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Agencies in this issue

The Courts
Department of Agriculture
Department of Banking and Securities
Department of Education
Department of Environmental Protection
Department of Human Services
Department of State
Executive Board
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RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 3, 65 AND 66]

[L-2020-3017232]

Applications of Certificated Water and Wastewater Utility for New Service, Expanding Certificated Service Territory and Acquisitions, Mergers, and Transfers of Jurisdictional Assets

Public Meeting held
May 8, 2025

Commissioners Present: Stephen M. DeFrank, Chairperson; Kimberly Barrow, Vice Chairperson, dissenting; Kathryn L. Zerfuss, statement follows, dissenting; John F. Coleman, Jr.; Ralph V. Yanora

Applications of Certificated Water and Wastewater Utility for New Service, Expanding Certificated Service Territory and Acquisitions, Mergers, and Transfers of Jurisdictional Assets; Docket No. L-2020-3017232

Revised Final-Form Rulemaking Order

(Editor's Note: The following table of contents provides an overview of where topics may be found in the PUC Order. Due to the difference in page numbering in the Order published in the *Pennsylvania Bulletin*, page numbers are omitted from the table of contents.)

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By the Commission:

The Pennsylvania Public Utility Commission (PUC) is the Commonwealth administrative agency which regulates jurisdictional public utilities, including various water and wastewater companies. The Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 101—3316, contains all relevant laws dealing with the PUC's regulation of jurisdictional public utilities operating within Pennsylvania, including water and wastewater companies. Under the Public Utility Code, the PUC may issue a certificate of public convenience (CPC) to an applicant, which then becomes evidence of its authorization to operate as a jurisdictional public utility or to perform other acts related to its proffered jurisdictional public utility service. Section 1103 of the Public Utility Code (relating to procedure to obtain certificates of public convenience), 66 Pa.C.S. § 1103, sets forth the process to obtain a CPC from the PUC. Specifically, an applicant must submit a written application to the PUC and the PUC is empowered to approve the application and grant the applicant a CPC only if it finds that it is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a).

The PUC promulgated the existing regulations within Title 52 of the *Pennsylvania Code*¹ to codify the Section 1103 certification process as it relates to CPC applications filed by water and wastewater applicants. See 52 Pa. Code § 3.501(a)-(b) (relating to certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider). Specifically, Section 3.501 of our regulations sets forth the relevant information and documentation an applicant must incorporate within its written CPC application. Section 3.502 (relating to protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider) of our regulations governs protests to those CPC applications.

On April 30, 2020, at the above-referenced docket number, the PUC entered an Advance Notice of Proposed Rulemaking (ANOPR) to address the length of CPC application proceedings. The PUC received comments from stakeholders generally in support of revamping these regulations. Subsequently, on December 16, 2021, the PUC entered a Notice of Proposed Rulemaking Order (NOPR) at this same docket to amend and update 52 Pa. Code §§ 3.501 and 3.502. In particular, we proposed to amend Section 3.501 by modifying some of the filing requirements imposed on the acquisition applications filed by existing, certificated Class A water and

wastewater public utilities² seeking to acquire another existing water or wastewater service provider. We also proposed to amend the public notice requirements for water and wastewater CPC applications and to eliminate those filing requirements that we deemed were no longer needed generally. Additionally, we proposed to amend the protest timeframe set forth in Section 3.502. Lastly, we also proposed editorial changes to various other regulatory provisions that were related to these principal amendments. All of these specific proposals were set forth in the NOPR Annex and explained in the NOPR Preamble.

We provided interested stakeholders with an opportunity to comment on the PUC's proposed amendments in the NOPR. Upon consideration of the entirety of the stakeholder comments and reply comments received by the PUC to it, as well as comments from the Independent Regulatory Review Commission (IRRC), we entered a Final-Form Rulemaking Order (FFRO)³ on October 25, 2024. The FFRO deviated from the NOPR by substantially amending Subchapter G of Chapter 3 of Title 52 of the *Pennsylvania Code* (relating to water or wastewater utility proceedings) to explicitly delineate (1) the filing requirements applicable to Section 1101 CPC applications filed by those seeking to become a new certificated water or wastewater public utility, and (2) the distinct filing requirements applicable to Section 1102 CPC applications filed by existing, certificated water or wastewater public utilities seeking authorization to extend a distribution main beyond the boundaries of their certificated service territory or to acquire another existing water or wastewater service provider, whether certificated or uncertificated. See 66 Pa.C.S. §§ 1101 and 1102 (relating to organization of public utilities and beginning of service; enumeration of acts requiring certificate).

On November 6, 2024, we delivered the FFRO to IRRC and the Legislative Committees for consideration. The FFRO was placed on the Public Meeting Agenda for IRRC's March 20, 2025 Public Meeting. At IRRC's Public Meeting, the regulation was disapproved.⁴ Thus, we hereby enter this Revised FFRO to address IRRC's disapproval. The Revised FFRO contains the original revisions to the NOPR that the PUC set forth in its October 25, 2024 FFRO plus additional clarifying revisions in response to IRRC's disapproval detailed below. Therefore, with this Revised FFRO, we have again rescinded and reserved Sections 3.501-3.502, not adopted the proposed Section 3.503 final-form, adopted Sections 3.511—3.516, amended Section 65.16 (relating to system of accounts for water utilities), and adopted Section 66.2 (relating to system of accounts for wastewater utilities), as discussed below and reflected in Annex A.

Background

I. Statutory Authority

Section 1101 of the Public Utility Code requires a person or corporation (as defined in 66 Pa.C.S. § 102 (relating to definitions)) to obtain a CPC prior to beginning to provide jurisdictional public utility service. Section 1101 of the Public Utility Code states, in pertinent part that:

§ 1101. Organization of public utilities and beginning of service.

² Class A utilities are currently defined as, a public utility that provides water or wastewater service and has an annual operating revenue of \$750,000 or more (averaged over the last 3 consecutive years). 52 Pa. Code § 65.16(a) (relating to system of accounts).

³ This FFRO consisted of a Final-Form Preamble and a Final-Form Annex.

⁴ IRRC issued its disapproval letter to the PUC on April 21, 2025.

¹ The *Pennsylvania Code* is a compendium of rules, regulations, and policy statements of the various Commonwealth administrative agencies set apart in titles assigned to the agencies. Title 52 is the title assigned to the PUC.

Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. The commission's certificate of public convenience granted under the authority of this section shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.

66 Pa.C.S. § 1101. Accordingly, a Section 1101 CPC confers jurisdictional status on the applicant to provide public utility service as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102. Thereafter, a certificated public utility may file subsequent CPC applications with the PUC in order to obtain authorization to perform various acts related to the provisioning of its certificated utility service. Section 1102 of the Public Utility Code enumerates those acts and states, in pertinent part, that:

§ 1102. Enumeration of acts requiring certificate.

(a) *General rule.*—Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by:

(i) A certificate of public convenience granted under this part or under the former provisions of the act of July 26, 1913 (P.L. 1374, No. 854), known as “The Public Service Company Law,” or the act of May 28, 1937 (P.L. 1053, No. 286), known as the “Public Utility Law.”

(ii) An unregistered right, power or privilege preserved by section 103 (relating to prior rights preserved).

(2) For any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.

(3) For any public utility or an affiliated interest of a public utility as defined in section 2101 (relating to definition of affiliated interest), except a common carrier by railroad subject to the Interstate Commerce Act, to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service. Such approval shall not be required if:

(i) the undepreciated book value of the property to be acquired or transferred does not exceed \$1,000;

(ii) the undepreciated book value of the property to be acquired or transferred does not exceed the lesser of:

(A) 2% of the undepreciated book value of all fixed assets of such public utility; or

(B) \$5,000 in the case of personalty or \$50,000 in the case of realty;

(iii) the property to be acquired is to be installed new as a part of or consumed in the operation of the used and useful property of such public utility; or

(iv) the property to be transferred by such public utility is obsolete, worn out or otherwise unserviceable.

Subparagraphs (i) through (iv) shall not be applicable, and approval of the commission evidenced by a certificate of public convenience shall be required, if any such acquisition or transfer of property involves a transfer of patrons.

66 Pa.C.S. §§ 1102(a)(1)—(3). Accordingly, a Section 1102 CPC confers authorization to perform any of the above-referenced acts, including rendering jurisdictional public utility service to a different territory than was previously authorized, or to acquire another existing certificated public utility.

As stated previously, Section 1103 of the Public Utility Code sets forth the procedure to obtain either a Section 1101 CPC or a Section 1102 CPC from the PUC. Section 1103 states in pertinent part that:

§ 1103. Procedure to obtain certificates of public convenience.

(a) *General rule.*—Every application for a certificate of public convenience shall be made to the commission in writing, be verified by oath or affirmation, and be in such form, and contain such information, as the commission may require by its regulations. 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. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

66 Pa.C.S. § 1103(a) (emphasis added).

II. PUC Regulations

Title 52 of the *Pennsylvania Code* contains the regulations that are promulgated by the PUC as may be necessary or proper in the exercise of its powers or for the performance of its duties. 66 Pa.C.S. § 501(b). Title 52 provides special rules of administrative practice and procedure before the PUC and further details special rules and regulations that public utilities and the public must follow. In particular, Section 3.501 of our regulations, 52 Pa. Code § 3.501, sets forth the information and documentation that is required to be incorporated within a written application so that a water or wastewater applicant can satisfy the statutory criteria set forth in Section 1103 of the Public Utility Code to obtain a CPC from the PUC. Thus, an applicant's compliance with the Section 3.501 filing requirements serves as substantial evidence that supports a finding that granting the CPC is in the “public interest” as prescribed by 66 Pa.C.S. § 1103.

The Section 3.501 CPC application filing requirements have gone through many iterations. When Section 3.501

was first promulgated in 1976, the application filing requirements were relatively limited and only applied to applications filed by public water suppliers.⁵ In 1983, as a result of recommendations published in a special report of the Joint Legislative Air and Water Pollution Control and Conservation Committee, the PUC expanded the breadth of the information and documentation that must be included within a Section 3.501 CPC application.⁶ The PUC also amended Section 3.501 to include procedural mechanisms for submitting protests to applications.⁷

In 1997, the PUC again revisited Section 3.501 and made amendments that incorporated even more additional requirements for applications such as listing the proposed rates to be charged, and proof of compliance with the requirements of the Pennsylvania Department of Environmental Protection (DEP).⁸ Additionally, the PUC expanded the scope of Section 3.501 so that the filing requirements also specifically applied to applications filed by wastewater treatment providers.⁹ The PUC also removed the protest section that was embedded in Section 3.501 and incorporated it into a new Section 3.502.

Finally, in 2006, at the behest of the Independent Regulatory Review Commission and DEP, the PUC further amended Section 3.501 by expanding the existing list of filing requirements to also include the submittal of a county comprehensive plan, municipal comprehensive plan, and zoning designations with the subject CPC application.¹⁰

III. *Advance Notice Of Proposed Rulemaking*

Currently, Section 3.501 of our regulations requires water and wastewater applicants seeking to obtain a CPC from the PUC to provide the following information and documentation in their written applications with a great degree of specificity:

- A copy of the required DEP Business Plan.
- A description of proposed facilities or additional information on existing facilities required if the application is for an expansion of existing service.
- A map of the proposed service area.
- Estimates of number of customer connections and estimates of water usage (treated) after one, five and ten years.
- Information demonstrating that the applicant has the ability to provide adequate water supply (including access to bulk sales of water), treatment, storage and distribution capacity to meet present and future customer needs.
- A proposed tariff showing rates (by rate schedule), rules and conditions for service.
- One-year, five-year and ten-year estimates of operating revenues, operation and maintenance (O&M) expenses, annual depreciation and taxes. Additional information required if the applicant is already providing certificated service and has been operating at a loss.
- Proof of DEP Compliance regarding design, construction and operation.

⁵ See 6 Pa.B. 911, 912-13.

⁶ See 13 Pa.B. 3221.

