 miles of main. Aqua's wastewater subsidiary, Aqua Pennsylvania Wastewater, Inc., serves approximately 38,000 connections in Pennsylvania. Aqua's water and wastewater systems serve both rural and urban areas.

Aqua commends the Commission for their continued initiatives to make improvements to water and wastewater application requirements. It is with this background that Aqua provides the following suggestions and clarifying comments for the Commission's consideration.

II. GENERAL COMMENT

Water and wastewater utilities have operated under Section 3.501 for both acquisitions of existing systems and expansions of the water and wastewater utilities' certificated territory through main extensions. Over the last 20 years, Aqua has acquired over 100 water and wastewater systems, and has completed 45 main extensions in the Commonwealth of Pennsylvania. Many of these acquired water and wastewater systems have been small and/or troubled systems that required substantial upgrades and repairs to come into compliance with Commission and DEP regulations.

The Company submits that the original purpose for Section 3.501 was to provide information to the PUC for the construction of new water systems. These requirements were expanded in later years to limit the addition of new small non-viable water and wastewater systems in the Commonwealth. In recent years the average length of non-fair market value applications under Section 1102 ("Standard Application") has increased from less than 100 pages to hundreds or thousands of pages of documentation. Fair market value applications under Section 1329 and 1102 ("FMV Application") are regularly multiple thousands of pages and have even gone above 10,000 pages of documentation. The Company is therefore proposing that the Commission limit

the applicability of Section 3.501 such that previously certificated Class A water and wastewater utilities that are operating in the Commonwealth and are in good standing with the PUC and DEP should not be required to provide the same level of information as a new water or wastewater system to be constructed or a new uncertificated entity seeking to provide service in the Commonwealth. Included in the Company's comments as **Attachment A** are suggested changes and edits to Section 3.501 that would still keep the Commission's original purpose of the regulation while providing flexibility for those utilities are in good standing and have been operating in the Commonwealth under previously issued CPCs. Attachment A provides two options for the modification of the regulation (1) within the existing structure of the subsections of the regulation which separates out proposed utilities and utilities already providing service, and (2) by proposing a new subsection applicable to just utilities already providing service in the Commonwealth.

As the Commission notes in its ANOPR Order, Section 3.501 was adopted in 1976. The regulation was initially promulgated for the establishment of water service to a new unserved area, which can be seen by the requirements in the regulation:

- (a) Each applicant for a certificate of public convenience as a public water supplier shall incorporate all of the following information, or documents, in the application:
 - (1) Full description of the **proposed waterworks construction and the manner in which it will be constructed.**
 - (2) A map or plan of suitable scale showing the boundaries of the **proposed service area**, the location or route of the **proposed waterworks construction**, the approximate time schedule for installation of the various component facilities, the elevations of major facilities and service areas, the productive capacity of sources, and the pipe sizes for all transmission mains and the distribution grid.

- (3) An estimate of the number of customers and the requirements for water for the first, fifth, and tenth years in the future and the ultimate future development anticipated by the applicant.²

Section 3.501 was amended over the years to add additional filing requirements and expanded to include wastewater applications. These regulations, as originally enacted and as expanded, were intended to prevent non-viable water and wastewater systems from being granted CPCs. This can further be seen in the 1993 Memorandum of Understanding (“MOU”) between the Pennsylvania Department of Environmental Resources and the PUC³:

NOW, THEREFORE, to accomplish the common goal of improving small water system viability, both agencies shall cooperatively undertake the following activities:

- (1) Develop regulations and policies **to restrict the formation of new non-viable water systems.**
- (2) Require the development and implementation of comprehensive water system facility plans, management plans and financial plans **for proposed new public water systems** in order to promote sound business operations and the continuous provision of quality water service that meets Safe Drinking Water Act and Public Utility Code requirements.⁴

These provisions continue to show that the focus of these regulations and the cooperation between the agencies is to ensure only viable water systems are created and to reduce the number of new small non-viable water systems.

The Company submits that the original purpose of these regulations should be reflected in the requirements for applications for CPCs under Section 3.501. The Company is not proposing that these regulations be changed for new water systems that are proposed to be built in the Commonwealth, or for new uncertificated entities that seek to obtain a CPC from the Commission.

² 6 Pa. Bull. 911, 912-913 (Apr. 17, 1976). (emphasis added).

³ MOU Between Pennsylvania Department of Environmental Resources and the Public Utility Commission (Dec. 2, 1993) (hereinafter “MOU”). The Department of Environmental Resources is the predecessor agency of the DEP.

