



October 11, 2022

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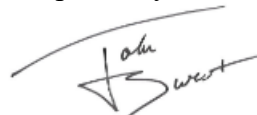
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17120

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

Dear Secretary Chiavetta,

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

Respectfully submitted,



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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF

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

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) respectfully submits the following Comments in response to the Commission's Notice of Proposed Rule Making Order, published in the Pennsylvania Bulletin on August 13, 2022, opening the public comment period for the Commission's Investigation into the Application of 52 Pa. Code § 3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers, and Transfers.

CAUSE-PA is a statewide unincorporated association of low income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain safe and affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income families maintain affordable access to utility services and achieve economic independence and family well-being.

CAUSE-PA has long been concerned with the widescale privatization of public water systems and the effects that such acquisitions, mergers, and transfers have had on the rates paid by consumers. We are especially concerned for low income consumers who already struggle to afford to stay connected to service, even at the lower rates generally charged by municipal utilities.

CAUSE-PA asserts that if the Commission is to exempt established water and wastewater companies from certain requirements associated with the utilities' presumed technical and financial fitness, it must also take steps to ensure that exempt utilities apply their advanced expertise and resources to protect consumers from the rate impact of a proposed acquisition, merger, or transfer.

II. BACKGROUND

The PA Public Utility Commission (Commission) proposes to amend its regulations governing the application for certificates of public convenience as they apply to the acquisition of water and wastewater service providers by existing, certified Class A utilities. Initially promulgated in 1976, the Commission subsequently expanded the requirements of Section 3.501 in October 1983, January 1997, and April 2006 to provide the necessary comprehensive review required of such a transaction as an acquisition of one utility by another, accounting for cost, safety, and existing infrastructure. Section 3.501 currently treats all acquisitions under a single scheme, requiring largely the same information from both new and existing utilities.

At its April 30, 2020, public meeting, the Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) asking for comprehensive input from stakeholders interested in improving by streamlining and shortening the application process. On July 15, 2020, CAUSE-PA submitted Comments to the ANOPR noting the effects of widespread privatization of public water systems on low income communities. CAUSE-PA explained that, if the Commission were to move forward with these regulatory amendments, consumer protection from the impending rate impact should be of foremost concern, and accountability in that regard should be built into this streamlined process. Specifically, the impact to low income communities, who struggle to maintain utility service to their homes, must be considered in every transaction of this nature. These resource-limited communities have no choice in these matters – yet they are accountable to cover the costs of their increasing bills. Should the Commission make it easier for established water utilities to acquire smaller systems, based on the expertise and resources of the acquiring system, the Commission should require the acquiring utilities to use such expertise and resources to protect consumers from the rate impact of a proposed acquisition, merger, or transfer.

On December 16, 2021, the Commission issued a Notice of Proposed Rule Making Order (NOPR), which was published in the Pennsylvania Bulletin on August 13, 2022. Unfortunately, the NOPR fails to address concerns raised in CAUSE-PA's Comments to the ANOPR and does not include any provisions that to address the impact of an acquisition on rate affordability. CAUSE-PA remains deeply concerned about the economic impact of water and wastewater acquisitions on low income communities and urges the Commission to explicitly consider these impacts in all acquisition, merger, or transfer proceedings to prevent future rate shock and to assess whether any proposed transaction will promote universal accessibility and affordability of service.

III. DISCUSSION

CAUSE-PA appreciates the opportunity to comment on this proposed regulation. As indicated above, our primary concern centers on the effect water system transfers will have on low income communities. In these Comments, we urge the Commission to amend the proposed rulemaking to account for the impacts of water system acquisitions on the rates paid by consumers and the impacts that the increased cost of water and wastewater service will have on low income households.

In the rulemaking, the Commission proposes to streamline the application process for Class A utilities during the process of acquisition of another water or wastewater service provider based on the experience and resources of the acquiring utility.¹ The Commission states that streamlining this process will not impact the comprehensive review conducted by the Commission. This regulation is meant to reduce the cost and administrative burden that acquiring utilities manage through the acquisition process. CAUSE-PA appreciates the Commission's commitment to

¹ Application of 52 Pa. Code § 3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers, and Transfers, Notice of Proposed Rulemaking Order, Docket No. L-2020-3017232, page 2 (order entered December 16, 2021).

thorough review of acquisition applications, but we note that streamlining processes for acquiring utilities can have the unintended consequence of further economically burdening low income households served by the acquired utilities, if these households are not considered in the transfer review conducted by the Commission.

Consideration of the economic impact of water and wastewater acquisitions on low income customers is directly related to whether an acquisition will provide a public benefit or whether it is contrary to the public interest. Thus, the economic makeup of the community and the potential future rate impact should be subject to appropriate disclosures for the Commission and interested parties to assess whether a proposed transaction will promote universal accessibility and affordability of service. To ensure that the Commission has sufficient information to conduct such an assessment, Applicants should be required to provide an analysis about the impact of a proposed acquisition on the low income customers of both the acquiring utility and the acquired utility. Applicants should further be required to provide a plan to mitigate any identified economic impact to these vulnerable groups of customers. The plan should include the creation or expansion of universal service programming and other measures to ensure that customers of the acquired and acquiring companies (or merged/merging and transferred/transferring companies) will be able to connect with and maintain affordable water and waste water service in their home.