⁷ Id.

⁸ See 27 Pa.B. 414.

⁹ The 1997 amendments also included 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). See 27 Pa.B. 414, 416, 419 and 431-433 (January 25, 1997).

¹⁰ See 36 Pa.B. 2097, 2098, 2106-08, 2131-33.

- If applicable, copies of public water supply/water quality management or National Pollution Discharge Elimination System (NPDES) permits.
- A valid certificated operator certificate.
- A five-year DEP compliance history with explanations of any prior violations.
- A five-year DEP compliance history on any other public utilities owned by the applicant, including affiliates.
- Documentation of compliance with any applicable requirements of: Delaware River Basin Commission (DRBC), Susquehanna River Basin Commission (SRBC), Ohio River Basin Commission (ORBC) and the Great Lakes Commission, state/county/local comprehensive plans.
- Identity of “affected” persons such as other public utilities, municipalities, authorities, associations and cooperatives that provide public water/wastewater service in or directly adjacent to the municipalities where service is proposed or within one mile of applicant’s facilities.
- If other water suppliers are available to the proposed service territory, provide proof that the cost/quality of applicant’s service is better for customers.
- A verification that water sources and customers will be metered.
- An affidavit showing service of the application on every municipality and planning office in the proposed service territory up to and including the county level, other public water entities within one mile of the service territory, the Bureau of Investigation & Enforcement (BI&E), OCA and OSBA.
- A signed verification of the entire application.

52 Pa. Code § 3.501(a)–(f). The manner in which Section 3.501 of our regulations is laid out indicates that this information is required of all applicants, regardless of their specific CPC request or viability status. Accordingly, the filing requirements therein apply to the following applicants: (1) those seeking to obtain a CPC to become a new certificated water or wastewater public utility, including those companies that have been providing de facto water or wastewater public utility service in Pennsylvania; (2) those existing certificated water and wastewater public utilities seeking to extend their distribution mains outside of their certificated service territory; and (3) those existing certificated water and wastewater public utilities seeking to acquire another existing public water supplier or wastewater treatment provider, whether certificated or uncertificated.

Because of the manner that Section 3.501 is constructed, CPC applications filed by existing, “well-established,” certificated water or wastewater public utilities that involved relatively simple requests such as uncontested distribution main extensions or non-protested acquisitions, often received the same level of PUC review as more complex matters. The PUC acknowledged that its existing review process for water and wastewater CPC applications began to result in protracted and lengthy proceedings for water and wastewater CPC applications. On February 6, 2020, the Motion of Commissioner Ralph V. Yanora, at the above-referenced docket number, directed the preparation of an Advanced Notice of Proposed Rulemaking (ANOPR) regarding Section 3.501 to address this issue. On April 30, 2020, the PUC entered this ANOPR.

In the ANOPR, the PUC posed numerous questions for stakeholders about whether and how it could improve its review process, especially for those CPC applications filed by certificated, well-established water or wastewater public utilities seeking to acquire another existing water or wastewater service provider. The ANOPR was published in the *Pennsylvania Bulletin* at 50 Pa.B. 2521 (May 16, 2020) and established a 60-day public comment period with comments due July 15, 2020. The PUC received comments from a range of stakeholders, which broadly supported modernizing the PUC's regulations set forth in 52 Pa. Code § 3.501.

IV. Notice Of Proposed Rulemaking

On December 16, 2021, in response to the comments to the ANOPR, the PUC entered a Notice of Proposed Rulemaking Order (NOPR), consisting of a Preamble and a proposed Annex A, formally commencing this rulemaking principally to amend its existing regulations at 52 Pa. Code §§ 3.501 and 3.502. In the NOPR, the PUC proposed that there should be a distinct difference between the information well-established jurisdictional water and wastewater utilities must submit with their CPC acquisition applications. As such, the PUC proposed to amend Section 3.501(a) of its regulations to clarify that the existing, extensive filing requirements therein explicitly applied only to (1) CPC applications seeking authority to operate as a new, certificated water or wastewater public utility; (2) all CPC applications filed by existing certificated Class B and Class C water and wastewater public utilities; and (3) non-acquisition CPC applications filed by certificated Class A water and wastewater public utilities.

Concomitantly, the PUC also proposed to amend Section 3.501 by establishing a new subsection (b) therein that set forth the new, distinct filing requirements that would only apply to CPC acquisition applications filed by existing, certificated Class A water and wastewater public utilities. The PUC also proposed additional revisions to Section 3.501 and proposed the creation of a new Section 3.503 that established a system of accounts for all certificated wastewater public utilities in accordance with the National Association of Regulatory Utility Commissioners¹¹ (NARUC) Uniform System of Accounts (USoA). Likewise, the PUC provided additional updates to Section 65.16 of its regulations in order to update the manner that certificated Class A, Class B, and Class C water public utilities kept their books in accordance NARUC USoA.¹²

The NOPR was published in the *Pennsylvania Bulletin* on August 13, 2022.¹³ The NOPR established a 90-day public comment period commencing upon publication in the *Pennsylvania Bulletin*. The PUC received comments from 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), and the Pennsylvania Municipal Authorities Association (PMAA). Reply comments were filed by NAWC, OCA, CAUSE-PA, and the Office of Small Business Advocate (OSBA). The PUC also received comments from IRRC.

V. Final-Form Rulemaking

¹¹ NARUC (or N.A.R.U.C.) is a non-profit organization, founded in 1889, dedicated to representing state public service commissions and state public utility commissions that regulate utilities that provide essential services such as energy, telecommunications, power, water, wastewater, and transportation.

¹² See fn. 11.

¹³ 52 Pa.B. 4926 (August 13, 2022).

Upon consideration of the entirety of the stakeholder comments and reply comments received by the PUC to the NOPR, as well as comments IRRC, we entered a FFRO on October 25, 2024. On November 6, 2024, we delivered the FFRO to IRRC and the Legislative Committees for consideration.

On January 8, 2025, the NAWC and PAWC (collectively, NAWC/PAWC) filed comments before IRRC.

The FFRO was placed on the Public Meeting Agenda for IRRC's March 20, 2025 Public Meeting. At IRRC's Public Meeting, the regulation was disapproved.

Thus, we hereby enter this Revised FFRO. This Revised FFRO contains the original revisions to the NOPR set forth in the FFRO and additional clarifying revisions in response to IRRC's disapproval detailed below.

Discussion

In the NOPR, the PUC sought to streamline and modify the filing requirements for certain water and wastewater CPC applications that fall under Chapter 11 of the Code. To accomplish this, the PUC attempted to modify the existing language of Section 3.501. Specifically, the PUC proposed to amend Section 3.501(a) so that it explicitly applied only to the following: (1) CPC applications filed to become a certificated water or wastewater public utility; (2) all CPC applications filed by certificated Class B and Class C water and wastewater public utilities; and (3) non-acquisition CPC applications filed by certificated Class A water and wastewater public utilities. Additionally, since the PUC had determined that there should be a distinction between the information well-established certificated water and wastewater public utilities must submit with their CPC acquisition applications, it proposed to incorporate the revised filing requirement within a new Section 3.501(b).

I. General Comments

A few of the commentators submitted general comments about our proposals to modify the existing CPC filing requirements set forth in Sections 3.501 and 3.502 of our regulations for certain water and wastewater transactions. In this section of the Final-Form Preamble, the PUC discusses the topics raised in those general comments.

A. Scope Of Proposed 52 Pa. Code § 3.501

1. Comments

NAWC notes that the PUC's current Section 1102 application process, as codified in Section 3.501 of its regulations, has created unnecessary delays which have become a deterrent to Class A water and wastewater companies acquiring small, troubled water systems or becoming involved in solutions to extend service to help customers and communities. NAWC Comments at 2–5. NAWC acknowledges that the PUC must review a public utility's application to ensure it satisfies the statutory public interest standard but asserts that the PUC must streamline the review process so that well-established public utilities may expeditiously acquire a small, troubled public utility. *Id.* With respect to applications that do not involve acquisitions, NAWC respectfully submits that the PUC should substantially rewrite this section to simplify and expedite the process for what should be relatively simple proceedings. To address this situation, NAWC suggests that the Commission consider adopting a policy similar to the Permit Decision Guarantee for the Department of Environmental Protection, Executive Order 2012-11. This policy requires DEP to establish clear guidance that describes permit application

requirements and includes predictable processing times for each covered application. NAWC asserts that a similar PUC policy would promote transparency, set realistic expectations for all participants in the application process, and help PUC management ensure that applications stay “on track” for prompt processing. NAWC Comments at 6-7. Consequently, NAWC states that it supports the PUC’s goal of updating its regulations to improve the efficiency of the PUC’s review process for applications filed by Class A owners seeking to acquire a small, troubled water system or extending service to customers that are without safe and reliable alternatives. *Id.* at 2-3.

PAWC generally supports the concept that the PUC should reduce unnecessary paperwork, and notes that every additional document imposes costs on a public utility which are eventually paid by ratepayers. PAWC at 7. Further, PAWC expresses concern that the overall burden of applying for a CPC should not be so great as to discourage a public utility from an acquisition that is in the public interest. *Id.* PAWC joins with the portion of NAWC’s comments that express concern about the length of time that uncontested applications filed under 66 Pa.C.S. § 1102 can linger at the PUC. *Id.* While PAWC does not recommend that the PUC establish a six-month deadline for issuing an order, as is required for Section 1329 filings, PAWC joins NAWC in encouraging the PUC to use creative approaches to make the Section 1102 CPC application process faster and more efficient for all uncontested applications, while still ensuring that approved applications are in the public interest. *Id.*

AQUA asserts that the original purpose for Section 3.501 was to provide the PUC with information for the construction of new water systems and that those filing requirements were expanded in later years to limit the addition of new small non-viable water and wastewater systems in the Commonwealth. *Id.* AQUA supports the PUC’s direction in the NOPR to limit the amount of information that a Class A water public utility or wastewater public utility is required to provide in an application that is filed in order to acquire an existing water or wastewater system under 66 Pa.C.S. § 1102 (relating to enumeration of acts requiring certificate). *Id.* However, AQUA asserts that a system acquisition 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. *Id.*

PMAA disagrees with the PUC’s general goal to reduce application requirements in Section 3.501 and related sections, particularly in situations where the relevant information is not readily available to the public or interested stakeholders. PMAA at 1. PMAA argues that the reduction in application information can often harm the public interest. PMAA at 1.

2. Disposition

Water and wastewater companies filing applications to obtain a Section 1102 CPC for uncontested or unprotected transactions have increasingly encountered delays in the processing of their applications because of having to comply with the extensive application filing requirement within Section 3.501. In the NOPR, we preliminarily determined that our application review process should not act as a deterrent to the acquisitions of existing jurisdictional water and wastewater systems, especially for applications seeking the acquisition of a small, troubled jurisdictional water or water system by one of our certificated Class A water and wastewater public utilities.

Although the PUC’s consideration of matters is normally undertaken efficiently, particularly given the statutory timeframes governing certain approvals, earlier this year, in alignment with Governor Shapiro’s Executive Order 2023-07,¹⁴ the PUC took affirmative steps to evaluate how it could promote and realize efficiencies in its licensing, application, and certification procedures. Building Efficiency in Commission Application and Certification Procedures, Docket No. M-2024-3047172 (Joint Motion of Chairman Stephen M. DeFrank and Commissioner Ralph V. Yanora dated April 4, 2024). As such, the PUC has two goals—to streamline its regulatory review but also to establish regulations that require an applicant to submit all necessary information with its written application so that the PUC may determine whether granting a CPC is in the public interest.