⁴ MOU at 1. (emphasis added).

Instead the Company is proposing that the Commission limit the applicability of this section for previously certificated Class A water and wastewater utilities that are operating in the Commonwealth and are in good standing with the PUC and DEP. Previously certificated Class A water and wastewater utilities should not be required under each application or main extension to provide the same detail of information as an unknown non-certificated entity that is seeking to provide service in the Commonwealth for the first time. **Attachment A** to the Company's comments provides suggested changes to Section 3.501 which would accomplish the Commission and DEP's goal of preventing new non-viable water and wastewater systems from forming, while allowing Class A utilities to provide enough information to the Commission without requiring excessive documentation. The Company would also propose that the Commission hold informal discussions or working group sessions on Section 3.501 to streamline filing requirements.

The Company's proposals and comments below reflect the need for limiting the applicability of Section 3.501 or proposing a new section for already certificated Class A utilities in good standing with the PUC and DEP.

III. SPECIFIC COMMENTS TO REQUESTS FROM THE COMMISSION

A. SPECIFIC UPDATES TO SECTIONS 3.501 AND 3.502

- 1. How might the Commission simplify the requirements of Section 3.501 for well-established utilities without hindering the traditional policy goals of Section 3.501 and 3.502?**

Please see Attachment A for proposed changes and edits to Section 3.501. Please see Section II General Comments, above, regarding how the traditional policy goals can be maintained while reducing excessive documentation with these applications.

- 2. What are the expected benefits of reducing requirements applicable to existing utilities? How would those benefits be passed on to ratepayers?**

Reducing the requirements applicable to existing utilities will save in time and documentation collection for each application filed with the PUC. Savings on time and resources to accumulate and file documentation, often that is similar if not the same in each application, will save in overall transaction costs for every application. Transaction costs are ultimately passed on to ratepayers and recovered in customer rates. Reductions in filing requirements will benefit ratepayers overall.

3. What, if any, issues arise from allowing existing utilities the option to meet the requirement of 3.501(a)(1)(ii)(A) following the completion of an original cost study after the transaction has closed, in lieu of submitting this information with an application?

The Company submits that this requirement should be modified for utilities already providing service to provide original cost studies for the acquired system in the utility's next base rate case that includes the acquired system. Original cost studies are completed by the acquiring utility after it owns and operates the subject system and not prior to filing the application. Many acquired systems do not have adequate records to develop an original cost study prior to the acquisition, and utilities should not be required to make this expenditure prior to acquiring and owning the system. The Company submits that in the Standard Application under Section 1102, no party is prejudiced by having an original cost study submitted in the utility's next base rate case as parties are then able to review and challenge any original cost study submitted. In FMV Applications, a utility is required to provide the original cost of the system in its engineering assessment since the ratemaking rate base for the acquired system is set in that proceeding. Original cost studies for main extension applications should not be required as often the facilities are not installed at the point where the utility is filing an application to the Commission.

4. What alternative documentation could be provided as evidence an application complies with the following subsections of Section 3.501:

- **3.501(a)(2)(vi): Providing a copy of county comprehensive plan, municipal comprehensive plan and applicable zoning designations.**

The Company submits that the current requirements are unnecessary for acquisitions of existing systems and for main extensions. Under Section 1329 applications, if the acquiring utility is not requesting service territory beyond the existing plant footprint, then the utility provides a statement to that effect without needing to provide copies of the comprehensive plan. A similar approach should be applied for Standard Applications under 1102. In the case of main extensions, a developer will have already gone through zoning review and local planning commission review before coming to the Company with a request for service. As such, the Company should not be required to provide the comprehensive plan in main extension application.

To address this requirement in an application for a main extension or Standard Application where a utility is requesting service territory beyond the existing plant footprint or beyond the area to be served by a main extension, the acquiring utility can provide a letter from the county and/or township that the requested service territory in the proposed acquisition or main extension is in compliance with the comprehensive plans.

- **3.501(a)(3)(ii): Identifying the future number of connections anticipated for the next 10 years.**

In acquisitions of existing systems, the requirement for identifying future connections should be limited to a projection of the next five (5) years. Generally, wastewater systems are required to project future connections or Equivalent Dwelling Units (“EDUs”) in their Chapter 94 Municipal Wasteload Management Annual Reports (“Chapter 94 Report”) submitted to DEP. Regarding water systems, there is no similar document to a Chapter 94 Report that systems are required to submit to DEP. Therefore, the requirement for water systems should be that the

applicant provide a projected number of new connections for the next five (5) years, if the information is available. For main extensions, the number of customers is generally stated in the application as a request to serve a specific customer or group of customers, and no further projection should be required beyond who the utility intends to serve through the main extension.

