

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

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

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

STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS

The Final Rulemaking Order and Annex pertaining to the filing requirements for certain water and wastewater applications for Certificates of Public Convenience (CPC) and the associated protest procedures for these applications are before the Commission for disposition.¹ One of the goals of this rulemaking is to streamline the Commission’s regulatory review of water and wastewater CPC applications, consistent with the Joint Motion of Chairman Stephen M. DeFrank and Commissioner Ralph V. Yanora addressing how the Commission can gain efficiencies in application proceedings.²

I voted in favor of the Joint Motion, and I support creating more efficient processes within the Commission. Nevertheless, I believe that creating efficiencies, while still ensuring meaningful public participation and trust in the regulatory process, is a delicate balance. Although numerous improvements have been made to this final rulemaking since it began, I am not confident that the final rulemaking does enough in all areas to address environmental compliance consistent with the Commission’s obligations under article I, section 27 of the Pennsylvania Constitution. For instance, I would have supported a requirement that Class A water and wastewater public utilities provide a 1-year history of compliance with the Pennsylvania Department of Environmental Protection’s regulations when applying for

¹ The Final Rulemaking addresses the following: (1) the filing requirements applicable to CPC applications filed by entities seeking authority to provide service as a new jurisdictional water or wastewater public utility under Section 1101 of the Public Utility Code (Code), 66 Pa. C.S. § 1101; (2) the filing requirements applicable to CPC applications filed by existing, jurisdictional water or wastewater public utilities seeking authority to extend a distribution main beyond the boundaries of their certificated service territory under Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102; (3) the filing requirements applicable to CPC applications filed by existing, jurisdictional water or wastewater public utilities seeking authority to acquire another existing water or wastewater service provider under Section 1102 of the Code, 66 Pa. C.S. § 1102; and (4) the protest procedures and time frames relating to protests to these water and wastewater CPC applications.

² *Building Efficiency in Commission Application and Certification Procedures*, Docket No. M-2024-3047172 (Joint Motion dated April 4, 2024). The Joint Motion is consistent with Governor Shapiro’s Executive Order 2023-07 – Building Efficiency in the Commonwealth’s Permitting, Licensing, and Certification Processes.

extensions of water distribution mains or wastewater collection mains and acquisitions of an existing water or wastewater system.³ This requirement would have allowed the Commission to exercise its due diligence in a reasonable manner that is not unduly burdensome.

I am also concerned that some of the final rulemaking's provisions could effectively prevent water and wastewater customers and impacted municipalities from participating in these CPC application proceedings. I note the comments filed by the Office of Consumer Advocate and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania that reducing the protest period from 60 to 30 days does not provide sufficient time for the public to review and evaluate the impacts of an application, particularly for residential customer filers, as well as businesses, community groups, and nonprofits that must retain counsel to participate.⁴ This shortened time frame is further compounded by the language in the rulemaking that failure to meet the 30-day time frame "shall be a bar to subsequent participation in the proceeding" unless "good cause" is demonstrated,⁵ which is a complete departure from the Commission's current rules of practice and procedure. While the Commission is currently seeking comments on similar amendments to protest periods in another pending rulemaking,⁶ I am concerned the Commission may inadvertently create agency *inefficiencies* by evaluating certain public protest periods piecemeal, rather than looking at our processes and procedures in a holistic fashion.

I firmly believe that government should work for all citizens, so while I support the goal of achieving Commission efficiencies in this final rulemaking, the Commission should not sacrifice our responsibility to ensure environmental compliance or the public's opportunity to participate in significant water and wastewater proceedings to meet this goal. For these reasons, I cannot support the current language of the final rulemaking, and I will be dissenting on this matter.



DATE: October 10, 2024

Kathryn L. Zerfuss, Commissioner

³ The Final Rulemaking requires Class B and C water and wastewater public utilities to provide a 5-year history of compliance with DEP regulations with an explanation of each violation, but it does not contain any corresponding DEP compliance history requirement for Class A water and wastewater public utilities. Annex at 22, 26, §§ 3.514(b), 3.515(d).

⁴ Final Rulemaking Order at 79-80.

⁵ Annex at 27-28, § 3.516.

⁶ See *Clarified Notice of Proposed Rulemaking Order: Regulations Governing the Public Utility Commission's General Provisions, 52 Pa. Code Chapters 1,3, and 5*, Docket No. L-2023-3041347 (Order entered August 22, 2024).