To be clear, despite PMAA’s contention about the elimination of application filing requirements, the PUC remains committed to ensuring that its regulatory review takes into consideration the specific transactions involved in a CPC application as well as the financial fitness and expertise of the particular applicant. As a result, we are not proposing to eliminate the filing of all documents that are deemed necessary and pertinent to our review process. Nor should the amendments to the application filing requirements be read as impeding our comprehensive review process for such applications or imposing a limitation on our authority to issue data requests in support of that review. The inherent goal of the instant rulemaking proceeding is to continue to refine our application review and approval process related to certain water and wastewater CPC applications. The PUC can still ensure that water and wastewater applicants submit all relevant information and pertinent documentation for it to conduct a comprehensive regulatory review of its application, while not subjecting applicants looking to finalize their acquisitions or to extend service to customers with onerous or substantial burdens.

Accordingly, we agree with the general comments of NAWC, PAWC and AQUA regarding the necessity of moving forward with this rulemaking so that we can update and streamline our review process relating to water and wastewater CPC applications.

B. Utility-Proposed Working Group

1. Comments

IRRC notes the water public utilities’ suggestion that the PUC form a stakeholder working group to resolve concerns about the rulemaking. IRRC encourages the PUC to continue efforts to build consensus and to engage in further discussions with all interested parties that have provided input on the rulemaking. IRRC at 2.

NAWC suggests that the PUC convene a working group, with definitive timelines for recommendations, to improve the final rulemaking prior to issuance. NAWC at 5-6. AQUA and PAWC agree that a working group would be useful to discuss further improvements to the application process. AQUA at 4, PAWC at 9.

2. Disposition

Using the ANOPR and NOPR process, the PUC solicited comments from stakeholders, including representatives from the regulated public utility sector, consumer advocacy groups, and municipalities. These comments provided a broad array of viewpoints as to the impact of the PUC’s proposed regulatory amendments concerning

¹⁴ Executive Order 2023-07—Building Efficiency in the Commonwealth’s Permitting, Licensing, and Certification Processes: <https://www.oa.pa.gov/Policies/eo/Documents/2023-07.pdf>.

acquisitions of water and wastewater systems. Our review of these comments reveals that in many instances there is no compromise position possible. For example, many Class A water and wastewater utilities seek to completely eliminate application requirements, while representatives on behalf of consumers and municipalities seek to preserve application requirements.

Accordingly, the PUC will not further delay the implementation of these amendments by convening a formal working group process. The PUC, using its expertise in the field of public utility regulation, carefully reviewed the comments submitted by stakeholders regarding specific regulatory changes in the acquisition application process, and came to a reasoned conclusion that would serve the public interest.

II. *Proposed Revisions to 52 Pa. Code § 3.501*

A. *Proposed Section 3.501(a)—New Applicants, Acquisitions By Class B And Class C Water And Wastewater Utilities, And Non-Acquisition Proceedings By Class A Water And Wastewater Utilities And Proposed Section 3.501(b)—Class A Water And Wastewater Acquisition Applications*

As stated above, in the NOPR, the PUC proposed to amend Section 3.501(a) to specify that the term “applicant” would only apply to new applicants, certificated Class B and Class C water and wastewater public utilities, and non-acquisition applications by certificated Class A water and wastewater public utilities. We also proposed to establish a new Section 3.501(b) that delineated the information well-established certificated water and wastewater public utilities must submit with their CPC acquisition applications.

1. *Comments*

IRRC notes that this rulemaking proceeding is intended to streamline requirements for established public utilities that seek to acquire another water or wastewater provider, reduce requirements that are no longer needed, and to update provisions related to accounting obligations. However, IRRC asks the PUC to explain how its proposal will be applied to applications for simple main extensions to serve existing or proposed developments and, if necessary, to amend its proposal to clarify how such applications will be regulated. IRRC Comments at 3.

Additionally, IRRC states that it is required to determine whether a regulation is in the public interest by considering criteria such as economic or fiscal impact and reasonableness. IRRC further states that when making this determination, it analyzes the text of the proposed rulemaking and the reasons for the new or amended language and the information the promulgating agency is required to provide under 71 P.S. § 745.5(a) in the regulatory analysis form (RAF). IRRC asserts that the RAF that was submitted to it as a part of the proposed rulemaking packet did not fully provide sufficient information for it to determine if the proposed regulation is in the public interest. Thus, IRRC directs the PUC to include additional information within the RAF when it submits the final-form regulation. IRRC Comments at 1.

Lastly, IRRC notes that this proposed rulemaking proceeding is intended to streamline requirements for established public utilities that seek to acquire another water or wastewater provider, reduce requirements that are no longer needed, and to update provisions related to acquisitions and accounting obligations. Generally, commentators from the water and wastewater utility industry have provided comments and suggestions that request more flexibility, less reporting and public notification

requirements and further streamlining of the application and approval process. Id. at 2.

NAWC notes that, even as modified, Section 3.501(a) continues to apply to applications submitted by Class A water and wastewater utilities that do not involve acquisitions, as well as to all applications filed by new applicants and existing Class B and Class C water and wastewater utilities. With respect to applications that do not involve acquisitions, NAWC respectfully submits that the PUC should substantially rewrite Section 3.501(a) to simplify and expedite the process for what should be relatively simple proceedings. NAWC asserts that the focus should be on the minimum information that the PUC needs to determine whether an uncontested application is in the public interest. NAWC asserts that additional information can be requested by way of data requests in a particular case as warranted. Accordingly, NAWC provides various redline revisions to proposed Section 3.501(a). NAWC Comments at 6.

AQUA states that over the last 20 years, it has completed numerous main extensions in the Commonwealth of Pennsylvania and also acquired over 100 water and wastewater systems, with many of those acquired water and wastewater systems being small and/or troubled systems that required substantial upgrades and repairs to come into compliance with PUC and DEP regulations. AQUA Comments at 3-4. AQUA states that an acquisition of a system should be viewed differently than a request to extend a main or service line in order to serve one or a handful of customers that are adjacent to a Class A utility’s service territory, especially in the case of environmental or health concerns with failing septic systems or issues with private wells. AQUA Comments at 4.

AQUA asserts that main extensions are typically simpler in nature and usually not protested; however, the Company notes that 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. AQUA Comments at 5. AQUA 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 working group proposed by NAWC. Id. Accordingly, AQUA states that it supports the comments of the NAWC including the proposed redline changes to Section 3.501(a) and convening a working group session with stakeholders to discuss further changes or improvements to the application process. Id.

2. *Disposition*

We agree with IRRC that the cornerstone of the Regulatory Review Act is reaching consensus amongst the interested stakeholders. Based upon our review of the filed comments and replies, it appears that our prior approach did not adequately realize the stated regulatory objective of this rulemaking proceeding, which was to streamline the regulatory review process for water or wastewater utilities seeking to obtain a CPC either to initiate a distribution main extension or to acquire another water and wastewater company. Therefore, we agree with NAWC and AQUA that our prior proposals to amend 52 Pa. Code § 3.501 did not go far enough to make a clear enough distinction between the filing requirements applicable to Section 1101 CPC applications and Section 1102 CPC applications involving distribution main extensions.

Our express goal and guiding principle in this rule-making endeavor is to ensure that any proposal we set forth is well-reasoned and fully considers the filed comments of the stakeholders. However, instead of convening a formal working group process to continue to discuss additional amendments to existing 52 Pa. Code §§ 3.501 and 3.502, we will address the comments and reply comments filed by various stakeholders to our specific proposals. The substance of those comments lends support to our determination that it is both prudent and necessary to take requisite action to modify Subchapter G of Chapter 3 of our regulations substantially so that it reflects a clear distinction between the filing requirements associated with the different types of CPC applications under Chapter 11 of the Code. Specifically, we will delete our prior proposals to amend Sections 3.501 and 3.502 of our regulations in its entirety and restructure and reformat Subchapter G of Chapter 3 of our regulations in the following manner:

- Create a new section that outlines the specific purpose of Subchapter G.
- Create a new definitions section.
- Create a new section that sets forth the distinct filing requirements for CPC applications to the furnish of new water and wastewater utility service in the Commonwealth or for curing de facto utility service.
- Create a new section that sets forth the distinct filing requirements for CPC applications related to main extensions requests from jurisdictional Class A, B, and C water and wastewater public utilities.
- Create a new section that sets forth the distinct filing requirements for CPC applications authorizing the acquisitions of existing jurisdictional water and wastewater public utilities by our jurisdictional Class A, B and C water and wastewater public utilities.
- Create a new section that sets forth the protest procedure regarding all water and wastewater CPC applications.

We discuss each of these new sections with specificity below and our final-form regulations reflect the modified proposals to restructure Subchapter G of Chapter 3.

Additionally, we adopt our proposal to update Section 65.16 to comply with the NARUC's current system of accounting standards. Likewise, we will amend Chapter 66 of our regulations to create a system of accounts for certificated wastewater public utilities.¹⁵ These final-form regulations are set forth in the Annex accompanying this Revised Final-Form Preamble.

Lastly, the PUC acknowledges IRRC's statement about the lack of certain pertinent information being in the RAF for it to determine whether our proposals to amend the existing regulations set forth within Subchapter G of Chapter 3 of Title 52 of *Pennsylvania Code* are in the public interest. The PUC will take the appropriate action to address any perceived deficiencies to Sections 14, 15, 19—21 and 29 of the RAF when we submit this final-form regulation to IRRC.

III. *New Proposals For Subchapter G Of Chapter 3*

In this section of this Preamble, we discuss the rationale that underpins our decision to delete the prior proposals to update and streamline the water and waste-

water CPC application filing requirements in its entirety and substantially reformat and restructure Subchapter G of Chapter 3 of our regulations.

A. *New 52 Pa. Code § 3.511—Purpose*

1. *Comments*

PAWC states that Section 3.501 should not be applied to applications filed under 66 Pa.C.S. § 1329 (relating to valuation of acquired water and wastewater systems) because the PUC has already developed an extensive filing checklist for those applications. PAWC Comments at 5.

CAUSE-PA states that in 2020 and 2022, PAWC proposed to recover \$56.4 million in acquisition costs alone. CAUSE-PA also reports that, as of 2021, AQUA has completed over 200 acquisitions since 1995. *Id.* at 6-7. CAUSE-PA states that 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, and the full recovery of those acquisition costs through rates, is also contributing to the growing unaffordability of water and wastewater rates. CAUSE-PA Comments at 6. CAUSE-PA also states that investor-owned utilities often charge substantially higher rates than municipally owned utilities, which presents a particular hardship to low-income customers of acquired utilities. CAUSE-PA notes examples where the acquisition of municipal utilities by AQUA and PAWC led to proposed rate increases in excess of 80%. *Id.* at 7-8. Finally, CAUSE-PA comments on the extreme hardship that comes from losing water service, due to inability to pay or otherwise. *Id.* at 9-10.

2. *Disposition*

One of the express purposes of the instant rulemaking is to establish filing requirements that will allow a new applicant to provide the appropriate proof to the PUC of its ability to render adequate water and wastewater public utility service in the Commonwealth. Another express purpose is for the PUC to establish regulations that delineate the information and documentation an existing, certificated water or wastewater public utility must submit to receive authorization to extend its facilities outside of its certificated service territory or to acquire an existing water or wastewater system, whether the acquired system is jurisdictional or non-jurisdictional to the PUC.

However, there seems to be a disconnect or misunderstanding from CAUSE-PA as to the type of water and wastewater acquisitions that the PUC is referring to in this rulemaking proceeding. The scope of this instant rulemaking only involves acquisitions using an original cost valuation of the acquired assets as prescribed by Section 1311 of the Public Utility Code. To be clear, we are not addressing 1329 acquisitions, and we are not proposing to modify the filing requirements for Section 1329 applications via this instant rulemaking, which have separate and distinct checklist requirements specifically for Section 1329 acquisitions. See generally *Valuation of Acquired Municipal Water & Wastewater Systems—Act 12 of 2016 Implementation*, Docket No. M-2016-2543193 (Tentative Implementation Order entered July 21, 2016) (2016 TIO); (Final Implementation Order entered October 27, 2016) (2016 FIO); (Tentative Supplemental Implementation Order entered September 20, 2018) (2018 TSIO); (Final Supplemental Implementation Order entered February 28, 2019) (2019 FSIO); (Tentative Supplemental Implementation Order entered February 7, 2024) (2024 TSIO) and (Final Supplemental Implementation Order

¹⁵ As explained in the NOPR and herein, the proposed Section 3.503 was intended to act as a placeholder until such time as the proposed revisions to Chapter 66 of the PUC's regulations concerning wastewater service became final. Now that the Chapter 66 regulations are final, we will amend Chapter 66.

entered July 2, 2024) (2024 FSIO). Our objective was explicitly reflected in the NOPR preamble and accompanying NOPR annex—seeking to eliminate only those filing requirements that we deem are no longer beneficial or useful to certain water and wastewater transactions under Chapter 11 of the Code that utilize the original cost valuation methodology set forth in 66 Pa.C.S. § 1311 (relating to valuation of and return on the property of a public utility). See, e.g., NOPR at 29 (the PUC will consider the Section 1329 process as independent).

