



VIA E-FILING

October 12, 2022

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

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

Dear Secretary Chiavetta:

Enclosed please find the Comments of Aqua Pennsylvania, Inc. to the Pennsylvania Public Utility Commission's ("PUC" or the "Commission") December 16, 2021 Notice of Proposed Rulemaking Order concerning Section 3.501 of the Commission's regulations, 52 Pa. Code § 3.501.

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

Sincerely,



Alexander R. Stahl
Regulatory Counsel

Enclosure

cc: Christian McDewell, Law Bureau (via email)
Clinton McKinley, Bureau of Technical Utility Services (via email)
Paul Zander, Bureau of Technical Utility Services (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Comments of
Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF AQUA PENNSYLVANIA, INC.
TO THE
DECEMBER 16, 2021 NOTICE OF PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Notice of Proposed Rulemaking Order entered December 16, 2021 in Docket No. L-2020-3017232 (“NOPR”), regarding the information required to be submitted to the Commission in an application under Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, seeking a Certificate of Public Convenience (“CPC”) in compliance with Section 3.501 of the Commission’s regulations, 52 Pa. Code § 3.501.

At the Commission’s February 6, 2020 public meeting, the Commission directed the Law Bureau and the Bureau of Technical Utility Services to prepare an advanced notice of proposed rulemaking (“ANOPR”) order regarding Section 3.501.¹ The Commission issued its ANOPR Order on April 30, 2020, seeking comment from certificated water and wastewater utilities, the Pittsburgh Water and Sewer Authority, the Pennsylvania Department of Environmental Protection (“DEP”), the Office of Consumer Advocate, and the Office of Small Business Advocate. Interested parties filed comments by July 15, 2020 to the ANOPR. The Commission then issued its NOPR on December 16, 2021, which was published in the Pennsylvania Bulletin on August

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

13, 2022. Comments to the NOPR are due within 60 days of publication in the Pennsylvania Bulletin, and reply comments are due 30 days thereafter.

Aqua serves approximately 448,000 water customers in Pennsylvania. Aqua's water systems include approximately 6,000 miles of main. Aqua's wastewater subsidiary, Aqua Pennsylvania Wastewater, Inc., serves approximately 60,000 connections in Pennsylvania. Aqua's water and wastewater systems serve both rural and urban areas.

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

II. GENERAL COMMENT

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

The Company submits that the original purpose for Section 3.501 was to provide information to the PUC for the construction of new water systems. These requirements were expanded in later years to limit the addition of new small non-viable water and wastewater systems in the Commonwealth. In essence, it was a barrier to prevent further fragmentation of water and wastewater systems in Pennsylvania and to ensure that those who were granted the authority to

service customers in Pennsylvania were fit to do so.² The Company agrees with the direction that the Commission has started in limiting the amount of information that a Class A water and/or wastewater utility (“Class A Utility”) is required to submit related to a Section 1102 application.³ However, the Company believes that further steps should be taken regarding information requirements for applications under Section 1102 related to acquisitions of existing system, and the Company also believes a more expedited process should be allowed for simple main extensions to serve one or a small number of customers adjacent to Class A Utilities’ existing service territory.

The Company submits that an acquisition of a system should be viewed differently than a main extension or service line extension to serve one or a handful of customers that are adjacent to a Class A Utility’s existing service territory, especially in the case of environmental or health concerns with failing septic systems or issues with private wells. These types of applications to serve additional abutting customers to a Class A Utility’s service territory should be expedited as it serves the public interest to have those customers connected to public water or wastewater utilities.

In addition to the comments below, the Company supports the comments of the Pennsylvania Chapter of the National Association of Water Companies (“NAWC”) including the proposed redline changes to Section 3.501 and convening a working group session with stakeholders to discuss further changes or improvements to the application process.

² See NOPR at 4-5 (“The Commission’s Order amending Section 3.501 in 1983, 1997, and 2006 create necessary requirements to ensure small systems prove their viability prior to operation.”).

³ Id. at 5 (“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.”).

III. SPECIFIC COMMENTS TO THE PROPOSED REGULATIONS

A. Section 3.501(a)

The provisions of Section 3.501(a), as proposed in the NOPR, would seem to apply to simple main extensions to serve existing or proposed developments for Class A Utilities as Section 3.501(b) applies to Class A Utilities “which seeks a certificate of public convenience to acquire a public water distribution or wastewater collection, treatment, or disposal system. . . .” As such, it appears that proposed developments or main extensions to connect existing structures outside of a Class A Utility’s service territory would fall under Section 3.501(a), which requires more extensive information. Yet, these main extensions are typically simpler in nature and usually not protested. The Company believes if these types of applications would be subject to Section 3.501(a), there needs to be significant revision to this section, which could be addressed in the work group proposed by NAWC.

B. Section 3.501(b)(1)

The Company respectfully disagrees with the requirement that a Class A Utility be required to provide an inventory of lead service lines (“LSLs”) or damaged wastewater service laterals (“DWSLs”) at the time the utility files an application with the Commission. Prior to ownership, a Class A Utility does not own the subject system, as such, it does not have access to all the information that would be needed to develop an inventory of LSLs or DWSLs.