- **3.501(a)(6)(iv): Providing a Pennsylvania Department of Environmental Protection (DEP) 5-year compliance history of other utilities owned or operated, or both, by the applicant, including affiliates, and their parent corporations regarding the provision of utility service.**

The Company submits that this requirement should not apply to already certificated Class A water and wastewater utilities in the Commonwealth. The existing regulation requires a compliance history of “other utilities owned or operated, or both, by the applicant, including affiliates, and their parent corporations”. In the case of Aqua, the regulation could be read to require DEP compliance history of every Aqua system (water and wastewater), which would include well over 100 systems. In more recent applications, the Company has provided a five-year compliance history of systems of similar type (size or processes) or location to the acquired system, or provided a statement in the application that the Company’s systems are in general compliance with DEP regulations. The Company submits that limiting the requirement for already certificated Class A water and wastewater utilities to a five-year compliance history of systems of similar type (size or processes) or location to the acquired system, or a verified statement to the Company’s general compliance is adequate to address this requirement. A general statement of compliance can be provided for main extension applications as well.

- **What are the costs and benefits of any proposed alternative documentation?**

As stated above in response to question III.A.2., reducing the requirements applicable to existing utilities will save in time and documentation collection for each application filed with the

PUC. Savings on time personnel are required to accumulate and file documentation, often that is similar if not identical in each application, will save in overall transaction costs which occur for every application. Transaction costs are ultimately passed on to ratepayers and recovered in customer rates. Reductions in filing requirements will benefit ratepayers overall.

- **What potential costs and benefits exist by applying these sections to Class A water utilities when those Class A utilities are solely applying for a certificate of public convenience to acquire a non-certificated water or wastewater service provider?**

Please see the discussion in Section II General Comments, and Attachment A. The Company submits that the original purpose of this regulation was to prevent new small systems from obtaining a certificate of public convenience that would be more likely to become troubled in the future. Class A utilities have already been operating in the Commonwealth and are well known to the Commission and DEP. The same level of filing requirements is not necessary for already certificated Class A utilities. Class A utilities have already shown their financial, operational, legal, and managerial fitness to operate in the Commonwealth. The proposed changes in Attachment A to these comments reflects a balance between information filed with the Commission and the prevention of excessive documentation for already certificated Class A utilities in good standing operating in the Commonwealth.

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

As part of any acquisition of an existing municipal wastewater system the municipality's Act 537 Plan will need to be updated to reflect the change in ownership. The Act 537 Plan update generally runs concurrently with the application to the Commission. While the Company is not

opposed to providing Act 537 Plan documents in the acquisition of an existing wastewater system, the Company will note that many times the existing Act 537 Plan has not been updated in many years and can be missing maps or certain attachments that either cannot be located by the municipality or through a record search at DEP. Moreover, when sewer service has been extended to certain areas in a municipality or in a private system, there may not be Act 537 Planning Modules that reflect an expansion of the sewer service area as they may have been exempted from the Planning Module process by DEP. Additionally, as noted above relating to outdated documentation, the Company does not believe that applications should be delayed if portions of the document or attachments cannot be located.

The municipality is responsible for Act 537 planning and continues to be responsible for it even after a sale of a system. If an existing system or sewer area is not accurately reflected in the Act 537 Plan, it is the municipality's responsibility to update that Act 537 Plan. In the sale of a municipal system, the municipality can provide a letter that the Act 537 Plan will be updated to reflect the sale of the system. As such, compliance with this section can be accomplished by the acquiring utility when acquiring a municipal system by filing a letter from the municipality that it has begun or will begin the process of updating the Act 537 Plan.

In the sale of a private system, the acquiring utility can send a certified letter to the municipality notifying the municipality of the pending sale and request that the municipality update the Act 537 Plan, as necessary. If a system is under a Consent Order, Corrective Action Plan, or Connection Management Plan, the Company will either assume the responsibilities under that order or plan, or enter into a new order or plan with DEP. The agreement to take on this responsibility is generally found in the purchase agreement for the system. Through the

municipality providing an Act 537 Plan update and assumption or negotiation of existing plans or orders, utilities are in compliance with the Act 537 Plan.

