

PENNSYLVANIA BULLETIN

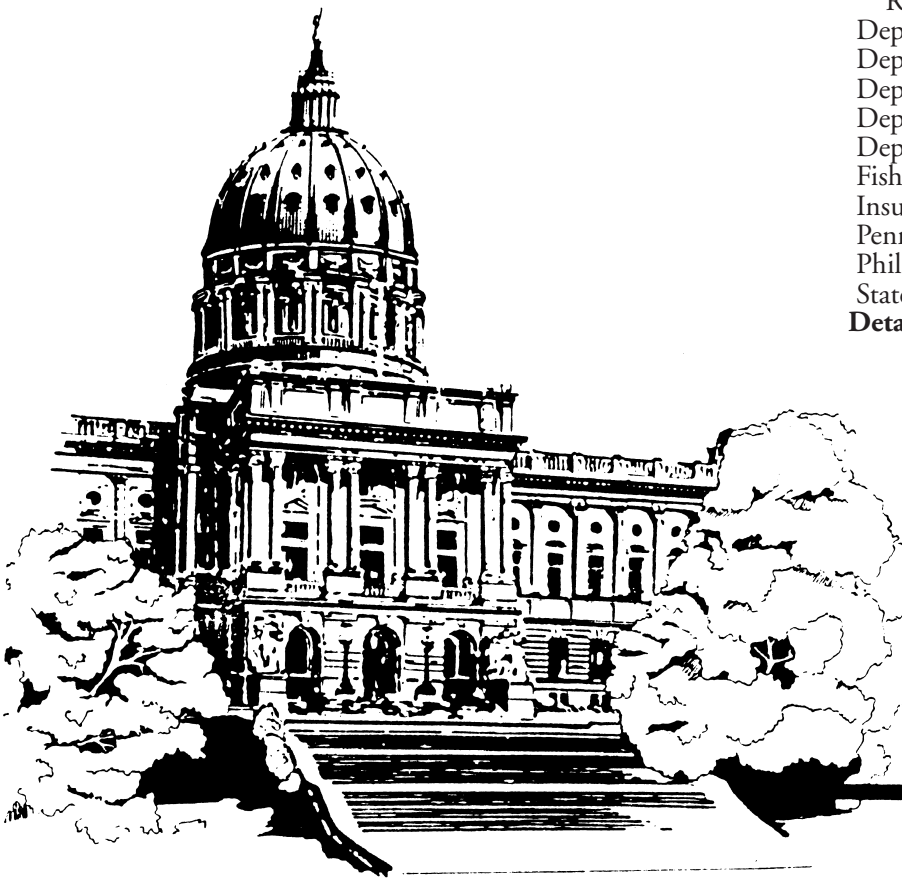
Volume 52
Saturday, August 13, 2022 • Harrisburg, PA
Number 33
Pages 4903—5108

See Part II page 5049
for the Rules and Regulations

Part I

Agencies in this issue

The General Assembly
The Courts
Department of Agriculture
Department of Banking and Securities
Department of Conservation and Natural
Resources
Department of Environmental Protection
Department of Health
Department of Human Services
Department of Revenue
Department of Transportation
Fish and Boat Commission
Insurance Department
Pennsylvania Public Utility Commission
Philadelphia Parking Authority
State Board of Medicine
Detailed list of contents appears inside.



substantially equivalent jurisdiction or jurisdictions, for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(ii) English language proficiency by demonstrating one of the following:

(A) The applicant’s educational program was in English.

(B) The applicant’s training was at an English-speaking facility.

(C) The applicant’s entry examination was taken in English.

(D) The applicant is certified by the Educational Commission for Foreign Medical Graduates.

(E) The applicant has achieved a score of at least 83, or similar score acceptable to the Board, on the Test of English as a Foreign Language examination.

(F) The applicant has achieved a score of 350 in each of the four subtests of the Occupational English Test.

(G) The applicant has achieved a passing score on a substantially equivalent English proficiency examination as approved by the Board.

(4) Have not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certification, registration or permit to practice prohibited by section 41 of the act (63 P.S. § 422.41) or section 204 of the NDRA (63 P.S. § 272.204).

(5) Have not been disciplined by the jurisdiction that issued the license, certification, registration or permit.

(6) Have paid the applicable application fee as required by § 16.13 (relating to licensure, certification, examination and registration fees).

(7) Satisfies the professional liability insurance requirements as required under the act, section 3.2 of the ALA (63 P.S. § 1803.2), this chapter and Chapter 18 (relating to State Board of Medicine—practitioners other than medical doctors).

(8) Have applied for a license, certification, registration or permit in accordance with this chapter in the manner and format prescribed by the Board.

(9) Completes 3 hours of training in child abuse recognition and reporting from a provider approved by the Department of Human Services as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating to competency, experience or English proficiency. The applicant may request the interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts.* Notwithstanding subsection (a)(4) and (5), the Board may, in its discretion, determine that an act prohibited under section 41 of the act (63 P.S. § 422.41), section 204 of the NDRA (63 P.S. § 272.204) or a disciplinary action taken by another jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 16.12c. Provisional endorsement license under 63 Pa.C.S. § 3111.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 16.12b (relating to licensure by endorsement under 63 Pa.C.S. § 3111).

(b) *Expiration of a provisional endorsement license*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon written request and showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) When the Board completes its assessment of the applicant and denies or grants the license.

(2) When the holder of the provisional endorsement license fails to comply with the terms of the provisional endorsement license.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 16.12b after expiration or termination of a provisional endorsement license; however, the individual may not be issued a subsequent provisional endorsement license.

§ 16.13. Licensure, certification, examination and registration fees.

(a) *Medical Doctor License:*

License Without Restriction:

Application, graduate of [**accredited**] a medical college **within the United States or Canada** \$35

Application, graduate of [**unaccredited**] a medical college **outside of the United States or Canada** \$85

Biennial renewal \$360

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[Pa.B. Doc. No. 22-1210. Filed for public inspection August 12, 2022, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 3 AND 65]

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

Public Meeting held
December 16, 2021

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; John F. Coleman, Jr., Vice Chairperson; Ralph V. Yanora

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

Notice of Proposed Rulemaking Order

By the Commission:

In accordance with Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Pennsylvania Public Utility

Commission (Commission) formally commences this rule-making principally to amend its existing regulations at 52 Pa. Code §§ 3.501 and 3.502, as discussed below.

Pursuant to 66 Pa.C.S. § 1101, a public utility must obtain a certificate of public convenience from the Commission in order to offer, render, furnish, or supply public utility service in Pennsylvania. Section 1103 of the Public Utility Code, 66 Pa.C.S. § 1103, establishes the procedure to obtain a certificate of public convenience. That provision provides, in relevant part, that a “certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”¹ After a public utility obtains the right to commence service under 66 Pa.C.S. § 1101, it may make subsequent applications for certificates of public convenience pursuant to 66 Pa.C.S. § 1102 to, among other things, begin service to new territories, abandon service, and transfer used or useful utility assets. 66 Pa.C.S. §§ 1102(a)(1)—(3). Section 1102(a)(5) serves a similar purpose as Sections 1101, 1102(a)(1), and (a)(3), but is limited to municipal corporations that provide public utility service beyond their corporate limits.

The Commission has promulgated regulations in 52 Pa. Code Chapter 3 governing practice before the Commission, including procedures for applications for certificates of public convenience under 66 Pa.C.S. § 1103. Section 3.501 governs applications for certificates of public convenience as a public water or wastewater collection, treatment, or disposal provider.² Section 3.502 governs protests to applications under Section 3.501.³

The Commission proposes to amend its regulations governing the application for certificates of public convenience as to the acquisition of water and wastewater service providers by existing, certificated Class A utilities. The proposed amendments streamline some requirements for established utilities during the process of acquisition of another water or wastewater service provider. Smaller updates are proposed to other sections to reduce requirements which are no longer needed generally, and we also propose editorial changes for provisions related to these principal amendments. While the Commission streamlines this process in order to decrease the time required to review applications, neither the changes to the Commission’s regulations nor this Order should be read to limit the Commission’s thorough review of applications or its authority to issue data requests in support of that review. The purpose of regulatory requirements for applications is to define information and documents which are routinely needed for Commission review and which are not likely to change. Other information is better collected through separate means such as data requests. The Commission also takes this opportunity to revise Section 3.501 unrelated to acquisitions as well as updating 52 Pa. Code § 65.16 and creating a new section to modernize the obligations of Class A, B, and C water and wastewater utilities.

Background

Section 3.501 was initially promulgated in April 1976.⁴ The information required by the regulation was relatively limited, requiring a full description of the waterworks project’s construction, a map showing the project and its boundaries, information regarding the topography of the

project, the schedule of project construction, the transportation and distribution specifications, estimated customers at years 1, 5, and 10, and the ultimate future development of the project.⁵ Wastewater systems were not within the regulation’s original scope.