Therefore, to provide sufficient clarity about the actions we are taking and the type of the acquisitions involved, we will incorporate a new purpose section in the revamped Subchapter G of Chapter 3 of our regulations. Accordingly, we will incorporate a new Section 3.511 that reflects the specific purpose for Subchapter G in the final-form regulations as set forth in the Annex.

B. *New 52 Pa. Code § 3.512—Definitions*

1. *Comments*

In its comments, IRRC notes that the following terms appear in several sections of the proposed NOPR: “water system,” “water supplier,” “water service,” “waterworks,” “wastewater system,” “wastewater utility,” “wastewater collection,” “wastewater treatment provider,” and “wastewater disposal provider.” IRRC suggests that if certain terms have the same meaning we consolidate them and only use one of these terms. IRRC also suggests that the PUC define the terms and include definitions for those terms in the appropriate sections or chapters of the rulemaking. IRRC Comments at 2.

2. *Disposition*

Given IRRC’s concerns about the similar, but undefined, terms that appear in the NOPR preamble and accompanying Annex, we will replace each of these specific terms referred to by IRRC and consolidate them to remove any ambiguity in the final-form regulations. In fact, as part of our proposal to restructure Subchapter G of Chapter 3 of our regulations, we deem that it is prudent to incorporate a new definitions section therein to provide the regulated community with clear guidance regarding how these words or phrases are to be understood and used in the final-form regulations such as the terms “certificated water public utility,” which is now defined as “a person or corporation that has been authorized by the Commission to provide water public utility service,” or “certificated wastewater public utility,” which is now defined as “a person or corporation that has been authorized by the Commission to provide wastewater public utility service.” Accordingly, we will provide definitions for certain terms in this new definitions section in the final-form regulation.

We note that the *Pennsylvania Bulletin Style Manual* requires that a definitions section be placed near the beginning of a chapter. To comply with this directive, we will create a new definitions section within Subchapter G of our regulations. Accordingly, we will incorporate a definitions section in the newly-created Section 3.512 that sets forth specific definitions as reflected in Annex A.

C. *New 52 Pa. Code § 3.513—Filing Requirements To Become A New Certificated Water Public Utility Or Certificated Wastewater Public Utility*

1. *Comments*

We sought input on what should be the applicable filing requirements for CPC applications to become a new certificated water or wastewater public utility in Pennsylvania. However, the entities that filed comments were

more focused on discussing which filing requirements should or should not apply to applications involving proposed extensions of water and wastewater mains beyond the existing boundaries of the company’s certificated service territory or the proposed acquisitions of existing water and wastewater public utility.

2. *Disposition*

Public water systems depend on distribution systems to provide an uninterrupted supply of pressurized safe drinking water to all consumers. The basic function of a water distribution system main is to transport water from the treatment facility to the customer or from the source to the consumer when treatment is absent. In addition, water distribution systems may also provide storage, as well as provide flow and pressure adequate for fire protection. Additionally, the treatment and proper disposal of wastewater is a crucial process and is the first line of defense against the potential pollution of public and private drinking water sources and the spread of disease. As such, the proper construction and maintenance of water and wastewater distribution systems is of great importance to ensuring human health, environmental sustainability and industrial processes.

Recognizing this fact, in 1976, the PUC promulgated Section 3.501 for the purpose of setting forth the information and documentation that a public water supplier must submit along with its application to demonstrate that granting it a CPC is in the public interest.¹⁶ In order to demonstrate the viability of its water system, an applicant seeking to obtain a CPC to become a new certificated water public utility in the Commonwealth of Pennsylvania was required to provide 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 in the application.

In 1983, the PUC amended Section 3.501 so that a public water supplier application not only had to submit the pre-existing information noted above, but also was required to submit evidence of compliance with requirements of DEP and other new laws.¹⁷ Applicants were additionally required to provide information related to DEP approvals, various River Basin Commission approvals, and neighboring utilities with their CPC applications. Subsequently, DEP promulgated regulations under the Pennsylvania Safe Drinking Water Act, the Act of May 1, 1984 (P.L. 206, No. 43), that, among other things, established a permit program that sets forth standards for construction, operation and modifications to public water systems. DEP required a public water supply applicant to file a permit application containing all of the applicable DEP modules related to public water supply.

In 1994, DEP again took action to amend its safe drinking water regulations by requiring that public water suppliers must also prepare a Business Plan and submit it with their permit applications.¹⁸ However, for the purpose of preparing detailed guidelines regarding the contents of the required Business Plan, DEP delayed the implementation of this requirement until October 1, 1996. DEP ultimately released a Business Plan Manual in June 1996 that set forth the format of the required Business Plan. DEP determined that this format captured all of the

¹⁶ 6 Pa.B. 911 (April 16, 1976).

¹⁷ 13 Pa.B. 3221 (October 21, 1983).

¹⁸ 24 Pa.B. 6404 (December 24, 1994).

necessary information that an applicant seeking a permit would find useful. Specifically, the format of the required Business Plan has three basic components:

- Facilities Plan—including an assessment of the current and foreseeable water supply needs of the area, a description of alternatives considered (including both construction and operating costs) and the rationale for the approach selected.
- Management Plan—including documentation that the applicant has the legal right and authority to construct, operate and maintain the system, a management and administrative plan, and an operation and maintenance plan.
- Financial Plan—projections and assurances that the system's revenues and cash flow will be sufficient for meeting the costs of construction, operation, and maintenance for at least five full years from initiation of operations.

Subsequently, in 1997, the PUC took action to amend Section 3.501 so that it also governed the CPC applications of wastewater treatment providers.¹⁹ Similar to applicants seeking to become a certificated public water utility, those seeking to become a certificate wastewater public utility also were required to submit evidence with their CPC applications demonstrating their viability. However, since DEP's Business Plan requirement only applied to wastewater treatment providers, they could not simply submit such a plan with the CPC applications to satisfy their Section 1103 evidentiary burden. Consequently, in modifying Section 3.501, the PUC directed wastewater treatment supplier applicants to use its current form that explicitly delineated the PUC's filing requirements including, inter alia, a map of the service territory, a copy of the county comprehensive plan, municipal comprehensive plan, and zoning designations if requested, or a letter that certified the applicant's compliance with these plans, listing of the proposed rates, etc. Concomitantly, for those applicants seeking a CPC to become a new certificated public water utility, the PUC required them to submit a copy of the DEP public water supplier Business Plan with their CPC applications. Additionally, a new Section 3.502 was added to our regulations to replace and expand the protest subsection removed from Section 3.501.

It is now time to review our filing requirements to determine if any of them may be obsolete, redundant or burdensome to new applicants. The PUC recognizes that it continues to have an integral role in preventing the creation of new, nonviable small water and wastewater systems prior to their commencement of operations in the Commonwealth and takes this regulatory responsibility seriously. See generally 52 Pa. Code § 69.701 (relating to viability of small water systems). As such, the PUC determines that it will not eliminate any filing requirement that ensures that applicants seeking authority to build and operate brand new water systems or wastewater systems within the Commonwealth possess the requisite managerial, technical and financial capabilities to adequately operate the new system.

The PUC acknowledges that certain information that is required to be incorporated within DEP's public water supplier Business Plan is somewhat similar to the information it had delineated in Section 3.501 and required public water supply applicants to provide with their CPC applications. To accomplish the goal of restricting the number of nonviable drinking water systems in Pennsyl-

vania, the PUC acknowledges that it is prudent to work closely with DEP and other agencies and organizations involved in safe drinking water programs to prevent the creation of new nonviable small systems. However, since the PUC has its own ongoing responsibility to ensure the viability of new water and wastewater systems, it is not prudent for us to rely solely on another state agency's requirements that it may utilize to fulfill its own independent regulatory responsibility to determine whether a new potential public water supplier or wastewater treatment supplier is viable. As a result, the final-form regulation delineates our own specific filing requirement that an applicant will need to submit with its Section 1101 CPC application to demonstrate that granting it a CPC to become a new certificated water or wastewater public utility in Pennsylvania is in the public interest.

Nonetheless, if a public water supplier applicant concludes that a majority of the information incorporated within its DEP Business Plan is relevant and addresses the PUC's independent filing requirements it is free to submit it with its application. However, we will no longer expressly require this within our regulations. Accordingly, to bring clarity for future applicants as to what information is necessary to demonstrate that the new water or wastewater system is viable and whether it is in the public interest for them to become a certificated water or wastewater public utility, the PUC has delineated the applicable filing requirements within new Section 3.513 of its final-form regulation as set forth in the accompanying Annex A.

In particular, under the final-form regulation, the PUC requires that an applicant seeking to expand service beyond its certificated service territory to submit a map of its proposed service territory that describes it both legally and physically. The map must include (1) a bearing angles and distances description; (2) the location or route of the waterworks or wastewater collection, treatment or disposal facilities; and (3) the elevations of major facilities and service areas. This requirement is set forth in new Section 3.514(a)(2) in Annex A.

An applicant seeking to build a new water or wastewater system, which includes both a system that yet must be fully constructed or an existing system that has been providing service and owned and operated by an uncertificated entity, must describe the system's transmission and distribution facilities in detail by identifying the pipe by size and materials (and installation date if applicable), and also the valves and hydrants alongside the pipe. Further, applicants are required to submit all relevant data regarding the construction of any new water and wastewater system, including designs and engineering reports, construction plans accompanied with a breakdown of the cost of construction, by major plant category, including the sources of funds used to construct the facilities and timing in which the proposed system will be constructed and a detailed description of facilities of the proposed system.

Additionally, applicants are required to submit documentation that the proposed system is viable. A viable water or wastewater system is one which is self-sustaining and has the commitment and financial, managerial and technical capabilities to reliably meet PUC and DEP requirements on a long-term basis. System capacity refers to the capability of a system to remain viable over time and whether the system has sufficient capacity to deliver water or wastewater service that meets applicable standards consistently over time, and not just intermit-

¹⁹ 27 Pa.B. 414 (January 25, 1997).

tently. The PUC and DEP have agreed to work together to substantially restrict the number of nonviable drinking water systems in Pennsylvania. In fact, an entity may not construct a public water system without first having obtained a construction permit from DEP. See 25 Pa. Code § 109.501(a) (relating to general permit requirements). Likewise, Section 4.3 of DEP's Domestic Wastewater Facilities Manual Pennsylvania states that in those cases where the applicant for a NPDES permit is subject to PUC regulation, it must first obtain a CPC from the PUC before DEP will issue a NPDES permit, which is required for any point source discharge to waters of the Commonwealth. 25 Pa. Code § 92a.1(b) (relating to purpose and scope).

As such, it is important that applicants submit evidence that they have obtained or are in the process of obtaining the required DEP permits to operate or construct the proposed new water or wastewater system such as the relevant public water supply permits or water quality management permits or NPDES permits. This information or documentation will demonstrate that they have the financial, managerial, and technical capability to reliably meet performance requirements over a period of time. Since applicants for new service are being required to serve DEP with their CPC applications, DEP will have the opportunity to provide us with any relevant information regarding the noncompliance of the applicant in order to assist us in determining the fitness of the applicant and ultimately prevent the creation of nonviable water or wastewater systems within the Commonwealth.