Regarding main extensions, a developer typically will need to obtain a Sewage Facilities Planning Module approval or waiver. As such, since the Company requires this approval before an application is made to the Commission, the main extension is in compliance with the Act 537 Plan.

6. What alternative documentation could be provided by wastewater utilities in an application which assures compliance with the requirements of Section 5 of the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5) and what are the costs and benefits of these alternatives?

As stated in response to III.A.5., above, if the Company is acquiring a municipal wastewater system, the Act 537 Plan is required to be updated by the municipality and approved by DEP. The municipality has responsibility for updating the Act 537 Plan, and that responsibility remains with the municipality after the sale of the municipality's wastewater system. If acquiring a municipal wastewater system, the Company can provide a letter from the municipality that it has begun or will begin an update to the Act 537 Plan.

7. Should Section 3.501(a)(6) be revised to include providing evidence of DEP Chapter 105 Permits for water systems that have or will have impoundments with dams or reservoirs in accordance with DEP regulations in 25 Pa. Code § 105?

The Company is not opposed to providing the DEP Chapter 105 permits with an application, if available from the current owner or DEP. The Company notes that the goal of this ANOPR is to streamline filing requirements, the DEP Chapter 105 permits can add significant size to a filing, especially if the permit is a joint permit with the United States Army Corps of Engineers. Moreover, any update or transfer of this permit falls within the jurisdiction of the DEP and not the Commission.

The Company notes that many existing water system dams or reservoirs were constructed many years ago, and if an original permit document cannot be located, a more recent revision to the permit should be adequate evidence to provide with the application as it will contain information that is relevant to the current operations of the dam or reservoir. Alternative documentation instead of providing the permit is providing key information related to the permit and the facility, including, facility name, permit number, hazard rating, last inspection date, status / presence of an emergency response plan, any material deficiencies noted and not corrected from the last inspection report.

8. What alternative documentation could be provided by applicants to satisfy the present requirements of Section 3.501(a)(7) and what are the costs and benefits of these alternatives?

Per the Company's suggested changes in Attachment A, the Company is proposing that this requirement is not necessary for Class A water and wastewater utilities already providing service. In applications over the past several years the Company has not received letters from the entities listed in Section 3.501(a)(7) regarding general compliance, nor is the Company aware that these entities provide letters to that effect. The Company is proposing that this requirement is not necessary for already certificated Class A utilities because it is directed more at utilities proposing to start service or constructing new facilities as opposed to those entities that have already been providing service in the Commonwealth.

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

The Company submits that Section 3.501(d) should be revised to use a less than 60-day protest period in all circumstances. It has been the Company's experience that the protest period for an application generally runs fifteen (15) days from the date of publication in the Pennsylvania

Bulletin for acquisitions or main extensions. This publication practice provides adequate notice to residents in the requested service areas of the application or main extension. The provision can be changed to provide a protest period of at least 15 days from the publication in the Pennsylvania Bulletin while allowing the Secretary of the Commission the discretion to enter a longer protest period if needed.

- 10. Should Section 3.501(d) be revised to require publication of the notice of an application once a week for two consecutive weeks in a newspaper of general circulation located in the territory covered by the application, rather than the requirement in Section 3.501(d) to publish daily for two consecutive weeks?**

The Company submits that in Secretarial Letters in recent years this practice is already occurring. Generally, the PUC has required publication of notice in a newspaper of general circulation located in the requested service territory once a week for two consecutive weeks in all of Aqua's recent applications. This publication practice provides adequate notice to residents in the requested service areas of the application. If additional notice requirements are warranted, the PUC has the authority to order such additional notice.

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

Final plan approval for subdivisions and land developments should not be included in an application to the Commission because in almost all instances, final approval is conditioned upon evidence that the developer can obtain public water or wastewater service. Commission approval of an application to serve the requested territory is required to get final approval for land development. The Company believes it would be beneficial to include a parcel or parcels that have preliminary planning approval in the service territory request of an acquisition application as it

would not require a later application to the Commission to extend the service area by a few parcels. Moreover, it would benefit developers as they would not have to wait for the initial acquisition application to conclude, before a new application could be filed to extend that service territory. It would also benefit the Commission as utilities would not have to continue to file applications to serve a single or a few additional parcels that adjoin the service territory, thereby saving Commission time and resources. Along with areas or parcels that have preliminary planning commission approval, the Commission should consider allowing utilities to include areas with failing septic systems in the service territory that are near the requested service territory so the utility can connect these customers without having to file an application to extend service territory.