The Commission greatly expanded Section 3.501 in October 1983 to require applicants to include information related to Department of Environmental Protection (DEP) approvals, various River Basin Commission approvals, and neighboring utilities, and to provide procedural mechanisms for application protests.⁶ The Commission amended Section 3.501 again in January 1997 to specifically include wastewater service and to explain that, “[a]lthough more detail is required, most of the requirements can be met by submitting the same documents to the Commission as must be submitted to DEP.”⁷ The 1997 amendments include the requirement of demonstrating compliance with Section 5 of the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.5, also known as an Act 537 Official Sewage Facilities Plan (Act 537 Plan).

The Commission revisited Section 3.501 most recently in April 2006, expanding its requirements further at the behest of the Independent Regulatory Review Commission and DEP. The Commission explained:

The final regulation in § 3.501(a)(2)(vi) requires an applicant to provide a Map of Service Area including the County Comprehensive Plan, Municipal Comprehensive Plan, and Zoning Designations if requested. An applicant letter is required to address compliance with the applicable requirements of these plans pursuant to § 3.501(a)(7) regardless of whether the Commission requests a copy of these voluminous documents. [Current] Section 3.501(b) provides additional considerations that the Commission will consider and may rely on. This includes Comprehensive Plans, Multimunicipal Plans, Zoning Ordinances and Joint Zoning Ordinances reflecting the Municipalities Planning Code. This reflects our agreement with IRRC and DEP about important considerations that should be considered when evaluating an application.⁸

As Section 3.501 currently stands, it treats all acquisitions under a single scheme, requiring largely the same information from both new and existing utilities.

Section 3.501 requires significant information related to compliance with DEP regulations and seeks information related to the types of financial and managerial fitness that certificated utilities presumably possess. The Commission’s Orders amending Section 3.501 in 1983, 1997, and 2006 create necessary requirements to ensure small systems prove their viability prior to operation. This fits Commission policy that “[m]any small water systems in this Commonwealth are not viable and need to be restructured. Most new water systems being created in this Commonwealth are small and are likely candidates for becoming nonviable.”⁹ The “objective of the Commission [is] . . . to substantially restrict the number of nonviable drinking water systems by discouraging the creation of new nonviable small systems.”¹⁰ The Commission has stated “[t]he regionalization of water and wastewater systems through mergers and acquisitions will allow the water industry to institute better management practices

⁵ Id.

⁶ 13 Pa.B. 3221.

⁷ 27 Pa.B. 414, 419.

⁸ 36 Pa.B. 2097, 2098-99.

⁹ 52 Pa. Code § 69.701(a)(1) (Commission’s general policy statement on the viability of small water systems).

¹⁰ 52 Pa. Code § 69.701(a)(3).

¹ 66 Pa.C.S. § 1103(a).

² 52 Pa. Code § 3.501.

³ 52 Pa. Code § 3.502.

⁴ 6 Pa.B. 911.

and achieve greater economies of scale.”¹¹ In seeking to prevent the creation of nonviable systems, the documentation required under Section 3.501 for certificated applicants in good standing may have become unnecessarily burdensome, with the unintended consequence of making water and wastewater system regionalization more difficult.

The Commission has long held its procedural regulations are a work in progress; Section 3.501 is no exception to this view. As the field of utility regulation evolves, so must the Commission’s rules of practice. The certificate of public convenience is one of the principal tools the Commission uses to authorize qualified entities to provide utility service in the Commonwealth.

The application process for certificates of public convenience is a collaborative one, where the interests of consumers, small businesses, and the applicant utility must be taken into account. Where an acquisition is involved, the Commission must also become familiar with the additions to an established utility’s water or wastewater system.

At the 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 regarding 52 Pa. Code § 3.501.¹² Thus, at the April 30, 2020 public meeting, the Commission issued an Advance Notice of Proposed Rulemaking asking numerous questions of stakeholders to receive comprehensive input from those interested in improving the application process.

While the Commission’s questions were wide-ranging and covered many aspects of the application process under Sections 3.501 and 3.502, and more, the core of the Commission’s inquiry was an investigation of whether and how the Commission may improve the process of applications for certificates of public convenience when a well-established water or wastewater service provider seeks to acquire another utility service provider.

Commenters provided helpful feedback which will ensure the Commission’s regulations are well-targeted to serve the interests of all stakeholders. Composing this feedback, commentators’ remarks broadly supported modernizing the Commission’s regulations in this area. Positive feedback was provided by commenters representing consumer interests¹³ as well as industry.¹⁴

Commenters include the Pennsylvania Chapter of the National Association of Water Companies (NAWC), the Office of Consumer Advocate (OCA) the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Aqua Pennsylvania, Inc. (Aqua), Pennsylvania-American Water Company (PAWC), The Manwalamink Water Company and Manwalamink Sewer Company (collectively, Manwalamink), and the Pennsylvania Association of Township Supervisors (PATS). Suez Water Pennsylvania Inc. (Suez) filed a letter in support of NAWC.

¹¹ 52 Pa. Code § 69.721(a) (Commission’s general policy statement on water and wastewater system acquisitions).

¹² Motion of Commissioner Ralph V. Yanora.

¹³ Comments of the Office of the Consumer Advocate, p. 2 (“The OCA submits that there may be modifications that will make the process more efficient for all stakeholders.”)

¹⁴ Comments of Aqua Pennsylvania, Inc., p. 3 (“Aqua commends the Commission for their continued initiatives to make improvements to water and wastewater application requirements.”)

Comments¹⁵

A. Should the Commission create different application processes for “well-established” utilities when they acquire other water or wastewater service providers? If so, how should the Commission define a “well-established” utility subject to streamlined application process?

The OCA comments that different application processes for well-established utilities may be possible, but that “well-established” should mean more than simply “certificated” and that the amount of time in which a utility holds a certificate of public convenience should not be the definition of “well-established”.¹⁶ OCA proposes the existing definition of financial, managerial and technical viability may be used to analyze whether a utility is “well-established” and that depending on how often the utility files, whether a utility is “well-established” may be reanalyzed from time to time.¹⁷

NAWC advocates in favor of a three-tiered application process. The three tiers draw a distinction between well-established utilities, small but pre-existing utilities, and applicants which are not existing water or wastewater utilities. For well-established utilities, NAWC suggests adapting the definition of capable public utility found in Section 529(m) of the Public Utility Code. Under NAWC’s system, a well-established utility would be “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.”¹⁸

PAWC comments that revisions to Sections 3.501 and 3.502 are critically important. It recounts the history of the regulation and the evolution of the problems the regulation works to address. PAWC further points out that when previous revisions were made, electronic access to the various records required in Section 3.501 were not available. Thus, PAWC contends the collection of the extensive documentation required by the Section are no longer justified now that internet access to these documents is viable.¹⁹

Aqua submitted comments in support of a differential treatment of “previously certificated Class A water and wastewater utilities that are operating in the Commonwealth and are in good standing with the PUC and DEP”.²⁰ Aqua proposes two methods for achieving this differential treatment, either through extensive modifications of Section 3.501 while retaining the regulation in its current structure, or by adding a new subsection applicable solely to Class A utilities providing service in the Commonwealth.²¹

Disposition

Taking into account the views and suggestions of commenters, the Commission finds that while there should be a distinction between well-established utilities and other utilities, the Commission should not adopt a system whereby the classification process adds too much complexity even if the ultimate application requirements on well-established utilities are reduced. As a result, the Commission would at this stage propose a classification

¹⁵ For organization, some of the inquiries of the Commission and the responses thereto have been consolidated. Although the responses to some inquiries provided useful information, the Commission finds the matters involved may be more appropriately resolved outside the context of this proceeding, and thus are not included in this NOPR.

¹⁶ OCA Comments at 2.

¹⁷ OCA Comments at 2-3.

¹⁸ NAWC Comments at 8-9.

¹⁹ PAWC Comments at 2-3.

²⁰ Aqua Comments at 4.

²¹ Aqua Comments at 4.

system distinguishing between Class A utilities and all other utilities, except where necessary forms of proof require further specification. This distinction would be limited to applications for acquisitions, and not applications generally.

Regarding the organization of the regulation, the current Section 3.501 makes some distinctions between established utilities and proposed utilities. See, e.g., 52 Pa. Code 3.501(a)(5)(i), (ii) (differential forms of proof for revenue and operating expenses for existing and proposed utilities). The Commission proposes to retain these distinctions and create a new subsection which applies specifically to well-established utilities.²² Well-established utilities will be carved out of the presently existing 3.501 requirements except to the extent reestablished in the new subsection.