Specifically, applicants are required to submit all illustrative materials regarding compliance with the applicable regulations, all applicable design, construction and operation standards of DEP, and other laws of the Commonwealth, including but not limited to the River Basin Commissions and any Statewide water plan, including any local watershed areas. Applicants also are required to present with their CPC application 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. To be clear, applicants need not present actual copies of these certifications but are required to submit a letter that has been signed by an authorized representative of the agency or governmental entity that affirmatively states the applicant is in compliance with its applicable rules, regulations and standards.

Furthermore, applicants will also have to submit evidence of compliance with comprehensive plans and zoning ordinances since the PUC is required to consider local land-use ordinances in making permit and funding decisions under the Act of June 22, 2000 (P.L. 483, No. 67) (Act 67) and the Act of June 23, 2000 (P.L. 495, No. 68) (Act 68) (collectively "Acts 67 and 68"), which amended the Municipalities Planning Code (MPC), Act of July 31, 1968 (P.L. 805, No. 247), codified at 53 P.S. §§ 10101—11202. Specifically, Section 1105 of Act 67 states, in pertinent part, that:

(a) Where municipalities have adopted a county plan or a multimunicipal plan is adopted . . . and the participating municipalities have conformed their local plan and ordinances to the county or multimunicipal plan by implementing cooperative agreements and adopting appropriate resolutions and ordinances, the following shall apply:

* * * * *

(2) *State agencies shall consider and may rely upon comprehensive plans and zoning ordinances when*

reviewing applications for the funding or permitting of infrastructure or facilities.

53 P.S. § 11105 (emphasis added). Additionally, Section 619.2 of Act 68 states, in pertinent part, that:

(A) When a county adopts a comprehensive plan in accordance with sections 301 and 302 and any municipalities therein have adopted comprehensive plans and zoning ordinances in accordance with sections 301, 303(d) and 603(i), *Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.*

53 P.S. § 10619.2 (emphasis added).

In Pennsylvania, the General Assembly has granted local governments, including counties, the power and responsibility for comprehensive planning. Local municipal officials exercise this authority through the MPC. Article III of the MPC specifically addresses municipal, multimunicipal, and county comprehensive plans. A county comprehensive plan (also called a master plan or comprehensive development plan) is a document prepared for a community, county or specific region which establishes an overall plan and recommended actions relevant to the current and future needs of the area.²⁰ It states future goals and serves as a vision for planning commissions, elected officials, and other public and private entities.²¹ Comprehensive plans typically contain: maps, graphics, studies, reports and other descriptive material identifying goals, objectives, policies, guidelines, standards, and options for the immediate and long-range protection, enhancement, growth and development of the community.

The PUC's actions must be consistent with sound land-use planning and that it must consider the impact its actions may have on comprehensive land-use plans. When reviewing an application for a CPC, the PUC must consider how granting the application may impact local comprehensive plans and zoning ordinances. See 52 Pa. Code § 69.1101 (relating to local land-use plans and ordinances in issuing certificates of public convenience). Therefore, we determine that it is not prudent to rely on self-certifications from applicants that their project complies with county and municipal comprehensive plans and zoning ordinances.

However, we take note of PAWC's suggestion that we consider an alternative to the requirement that an applicant provide a copy of the municipal and county comprehensive plans as well as zoning designation with its CPC application. PAWC Comments at 2. We find that this requirement is unduly burdensome on applicants who would have to submit copies of these voluminous documents. Plus, the PUC would then need to take time to review the plan and then independently verify that the subject construction project is in compliance with municipal planning. Consequently, in the final-form regulation, the PUC requires that applicants only have to obtain certification letters signed by authorized representatives from the municipality that indicates the applicant's project is compliant with their applicable county and municipal comprehensive plans, as well as zoning designations. This signed letter will act as proof of compliance since the PUC is only primarily interested in verification of compliance. An applicant will not be able to satisfy the statutory

²⁰ See generally Article III of the Pennsylvania Municipalities Planning Code, Act of Jul. 31, 1968, P.L. 805, No. 247, as reenacted and amended, codified at 53 P.S. §§ 10101—11202.

²¹ 53 P.S. § 10301.

public interest threshold and obtain a CPC from the PUC until the applicant submits notification of this compliance.

Lastly, applicants are required to identify all other public water suppliers or wastewater treatment providers that may operate within the municipalities, or a municipality directly adjacent to the municipalities, in which the applicant seeks to provide service that abuts or is situated within one-mile of the applicant's proposed facilities and include a verification that they proffering metered service 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 PUC.

In conclusion, the PUC remains committed to preventing the occurrences of nonviable water and wastewater systems in Pennsylvania. We have determined that it is prudent to retain a majority of the filing requirements that had been set forth within existing Section 3.501. Although 3.501 is deleted, new Section 3.513 retains much of the substance of Section 3.501 by delineating the applicable information and documentation that the PUC is requiring an applicant to submit when it reviews the application to obtain a CPC to become a certificated water or wastewater public utility. As we stated above, these filing requirements will assist the PUC in determining whether granting a Section 1101 CPC is in the public interest. Accordingly, these requirements are reflected in the final-form regulation set forth in the accompanying Annex A.

D. New 52 Pa. Code § 3.514—Expansion Of Certificated Service Territory

The manner that the NOPR proposed to modify the existing Section 3.501 of our regulations reflects that the extensive filing requirements still applied to the non-acquisition applications (i.e., distribution main extension requests under 66 Pa.C.S. § 1102) filed by existing, certificated Class A, Class B, and Class C water and wastewater public utilities. Given that the aim of this instant rulemaking is reduce the application filing requirements related to CPC requests, the PUC has determined to create a new section within Subchapter G that solely applies to these non-acquisition applications. Notwithstanding, the PUC must still address the commentators' criticism of our prior proposals that referenced non-acquisition applications. We will discuss these below.

1. Proposed 52 Pa. Code § 3.501(a)(6)(iv) And Proposed 52 Pa. Code § 3.501(a)(9) And Proposed 52 Pa. Code § 3.501(a)(10)

In the NOPR, the PUC stated that an applicant's 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 PUC also determined that it is not seeking a full review of a well-established utility's compliance with DEP regulations. Notwithstanding, the PUC did not propose to eliminate the requirement from Section 3.501(a)(6)(iv) but rather adopted AQUA's suggestion that it instead issue data requests to seek the compliance history of the applicant from a comparable DEP region when such information is needed.

Additionally, in the NOPR, the PUC agreed with the commentators' position as expressed in the ANOPR that the current requirement of existing Section 3.501(a)(6) is resource-intensive for existing wastewater utilities. However, the PUC noted that the information contained in Plans submitted pursuant to the Pennsylvania Sewage

Facilities Act, P.L. 1535, No. 537 (Act 537), 35 P.S. §§ 750.1, et seq., (Act 537 Plans) is necessary for the PUC to perform our duties in regulating the service of these same utilities. Thus, the PUC proposed to require the submission of this information, to the extent applicable, so long as it did not have ready access to this information through other means.

Lastly, in proposed Section 3.501(a)(10), we required an applicant to submit municipal and final plan approvals when filing an application to extend its service territory due to a planned development.

a. Comments

PAWC states that it joins the NAWC in recommending that the proposal requiring an existing, certificated wastewater public utility to produce copies of the DEP Sewage Facilities Planning Module (SFPM) approval be modified or allow for an express waiver of that requirement. In the alternative, PAWC recommends that the PUC clarify what documents should be submitted. PAWC submits that the PUC should not require the submission of existing Act 537 documents, which will change, in order for the PUC to approve an application. PAWC Comments at 3.

PAWC opposes the requirement that an applicant seeking to extend its facilities to furnish service to a planned development outside of its service territory must provide evidence of preliminary plan approval for anticipated subdivisions and final plan municipal approval whenever such approval is granted. PAWC Comments at 4. PAWC asserts that these requirements are onerous for utilities because developers do not generally inform utilities until after such approvals have been granted. PAWC Comments at 5. PAWC submits that the PUC's concern that applicants will increasingly have to file future applications in order to clean up their faulty speculative service territory requests due to not providing evidence of conditional plan approval is overstated and should not drive public policy. *Id.*

AQUA submits that main extensions to existing or proposed developments have already gone through municipal planning approval by the time a public utility receives a request to expand its service territory, and, as such, a DEP SFPM approval or waiver should be sufficient to show that there was compliance with zoning and planning PUC requirements. AQUA at 7.

b. Disposition

A proposed extension of a water or wastewater system includes new pipelines or conduits, and all other appurtenant constructions, devices and facilities added to an existing water or wastewater system for the purpose of furnishing water or wastewater public utility service from individual structures or properties to the existing system. When a certificated water and wastewater public utility seeks to initiate an extension of its system beyond the borders of its certificated service territory that transaction falls under Section 1102 of the Public Utility Code. A certificated public utility only has to obtain a Section 1102 CPC when it is seeking to extend its facilities beyond the borders of its existing certificated service territory as delineated in its Section 1101 CPC. Thus, these filing requirements only apply to a proposed extension of facilities outside of existing certificated service territory.

While our review of extension applications should be comprehensive and thorough, it need not be unduly burdensome to certificated water and wastewater public utilities. We determine that a certificated water and

wastewater public utility need only provide the information and supporting documentation that supports a finding that the proposed extension of its existing water or wastewater system is in the public interest. As such, a certificated water or wastewater public utility will have to submit all relevant documentation i.e., a map, description of facilities, engineering report, etc., with its CPC extension application. Additionally, a certificated water or wastewater public utility is required to submit a letter from DEP that certifies its compliance with all applicable DEP regulations.

Further, the PUC seeks to ensure the continued viability of existing, certificated water and wastewater public utilities and will require evidence demonstrating that a proposed extension of facilities does not impair the viability of their water and wastewater system. Permits and other information concerning the DEP-permitted productive or treatment capacity of sources, treatment facilities, major distribution or collection facilities allows the PUC to determine whether the proposed extension will result in the existing water or wastewater system operating beyond its permitted capacity. As such, we determine that this requirement to provide information concerning permitted capacity and materials and construction for all transmission and distribution or collection facilities of the acquired system with their acquisition application is reasonable. Accordingly, all existing certificated water and wastewater public utilities will be required to provide information concerning permitted capacity and materials and construction for all transmission and distribution or collection facilities when they are proposing an extension that is beyond their service territory with their CPC application. This requirement is reflected in the new Section 3.514 of the final-form regulation set forth in accompanying Annex A.

Also, consistent with our Policy Statement at 52 Pa. Code § 69.1101 and Acts 67 and 68, a main extension, whether to a single property or to a planned development outside of a utility's certificated service territory, must align with local comprehensive plans and zoning ordinances. The implications of subdividing land, which refers to division of a single tract of land into two or more parcels, each intended for separate ownership or development, are significant as they can affect zoning, land use, and the overall development potential of the property. The PUC notes that Act 537 was enacted by the General Assembly to address existing sewage disposal problems and prevent future problems in Pennsylvania. As a result, Act 537 requires all municipalities to develop and implement a comprehensive official sewage facilities plan that addresses their present and future sewage disposal needs. The main purpose of a municipality's sewage facilities plan is to protect the health, safety and welfare of the citizens living in the municipality. These plans are modified when new land development projects are proposed or whenever a municipality's sewage disposal needs change. This is accomplished in part by the municipality updating its official Act 537 Plan or by the municipality, owner, subdivider or agent of the proposed land development completing "Planning Modules for Land Development." The municipality will act on the completed modules and submit them to DEP for review and subsequent approval or denial. DEP may then take action to approve the official plans and any subsequent revisions.