Often the selling entity does not have information on LSLs in its system, and due to available funding may not have begun or completed a service line inventory as required in the Environmental Protection Agency’s (“EPA”) Lead and Copper Rule (“LCR”), especially in the case of small troubled systems. Moreover, a Class A Utility has no right, prior to ownership, to determine the extent of LSLs or DWSL as there would be no easement or rights of access for the

utility to view the material or condition of the customer service line. A selling entity's system may be older or have sparse records regarding tap cards or other plans making developing a LSL inventory for an application very difficult. The Commission should not require a LSL inventory at the time of application, but should allow the Class A Utility to be a solution for these systems and complete this inventory post-closing.

Regarding DWSLs, a Class A Utility should not be required to provide an inventory or estimate of DWSLs. The extent of DWSLs may not generally be known in the selling entity's system. And, similar to LSLs, a Class A Utility does not have access rights to view the condition of service line condition at the time of the application. Additionally, a DWSL Replacement Program under Chapter 66 of the Commission's regulations is not required of Class A Utilities, unlike a LSL inventory which is required by EPA and Commission regulations. DWSL Replacement Programs are petitioned for at a utility's discretion and applied to specific areas in which Class A Utilities would seek authorization from the Commission to replace DWSLs. Therefore, unless the Class A Utility is requesting that the acquired system be added to an **existing** DWSL Replacement Program through the application process, an inventory or estimate of DWSLs should not be required at the time of the application. The Company submits that requiring an inventory of LSLs or DWSLs at the time of the application should be removed.

C. Section 3.501(b)(2)

The Company respectfully disagrees with the requirement that a bearings and angles description is required for a service territory map in an application proceeding. A general description of the service territory showing the boundaries should suffice. In addition, the elevations of facilities do not appear to be a necessary requirement in approving a Class A Utility's application. An existing system, that will be acquired by a Class A Utility, and its design was

reviewed by DEP including where major facilities are located, and the Company submits that this information regarding elevation is not necessary to determine if the acquisition of a system is in the public interest.

D. Section 3.501(b)(3)

The Company believes that including the capacity in the system that is available is necessary in an application, which can be addressed through a statement that capacity is available. In the case of a main extension or service territory extension for a development, a Sewage Facilities Planning Module (“SFPM”) approval or waiver should be sufficient to determine that there is capacity in a wastewater system as the DEP has determined there is capacity. In a water system, a statement that capacity exists to serve the subject additional customers should suffice.

E. Section 3.501(b)(4)

The Company submits that main extensions to existing or proposed developments have already gone through municipal planning approval by the time the Company receives a request to expand its service territory, and, as such, a SFPM approval or waiver should be sufficient to show that there was compliance with zoning and planning commission requirements.

F. Section 3.501(b)(5)

The Company agrees that it can provide projected customers and consumption for the next five years for wastewater systems as this is required in Chapter 94 reporting. The Company would like to clarify that some acquired systems do not break down customers by class or consumption by class, and, therefore, that information can be provided, but only if available. The Company is unclear on the requirement of reporting on consumption and customers of a selling entity that will continue to provide service to customers post-closing. Often these selling entities are not under

the jurisdiction of the Commission so it is unclear why the Commission would need this information from the Class A Utility.

G. Section 3.501(b)(6)

The Company supports NAWC's comments in this section.

H. Section 3.501(b)(7)

The Company submits that permits can be provided, if available, and if those permits are not available and a search has been conducted, a Class A Utility can provide a verification that a search has been conducted. A Class A Utility can then work to obtain needed permits, without delaying the review of an application before the Commission. The Company also supports reducing the compliance history review to three years. The Company does not believe that Act 537 Plans for all applications should be required. Act 537 planning is under the jurisdiction of the DEP, and any updates to those plans are the responsibility of a municipality, the municipal planning agency, the County planning agency, and is ultimately reviewed and approved by DEP. For applications related to main extensions to existing or proposed developments SFPM approval or waiver should suffice. For a service territory extension to one or a handful of customers bordering the service territory of a Class A Utility, the entire Act 537 plan should not be needed as part of an application as the Act 537 planning for that subject customer(s) was approved through the SFPM process.

I. Section 3.501(b)(8)

The Company supports the addition of this subsection as presented in the comments of NAWC.

J. Section 3.501(c)

The Company supports the comments of NAWC regarding this subsection.

K. Section 3.501(d)

The Company does not have any comments or proposed changes to this section.

L. Section 3.501(e)

The Company does not have any comments or proposed changes to this section.

M. Section 3.501(f)

The Company supports the comments of NAWC regarding this subsection.

N. Section 3.501(g)

The Company does not have any comments or proposed changes to this section.

O. Section 3.501(h)

The Company supports the comments of NAWC regarding this subsection.

P. Section 3.501(i)

The Company does not have any comments or proposed changes to this section.

Q. Section 3.502

The Company agrees that the protest timing for applications should be set at 30 days and agrees with NAWC's comments regarding this section.

R. Section 3.503

The Company does not have any comments or proposed changes to this section.

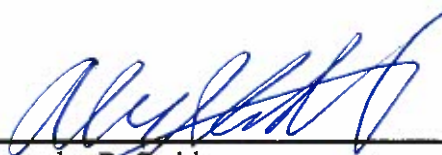
S. Section 65.16

The Company does not have any comments or proposed changes to this section.

IV. CONCLUSION

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

Respectfully submitted,



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

Dated: October 12, 2022