B. Should the Commission allow existing utilities to complete an original cost study, under Section 3.501(a)(1)(ii)(A), after an acquisition has closed rather than requiring the study at the time of application submission?

The OCA comments that when an acquired utility is certificated there is no need to wait for an original cost study to be submitted because the information would already be available on file with the Commission. For service providers to be acquired which are not presently regulated by the Commission, the OCA is supportive of the option of submitting an original cost study after closing of the transaction.²³

PAWC comments in support of allowing original cost studies to be submitted after a transaction has closed. According to PAWC, it is common for sellers to have projects under construction in a way that makes an accurate original cost study impossible at the time of the filing of an application. PAWC asserts that for municipal sellers, asset lists and depreciation schedules are often incomplete, and as such it is necessary to wait until after closing to produce an accurate study. PAWC further comments in support of using original cost studies for acquisition adjustments under 52 Pa. Code § 69.711 and § 69.721.²⁴

Aqua comments that for existing utilities acquiring non-certificated entities, the applicant should not be required to provide original cost studies as part of the application, but should be able to submit them in the next base rate case. Aqua notes that many acquired systems do not have adequate records to develop original cost prior to the acquisition. Aqua argues that no party is prejudiced if an original cost study is submitted in the acquiring utility's next base rate case, as then all parties will be able to review and challenge the original cost study. Aqua also asserts that for fair market value applications, original cost studies are a necessary part of the engineering assessment which is submitted separately. Finally, for main extension applications, Aqua argues original cost studies should not be required as in many cases the facilities have not yet been installed at the time of the application.²⁵

Disposition

The Commission agrees that it should modify Section 3.501(a)(1)(ii)(A) to allow for an original cost study to be filed after approval of a relevant application for well-established utilities. The Commission has prior experi-

ence allowing certain applicants to submit original cost studies after an acquisition rather than at the time of application submission.²⁶ Allowing applicants to submit this information later does not appear to harm the public interest, and allowing utilities to acquire assets and submit an original cost study to be considered in the context of the acquiring utility's next base rate case, in accordance with Sections 69.721(e) and (f) of the Commission's regulations, 52 Pa. Code § 69.721(e) and (f), helps to ensure that the acquiring utility will be able to provide more accurate information to the Commission.²⁷ While the OCA is correct that this information should be readily available to acquiring utilities, oftentimes the selling utility has not fulfilled its statutory duties or is not well-managed, hence the need for the acquisition. For these reasons, the Commission proposes to allow for the filing of original cost studies to be considered in the context of the acquiring utility's next base rate case.²⁸ The filing and service of original cost studies through this method should follow the Commission's policy statement at 52 Pa. Code § 69.711, which already provides for the submission and service of original cost studies when an acquiring utility seeks an acquisition adjustment.

C. As alternative compliance to providing municipal and county comprehensive plans as well as zoning designations under section 3.501(a)(2)(vi), what other documentation can be provided? And what are the costs and benefits of those alternatives?

The OCA points out that the present form of Section 3.501(a)(2)(vi) only requires county and municipal comprehensive plans if the Commission requests the information. The OCA suggests that an applicant may be able to reduce costs by submitting this information in an electronic form or by submitting a link to the information, as the information may be available from county or municipal websites.²⁹

PAWC agrees with the OCA that the current iteration of the subsection only requires this information upon request. Still, PAWC recommends the elimination of the requirement or for the Commission to clarify when a request is necessary and appropriate. PAWC finally asserts that this requirement should not be necessary for the acquisition of an existing system, as the applicable zoning designations would have already been performed.³⁰

Aqua comments that this requirement is unnecessary for acquisitions and main extensions. Aqua notes that when a utility is not expanding beyond an existing plant footprint, then providing a statement to that effect should be sufficient. In the case of main extensions, Aqua says zoning and local planning commission review will have already been completed at the time of the application, and as such providing comprehensive plans are unnecessary. Aqua lastly suggests that when a utility intends to provide service beyond the existing service territory of the acquired entity or beyond the area to be served by a main extension, the utility should provide a letter to the

²⁶ Application of Aqua Pennsylvania Wastewater, Inc. (APW) for approval of: (1) the acquisition by APW of certain wastewater system assets of Tobyhanna Township situated within Tobyhanna Township, Monroe County, Pennsylvania; and (2) the right of APW to begin to offer, render, furnish and supply wastewater service to the public in a portion of Tobyhanna Township, Monroe County, Pennsylvania, Docket No. A-2016-2575001 (Order entered March 16, 2017).

²⁷ Original cost studies should contain the materials specified in, and should be filed in accordance with, Commission regulations. See 52 Pa. Code § 69.721(d)—(f).

²⁸ See Annex, new Section 3.501(b)(1).

²⁹ OCA Comments at 4.

³⁰ PAWC Comments at 14.

²² See Annex, new Section 3.501(b).

²³ OCA Comments at 3.

²⁴ PAWC Comments at 13-14.

²⁵ Aqua Comments at 7.

Commission from the County or Township that the new area of service is in compliance with comprehensive plans.³¹

PSATS is strongly supportive of the Section 3.501 requirement that an applicant provides applicable county and municipal comprehensive plans, as well as zoning designations, if the Commission requests copies.³²

Disposition

The Commission finds the requirement that utilities provide municipal and county comprehensive plans and zoning ordinances is unnecessarily burdensome both on Class A utilities in the process of an acquisition, as well as established utilities which do not qualify as Class A utilities. The Commission is primarily interested in verification of compliance with these documents, not obtaining copies of these documents for some other use. Therefore, the Commission proposes to require applicants to obtain certification letters, signed by an authorized representative of each affected county and municipality, that any addition to the service territory of an applicant complies with applicable county and municipal comprehensive plans and zoning ordinances, as further discussed below. Under the proposed regulations, if any county or municipality does not provide a certification regarding compliance with comprehensive plans or zoning ordinances, as further discussed below, the applicant must still provide such comprehensive plans and zoning ordinances and verify compliance through an alternative method. Also, if in a particular case the Commission needs a copy of any of these documents in full, it may still request this information from the utility.³³ The Commission proposes to eliminate Section 3.501(a)(2)(vi) and modify Section 3.501(a)(7) to provide relief to utilities generally and add new Section 3.501(b)(4) as a less extensive requirement for well-established utilities.

D. As alternative compliance to identifying the future number of connections anticipated for the next 10 years under Section 3.501(a)(3)(ii), what other information can be provided? And what are the costs and benefits of those alternatives?

The OCA comments that an acquiring utility should be able to develop the information requested in Section 3.501(a)(3)(ii): the future number of connections for 10 years. The OCA submits that this information is important for demonstrating the financial, technical, and managerial viability of an acquiring utility, and for other entities seeking certificates of public convenience.³⁴

PAWC comments in support of eliminating the requirement for well-established utilities to project the future number of anticipated connections for the next 10 years following the application. PAWC comments that for existing-system acquisitions or line extensions, this information is unnecessary. PAWC comments that alternative documentation may be provided in the form of Chapter 94 reports. See 25 Pa. Code §§ 94.1 et seq. Ultimately, PAWC argues, the need for a 10-year projection, or any projection, is highly dependent on the purpose of the information in the application, especially whether the purpose is projected adequate capacity, which should be presumed for well-established systems, or future viability of the system based on an adequate customer base. PAWC

contends that the usefulness of this information is undercut by the lack of any definitive documentation to confirm compliance.³⁵

Aqua comments that the requirement for identifying future connections should be limited to 5 years. For wastewater systems, Chapter 94 reports submitted to DEP require a 5-year projection. Aqua's comments support keeping the water application projection consistent with similar DEP requirements. Aqua argues that main extensions are generally brought to serve a specific customer or group of customers or group of customers, and a projection is unnecessary because the number of new connections is stated in the application.³⁶

Disposition

The Commission proposes a 5-year requirement for adoption. Modifying the current requirement of Section 3.501(a)(3)(ii) would serve to align the Commission's regulatory requirements with that of DEP. Aligning requirements between agencies generally serves to preserve oversight while drastically reducing compliance costs. As such, unless there is a special need for higher requirements in a particular context, it is good policy to align similar requirements between agencies. The Commission does not conclude there is any special need presently, and therefore we propose to amend Section 3.501(a)(3)(ii) and adopt the same requirement for anticipated connections for well-established utilities applying to acquire a water or wastewater service provider.³⁷

E. As alternative compliance to providing a DEP 5-year compliance history of affiliated utilities, what other information can be provided? And what are the costs and benefits of those alternatives?