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

The Company submits that FMV Applications should not be treated the same as Standard Applications. The filing requirements for FMV Applications are extensive due to the six-month consideration period under the statute. Non-Fair Market Value applications made under Section 1102 of the Public Utility Code for acquisition of existing systems or main extensions do not require the same level of documentation up front in the filing because there is no statutory time limit for the Commission to issue an order on the application. The Company believes that FMV Applications and Standard Applications should be treated separately. Any change to the Section 1329 Checklist should only be made upon notice and opportunity to be heard under the Implementation of Section 1329 of the Public Utility Code docket.

- 13. Parties should discuss whether applicants should follow additional processes and procedures regarding property owners that would be required to connect to an applicant’s system upon application approval but which have not requested service from the utility, including, but**

not limited to, property owners located in municipalities which have adopted a mandatory connection ordinance.

Generally, a municipality that has a mandatory connection ordinance will have required residents to connect to the public water or wastewater system. The mandatory connection ordinances are generally governed by a designated distance requirement to connect to the system, e.g., any resident within 150 feet of a public system is required to disconnect from any source / disposal facility and connect to the public system. In a Standard Application or FMV Application, the Company may include parcels that are not connected to the system if they are contiguous with the area served by the public system, e.g., those residents on well or septic systems, so that if those residents' wells or septic systems fail, they can easily be connected to the existing system without the need for a separate application to the Commission for extension of a service area. The procedures for connecting these customers would fall under the Company's existing tariff requirements.

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

Acquiring utilities should not be required to identify lead service lines ("LSLs") or damaged wastewater service laterals ("DWSL") in an application proceeding, unless it is available from the selling entity. It is not feasible for an acquiring utility to identify each LSL or DWSL prior to owning and operating a system. In regard to LSLs, this would require physical inspection of every lateral of the system prior to the acquiring utility owning the system. Concerning DWSLs, this would require extensive smoke testing, inflow and infiltration ("I&I") studies, and other measures that the acquiring utility would have to perform prior to owning and prior to filing an application before the Commission. The Company submits that this proposed requirement would

not be feasible to complete prior to submitting an application or owning the system and would add significant time and costs to the acquisition's transaction and closing costs. Moreover, the acquiring utility does not have rights of access prior to owning the system to perform this inspection, and the selling entity may not have the financial or operational resources to complete such an inspection. Identifying LSLs and DWSLs occurs over time as the acquiring utility owns and operates the system.

15. Parties should propose any changes to Section 3.502 they deem relevant.

The Company is proposing to change the protest period in Section 3.502 to be consistent with the Company's proposed change in question III.A.9, above. The Company may supplement this response on review of comments submitted by other interested parties.

B. THE COMMISSION'S GOALS OF REGIONALIZATION AND CONSOLIDATION

1. Parties should discuss how the Commission's goals of regionalization and consolidation may be further improved to promote the acquisition of systems with fewer than 3,300 connections by larger more viable systems.

Many small systems in the Commonwealth face challenges of needed upgrades to their facilities to replace deteriorated infrastructure or to meet more stringent environmental regulations. Often these small or non-viable systems do not have good records that the Company would generally gather for an application to the Commission. In these instances, if a system is determined to be a small or non-viable system, the Company believes that a short form application could be developed that would allow larger utilities to acquire these systems without having to complete exhaustive searches for documentation that have been misplaced, not updated, or never created. The Company has had conversations in recent years regarding the effort now associated with the

Commission's application and approval process for small, troubled systems and how it can impact its ability and workload to proceed forth with a particular troubled system. Reducing the requirements necessary to acquire these systems will streamline the application process and move these systems from their current owners to well-established capable utilities that will make the necessary investments and ensure compliance with PUC and DEP regulations. This will ultimately benefit the customers of the small or non-viable system, the Commission, DEP, and the Commonwealth as a whole by reducing the number of systems without the financial or managerial abilities to make needed investments.

When a Company acquires a troubled system, like the Company's acquisition of the Sun Valley system, there is likely no scenario where that system will ever earn a fair return on its own or even break even. However, because of the Commonwealth's support of consolidation and regionalization and the Commission's long-standing policy of encouraging larger water and wastewater utilities to acquire smaller and/or troubled systems, this process can take place because of the acquiring utility can spread costs over a larger customer base. Acquiring and improving these systems take significant time and resources of the Company, from cleaning up estate issues of the owner, addressing outstanding creditors, and locating or obtaining real property interests, to working with struggling families within the community, in addition to, in many cases, rebuilding the entire system. Management and operational staff work to ensure that environmental compliance and operational issues are addressed in an expedient and cost-effective manner. It is an extraordinary time consuming and focused effort to get these systems back on track. The Commission should therefore continue to consider the efforts that utilities have made in these small and troubled systems when the Company submits a rate increase request.