The PUC remains of the opinion that the information contained in an Act 537 Plan is necessary for it to perform its duties in reviewing applications involving

wastewater distribution main extensions to planned developments outside of the certificated service territory. Consequently, the certificated wastewater public utility is required to provide the appropriate documentation to indicate that the proposed extension of its wastewater facilities outside of its certificated service territory is consistent with the DEP-approved official Act 537 Plan(s) for the affected municipalities. If the treatment facilities covered by the application are considered new or are expanding, the certificated wastewater public utility is required to submit a copy of the Act 537 Planning Approval letter from DEP. This is necessary so that the PUC has the requisite evidence indicating that the proposed extension project is in compliance and compatible with the local municipal land use plans and other zoning designations by submitting preliminary and final municipal plan approvals with the PUC.

We also require certificated water and wastewater public utilities to file preliminary plan approvals for planned developments to prevent them from requesting more territory than the developer may actually need. A certificated water or wastewater public utility seeking to extend its service territory to incorporate large undeveloped areas is required to show proof of plan approval to avoid speculative extension requests and to ensure that the land requirements applicable to the installation of public sewer/water facilities in the expanded area are met. While it is not necessary that an applicant show evidence of final plan approval at the time it files its application, the applicant may always supplement its filed application when it receives final plan approval from the municipality. Final approval of the planned development also gives rise to a rebuttable presumption that the proposed planned development is consistent with the municipality's most up-to-date official Act 537 plan. Accordingly, in the final-form regulation as reflected in Annex A, we have required that a certificated water or wastewater public utility demonstrate consistency with the applicable county and municipal comprehensive plans and zoning ordinances by obtaining a certification letter signed by an authorized representative of each affected county and municipality that indicates that the proposed extension of its water or wastewater system beyond the boundaries of its certificated service territory complies with the comprehensive plan.

Accordingly, these requirements are reflected in the final-form regulation set forth in the accompanying Annex A.

E. New 52 Pa. Code § 3.515—Original Cost Acquisitions Of Existing Water And Wastewater Utilities

In the NOPR, we proposed amendments and revisions to Section 3.501 in order to eliminate or reduce several existing acquisition application filing requirements for certificated, well-established water and wastewater public utilities for the purpose of decreasing the processing time to review these type of CPC applications. Specifically, we proposed to modify Section 3.501 to limit the more extensive existing filing requirements as only being applicable to the acquisition transactions initiated by certificated Class B and Class C water or wastewater public utilities.

The following Section 3.501 requirements have been eliminated entirely or modified for the acquisition appli-

cations filed by certificated water and wastewater public utilities as reflected in the new Section 3.515, as follows:²²

- For acquisition proceedings, we have eliminated the requirement that the acquiring utility provide a breakdown of the sources of funds used to finance the construction of the facilities.
- For acquisition proceedings, we are requiring a general map or plan of suitable scale and detail delineating the boundaries of the new service area on an existing service area map or a new service area map, including the location or route of the proposed facilities, and we have eliminated the requirement to include a bearing angles and distances description, and elevations of major facilities in the new Section 3.515.
- For acquisition proceedings, we have eliminated the requirement that the acquiring utility provide the approximate time schedule for installation of the various component facilities.
- For acquisition proceedings, we have eliminated the requirement that the acquiring utility provide a copy of the county comprehensive plan, municipal comprehensive plan and applicable zoning designations, if requested.
- For acquisition proceedings, we have reduced the reporting of future number of connections to “5 years” in the new Section 3.515.
- For acquisition proceedings, we require the acquiring utility 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 have eliminated the requirement that 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 initiated by Class B and Class C water and wastewater public utilities, we require them to provide a 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service. We have eliminated the requirement that Class A water and wastewater utilities provide a 5-year compliance history with DEP for acquisition proceedings.
- For acquisition proceedings, we require the acquiring utility to identify and contact neighboring service areas.

1. *Acquisitions Of Municipal Corporations And De Facto Public Utilities*

a. *Comments*

NAWC raises the issue of acquisitions of bona fide cooperatives and municipal corporations operating outside the municipality’s boundaries, which NAWC asserts are

not addressed in the NOPR. NAWC believes that non-certificated utilities should not be required to seek a CPC to sell their assets, and also suggests that a Class A public utility should be allowed to simply acquire these types of systems without obtaining a CPC themselves. NAWC Comments at 15-16.

b. *Disposition*

Section 1102 of the Public Utility Code is clear that when a certificated water or wastewater public utility seeks to acquire an existing water supply facilities and assets, including buildings, water pumping stations, water mains and pipes, water meters, and appurtenances thereto, and water treatment works it must first apply for and receive a CPC from the PUC. Further, Section 1102(a)(3) specifically states that such a CPC granting approval for the acquisition is required regardless of whether or not the entity from which the facilities are being acquired is itself a public utility.

§ 1102. Enumeration of acts requiring certificate.

(a) *General rule.*—*Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:*

* * * * *

(3) *For any public utility or an affiliated interest of a public utility as defined in section 2101 (relating to definition of affiliated interest) [. . .] to acquire from, [. . .] any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.*

66 Pa.C.S. § 1102 (emphasis added). Further, Section 1102(a)(3) specifically states that such a CPC granting approval for the acquisition is required regardless of whether the entity from which the facilities are being acquired is itself a public utility. Clearly, a certificated public utility is required first to obtain a CPC to acquire an existing water or wastewater system as those acquired assets will become used and useful in furnishing jurisdictional public utility service. Accordingly, this instant rulemaking makes it explicitly clear that a certificated water or wastewater public utility must file an application under new Section 3.515 to acquire an existing water system or wastewater system, whether it is certificated or non-certificated.

2. *Proposed Section § 3.501(b)*

a. *Comments*

IRRC notes that the proposed Section 3.501(b) of the NOPR would apply only to applicants that currently provide public utility service and are seeking a CPC for authority to acquire public water distribution or wastewater collection, treatment or disposal systems. It would specify the information that would be required with the application for the additional authority. However, IRRC expresses concern that the NOPR Preamble did not provide a specific rationale or explanation of the need for the information to be included with the application. In particular, IRRC notes that many of the comments received on this subsection (b) from industry representatives either question the need for certain information or provide alternatives to the information requested. IRRC asked the PUC to provide, in the Final-Form Preamble, an explanation of the need for the information being

²² In their comments before IRRC, NAWC/PAWC ask the PUC to clarify whether the new Section 3.515 requires an appraisal for an acquisition pursuant to Sections 1102 and 1103 of the Code, 66 Pa.C.S. §§ 1102, 1103. NAWC/PAWC Comments at 5-6. We are not adopting an appraisal requirement for such acquisitions as it is unnecessary and not a statutory requirement for Section 1102 original cost acquisitions. Accordingly, the Annex does not reflect this requirement.

requested in each of the seven paragraphs of subsection (b), and to consider and respond to the questions and recommendations of the commentators, including the suggestion to include a waiver provision for documentation that is not available or does not exist. IRRC at 3.

b. *Disposition*

Currently there are nine (9) Class A, seven (7) Class B, and 33 Class C water public utilities operating in Pennsylvania. There are five (5) Class A, five (5) Class B, and 29 Class C wastewater public utilities. Upon further consideration, we determine that it is best to wholly modify our prior proposals regarding CPC acquisition applications filed by existing, certificated Class A, Class B, and Class C water and wastewater public utilities by incorporating the applicable filing requirements for each in one section, a new Section 3.515 (relating to acquisitions of existing water and wastewater systems). However, it is still necessary to address the comments related to our specific prior proposals regarding acquisitions and then explain why we are substantially restructuring Subchapter G of our regulations and creating a new section regarding acquisition requests by certificated Class A, Class B, and Class C water and wastewater public utilities.

3. *Proposed Section 3.501(a)(1)(iii)(A) And Proposed Section 3.501(b)(1)(i)*

In the NOPR, the PUC proposed at the time of filing the 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, as applicable. 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 PUC's regulations. 52 Pa. Code §§ 65.55 and 66.35.

a. *Comments*

NAWC strongly opposes the requirement that a utility prepare an inventory or estimate of LSLs and DWSLs, and state with particularity a plan for including those lines into their LSL and DWSL plans. NAWC at 8. According to NAWC, including this requirement into Section 3.501 frustrates the approval process rather than accelerating it. NAWC at 8. NAWC further disputes the assumption that developing an inventory or estimate of LSLs and DWSLs is possible based on the age of the system and seller information prior to taking operational control of another utility. NAWC asserts that selling utilities frequently have little to no information that would allow the development of a reliable estimate of LSLs or DWSLs. NAWC at 8-9. In lieu of requiring an estimate of LSLs and DWSLs as a precondition of an application, NAWC suggests that compliance with Sections 65.55 and 66.35 should only be enforced after approval of the acquisition application. NAWC at 9-10.

PAWC joins NAWC in opposing the requirement that utilities complete an inventory or estimate of LSLs or DWSLs. PAWC asserts that the PUC's proposal is not feasible because of the lack of information by either the buyer or the seller at the time an application is filed. PAWC argues that because a Class A utility is already obligated to address LSL and DWSLs and because that obligation is not shared by other potential acquirers, the application is in the public interest despite the lack of

reliable information about the projected costs to address the LSLs or DWSLs in the seller's system. PAWC at 6-7.

AQUA likewise opposes the PUC's proposed rule that acquiring utilities prepare an inventory or estimate of DWSLs and LSLs. AQUA comments that the applicant does not own the subject system and does not have access to all the necessary information that would be needed to develop that estimate. AQUA also comments that even the selling entity may not have information on LSLs and the selling entity may not have completed a service line inventory, especially in the case of small troubled systems. As such, AQUA believes that the LSL and DWSL inventory would be properly submitted after closing. AQUA at 5-6.

Additionally, AQUA notes that a DWSL Replacement Program under Chapter 66²³ of the PUC's regulations is not required of Class A Utilities, unlike an LSL inventory which is required by the U.S. Environmental Protection Agency (EPA) and PUC regulations. AQUA points out that a utility may, at its discretion, petition for a DWSL Replacement Program, applied to specific areas in which Class A Utilities would seek authorization from the PUC 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, AQUA does not believe that an inventory or estimate of DWSLs should be required at the time of the application. AQUA at 6.

CAUSE-PA supports requiring inclusion of an inventory or estimate of LSLs and DWSLs in an acquisition application. CAUSE-PA also comments that, contrary to the claims by the Class A utilities in their comments, an acquisition is not necessarily better than an existing utility for remediation purposes, especially for existing municipal utilities. As described by CAUSE-PA, "publicly owned municipal authorities may have access to public funding and low-cost financing [for remediation] that is not available to private water utilities." Consequently, understanding the LSLs and DWSLs which may exist is necessary so that the impact on ratepayers of remediation is well understood. CAUSE-PA Reply at 5-7.

CAUSE-PA further disputes the Class A utilities' claim that providing an inventory or estimating LSLs and DWSLs would be unjustifiably difficult. CAUSE-PA comments that Class As are being given a streamlined application process precisely because they are more capable and possess greater expertise than other utilities. CAUSE-PA suggests that if an acquiring utility lacks the in-house expertise to complete the LSL or DWSL estimate, they could employ water analytics companies that specialize in using predictive machine learning software to locate lead service lines and can help utilities develop an estimate. CAUSE-PA also notes that there may be public funds available to small, publicly owned water utilities that can assist with technical capacity for lead inventory and contamination response, among other necessary lead removal activities. Further, CAUSE-PA asserts that methods for conducting a service line inventory are well-established and acquiring utilities can use available information and existing services to complete the required inventories. CAUSE-PA Reply at 7.

The OCA supports the requirement that acquiring utilities provide an inventory or estimate of LSLs and DWSLs in their application and also points out that NAWC-PA acknowledges that Class A water/wastewater utilities can provide an accounting of known LSLs and

²³ 52 Pa. Code § 66.1 (relating to definitions) and 52 Pa. Code §§ 66.31-66.42 (relating to damaged wastewater service laterals).

known DWSLs in the seller's system. The OCA submits that, at a minimum, if the selling utility has information or has conducted an inventory of LSLs and/or DWSLs, that information should be provided as part of the application. OCA Reply at 9.