The OCA comments, regarding the DEP 5-year compliance history of an applicant, affiliate, or parent thereof, that "[t]he information can provide a wider view of the compliance history of the organization or acquiring entity."³⁸ The OCA submits that electronic submission of the DEP 5-year compliance history of utilities or affiliates of the applicant or the applicant's parent company may reduce administrative costs while still providing a full and complete picture of the compliance history beyond the applicant's direct compliance history.³⁹

PAWC comments that the 5-year compliance history requirement should not be applied to well-established utilities with a demonstrated history of DEP compliance. PAWC states in support that, "DEP compliance can be presumed and any violations promptly addressed."⁴⁰ PAWC does not see significant benefits or burdens from alternative documentation, but rather believes that the DEP compliance history requirement should be eliminated entirely. PAWC argues that DEP may file a protest to an application if needed.⁴¹

Aqua comments on the burdensome impact of this requirement on already certificated Class A water and wastewater utilities. According to Aqua, the requirement that the 5-year compliance history reaches all affiliates and parent corporations could reach well over 100 systems. Aqua states that in more recent applications, it has provided compliance histories only for those systems of similar type or location to the acquired system, or provided a statement in the application that Aqua's

³¹ Aqua Comments at 8.

³² PSATS Comments at 2.

³³ See Annex,

³⁴ OCA Comments at 4.

³⁵ PAWC Comments at 15.

³⁶ Aqua Comments at 8-9.

³⁷ For well-established utilities, see Annex, new Section 3.501(b)(5).

³⁸ OCA Comments at 4.

³⁹ OCA Comments at 4-5.

⁴⁰ PAWC Comments at 15.

⁴¹ PAWC Comments at 16.

systems are in general compliance with DEP regulations. Aqua submits that this practice should be embedded officially in the regulation.⁴² As for the costs and benefits of potential alternative documentation, Aqua comments that reducing the requirements applicable to existing utilities will save in time and documentation. These savings, according to Aqua, will translate to reduced transaction costs which will ultimately benefit ratepayers.⁴³

Disposition

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

F. 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?

The OCA comments that it does not oppose an applicant providing a copy of a DEP-approved Sewage Facilities Planning Modules or their current Act 537 Plan. The OCA posits that this information benefits stakeholders by providing them the opportunity to see the proposed acquisition in the context of these documents. The OCA proposes providing the documents in electronic formats to reduce costs if the information is voluminous.⁴⁴

PAWC opposes the addition of a requirement for an applicant to provide a copy of a DEP-approved Sewage Facilities Planning Module or an Act 537 Plan. PAWC argues that the Commission's review of Act 537 Plans, while originally to verify that the applied-for service area matches the Act 537 Plan, has ventured into areas that are not within the Commission's jurisdiction. PAWC asserts Commission review related to this area has become overly burdensome and extensive. PAWC instead suggests that the Commission should not conduct an independent evaluation of the Act 537 Plan, but should condition its application-approval on the acquiring utility obtaining all necessary DEP approvals prior to closing. PAWC finally asserts that DEP may file a protest with the Commission relating to an application.⁴⁵

NAWC comments that there is no need for the Commission to determine whether a capable water or wastewater utility is in compliance with laws enforced by DEP and other agencies. Instead, NAWC suggests that applicants should merely notify the Commission that it has obtained all necessary DEP and other approvals. NAWC adds that DEP requires the completion of an Act 537 Plan special study concurrent with an acquisition, which can be difficult for some municipalities to complete before closing.⁴⁶

Aqua notes that during acquisitions of municipal wastewater systems, the Act 537 Plan documentation provided

by the selling utility is often incomplete, and will need to be updated concurrently with the acquisition. As such, while Aqua does not object to providing Act 537 Plan documents, it asserts that incompleteness of this documentation should not delay the approval of an acquisition. For private sales, Aqua states that the acquiring utility can send a certified letter to the municipality of the pending sale and can request an update to the Act 537 Plan. For main extensions, developers typically are required to obtain sewage facilities planning module approval prior to the time an application is made to the Commission.⁴⁷

Aqua and PAWC repeat these arguments with respect to documentation that assures compliance with Section 5 of the Pennsylvania Sewage Facilities Act.⁴⁸

Disposition

The Commission agrees with commenters that the current requirement of Section 3.501(a)(6) is resource intensive for existing wastewater utilities when they are acquiring other utilities. However, the information contained in Act 537 Plans is necessary for the Commission to perform its duties in regulating the service of these same utilities. As such, the Commission proposes to require the submission of this information, to the extent applicable, so long as the Commission does not have ready access to this information through other means.⁴⁹

J. Section 3.501(a)(7) requires an applicant to submit copies of certifications issued by certain government agencies that the applicant is in compliance with their mandates. What alternative documentation could be provided to satisfy this requirement's purpose?

The OCA comments that while it is not certain what alternatives are viable for the certification requirements in Section 3.501(a)(7), for Class A utilities that file a large number of applications each year, an affidavit from the applicant that they are in compliance and in good standing with each applicable governmental entity may be sufficient.⁵⁰

PAWC comments that the requirements of Section 3.501(a)(7) are unduly burdensome for well-established utilities. PAWC suggests that instead of the current requirements, applicants should be allowed to identify which government entities' mandates are applicable to the entity to be acquired, as well as identifying if the entity to be acquired has any existing violations. PAWC further comments that if the acquired utility has existing violations, the applicant should address how they will be remediated. PAWC again asserts that the relevant governmental entities interests are protected by their ability to file a protest.⁵¹

PSATS supports the requirement that an applicant submit a letter to address compliance with the applicable requirements of municipal plans regardless of whether the Commission requests a copy of the plans themselves. PSATS supports the currently written language of Section 3.501(a)(7)(iv) as they state the burden should be on the applicant to demonstrate compliance with these plans.⁵²

Aqua proposes that the requirements of Section 3.501(a)(7) should not apply to Class A water and wastewater utilities already providing service. Aqua states that in applications over the past several years, it has neither received letters from the entities listed under Section

⁴² Aqua Comments at 9.

⁴³ Aqua Comments at 9-10.

⁴⁴ OCA Comments at 5.

⁴⁵ PAWC Comments at 17.

⁴⁶ NAWC Comments at 11-12.

⁴⁷ Aqua Comments at 10-12.

⁴⁸ 35 P.S. § 750.5.

⁴⁹ See Annex, new Section 3.501(b)(7)(v).

⁵⁰ OCA Comments at 6-7.

⁵¹ PAWC Comments at 18-19.

⁵² PSATS Comments at 2.

3.501(a)(7), nor is it aware whether the entities provide letters to that effect. For these reasons, Aqua does not believe it is necessary for Class A utilities to provide this information. Aqua contends this requirement is targeted at utilities proposing to start services or construct new facilities.⁵³

Disposition

We agree with PAWC's suggestion that applicants be allowed to identify which government entities' mandates are applicable to the entity to be acquired, as well as to identify if the entity to be acquired has any existing violations. However, we also agree with PSATS and the OCA that evidence of compliance with municipal and county comprehensive plans and zoning ordinances is important as part of the Commission's consideration. The requirement to provide evidence of compliance with municipal and county comprehensive plans and zoning ordinances and the identification of applicable requirements or mandates of the government entities should be considered independently. Whereas applicants must always verify compliance with the requirements of any officially adopted county comprehensive plans, municipal comprehensive plans, and applicable zoning designations, applicants should only be required to verify compliance with the requirements or mandates of the governmental entities identified in Section 3.501(a)(7) if requirements are applicable to the entity or additional service territory being acquired. That is, we do not propose to require the applicant to blanket each identified entity with a request for verification of compliance. The applicant is, however, expected to complete the required due diligence to determine the existence of any requirements or mandates applicable, and then verify compliance with the identified governmental entity. The current language of Section 3.501(a)(7) only requires certifications relating to applicable requirements.

In the Commission's experience, and to the contrary of Aqua's comments, utilities have been able to submit signed statements from affected governmental entities through a form letter requesting certification of the applicant's compliance from the relevant agency. Verification of this compliance is especially necessary if the applicant is a proposed utility or is seeking an expansion of service territory.

We propose that an Applicant must provide evidence with their application to the Commission that the applicant requested certifications from governmental entities. Upon filing of an application, applicants are expected to address the status of pending certification requests and are further expected to supplement the record with responses if they are received prior to the issuance of a certificate of public convenience. If timely responses are not received, we proposed that general applicants must certify that the application complies with applicable requirements or mandates and must still provide copies of the needed documents. For well-established utilities in acquisition proceedings, a narrower certification requirement is proposed.⁵⁴

Applicants are expected to, in good faith, determine whether prudent and reasonable accommodations may be made to address local land use and planning requirements. For example, as discussed in Section O below, governmental entities could determine that including an area along the route of a main extension conflicts with land use and planning goals due to the existence of a mandatory connection ordinance. Alternatively, affected

officials could determine that not including an area along the route of a main extension conflicts with local land use and planning goals. In either instance, if appropriate and reasonable, the applicant should revise their requested service territory to eliminate or mitigate identified conflicts in advance of seeking Commission authorization.