The Commission should also support water quality accountability legislation in the Commonwealth. Water quality accountability legislation ensures that all water systems across the Commonwealth have taken the necessary steps of reviewing their system, testing all necessary facilities, and completing planning for the system assets. The planning would include an asset management plan, cyber security plan, and required mitigation plans for violations. The requirements would ensure that customers have viable systems in the years to come, and for those systems that would not be able to meet such requirements, they should be encouraged / required to explore the possibility of combining with another private or municipal system. The legislation would thereby strengthen the Commonwealth's water infrastructure by requiring proper planning for viable systems and the elimination of smaller non-viable systems.

The Commission should also consider updating and re-deploying its troubled system list. The troubled system list should be sent to the large water and wastewater utilities in Pennsylvania to begin discussions on how the large utilities can provide solutions for the Commonwealth and the Commission to improve overall service and reliability for customers.

Finally, in regard to acquisitions of troubled systems either through negotiated purchase or through a Section 529 Proceeding, 66 Pa. C.S. § 529, the Commission should continue to provide return on equity incentives to award utilities that continue to acquire these small and troubled systems, encourage negotiations and settlement process to take small and troubled systems, and only using the Section 529 Proceedings as a last resort. The Section 529 Proceeding should only be used when all other avenues for acquisition or merger of the system have been explored. Large utilities can participate in discussions with the small utility to explore opportunities for acquisition outside the Section 529 Proceeding which will save the Commission and parties time and resources by not requiring numerous filing before the Commission in the 529 Proceeding. Additionally, if

a utility acquires a small troubled system, the utility should be permitted to increase rates, if necessary, upon acquisition, and begin charging a Distribution System Improvement Charge (“DSIC”) for needed improvements.

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.**

The Company supports the development of a fund to deal with nonviable or abandoned water and wastewater systems. To the extent that a utility is actively overseeing a receivership and/or imminently expected to do so, the utility should be able to request a surcharge equal to the projected revenue requirement of operating expenses, return on, and of, projected capital expenditures installed to correct immediate deficiencies in the system being operated in receivership. Considering that most nonviable or abandoned systems are small in size, and the likely candidates for taking over such systems are larger with a vast customer base to spread costs, the expected surcharge on the larger utility would likely be fractional, while at the same time promoting a good public policy, improve health and safety, and reduce the number of small nonviable systems in the Commonwealth. The surcharge could be capped or treated as the “lesser of”, and any such surcharge should be subject to Section 1307 of the Public Utility Code, 66 Pa. C.S. § 1307.

3. **Should the Commission consider seeking to modify the 1993 Memorandum of Understanding between the Commission and the Department of Environmental Protection? If so, in what ways? Should the scope of the memorandum be broadened to also include wastewater service?**

The Company believes that the MOU can be expanded to allow for documentation sharing between the agencies, especially regarding existing Act 537 Plans, Chapter 94 Reports, or other

DEP documentation requested by the PUC in application proceedings. The Company agrees that the scope of the memorandum should be broadened to include wastewater service as many wastewater systems are struggling to keep up with environmental regulations and if those systems can be identified and classified as small or non-viable, a long term solution can be reached for these systems which provides benefits overall to the Commonwealth.

C. CROSS-CONNECTIONS AND BACK FLOW PREVENTION

1. What methods within the Commission’s jurisdiction might be used to reduce or eliminate the presence of contaminants such as lead, PFOA/PFOS and Legionella from the drinking water supplies of systems subject to approval under Sections 3.501 and 3.502?

The Company will continue to work with the Commission in the development of the Commission’s implementation of Act 120 of 2018 to address lead customer service lines in its existing systems. The Company notes in its response to III.A.14., that often it will not be known if a customer has a LSL upon acquisition. Following acquisition of an existing system, the Company will be able to further review the system and determine if there are concentrations of lead service lines.

Regarding PFOA/PFOS, there is a current health advisory limit of 70 parts per trillion (“ppt”). The health advisory is not a maximum contaminant level issued by DEP. The Company already provides treatment where there is an exceedance of the health advisory level in the Company’s systems, which is done in coordination with DEP. Further, the Company has committed to installing treatment on sources where the sampling shows a 13ppt concentration. The Company has been proactive in implementing treatment where necessary to reduce PFAS/PFOA.