Even at the lower rates generally charged by smaller systems and municipal utilities, low income consumers often struggle to afford to maintain water and wastewater service and often must make impossible choices and tradeoffs between necessities such as utility service, rent, food, or medicine.² For many families, that struggle is worsened when Class A utilities acquire smaller

² Coty Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*, NAACP Legal Defense and Educational Fund, Inc, May 2019, at p. 28, (hereinafter "Water/Color Report") available at: https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf

and/or publicly owned water and sewer systems because they often bring steep rate increases as the rates for these acquisitions are consolidated with the rates of the acquiring utility.

Water and wastewater services are increasingly unaffordable across the Commonwealth, as rates for service have risen precipitously over the last decade.³ Low income families now regularly pay more than 10% of their gross household income for water and wastewater services alone, and there are few programs available to help meaningfully offset those costs.⁴ Critical infrastructure investment needs, including stormwater system requirements and lead remediation issues, have driven substantial rate increases in communities across the state, for both public and investor-owned water and wastewater systems. However, infrastructure costs are not the only reason water and wastewater rates are increasing. The acquisition of relatively healthy and financially stable publicly owned water and wastewater systems at fair market value pursuant to Section 1329 of the Public Utility Code,⁵ and the full recovery of those acquisition costs through rates, is also contributing to the growing unaffordability of water and wastewater rates.

The premium costs borne by consumers as a result of the current valuation standards bear no relationship to the provision of safe service – nor is there any cap on the number of systems that an investor-owned company can acquire while passing the premium costs on to consumers. These generous valuations have been used by Class A water and wastewater utilities to consolidate systems leaving residential ratepayers to foot the bill. For example, in Pennsylvania American Water Company’s (PAWC) 2020 rate case, it proposed to recover \$27.5 million from ratepayers

³ Nina Lakhani, [Millions of Americans Can’t Afford Water as Bills Rise 80% in a Decade](https://www.theguardian.com/us-news/2020/jun/23/millions-of-americans-cant-afford-water-bills-rise), the Guardian (June 23, 2020), <https://www.theguardian.com/us-news/2020/jun/23/millions-of-americans-cant-afford-water-bills-rise>.

⁴ Testimony submitted on behalf of CAUSE-PA in a recent Pennsylvania American Water rate case revealed that – at current rates – low income households paid up to 8% of household income for water - and as high as 13% of household income for wastewater, depending on their income and geographic region. Pa. PUC v. Pa. American Water, Docket Nos. R-2020-3019369, R-2020-3019371, Testimony of Mitchell Miller on Behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (filed September 8, 2020). This testimony is a matter of public record, and is available for review upon request.

⁵ 66 Pa. C.S. §1329.

to cover the costs of its acquisitions.⁶ Subsequently, in its 2022 rate case, PAWC proposed that its customers foot the bill for another \$28.9 million dollars to cover acquisition costs.⁷ Also, in its 2021 rate case, Aqua Pennsylvania reported that it has completed over 200 acquisitions since 1995 and some of those acquisitions included *multiple* systems.⁸

Pennsylvania's investor-owned water and wastewater utilities most often charge substantially higher prices compared to municipally owned utilities, which leads to increased hardships on low income customers of acquired utilities.⁹ Unlike municipally owned utilities, private, investor-owned utilities are entitled to earn a return on their investment which is built into rates. Likewise, the cost of capital is often lower for municipally owned utilities, which have greater access to low or no cost municipal financing and other public funds to help pay for infrastructure projects.

When a smaller, municipally owned utility with lower residential rates is acquired by a larger, investor owned utility, there are often promises to shield the acquired utility customers from further rate increases for a period of years following a rate increase. However, any agreed-upon rate freeze will inevitably come to an end. The subsequent increase in rates can lead to rate shock for customers of the acquired system when their rates are increased to consolidate with rates paid by the acquiring utility's customers. For example, in Aqua's recent rate case, it proposed to raise rates for customers of acquired wastewater systems in Limerick and Whitpain by over 80%.¹⁰

⁶ See Pa. PUC v. PAWC, R- R-2020-3019369, PAWC St. 1, Nevirauskas, Sched. RPN-1.

⁷ Pa. PUC v. PAWC, R- R-2022-3031672, PAWC St. 1, Everette, Sched AEE-1.

⁸ Pa. PUC v. Aqua Pennsylvania, R- R-2021-3027385, Aqua St. 7 Moul at 4.

⁹ In 2017, the University of Delaware Water Resources Center, which tracks water rates for public and private water utilities in Delaware, Pennsylvania, New Jersey, and Maryland, found that the average water rate for public water utilities in those states was \$6.13 per 1,000 gallons, while private utilities charged \$10.90 per 1,000 gallons – a difference of 44 percent. Since 2017, Pennsylvania's two largest investor-owned water and wastewater utilities – Aqua and Pennsylvania American Water – have each been approved for significant additional rate increases, folding in the cost of fair market valuation into rates. See ITPI, *The Risks Posed by Water Privatization* (July 2020), https://www.inthepublicinterest.org/wp-content/uploads/ITPI_WaterPrivatization_July2020_final.pdf.