K. 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 OCA comments that the protest period should not be shortened. The OCA asserts that the issues presented in an application can have a large impact of individuals and businesses. The OCA argues that the current 60-day period for filing a protest is a reasonable period for all involved and gives an interested party sufficient time to understand the impacts of the application. The OCA additionally contends that in situations when people are required to connect, shortening the protest period would be unreasonable.⁵⁵

Aqua's position on the protest period is that the current period of 60 days is too long, and that it should be shortened to 15 days. Aqua supports its position by noting that in its experience with applications generally, the protest period after publication in the *Pennsylvania Bulletin* for acquisitions or main extensions runs 15 days. Aqua proposes that the Secretary of the Commission should be able to extend a 15-day default protest period if necessary.⁵⁶

PSATs comments "Section 3.501(d) should be revised to use a protest period of less than 60 days. All parties, including affected municipalities, need an appropriate amount of time to file protests to these applications."⁵⁷ PSATS does not indicate what length an appropriate time to file protests should be, if not the current protest period.

PAWC comments that a 15-day protest period should be used, unless otherwise provided.⁵⁸

Disposition

The Commission agrees that protest periods under Sections 3.501 and 3.502 may be shortened. A review of recent applications proceedings since the prior modification of these rules indicates that most utility protests do not take the full sixty days to file. While the utility commenters seek to shorten the protest period to 15 days, this period would not seemingly allow sufficient time for impacted parties to participate in an application's proceedings, in particular members of the public. The Commission's review indicates that protests are often filed after a 15-day period would be expired, and it is not the Commission's intent to shift burdens between stakeholders, rather the Commission's goal in shortening the protest period is to balance the need for timely and efficient consideration by the Commission for utilities while ensuring a proper opportunity for due process and access by interested parties to application proceedings through filing a protest. The Commission concludes that shortening the default protest period to 15 days would impose significant burdens on the ability of the public to file a protest, given the current times in which protests are filed. Moreover, the utility commenters in favor of a 15-day protest period present no evidence to show that a fourfold reduction in the protest period would not be harmful to interested parties' ability to protest. Specifically, one reason for a longer protest period is that

⁵⁵ OCA Comments at 7.

⁵⁶ Aqua Comments at 13-14.

⁵⁷ PSATS Comments at 2.

⁵⁸ PAWC Comments at 19.

⁵³ Aqua Comments at 13.

⁵⁴ See Annex, new Section 3.501(b)(7)(iv).

municipal meetings often occur only monthly, which may be a significant way in which the public becomes aware of an application. The Commission has concerns that overly shortening the protest period coupled with reducing notice requirements, as discussed below, will result in reduced awareness of applications among the public.

The Commission instead proposes that shortening the protest period to 30 days in the proposed Section 3.501(d) would improve the speed of the application process, without imposing too restrictive of a time burden on potential protesters. A Commission review of a sample of applications indicates that while this period is slightly shorter than the average time to protest since the last major revision of Section 3.501, given that delayed protests have commonly been filed by sophisticated protesters, the Commission concludes that a 30-day period will not substantially impact these filers. If there is a problem that causes a delay in a protest filing, the Commission proposes to retain the option of allowing a protest to be late-filed, but only upon due cause shown. The Commission proposes to explicitly state that municipal meeting schedules should be factored in when determining good cause has been shown for a late filing.

L. 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?

PAWC comments in support of modifying the publication requirements of Section 3.501(d). PAWC suggests that the subsection should at least be modified to provide for notice in a territorial newspaper of general circulation once a week for two consecutive weeks, but PAWC also suggests that the Commission should consider taking further action. PAWC argues that electronic media is quickly replacing newspapers and is causing publication challenges and increased expenses for legal notices.⁵⁹

The OCA comments that providing less notice is not consistent with due process and that if the frequency of newspaper publication is lowered and the protest period is shortened as discussed above then it would adversely impact the due process provided to those potentially impacted by an application. The OCA adds that notice could be provided by additional methods such as a bill insert and that the notices used in Section 1329 and 1102 applications could be used as an example of how to structure a notice, as opposed to a Section 1308 application.⁶⁰

PSATS comments that if the Commission reduces newspaper publication requirements, then it should add other means of reaching out to impacted persons to provide notice such as websites and social media. PSATS further comments that with decreased newspaper publication schedules, the current daily publication requiring for application notices may not be possible to achieve.⁶¹

Aqua comments that through Commission recent Secretarial Letter practices, a once-per-week newspaper publication requirement is already occurring and providing adequate notice to customers. Aqua contends that if additional notice requirements are warranted for a particular application, then the Commission has the authority to order such additional notice.⁶²

Disposition

Commenters arguments regarding the changing nature of media and the difficulty and expense of providing notice to non-customer interested parties are well-taken. The Commission proposes to alter the current requirement from newspaper notice once a day for two consecutive weeks, to require newspaper notice once a week for two consecutive weeks as the default process.

M. 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?

PAWC does not support a requirement that an applicant provide evidence that potential land developments have been granted municipal approvals. PAWC states that developers do not generally inform utilities until such approvals have been granted. PAWC contends that municipalities have the option to protest an application, and that this area is within the jurisdiction of planning commissions and municipalities.⁶³

PSATS supports a rule that applicants must provide evidence that anticipated subdivisions and land developments to be served by the applicant utility have been granted preliminary and final plan approval. PSATS argues that a rule requiring disclosure of preliminary and final approval would be an improvement on the existing regulation because the mere plan of a developer does not mean the proposed development will meet with existing zoning requirements.⁶⁴

Aqua comments in opposition to a requirement that final plan approval for subdivisions should be included in an application. Aqua argues that, almost always, final approval is conditioned on proof that the developer can obtain public water or wastewater service. Instead, Aqua proposes that it would be beneficial to include parcels that have preliminary approval in the service territory of an acquisition application to smooth the eventual addition of those developments into the applicant's service base. Aqua contends this would benefit developers who would not have to wait for an initial application to conclude before any new extension application could be filed, and it would benefit the Commission as utilities would not have to file applications to add just a few new parcels. Aqua also proposes allowing utilities to include nearby areas with failing septic systems in the service area request so that a new application would not need to be filed later.⁶⁵

Disposition

The Commission proposes, based on comments and prior experience, that where an application is primarily intended to extend service territory to a planned development, the applicant should provide evidence of preliminary plan approval for anticipated subdivisions and final plan approval whenever such approval is granted. Without providing evidence of even conditional plan approval, service territory requests may become too speculative, which will not serve to simplify the process and may unduly burden the applicant's existing ratepayers. Rather, it would appear to increase the need for future applications to clean up speculative and, ultimately, faulty service territory requests. Furthermore, conditional plan approval provides a comparator for the Commission in order to confirm the utility has properly advised municipal regulatory bodies of the extent of the planned

⁵⁹ PAWC Comments at 19.

⁶⁰ 66 Pa.C.S. §§ 1102, 1308, 1329. OCA Comments at 7-8.

⁶¹ PSATS Comments at 2.

⁶² Aqua Comments at 14.

⁶³ PAWC Comments at 20.

⁶⁴ PSATS Comments at 3.

⁶⁵ Aqua Comments at 14-15

service territory contemporaneous with the Commission review. The Commission has experienced such a case, as in the recent *Application of the York Water Co.—Wastewater for Approval of the Right to: (1) Acquire Certain Wastewater Facilities from CCD Rock Creek LLC; & (2) Begin to Offer, Render, Furnish or Supply Wastewater Serv. to the Pub. in a Portion of Straban Twp., Adams Cty., Pennsylvania*, Docket No. A-2019-3014022 (Order entered Sept. 17, 2020), where the utility's application to the Commission did not align with the information the utility and developer provided municipal regulatory bodies. Similarly, in the Initial Decision of former ALJ Chestnut in a contested utility application proceeding involving Newtown Artesian Water Company, ALJ Chestnut recommended denial of Newtown Artesian's application given the fact that the affected municipality had not granted preliminary plan approval regarding an anticipated land development included in the requested territory.⁶⁶

The Commission recognizes that many applications may involve developments in some ancillary manner, and that applicants may not be aware of the status or boundaries of developments located within a requested territory. Consequently, to strike an appropriate balance, the Commission proposes that applicants be required to provide municipally-approved preliminary plans, final plans, or associated meeting minutes evidencing such approvals only if an application involves extending service to a development outside of the applicant's service territory.⁶⁷