Legionella can occur in a customer's plumbing system, especially in cases where there is stagnant water. Aqua's Cross Connection Control ("CCC") Program adopted in compliance with Pennsylvania's environmental regulations, is designed to eliminate the risk of pollution or contamination to the water supply. Aqua's program addresses the elimination of existing cross-connections, the effective containment of sources of contaminations, and prevention of future cross-connections. The particular backflow devices required to be installed by a water customer is based on the risk associated with the particular premise as defined by American Society of Sanitary Engineer's Standards.

Finally, the Commission should consider allowing utilities to recover the costs of meter relocations from within a customer's property to outside the property in a meter pit. A utility generally does not own the meter pit when installed; however, as part of an overall program to reduce non-revenue water ("NRW") in systems across the Commonwealth, improve efficiencies in water delivery, a utility should be permitted to recover these costs of relocation. The installation of these new meter pits and meters will often come with a form of backflow prevention, which will provide further protection against pollution or contamination of the water supply.

- 2. Whether the Commission should exercise its authority pursuant to 66 Pa.C.S. §§ 501 and 504 to require public utilities to provide copies of current cross-connection control programs approved by the Department of Environmental Protection pursuant to 25 Pa. Code § 109.709(b) for systems subject to approval under Sections 3.501 and 3.502.**

When the Company acquires a system or completes a main extension to serve new parcels the Company will apply its CCC program to these newly acquired customers. The Company does not believe that a new condition is required in the application to provide the Company's current CCC program as it is already on file with the Commission and the Company would be supplying the same document in each application to the Commission.

- 3. Whether it would be reasonable for the Commission to condition approval of acquisition applications filed pursuant to 66 Pa.C.S. § 1102(a)(3) and 52 Pa. Code §§ 3.501 and 3.502 upon implementation of a DEP-approved cross-connection control program and/or a Commission-approved cross-connection control plan.**

Please see the response to III.C.2., above. The Company does not believe it is necessary to impose this condition for an approval of a water system acquired under Section 1102 and in compliance with Sections 3.501 and 3.502 as acquired customers through acquisitions of existing systems or main extensions would become subject to the Company's CCC program upon approval of the application.

IV. CONCLUSION

Aqua appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking and asks that the Commission consider its comments. Aqua looks forward to continuing to work with the Commission on these issues. Please direct any questions with regard to these comments to the undersigned.

Respectfully submitted,



Alexander R. Stahl
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
Phone: 610-645-1130
AStahl@AquaAmerica.com

Dated: July 15, 2020

ATTACHMENT A

Attachment A

PROPOSED CHANGES TO 52 PA. CODE §§ 3.501 and 3.502

OPTION 1

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

(a) *Applicant.* ~~Except for Class A Water and Wastewater public utilities already providing service in the Commonwealth, An~~ applicant for a certificate of public convenience as a public water 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, as applicable to proposed utilities or utilities already providing service, 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 to the Commission in the next base rate case which includes the acquired system:

(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.

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

(i) Proposed utilities and utilities already providing service shall provide a map of suitable scale highlighting the boundaries of the proposed service area, including:

(A) A courses and distances or metes and bounds description.

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

(ii) Proposed utilities shall provide the following general system information:

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

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

(C) A copy of the county comprehensive plan, municipal comprehensive plan and applicable zoning designations, if requested.

(iii) Utilities already providing service shall provide the following general system information:

(A) The approximate year(s) that major facilities in the system were installed.

(B) The elevations of major facilities and service areas.

(C) The DEP productive or treatment capacity of sources or treatment facility.

(D) Pipe sizes and materials of the system, if available.

~~—(i) A courses and distances or metes and bounds 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.~~

~~—(v) The DEP permitted productive or treatment capacity of sources or 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, if requested.~~

(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 in the current calendar year and future number of connections anticipated for the next ~~10 years~~ 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).

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(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 through the methods set forth in paragraph (d).

(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.~~ Utilities that have been providing service shall file the utility's most recent balance sheet and income statement and the acquired utilities most recent financial statements, if available. In addition, the utility will state the projected first year revenue and operating expenses of the system.

(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, or in the case of a utility already providing service, a statement attesting to the applicant's general compliance history with DEP requirements.

(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 of a proposed utility 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) DEP.