NAWC reiterates its opposition to the LSL and DWSL inventory requirement. NAWC notes that Class A utilities will be required to comply with Sections 65.55 and 66.35, whereas the selling utility will not. NAWC Reply at 5.

b. *Disposition*

In a separate rulemaking at Docket No. L-2020-3019521, the PUC promulgated proposed regulations to Implement Act 120 that culminated in addressing lead service line replacements (LSLRs) in Chapter 65 of our regulations and proposed a new Chapter 66 in our regulations to address wastewater service and damaged wastewater service lateral (DWSL) replacements. The PUC entered a Final-Form Rulemaking Order to implement Act 120 on March 14, 2022, and the final regulations became effective upon publication in the *Pennsylvania Bulletin* on July 23, 2022. See 52 Pa.B. 4096 (July 23, 2022).

Section 65.56(a) (relating to LSLR plan requirements) of the PUC's regulations addresses the LSL service line inventory requirements for LSL plans, including the requirements for an entity acquiring a water distribution system, and provides:

(a) *Service line inventory.*

(1) Entities subject to this chapter shall submit to the [PUC] a service line inventory that complies with United States Environmental Protection Agency regulation at 40 CFR 141.1—143.20 as enforced by the Department of Environmental Protection, inclusive of future changes as those regulations may be amended.

(2) An entity acquiring a water distribution system shall provide to the [PUC] a service line inventory for the acquired system upon completion of the acquisition or as part of the entity's service line inventory under paragraph (1), whichever is later. An entity may rely on a previously completed service line inventory for an acquired system if the entity updates the service line inventory to meet the requirements of paragraph (3).

(3) An entity's service line inventory must comply with the timing and direction of United States Environmental Protection Agency regulation at 40 CFR 141.1—143.20 as enforced by the Department of Environmental Protection, inclusive of future changes as those regulations may be amended.

(4) An entity shall identify assumptions in its service line inventory to the Commission.

(5) Until the inventory is complete, an entity shall provide detailed information regarding the progress of its service line inventory as part of its annual LSLR program report under § 65.59 (relating to LSLR program reports).

(6) After an entity's service line inventory is complete, it must be incorporated into the entity's next LSLR plan update under § 65.57 (relating to periodic review of LSLR plan).

52 Pa. Code §§ 65.56(a)(1)—(6).

Under the LCRR²⁴, all community water systems in Pennsylvania must develop a service line inventory by October 16, 2024. The subject proposed amendments to Section of 3.501 in the instant rulemaking were intended to work in conjunction with Section 65.56(a) of the PUC's regulations, which was promulgated under Act 120. The PUC's proposal to require the provision of an inventory of LSLs and an inventory or estimate of DWSLs as part of an acquisition application was intended to mitigate the risk of acquiring systems with undisclosed major liabilities. The PUC determined that it was prudent for the acquiring public utility to have an inventory of LSLs so that it would have a more accurate estimate of what investments will be required to replace LSLs.

However, given that all community water systems are required to have service line inventories by October 16, 2024, this information should be readily available to an acquired utility to mitigate any risks. Thus, we now determine that an existing certificated water public utility should not be required to prepare an inventory or estimate of LSLs of the acquired system as part of its acquisition application. Section 65.56(a) governs and it permits an acquiring public utility to provide a service line inventory for the acquired system upon completion of the acquisition. Consequently, this filing requirement for Class A, Class B, and Class C water public utilities will not be adopted or incorporated in the new Section 3.515. Accordingly, these requirements are not set forth in the final-form regulation set forth in the accompanying Annex A.

As it pertains to DWSLs, the Chapter 66 regulations do not include a DWSL inventory requirement because, unlike LSLR programs, DWSL programs are optional. Since the DWSL program is only optional, we also determine that we should not require a certificated wastewater public utility to submit an inventory of DWSL of the acquired wastewater system. Therefore, we have not adopted these filing requirements for Class A, Class B, and Class C wastewater public utilities in the final-form regulation.

4. *Proposed Section 3.501(a)(2) And Proposed Section 3.501(b)(2)*

We proposed that a certificated Class A, Class B and Class C water or wastewater public utility applicant be required to submit a map or plan of suitable scale and detail, highlighting the boundaries of the proposed service area, including (1) a bearing angles and distances description; (2) the location or route of the waterworks or wastewater collection, treatment or disposal facilities; and (3) the elevations of major facilities and service areas.

a. *Comments*

NAWC submits that a map of the proposed service areas is sufficient and that it is unnecessary to provide information concerning bearing angles and distances and the elevation of facilities because surveys increase costs which are passed on to ratepayers without accordant benefit to the public interest. NAWC argues the PUC

²⁴ The EPA set forth revisions to the National Primary Drinking Water Regulation for lead and copper, referred to as the Lead and Copper Rule Revisions (LCRR). Under the LCRR, the EPA will require all community water systems to develop an inventory of LSLs or service lines of unknown composition and to submit LSLR plans, within the meaning of the LCRR, to their respective state primacy agency by October 16, 2024. The centerpiece of the EPA's program is the development of detailed service line inventories by water service providers to identify what is known and not known about their service lines, how service providers are to communicate that information to the public, and how they will establish LSL replacement priorities. The EPA service line inventory requirements include the identification and categorization of certain service lines by material directly associated with lead, including "lead," "non lead," "lead status unknown," or "galvanized requiring replacement" designations. See National Primary Drinking Water Regulation: Lead and Copper Rule Revisions, 86 FR 4198 at 4200, 4213, 4290-4291 (January 15, 2021) (amending 40 CFR 141-142).

should apply this change to all applications, not just acquisition applications. NAWC Comments at 10.

AQUA agrees with the NAWC that a bearing angles and distances description is not necessary for an acquisition, and that a general description would suffice. AQUA especially opposes the need for elevations of facilities especially where an existing system is acquired, because those designs would have been reviewed by DEP. AQUA Comments at 6-7.

b. Disposition

We agree with NAWC and AQUA that a map or general description of the acquired service territory is sufficient for our review of an acquisition application. Information on bearing angles and distances designed to generate highly granular geospatial information are not necessary for every application. Two-dimensional maps provide the Commission with sufficient information to establish service territory boundaries in an application for an acquisition of an existing water or wastewater system. Should disputes arise at the time or after an application to acquire an existing water or wastewater system is filed, litigants may obtain bearing angles and distances information as may be applicable in each situation. Additionally, the Commission does not require elevation information to determine service territory boundaries. Requirements to furnish detailed information about the system, including a water distribution map showing the location of major facilities, pipe sizes, fire flow, and pressure zones, and a wastewater collection map showing the location of major facilities, pipe sizes, gravity or force main designation, and direction of flow are incorporated in new Section 3.515 of the final-form regulation. Thus, new Section 3.515 set forth in Annex A will only require an acquiring utility to provide a map or plan of suitable scale and detail delineating the boundaries of the new service area on an existing service area map or as a new service area map, including the location or route of the existing water or wastewater system.

5. Proposed Section 3.501(a)(2)(v) And Proposed Section 3.501(b)(3)

We proposed that a certificated Class A, Class B, or Class C water and wastewater public utility shall submit to the PUC 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 all transmission and distribution or collection facilities of the acquired system.

a. Comments

NAWC states that a Class A utility should be able to submit a statement that there is capacity on the system to serve the customers in the proposed service territory, rather than providing DEP permits. NAWC Comments at 10.

PAWC joins NAWC in recommending that this proposal be modified so the applicant need only produce copies of the DEP Sewage Facilities Planning Module Approval, or a waiver of that requirement. In the alternative, PAWC recommends that the PUC clarify what documents should be submitted—such as current plans or updates to reflect the acquisition. PAWC submits that the PUC should not require the submission of existing Act 537 documents, which will change, in order for the PUC to approve an application. Instead, PAWC recommends that the PUC should require the acquiring utility to obtain approval of a new or updated Act 537 Plan by the time of closing of the transaction. PAWC Comments at 3.

b. Disposition

System capacity refers to the capability of a system to remain viable over time. The system must have the sufficient capacity to deliver water or wastewater service that meets applicable standards consistently over time, not just intermittently. Permits and other information concerning the DEP-permitted productive or treatment capacity of sources, treatment facilities, major distribution or collection facilities allows the PUC to determine whether the acquired system is operating beyond its permitted capacity.²⁵ As reflected in our Policy Statements, the consolidation of water and wastewater systems by Class A water or wastewater public utilities should result in greater environmental and economic benefits to customers. 52 Pa. Code § 69.721(a) (relating to water and wastewater system acquisitions). However, the PUC also seeks to ensure that the viability of the acquiring public utility will not be impaired by the acquisition. 52 Pa. Code § 69.711(a)(2) (relating to acquisition incentives). If there is an issue regarding system capacity, it may detrimentally impact the long-term viability of the acquiring entity—meaning its capability to safely and adequately operate the acquired system in compliance with the Code, the Pennsylvania Safe Drinking Water Act and other requisite regulatory requirements on a short-term and a long-term basis.

As such, we determine that the requirement that the acquiring utility provide information concerning permitted capacity and materials and construction for all transmission and distribution or collection facilities of the acquired system with their acquisition application is reasonable and consistent with our policy goals regarding regionalization and consolidation. We also will require the acquiring utility to 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. However, we further determine that only certificated Class B and Class C water and wastewater public utilities, who may be more likely to have operational deficiencies that result in their systems becoming non-viable, will have to provide information concerning permitted capacity and materials and construction for all transmission and distribution or collection facilities of the acquired system with their acquisition application. Accordingly, these requirements for Class B and Class C water and wastewater public utilities will be reflected in the new Section 3.515 in the final-form regulation set forth in the accompanying Annex A.²⁶

6. Proposed Section 3.501(a)(7)(i)(D) And Proposed Section 3.501(b)(4)

We proposed that Class A, Class B, and Class C water and wastewater public utilities be required to submit a certification that the un-served requested service area complies with the county comprehensive plan, municipal comprehensive plan, and applicable zoning designations.

a. Comments

PAWC comments that a public utility should be able to verify compliance with comprehensive plans and zoning ordinances through its response to a data request. In the alternative, PAWC proposes that a public utility could

²⁵ We further note that there is a DEP requirement to transfer all permits, so there is no additional cost involved to obtain copies of these permits for an acquisition application. See 25 Pa. Code § 109.503(b)(2) (relating to public water system construction permits).

²⁶ In their comments before IRRRC, NAWC/PAWC ask the PUC to clarify whether Class A water and wastewater public utilities are subject to this requirement. NAWC/PAWC Comments at 4-5. As stated herein, this requirement applies to Class B and C public water and wastewater public utilities. The Annex reflects the same.

submit an application and subsequently supplement its application when it receives responses from local officials. Lastly, PAWC submits that a public utility should be able to provide links to websites which contain the applicable municipal and county comprehensive plans and zoning ordinances instead of having to provide full copies. PAWC Comments at 2.

NAWC comments that DEP SFPM approval, or a waiver of that requirement, should be sufficient to demonstrate compliance with zoning and comprehensive planning requirements for un-served areas. NAWC Comments at 10.

b. *Disposition*

Under Acts 67 and 68, the PUC will consider the impact of its decisions upon local comprehensive plans and zoning ordinances and ensure that its actions are consistent with sound land-use planning. See 52 Pa. Code § 69.1101. It is crucial that a certificated water or wastewater public utility's acquisition transaction does not conflict with local zoning ordinances or comprehensive planning. Consequently, we find that it is necessary to require an applicant to provide certification of such compliance with its application. This certification letter should be signed by an authorized representative of the municipality or county which the PUC will receive as evidence of approval by local officials. The PUC finds that the requirement for a certificated Class A, Class B, or Class C water or wastewater public utility to submit a certification that the un-served requested service area complies with the county comprehensive plan, municipal comprehensive plan, and applicable zoning designations is reasonable and appropriate. Accordingly, this requirement is incorporated in new Section 3.515 of the final-form regulation in Annex A.