¹⁰ Pa. PUC v. Aqua PA, R-2021-3027386, Aqua Ex. 5-B, R-2021-3027386, Sched. WW-7.

Likewise, in PAWC's recent rate case it proposed to increase rates for customers if its water acquisition in Steelton by over 80%.¹¹ Thus, the solution to rising infrastructure costs is not to simply promote the acquisition municipally owned water and wastewater systems by private, investor-owned utilities.

For low income ratepayers facing these steep rate increases, the primary benefit of simplifying the acquisition process would be to improve the ability of low income customers to access existing customer assistance programs maintained by established utilities, which would not otherwise be available through smaller utilities. Ensuring that these programs are able to help mitigate the impact of rate increases that follow such acquisitions is a necessary for low income customers to continue to be able to afford water service in the face of these often steep rate increases.

CAUSE-PA therefore asserts that additional paragraphs should be added to 52 Pa. Code 3.501(a)(4) Rates, requiring the following:

52 Pa Code 3.501(a)(3) Customers

(iv) Each utility shall provide an estimate, based on census data, of the number low income utility customers in the service territory to be acquired or transferred in the following income categories relative to the Federal Poverty Level (FPL):

- (A) 0-50% FPL*
- (B) 51-100%FPL*
- (C) 101-150%FPL*
- (D) 151-200% FPL*

52 Pa Code 3.501(a)(4) Rates:

(iii) Established utilities applying under the simplified application process shall provide:

- (A) An analysis of the impact the proposed transaction will have on universal service.*
- (B) An analysis of the impact the proposed transaction will have on existing low-income programs and participants.*

¹¹ Pa. PUC v. PAWC, R-2022-3031672, PAWC St. 10 at Exhibit CBR-1.

(C) A needs assessment indicating whether the utility's existing low income programs are adequate to address the need within the expanded service territory.

Requiring this information at the outset of proposed acquisitions, mergers, or transfers will help ensure that the proposed transactions are not contrary to public interest by harming low income communities. Clean, safe, reliable, and affordable water and wastewater service is a necessity for all Pennsylvania households. Water and wastewater unaffordability is increasingly problematic across the Commonwealth,¹² and an alarming number of households are subject to involuntary termination because they are unable to pay – as evidenced by the fact that many are not able to reconnect service following an involuntary termination. In the first six months of 2022, approximately 11,756 residential consumers across Aqua Pennsylvania and Pennsylvania American Water service territories were terminated – yet just 8,274 were reconnected.¹³

The loss of water service due to the inability to pay can have far-reaching and devastating impacts to individuals, families, and the community as a whole. Water shutoffs also pose a threat to public health and human dignity, because “Without access to running water, families are unable to cook, bathe, clean, or flush their toilets.”¹⁴ Involuntary termination of water service due to the inability to pay immediately results in unsanitary and dangerous conditions in the home – and can and does trigger eviction and foreclosure proceedings, and often results in forced removal of children from the home.¹⁵ The inability to pay for water service also has long-term impacts on a consumer’s credit, and has a destabilizing impact on the ability of families to remain housed over

¹² See Nina Lakhani, Millions of Americans Can’t Afford Water as Bills Rise 80% in a Decade, the Guardian (June 23, 2020), <https://www.theguardian.com/us-news/2020/jun/23/millions-of-americans-cant-afford-water-bills-rise>

¹³ Pa. PUC, BCS, Terminations and Reconnections: Year-to-Date June 2021 vs. Year-to-Date June 2022 as Reported by Utilities Pursuant to Monthly Reporting Requirements at 52 Pa. Code 56.231.

¹⁴ Water/Color Report at 28.

¹⁵ *Id.* (As recognized by the EPA, a water service disconnection amounts to a practical eviction, as the home may be deemed uninhabitable.).

the long term – often triggering periods of homelessness. Indeed, the mere existence of utility debt often disqualifies households from public and private housing alike.¹⁶

Careful consideration therefore must be given to the continued ability of low income households to connect to and maintain affordable water and wastewater service. If established water and wastewater utilities are to be presumed to bring a certain level of technical and financial fitness that obviates the need for certain application requirements, then the utilities should be required to utilize their expertise and resources to help protect vulnerable citizens within the acquired territories.

IV. CONCLUSION

CAUSE-PA thanks the Commission for the opportunity to comment on this critically important issue and respectfully requests that, if the acquisition application requirements are simplified, the Commission take additional steps to ensure that any such acquisition does not harm low income consumers.

Respectfully Submitted,
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¹⁶ See Dep't of Housing and Urban Development (HUD), Public Housing Occupancy Guidebook, Utilities, available at: https://www.hud.gov/sites/dfiles/PIH/documents/PHOG_Utilities_FINAL.pdf. Utility debt is examined as part of public housing determinations and is often used as a reason to deny applications for public housing assistance. Id. Likewise, private housing providers often require applicants to secure service in their name as a condition of the lease.