N. 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.

PAWC comments that Section 3.501 should not be applied to Section 1329. PAWC contends that the Section 1329 application checklist is already unduly burdensome and "bears no resemblance to the limited filing requirements in the statute." PAWC states the checklist operates as a hindrance to fair market value acquisitions and should not be used as a model for revisions to 3.501. PAWC argues that the Commission's reevaluation of 3.501 should cause it to reconsider the Section 1329 process.⁶⁸

NAWC comments that Chapter 11 acquisition proceedings and Section 1329 proceedings should not be governed by the same procedures. In particular, NAWC objects to the extensive documentation required in a 1329 proceeding, and also the individual customer notice. NAWC argues the additional issue in 1329 proceedings—fair market value rate base—indicates the application procedures should be different. NAWC contends "there is no need for the extensive documentation required for a Section 1329 acquisition application."⁶⁹

The OCA comments that the contents of the Section 1329 Application Filing Checklist should not be modified as part of these amendments to Section 3.501. The OCA notes that the Section 1329 filing requirements were developed in two implementation orders over the course of multiple years.⁷⁰

Aqua's comments comport with the general view that these application types should not be treated the same. Aqua contends Section 1329 applications require extensive up-front documentation because of the six-month consideration period contained in the Section. Alternatively, Aqua says, the Section 3.501 application requirements may be more flexible because there is no statutory time by which standard applications must be approved. In addition, Aqua argues that changes to the Section 1329 Application Filing Checklist should only be made after notice and opportunity to be heard under the Implementation Order docket.⁷¹

Disposition

The Commission accepts the comments of the interested parties that Section 1329 application requirements and the Section 3.501 application requirements serve separate purposes and should not be made uniform. Accordingly, while we modify Section 3.501 as part of this proceeding, at this time, the Commission will consider the Section 1329 application process as independent.

O. 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.

The OCA comments in support of requiring applicants to notify property owners that would be required to connect to an applicant's system upon application approval. The OCA suggests that this notice should be provided over and above any notice required by a municipality when the mandatory connection ordinance was adopted. The OCA further suggests that the notice should include information on the mandatory connection ordinance, rates, and how property owners may protest the application.⁷²

PAWC comments in opposition to providing additional notice procedures for customers who would be forced by a mandatory connection ordinance to connect to the applicant's system. PAWC contends these customers would have the opportunity to participate in the political process leading up to the approval of the ordinance, and there should not be additional processes beyond the required notice in the application filing.⁷³

Aqua comments that the procedures for connecting adjacent customers to its system already fall under its existing tariff requirements. In support, Aqua states that generally, a municipality with a mandatory connection ordinance will require customers who are within a certain distance of a public system to disconnect from any private water source or disposal facility and connect to the public system. Aqua comments that it already includes adjacent parcels in its applications so that if there is a failure of a private well or septic system, the parcel may be connected to Aqua's system without an additional application.⁷⁴

Disposition

Mandatory connection ordinances may present certain issues for both property owners and governmental entities. Regarding property owners, the Commission does not intend to create situations where property owners are required to become utility customers without either a

⁶⁶ Application of *Newtown Artesian Water Company*, Docket No. A-212070F0004, Initial Decision at 18 (Initial Decision issued June 1, 2004).

⁶⁷ See Annex, Section 3.501(a)(10).

⁶⁸ PAWC Comments at 20-21.

⁶⁹ NAWC Comments at 5.

⁷⁰ OCA Comments at 8.

⁷¹ Aqua Comments at 15. The docket for the Section 1329 Implementation Orders is Docket No. M-2016-2543193.

⁷² OCA Comments at 9.

⁷³ PAWC Comments at 21.

⁷⁴ Aqua Comments at 16.

request for service or reasonable notice of the utility's rates, rules, and regulations. While PAWC is correct that customers would have had the opportunity to participate in the political process leading up to the approval of the ordinance, many customers may have chosen not to participate in that process at the time because there was no infrastructure in place that would subject them to the requirement at that time. If a jurisdictional utility is granted an additional service territory, the utility could extend facilities within that service territory, which may subject property owners to mandatory connection ordinance requirements. The mere possibility of a private well or septic system failure is not adequate evidence of the need for an additional service territory. Indeed, depending on the language of the mandatory connection ordinance, the distance within which properties must connect, and local site conditions, all property owners within a requested territory, including those with functioning wells or septic systems, may be required to fund and install customer-owned service lines or laterals, and may even be required to fund utility infrastructure.⁷⁵ However, we also do not intend to promote fragmented service territories or increase the number of applications utilities would be required to file. The use of additional notice regarding rates, rules, and regulations, to include information on the mandatory connection ordinance and how property owners may protest the application, may be appropriate. Therefore, the Commission proposes to require that if the application includes a request to provide service in an area covered by a mandatory connection ordinance, the notice provided to customers and to the general public must include conspicuous notice that such an ordinance applies. As part of this proceeding, we seek input from commenters as to what form such notice should take.

Regarding governmental entities, we note that by requiring applicants to include a copy of their proposed service territory when seeking land use/planning certifications from governmental entities, such governmental entities should be better informed as to whether an applicant's requested service territory includes areas along the length of a proposed main extension. Should a governmental entity determine that an applicant's requested service territory does not conform with land use, planning, or other legal requirements due to the existence of a mandatory connection ordinance, the Commission will consider any protest or comments filed by such governmental entities when reviewing an applicant's request, consistent with Section 3.501.

P. Should an acquiring utility 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.

The OCA comments in support of identifying lead service lines and damaged wastewater service laterals as well as the projected costs to remove or replace the subject lines within the territory to be acquired.⁷⁶ The OCA argues disclosure of this information will assist the Commission and parties in accurately determining the potential benefits of an acquisition.

Aqua and PAWC do not believe acquiring utilities should be required to identify the existence of LSLs and DWSLs, as well as their projected costs.⁷⁷ Both utilities

base their position on the argument that it would be exceedingly difficult to collect this information when the lines are not yet owned by the applicant, and the records of these lines are limited or non-existent.⁷⁸ PAWC notes that once the acquisition is complete, the new customers will be eligible for PAWC's lead service line replacement program.⁷⁹

Disposition

The Commission agrees with the OCA that discovering and replacing LSLs and DWSLs and understanding the costs of replacement is critical to understanding the public benefits of an acquisition. Plus, identifying these public health risks is the first step in their mitigation. That being said, the Commission recognizes the difficulty in identifying the full extent of LSLs and DWSLs by acquiring utilities prior to operating the facilities. Yet, an experienced utility has sufficient expertise to complete, based upon the age of the system and utilizing available seller system information, an inventory or estimate of potential LSLs and DWSLs as part of its acquisition due diligence and, therefore, we propose that utilities will be required to complete such an assessment and disclosure as part of application filings.⁸⁰ Moreover, in order to achieve the benefits of improved LSL and DWSL replacement, the Commission does not propose to require acquiring utilities to identify the lines before an application, but proposes a requirement that an applicant state with particularity a plan for the inclusion of new lines into the LSLR Program or DWSL Program as set forth in the proposed regulations at 52 Pa. Code §§ 65.55 and 66.35. While these program requirements have not yet been implemented, it is critical that the applications for acquisitions are synergistic with the Commission's rules for the implementation of Act 120 of 2018.⁸¹

Q. Are there changes that should be made to Section 3.502 (relating to protests to 3.501 applications)?

PAWC and Aqua comment that Section 3.502 should be made to conform with the proposed protest period changes to Section 3.501.⁸² The OCA proposes that the Commission should provide an indication in Section 3.502 that a protest form is provided on the Commission's website, but the form is not required to be used in order to be a valid protest.⁸³

Disposition

We agree with commenters that the changes proposed herein to the protest period stated in 3.501(d) should be reflected in Section 3.502. Accordingly, we adopt the same stated period for both sections. The OCA also offers that the regulation should be revised to direct protesters to the Commission website for a standard protest form.⁸⁴ Because the Commission is revising its protest period to provide a shorter time for protest, the OCA's suggestion is a valuable addition to make filing a protest easier to understand. The Commission seeks not only to reduce unnecessary complexity for well-established utilities but also among stakeholders and other interested parties.

R. Revisions to Water and Wastewater Utility Classes

In 1996, the Commission adopted the most recent changes to the enumeration of the obligations of Class A, Class B, and Class C utilities in 52 Pa. Code § 65.16

⁷⁵ Aqua Comments at 16-17; PAWC Comments at 22.

⁷⁶ PAWC Comments at 22.

⁷⁷ See Annex, Section 3.501(a)(1)(iii), new Section 3.501(b)(1)(i).

⁷⁸ See Rulemaking to Implement Act 120 of 2018, Docket No. L-2020-3019521 (Order entered September 17, 2020).

⁷⁹ Aqua Comments at 17; PAWC Comments at 22.

⁸⁰ OCA Comments at 9.

⁸¹ OCA Comments at 9-10.

