

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

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

Public Meeting of October 10, 2024  
3017232-LAW  
Docket No. L-2020-3017232

**STATEMENT OF VICE CHAIR KIMBERLY BARROW**

Before us for consideration is the final rulemaking order which revises the certificate of public convenience (CPC) application process utilized by water and wastewater providers seeking Commission authority: (1) to become a water or wastewater public utility; (2) to extend water distribution or wastewater collection mains beyond a certificated service territory; or (3) to acquire existing water or wastewater systems.

While I acknowledge that this rulemaking undertook the commendable goal of refining our existing application process, there are several issues in the rulemaking that I find troubling as highlighted below.

First, I would like to echo the suggestion made by several commenters in the rulemaking, including the Independent Regulatory Review Commission (IRRC), the National Association of Water Companies (NAWC) and other water companies, that the Commission should have formed a stakeholder working group to resolve contentious issues. Specifically, IRRC encouraged the Commission to continue efforts to build consensus and to engage in further discussions with all interested parties that have provided input on the rulemaking.<sup>1</sup> Further, NAWC suggested that the Commission convene a working group, with definitive timelines for recommendations, to improve the final rulemaking prior to issuance.<sup>2</sup> Participating water companies also agreed that a working group would be useful to discuss further improvements to the application process.<sup>3</sup>

I agree with the parties that a stakeholder working group formed to address the very critical issues raised in this rulemaking would have been beneficial and could have facilitated more consensus-based solutions to the benefit of all involved.

Second, in the notice of proposed rulemaking (NOPR), the Commission stated that an applicant's Department of Environmental Protection (DEP) compliance history is a necessary part of an application from a well-established water or wastewater utility seeking to expand its service territory. However, the Commission also determined that it was not seeking a full review of a well-established utility's compliance with DEP regulations. Notwithstanding, the Commission did not propose to eliminate the requirement from Section 3.501(a)(6)(iv) but rather adopted Aqua PA's suggestion that it instead issue data requests to seek the compliance history of the applicant for a comparable DEP region when such information is needed. This approach is an equitable and common-sense solution which would both protect the public interest and foster administrative efficiency.

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<sup>1</sup> IRRC at 2.

<sup>2</sup> NAWC at 5-6.

<sup>3</sup> Aqua Pennsylvania, Inc. (Aqua PA) Comments at 4, Pennsylvania-American Water Company (PAWC) at 9.

Contrast that approach with the NAWC's and PAWC's recommendation that an existing utility's presumption of technical fitness should apply to presumed compliance with environmental obligations, thereby wholly absolving them from providing any DEP compliance history. While the DEP five-year compliance information appropriately applies to the selling utility and provides a clear idea on the state of the utility being acquired, it is important that a well-established certificated utility also provide recent compliance history, even if not the five-year compliance history. Thus, I believe a well-established certificated water or wastewater public utility, including a Class A water and wastewater utility, should provide a recent DEP compliance history.

Third, for acquisition applications filed by certificated water and wastewater public utilities, the NOPR required, *inter alia*, that the applicant submit a map of the proposed, acquired service territory which contains detail to delineate the boundaries of the new service area, including a description by bearing angles and distances, the location or route of the existing water or wastewater system as well as elevations of major facilities in the service territory.

I am in agreement with this requirement as it provides the Commission with the relevant information to make an informed decision on such applications. Where such information is missing in the application, and when necessary, Staff should request submission of this information through data request to enable them to conduct an appropriate and comprehensive review of the application. Therefore, I believe a certificated water or wastewater public utility should submit all relevant documentation with its acquisition application *e.g.*, a map including a description by bearing angles and distances, the location or route of the existing water or wastewater system as well as elevations of major facilities in the service territory, description of facilities, engineering report, etc. Moreover, having detailed descriptions of utility facilities and property allows the Commission to efficiently rule on controversies related to utility facilities or questions of service territory boundaries well into posterity, when litigants' records may not be as reliable.

Lastly, the Commission also proposed, *inter alia*, that at the time of filing of an acquisition application, an existing certificated Class A, Class B, or Class C water or wastewater public utility would be required to provide an inventory or estimate of lead service lines (LSLs) and damaged water sewer laterals (DWSLs) existing within the acquired system. Further, we proposed that the applicant would be required to state with particularity how potential LSLs and DWSLs would be included in public utility programs for the replacement of these lines as required by Sections 65.55 and 66.35 (relating to LSLR program requirements; DWSL program requirements) of the Commission's regulations.<sup>4</sup>

While NAWC, Aqua PA and PAWC strongly oppose this requirement, the OCA and CAUSE-PA support including these inventories in the application filings. They argue that understanding the LSLs and DWSLs which may exist in a system that is being acquired is necessary so that the impact on ratepayers of remediation is well understood.<sup>5</sup>

I agree that the inclusion of this information in the application is vital. I recognize the fact that the Commission addressed LSL replacement in Chapter 65 of our regulations and proposed a new Chapter 66 to address wastewater service and DWSL replacements. I am also aware that all community water systems are required to have service line inventories by October 16, 2014, and this information should be readily available to an acquired utility to mitigate any risks. Further, I acknowledge that Section 65.56(a)

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<sup>4</sup> 52 Pa. Code §§ 65.55 and 66.35.

<sup>5</sup> Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) Reply at 5-7; Office of Consumer Advocate (OCA) Reply at 9.

permits acquiring public utilities to provide a service line inventory for the acquired system upon completion of the acquisition.<sup>6</sup> However, I believe that requiring an inventory of LSLs as part of an acquisition application would still help to mitigate the risk of acquiring systems with undisclosed major liabilities, especially, since this inventory will provide a more accurate estimate of what investments will be required to replace LSLs.

I support the rulemaking's goal of administrative efficiency and I acknowledge that an inefficient Commission application process can hinder and delay the provision of safe and reliable utility service for Pennsylvania's residents. At the same time, I am wary of hollowing out our water and wastewater application process so drastically, that the Commission may not have sufficient information to make a truly informed decision on an application.

October 10, 2024

  
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Kimberly Barrow, Vice Chair

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<sup>6</sup> The Federal Environmental Protection Agency recently finalized Lead and Copper Rule Improvements Rulemaking. *See*, 40 CFR Parts 141 and 142 - [www.epa.gov/system/files/documents/2024-10/prepublicationfrn\\_national-primary-drinking-water-regulations-for-lead-and-copper\\_improvements.pdf](https://www.epa.gov/system/files/documents/2024-10/prepublicationfrn_national-primary-drinking-water-regulations-for-lead-and-copper_improvements.pdf)