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

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

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

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(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.* ~~D~~For applicants of proposed utilities, 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.

(b) *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) *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), 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) shall accompany the original application filed with the Commission.

(d) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with at least a 15-day protest period, except when the need for the proposed service or other exigent circumstances supports a request for a shorter protest period. The applicant shall also publish notice of application as supplied by the Secretary, daily 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. In addition, the ~~utility or~~ applicant shall individually notify existing customers of

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the filing of the application if the applicant is a proposed utility or the applicant is seeking to change existing rates in the application.

(e) *Application form.* The Commission may provide a standard application form for use by an applicant for this section and will, to the extent practicable, provide the application form 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 from actions of the staff).

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

(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) *References.* Subsection (a) supplements § 5.11 (relating to applications generally).

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OPTION 2

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

(a) *Applicant for Proposed Utilities.* An applicant for a certificate of public convenience as a public water or wastewater collection, treatment or disposal provider that is not already providing service in the Commonwealth under Commission granted certificates of public convenience, 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:~~

~~—(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.~~

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

(i) A courses and distances or metes and bounds 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.

(v) The DEP permitted productive or treatment capacity of sources or 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, if requested.

(3) *Customers.*

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(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 in the current calendar year and future number of connections anticipated for the next 10 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.~~

(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 shall submit a letter addressing all the applicable requirements or mandates of the following governmental entities. The letter must also append copies of

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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) DEP.

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

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

(iv) The requirements of any officially adopted 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.

(a.1) Applicant already certificated by the Commission. A Class A Water and/or Wastewater applicant for a certificate of public convenience as a public water or wastewater collection, treatment or disposal provider already operating under Commission granted certificates of public convenience in the Commonwealth shall provide the following information to the Commission.

(1) Plant in service.

(i) Utilities that have been providing service shall provide the following to the Commission in the next base rate case which includes the acquired system:

(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.

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(2) Map of service area and general system information.

(i) A map of suitable scale highlighting the boundaries of the proposed service area, including:

(A) A courses and distances or metes and bounds description.

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

(ii) General system information shall be included in the application, including:

(A) The approximate year(s) that major facilities in the system were installed.

(B) The DEP productive or treatment capacity of sources or treatment facility.

(D) Pipe sizes and materials of the system, if available.

(3) Customers.

(i) Number of customers by class and related consumption or gallons treated in the most recent calendar year and projected additional customer connections in the next five years.

(ii) Utilities shall demonstrate the 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) A tariff or tariff supplement which includes the proposed rates, rules, and conditions of service.

(5) Cost of service.

(i) The applicant's most recent balance sheet and income statement.

(ii) The projected first year's revenue and operating expense for the system.

(6) DEP documentation. An applicant shall provide the following DEP documentation or information with its application:

(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) Notices of violation during the previous five years for the system to be acquired.

(iv) A statement attesting to the applicant's general compliance history with DEP requirements.

(7) 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 the requested service area and that abuts or is situated within 1 mile of the applicant's requested service area.

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(8) 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.

(b) *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) *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), (a.1) and (b), 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) shall accompany the original application filed with the Commission.

(d) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with at least a 6015-day protest period, except when the need for the proposed service or other exigent circumstances supports a request for a shorter protest period. The applicant shall also publish notice of application as supplied by the Secretary, daily 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. In addition, the ~~utility or~~ applicant shall individually notify existing customers of the filing of the application if the applicant is a proposed utility or the applicant is seeking to change existing rates in the application.

(e) *Application form.* The Commission may provide a standard application form for use by an applicant for this section and will, to the extent practicable, provide the application form 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 from actions of the staff).

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

(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) *References.* Subsection (a) supplements § 5.11 (relating to applications generally).

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

(a) *Protests generally.* A person objecting to the application shall file with the Secretary and serve upon the applicant or applicant's attorney, if any, a written protest which must contain the following:

- (1) The applicant's name and the docket number of the application.
- (2) The name, business address and telephone number of the protestant.
- (3) The name, business address, Pennsylvania attorney identification number and telephone number of the protestant's attorney or other representative.
- (4) A statement of the nature of the protestant's interest in the application.

(b) *Participation in a proceeding.* Upon the filing of a timely protest the protestant will be allowed to participate in the proceeding as a party intervenor. Statutory advocates participate in any proceeding based on their statutory right of participation.

(c) *Motions.* A protest will be treated as a pleading; and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in § 5.101 (relating to preliminary motion).

(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 at least ~~60~~ 15 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. 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).