⁷⁵ All water utilities and certain wastewater utilities provide a minimum amount of funding for additional facilities needed to serve bona fide service applicants. However, this may not fund the entire cost to install additional required utility facilities and does not cover the cost of customer-owned facilities.

⁷⁶ OCA Comments at 9.

⁷⁷ Aqua Comments at 16-17; PAWC Comments at 22.

based on revenue levels. As a routine adjustment to account for economic changes, the Commission proposes to adjust these levels to accord with the current Uniform System of Accounts standards relied on by water utilities in Pennsylvania and throughout the country. The Commission is creating Section 3.503 to provide a placeholder enumeration of wastewater utility class obligations. Should the implementation of regulations for Act 120 of 2018 become final before these proposed rules, Section 3.503 will be deleted and we propose to move the enumeration of wastewater utility class obligations to Chapter 66.

All interested parties are invited to submit comments on the proposal set forth in Annex A. Parties commenting on this rulemaking should identify any financial, economic, or social impacts that the proposed changes will have on that party. Commenting parties should endeavor to support any stated positive or negative impacts with data.

Summary of Proposed Regulations

The proposed amendments eliminate certain information that well-established utilities must currently provide to the Commission before a certificate of public convenience may issue, thus allowing for the more efficient acquisition of another water or wastewater service system. The proposed amendments would not affect the information to be provided to the Commission by a well-established utility if they are not a Class A utility, which is a utility that must follow the NARUC system of accounts for Class A utilities under 52 Pa. Code § 65.16(a). This requires an annual operating revenue of \$750,000 or more, as calculated by an average of the previous three consecutive years. The application disclosures currently required by Section 3.501 are duplicative of the oversight in which the Commission elsewhere engages through its general authority to maintain safe, reliable service with just and reasonable rates.⁸⁵ Further, as the Commission retains its authority to issue data requests to supplement application requirements, the overall supervision of utilities is not expected to change.

Below is a proposed summary of the changes.

Section 3.501(a): Currently, Section 3.501 requires entities to file a copy of the original business plan filed with DEP. The remainder of Section 3.501(a) requires information only to the extent that it is not already included in the business plan. The proposed changes would eliminate the business plan filing requirement for acquisition proceedings and instead only require the more specific information requested in the remainder of the regulation. As these proposed changes relate only to acquisitions, filing the original plan is duplicative.

For acquisition proceedings we propose to eliminate Section 3.501(a)(1)(ii)(B): “A breakdown of the sources of funds used to finance the construction of the facilities.”

For acquisition proceedings we propose to eliminate Section 3.501(a)(2)(ii): “The location or route of the proposed waterworks or wastewater collection, treatment or disposal facilities.” (Subject to the limitation that the proposed amendments continue to require a courses and distances or metes and bounds description.)

For acquisition proceedings we propose to eliminate Section 3.501(a)(2)(iii): “The approximate time schedule for installation of the various component facilities.”

For acquisition proceedings we propose to eliminate Section 3.501(a)(2)(vi): “A copy of the county comprehensive plan, municipal comprehensive plan and applicable zoning designations, if requested.”

For acquisition proceedings we propose to eliminate part of Section 3.501(a)(3)(ii): “. . . future number of connections anticipated for the next 10 years.” This requirement is reduced to five years.

For acquisition proceedings we propose to eliminate Section 3.501(a)(3)(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.”

For acquisition proceedings we propose to eliminate Section 3.501(a)(5)(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.”

For acquisition proceedings we propose to eliminate Section 3.501(a)(6)(iii): “A 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service.” The amendments require this information only for the selling utility.

As to Section 3.501(a)(7): The proposed amendments eliminate these disclosures relating to information provided to other governmental entities. The proposed change to Section (a)(7) indicates that applicants are required only to identify requirements of these entities and certify that they are in compliance with those requirements. The proposed regulations also correct technical and drafting deficiencies in the current Section 3.501(a) as it applies to the more modern applicants and modifies Section 3.501(a)(7) for all utilities to slightly reduce the difficulty for applicants to retrieve information from municipalities and other governmental entities. The changes to the regulation provide alternative forms of compliance.

For acquisition proceedings we propose to eliminate Section 3.501(a)(8) and parts of (a)(9): The proposed amendments eliminate the parts of these sections relating to contacting neighboring service areas. As the modifications added in new Section 3.501(b) relate to acquisitions, little to no impact should be expected on neighboring service areas.

New Section 3.501(a)(10) requires municipal and final plan approval submissions where a utility files an application to extend its service territory due to a planned development.

Additionally, the proposed amendments to Sections 3.501 and 3.502 create a streamlined standard for notice and protest of the acquisition.⁸⁶ The notice and publication requirement reduces publication in newspapers of general circulation from daily publication to weekly publication. An applicant remains responsible for notifying customers of the acquisition. The protest period is reduced in Section 3.502 from 60 days to 30 days. Most protesters are presently able to file within 30 days. The Commission will allow late protests to be filed with good cause shown.

⁸⁵ 66 Pa.C.S. §§ 1301, 1501.

⁸⁶ See Annex, new Section 3.501(f), Section 3.502(d).

The proposed amendments to Sections 3.501 and 3.502 benefit the public by reducing costs involved in the process of regionalization of water and wastewater utility services. The Commission may also decrease the time in which small nonviable water and wastewater systems serve the public. Any regulatory benefit of the information disclosures currently required is outweighed by the benefit of transitioning the customers of nonviable systems into viable systems. The proposed amendments do not in any way affect the disclosures required to be provided to DEP.

Section 3.503 is created to mirror the proposed new section at 52 Pa. Code § 65.16, and provide the same requirements for wastewater utilities. As discussed above, this section is simply a placeholder reference until such time as the proposed revisions to Chapter 66 of the Commission’s regulations are final.

Section 65.16 is updated to use revised revenue figures for the respective classes. Editorial changes are proposed to make each subsection uniform. Modifications are proposed to comply with the nondelegation principles set forth by *Protz v. Workers’ Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 161 A.3d 827 (Pa. 2017).

Conclusion

Accordingly, under Sections 501, 504—506, 523, 1301, 1501 and 1504 of the Public Utility Code (66 Pa.C.S. §§ 501, 504—506, 523, 1301, 1501 and 1504); Section 201 of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law (45 P.S. § 1201), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.5; Section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); Section 5 of the Regulatory Review Act (71 P.S. § 745.5); and Section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, the Commission considers adopting the proposed regulations set forth in Annex A; *Therefore,*

It Is Ordered:

1. That the Law Bureau shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.
2. That the Law Bureau shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.
3. That the Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
4. That interested parties may file written comments and written reply comments to this proposed regulation at Docket No. L-2020-3017232. The comment filing period begins when this Notice of Proposed Rulemaking Order and Annex are published in the *Pennsylvania Bulletin* and ends 60 days later. The reply comment period begins at the end of the comment period and ends 30 days thereafter. Comments and reply comments must be filed by either:

U.S. MAIL OR OVERNIGHT DELIVERY TO:

Pennsylvania Public Utility Commission
 Attn: Secretary
 Commonwealth Keystone Building
 400 North Street, 2nd Floor
 Harrisburg, PA 17120.

OR

Electronically through the Commission’s eFiling System.

5. That the Secretary shall serve a copy of this Order and Annex A upon certificated water and wastewater utilities, the Pittsburgh Water and Sewer Authority, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate. The Order and Annex A shall be posted and made available electronically on the Commission’s website.

6. The contact person for this matter is Christian McDewell, Assistant Counsel, Law Bureau, (717) 787-7466, cmcdewell@pa.gov, Fixed Utility Valuation Engineer Clinton McKinley, (717) 783-6161, cmckinley@pa.gov, and Fixed Utility Valuation Analyst Paul Zander, (717) 783-6161, pzander@pa.gov, in the Bureau of Technical Utility Services.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: December 16, 2021

ORDER ENTERED: December 16, 2021

Fiscal Note: 57-337. No fiscal impact; (8) recommends adoption.

This form is designed to assist the Water/Wastewater Utility with
 Application for Certificate of Public Convenience

Providing public utility service within the Commonwealth of Pennsylvania requires you to request approval from the Commission prior to commencing business. The attached form may be used to create your application for a certificate of public convenience held for water or wastewater. This form should only be used for applications filed pursuant to 52 Pa. Code § 3.501(a). Any exhibits should be placed at the end of the application. Applications are subject to a \$350 fee, payable to the “Commonwealth of Pennsylvania”. If filing by hard copy, only one original of each document is required. The Commission may reject an application which fails to include the required information and documents (52 Pa. Code § 3.501(d)).

Mail the filing and application fee to:

Secretary
 Pa Public Utility Commission
 P.O. Box 3265
 Harrisburg PA 17105

To eFile, click on the Filing & Resources link on the Commission’s website at www.puc.pa.gov for instructions.

Questions concerning the application process may be directed to the Bureau of Technical Utility Services at 717-787-5550; please ask to be directed to the Water/Wastewater unit.

Checklist:

- Application and attachments, including your cover letter.
- A check for \$350 made payable to "Commonwealth of Pennsylvania".
- Original signed and notarized Verification Statement.
- Certificate of Service evidencing Application was served upon appropriate parties.

The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a 30-day protest period. The applicant shall also publish notice of application as supplied by the Secretary, once a week for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. If the applicant has been providing service prior to this application, the applicant shall individually notify existing customers of the filing of the application.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Application of _____
(name of applicant) for approval to offer,
render, furnish or supply _____
(water or wastewater) service to the public
in the Commonwealth of Pennsylvania

Docket No: A-_____
(will be filled-in by the Commission)

1. Public utility code: _____ (will be filled-in by the Commission)
2. Name of Company: _____
3. Company Address: Street name & number: _____ Post office box: _____ City: _____ State: _____ Zip Code: _____ Main Telephone: _____ Number: _____ Email Address: _____ Website Address: _____ Fax number: _____
4. Point of Contact for this Application: Name: _____ Title: _____ <i>Complete the following if different than above:</i> Street name & number: _____ Post office box: _____ City: _____ State: _____ Zip code: _____ Telephone Number: _____ Email address: _____ Fax number: _____
5. Attorney (if retained): Name: _____ Street name & number: _____ Post office box: _____ City: _____ State: _____

Zip code: _____ Telephone Number: _____ Email address: _____
--

6. Attach 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). Label this document as Attachment A. The following additional information/documents, if not included in the business plan, shall also be included and labeled as Attachment A-1, A-2, etc.:

(1) *Plant in service.*

(i) Proposed utilities shall provide:

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

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

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

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

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

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

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

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

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

(i) A bearing angles and distances description.

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

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

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

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

(3) *Customers.*

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

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

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

(4) *Rates.*

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

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

(5) *Cost of service.*

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

(ii) Utilities that have been providing service shall file its most recent balance sheet and income statement and, where applicable, the acquired public utility's most recent financial statements. The applicant shall also state the projected first-year revenue and operating expenses of the system. If the projected first-year revenue and operating expenses of the system project a net operating loss, the applicant shall describe in detail how the operating loss is to be subsidized, supported by an analysis of the future viability of the public utility.

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

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

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

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

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

7. *Additional documentation.*

(i) An applicant shall submit a letter issued by the following governmental entities confirming that the applicant does or does not meet all the applicable requirements or mandates of the following:

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

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

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

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

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

8. *Affected persons.* The identity of public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water supply service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adja-

cent 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 in 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. *Service area extensions for planned developments.* If an application is filed to extend a service territory to a planned development, the applicant shall provide evidence of preliminary plan approval for anticipated subdivisions and final plan approval whenever such approval is granted.

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

Verification

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date

Signature

Certificate of Service

Instructions: At the time of filing, the applicant must file a complete copy of the application with exhibits to be served by registered or certified mail, return receipt requested, upon:

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

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

(iii) 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.

I hereby certify that I have on this date _____ (month/day/year), served a true copy of the foregoing document(s) upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Bureau of Investigation and Enforcement
Pa PUC
PO Box 3265
Harrisburg, PA 17105

Dept of Environmental Protection
CENTRAL OFFICE
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101

Dept of Environmental Protection
REGIONAL OFFICE

Signature _____

Name (printed) _____

Title (printed) _____

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 3. SPECIAL PROVISIONS

Subchapter G. WATER OR WASTEWATER UTILITY PROCEEDINGS

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

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

(1) *Plant in service.*

(i) Proposed utilities shall provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) *Customers.*

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

(ii) Utilities that have been providing service shall submit the actual number of customers by class and related consumption or gallons treated, **or conveyed**

where a utility does not provide treatment, in the current calendar year and future number of connections anticipated for the next [10] 5 years.

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

(4) *Rates.*

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

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

(5) *Cost of service.*

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

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

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

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

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

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

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

(7) *Additional documentation.* **[In addition to a copy of the documents submitted under paragraphs (1)—(6), the applicant]**

(i) An applicant shall submit a letter [addressing all the applicable requirements or mandates of the following governmental entities. The letter must also append copies of certification] issued by the following governmental entities confirming that the applicant does or does not meet all the applicable requirements or mandates of the following:

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

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

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

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

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

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

(9) *Other requirements.* Demonstrate compliance with DEP regulations in 25 Pa. Code § 109.503(a)(3) or section 5 of the Pennsylvania Sewage Facilities Act requirements (35 P.S. § 750.5), whichever is applicable; or whether the applicant has contacted each public water supplier or wastewater collection, treatment or disposal supplier in paragraph (8), and one of the following applies:

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

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

(10) **[Verification. A verification that the water sources and customers are metered in accordance with § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.] Service area extensions for planned developments. If an application is filed to extend service territory to a planned development, the applicant shall provide evidence of preliminary**

plan approval for anticipated subdivisions and final plan approval whenever such approval is granted.

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

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

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

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

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

(i) A bearing angles and distances description.

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

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

(3) Capacity. The DEP-permitted productive or treatment capacity of sources, treatment facilities, major distribution or collection facilities and, to the extent known at the time of filing, the pipe sizes and material used for construction for transmission and distribution or collection facilities.

(4) Zoning and additional compliance certifications for un-served service area. A certification that the unserved requested service area complies with the county comprehensive plan, municipal comprehensive plan and applicable zoning designations.

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

(6) Rates. A proposed initial tariff which includes rates, proposed rules and conditions of service. The

applicant shall notify the customers of the selling entity of the filing of the application and any proposed rate changes.

(7) Selling entity's 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, 25 Pa. Code Chapter 105 (relating to dam safety and waterway management) Dams and Reservoirs or National Pollution Discharge Elimination System (NPDES) permits if applicable.

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

(iii) The selling entity's 5-year compliance history with DEP with a brief explanation of each violation, if any.

(iv) Identification of applicable requirements of the governmental entities listed in subsection (a)(7)(i), and certification that the applicant complies with the applicable requirements of those entities.

(v) Copies of the applicable Act 537 Plan documents for all affected municipalities relating to the acquired service area, as required under section 5 of the Pennsylvania Sewage Facilities Act.

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

[(c)] (e) Filing. Applications under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and filing specifications), and include a mode of payment as prescribed by § 1.42 (relating to mode of payment of fees) and in the amount delineated in § 1.43 (relating to schedule of fees payable to the Commission). The applicant shall file with the Commission the original of the application. An application which fails to include the information and documents outlined in subsections (a) [and], (b) and (c), as specified by the Commission for water and wastewater collection, treatment or disposal companies, is subject to rejection by the Commission. The original must contain exhibits. An affidavit of service showing the identity of those served under subsection [(f)] (g) shall accompany the original application filed with the Commission.

[(d)] (f) Notice.

The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a [60-day] 30-day protest period. [The applicant shall also publish notice of application as supplied by the Secretary,

daily for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. In addition, the utility or applicant shall individually notify existing customers of the filing of the application.] The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a 30-day protest period. At the time of filing with Commission, the applicant shall notify acquired customers of the filing of the application. An applicant which has been providing service to customers without a certificate of public convenience to serve those customers shall individually notify existing customers of the filing of the application. The applicant shall also publish notice of application as supplied by the Secretary, once a week for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. If the application includes a request to provide service in an area covered by a mandatory connection ordinance, the notice provided under this section shall include conspicuous notice that such an ordinance applies.

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

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

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

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

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

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

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

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

(2) A water or wastewater utility, municipal corporation or authority which provides water or wastewater

collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application.

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

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

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

* * * * *

(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] 30 days from the date of publication thereof except [when the need for the proposed service or other exigent circumstances supports a request for a shorter protest period] upon good cause shown. Failure to file the protest in accordance with this subsection shall be a bar to subsequent participation in the proceeding, except if permitted by the Commission for good cause shown or as provided in § 5.71 (relating to initiation of intervention). In determining whether good cause has been shown for a protest beyond the period set forth in this section, the Commission will take into account whether the scheduling of a municipal meeting has caused hardship for a timely protest.

(*Editor's Note:* The following section is proposed to be added and is printed in regular type to enhance readability.)

§ 3.503. System of accounts for wastewater utilities.

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

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

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

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

Subpart C. FIXED SERVICE UTILITIES**CHAPTER 65. WATER SERVICE****Subchapter A. SERVICE GENERALLY**§ 65.16. System of accounts for water utilities.

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

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

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

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

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

[Pa.B. Doc. No. 22-1211. Filed for public inspection August 12, 2022, 9:00 a.m.]