7. *Proposed Section 3.501(a)(3)(ii) And Proposed Section 3.501(b)(5)*

We proposed that a certificated Class A, Class B, and Class C water and wastewater public utility shall provide 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. We also proposed that in situations where the selling entity will continue to provide service to customers after the closing of the proposed transaction, the applicant shall provide values for the number of customers of the selling entity by class and related consumption or gallons treated before and after closing.

a. *Comments*

NAWC comments that the PUC's proposal to estimate connections for five (5) years, aligning the application requirement with DEP's reporting requirement, should be eliminated. NAWC asserts that DEP has no such projection rule for water connections on the basis that those projections would be unreliable and speculative. Additionally, NAWC believes that the PUC should remove references to situations where a selling entity will continue to provide service to customers after closing the transaction. NAWC believes this situation would be unusual and therefore need not be addressed explicitly in the regulation. NAWC Comments at 11.

AQUA agrees that it can provide projected customers and consumption for the next five years, as required by Chapter 94 reporting. AQUA comments that it is unclear on the requirement of reporting on consumption and customers for selling entities that will continue to provide

service, as those customers are often not under the jurisdiction of the PUC. AQUA Comments at 7-8.

b. *Disposition*

The PUC is requiring that certain acquisition applications contain information concerning permitted capacity and materials and construction for all transmission and distribution or collection facilities of the acquired system with their acquisition application. It is important for the PUC to be able to compare the permitted capacity of facilities to the projected number of customers and their consumption to ensure that the acquiring utility is not agreeing to serve more customers than the existing system and associated facilities are designed to handle. The burden is properly on Class B and C applicants to prove that they are capable of serving the proposed service territory, and to establish that there is a present need for service within that area. The PUC notes that both DEP and the River Basin Commission (where applicable) have limitations on how much water a given facility may treat or produce, or both, per day. Concerning wastewater utilities, we note that the Chapter 94²⁷ annual reports submitted to DEP under 25 Pa. Code § 94.12 (relating to annual reports) already contains projection information for at least five years.

Accordingly, we find that the requirements concerning projections for customers and consumption are reasonable and necessary evidence for Class B and Class C water and wastewater applicants. We have incorporated this requirement for Class B and Class C water and wastewater applicants in our final-form regulation within the new Section 3.515 as set forth in Annex A.²⁸

8. *Proposed Section 3.501(a)(4)(i) And Proposed Section 3.501(b)(6)*

We proposed that the acquiring water or wastewater public utility shall submit a proposed initial tariff which includes rates, proposed rules, and conditions of service. We also proposed that the applicant shall notify the customers of the selling entity of the filing of the application and any proposed rate changes.

a. *Comments*

NAWC comments that the notice required in proposed Section 3.501(b)(6) should be clarified to refer to the same notice as discussed in proposed Section 3.501(f). NAWC Comments at 11. AQUA agrees with NAWC. AQUA Comments at 8.

CAUSE-PA asserts that the impact on low-income communities, who struggle to maintain utility service to their homes, must be considered in every transaction subject to streamlined scrutiny. CAUSE-PA further notes that if the PUC makes it easier for established water utilities to acquire smaller systems based on their expertise, the PUC should also require that the utilities use their expertise to protect consumers from the rate impact of the acquisition, merger, or transfer. CAUSE-PA Comments at 3. Although CAUSE-PA recognizes that critical infrastructure investment needs such as stormwater improvements and lead remediation can cause rate increases, CAUSE-PA questions the need to streamline all acquisitions by well-established utilities. *Id.* at 6. As such, CAUSE-PA suggests that Class A utilities using the streamlined acquisition process be required to provide (1) an analysis of the effect of the transaction on universal

²⁷ 25 Pa. Code Chapter 94 relates to municipal wasteload management.

²⁸ In their comments before IRRR, NAWC/PAWC ask the PUC to clarify whether Class A water and wastewater public utilities are subject to this requirement. NAWC/PAWC Comments at 4-5. As stated herein, this requirement applies to Class B and Class C water and wastewater public utilities. The Annex reflects the same.

service, (2) an analysis of the impact on low-income programs and participants, and (3) a needs assessment indicating whether the utility's existing low-income programs are adequate to address the needs within the expanded service territory.²⁹

CAUSE-PA suggests that the economic makeup of the community and the potential future rate impact should be subject to appropriate disclosures for the PUC and interested parties to assess whether a proposed transaction will promote universal accessibility and affordability of service. *Id.* at 5. Additionally, CAUSE-PA notes that for low-income ratepayers facing steep rate increases as a result of an acquisition by larger utilities, the acquirer should be required to improve the ability of low-income customers to access existing customer assistance programs maintained by it as in all likelihood such program would not otherwise be available from the acquired smaller utility. CAUSE-PA asserts that requiring this information at the outset of acquisitions will ensure that the transaction is in the public interest of not harming low-income communities. CAUSE-PA Comments at 8-9.

CAUSE-PA further asserts that ensuring that these programs are able to help mitigate the impact of rate increases that follow such acquisitions is necessary for low-income customers to continue to be able to afford water service in the face of these often steep rate increases. To ensure that the PUC has sufficient information to conduct such an assessment, CAUSE-PA recommends that 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. CAUSE-PA also proposes that 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 wastewater service in their home. CAUSE-PA also comments that the benefit of streamlining the acquisition application process to low-income customers would mainly be to improve the ability of low-income customers to access existing assistance programs. *Id.* at 5, 8. Essentially, CAUSE-PA recommends that 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 so that the PUC can conduct such an assessment. *Id.*

Recognizing CAUSE-PA's comments concerning low-income customers, IRRRC requests that the PUC quantify the potential fiscal impact these transactions could have on low-income customers and to include that information in RAF submitted with the final rulemaking. IRRRC also asks the PUC to explain what protections are in place to ensure low-income customers are not economically harmed by the rulemaking. IRRRC Comments at 3.

In its Reply Comments, NAWC states that it opposes CAUSE-PA's proposal that CPC applications must include an assessment of the impact of the proposed acquisition on low-income customers of the acquiring utility and the acquired utility and to require applicants to include a plan to mitigate any identified economic impact on this group of customers. NAWC Reply Comments at 4. Additionally, NAWC also opposes CAUSE-PA's recommenda-

tion that the PUC require an applicant to conduct a "needs assessment" indicating whether the utility's existing low-income programs are adequate to address the need within the expanded service territory. *Id.* NAWC states that acquisition applications already include a discussion of how the acquisition provides affirmative public benefits such as the existence of programs offered by the acquiring utility for low-income customers. As such, NAWC asserts that CAUSE-PA's recommendation is unwarranted and duplicative.

b. *Disposition*

CAUSE-PA submitted comments expressing concern about the potential negative impacts of a streamlined acquisition process on low-income communities and indicated that the acquiring utility be required to address how they plan to ensure that low-income customers are able to maintain affordable water service after the acquisition is completed. Essentially, CAUSE-PA would have us require the acquiring utility to prove how it has affirmatively insulated low-income ratepayers from bearing the costs and potential financial impairment of the proposed transaction and future operations under its ownership.

Generally, applications to expand service territory or acquire systems already providing service must show a benefit to the public as a whole, not segmented groups. Per Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a), the PUC's consent may be given only if the proposed transfer and acquisition is in the public interest. In particular, the acquiring utility must show that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.³⁰ Yet, Section 1103(a) does not indicate that an analysis of demographics be included in the PUC's determination that a CPC is to be granted. Further, under CAUSE-PA's proposals, applicants would potentially have to prepare cost of service studies in advance of an acquisition without having sufficient information to accurately analyze the impacts of the proposed transaction on low-income customers. Accordingly, it would be inappropriate to include such a requirement in the proposed amendments to Sections 3.501-3.502 of our regulations.

Additionally, even though the PUC will require the acquiring utility to file a capital investment forecast of system upgrades for the acquired system that contains details of the scope and cost of each project or program, any such analysis would be purely speculative. The real fiscal impact of acquisition transactions on all customers can only truly be determined during a subsequent rate case that is initiated after the acquisition application has been disposed of by the PUC. Requests for analysis of the fiscal impact of acquisitions on low-income customers are more appropriately addressed in a rate case proceeding. Large Class A public utilities have widely differing customer assistance programs which may reduce the direct fiscal impact of transactions on low-income customers, whereas selling utilities usually do not have customer assistance programs. We will not require the acquiring utility to demonstrate in the acquisition proceeding that it has developed a program to identify and serve low-income customers in its service territories. Customer assistance programs are reviewed and, if appropriate, modified as part of rate proceedings before the PUC. It is our observation that acquiring utilities generally do not raise rates during the acquisition proceeding itself, but in a later separate base rate case. Given the opportunity for low-income advocates to participate in such base rate

²⁹ Although CAUSE-PA submitted a suggestion related to Section 3.501(a)(4) in its comments, we believe it intended its comment to apply to Section 3.501(b)(6).

³⁰ *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972).

proceedings, we find that CAUSE-PA's proposals to require analyses of Section 3.501 acquisitions on low-income customers and universal service are more appropriately addressed elsewhere. For these reasons, we decline to incorporate CAUSE-PA's proposals in the final-form regulation requiring applicants to identify and mitigate impacts of acquisitions on low-income customers.

Along with providing notice in the *Pennsylvania Bulletin* and a newspaper of general circulation as required by 52 Pa. Code § 5.14, the PUC will also require acquiring water and wastewater public utilities to provide, at the time of filing an acquisition application with the PUC, direct notice to the selling utility's customers of the application when there is any proposed increase in rates. The PUC will require the acquiring utility to file a capital investment forecast of system upgrades for the acquired system that contains details of the scope and cost of each project or program. However, we will discuss in greater detail the requirement that the acquiring water or wastewater public utility provide direct notice to the customers of the selling entity of any proposed rate changes in Section F.1. below.

Accordingly, we have not adopted CAUSE-PA's suggestions. We are only requiring that an acquiring public utility provide notice of any proposed rate increase at the time it files its acquisition application with the PUC. This provision is reflected in new Section 3.515(f) of the final-form regulation as set forth in Annex A.

9. *Proposed Section 3.501(a)(6) And Proposed Section 3.501(b)(7)*

We proposed that a certificated Class A, Class B, and Class C provide proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including the following:

- (i) Copies of public water supply/water quality management, Chapter 105 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) 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.
- (v) Identify applicable requirements of the governmental entities listed in subsection (a)(7)(i), and shall certify that the applicant complies with the applicable requirements of those entities.
- (vi) Copies of the applicable Act 537 Plan documents for all affected municipalities relating to the acquired service area, as required by section 5 of the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5).

a. *Comments*

AQUA submits that permits can be provided, if available. However, if a search has been conducted and those required permits are not available, AQUA proposes that the acquiring utility can provide a verification that a search has been conducted that the acquiring utility may then work to obtain needed permits, without delaying the review of an application before the PUC. AQUA also

supports reducing the compliance history review to three years instead of five. AQUA does not believe that Act 537 Plans should be required for all applications, given that 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. AQUA believes that for applications related to main extensions to existing or proposed developments, SFFPM approval or a waiver should suffice. For a service territory extension to one or a handful of customers bordering the service territory of a Class A Utility, AQUA believes that 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 SFFPM process. AQUA Comments at 8.

NAWC proposes that the PUC should remove the requirement that the acquiring entity prove that the selling entity complies with the mandates of certain government agencies. NAWC argues that the selling entity will no longer be involved, and so their compliance or non-compliance is no longer relevant. NAWC Comments at 11-12. Further, NAWC contends that the requirement to produce copies of NPDES permits and other DEP permits only serve to delay the transfer of a sub-standard water system to a utility which is technically fit. By way of example, NAWC states that its members have recently acquired some aged systems where the transfer of the system was delayed because they could not document that the seller had obtained a permit years ago. Id. at 11-12. Instead, NAWC suggests that a Class A water or wastewater utility should be permitted to submit applicable permits, if available, and, if they are not available, should be permitted to submit a verification that a search was conducted. Because the Class A utility acquiring the system is obligated to obtain the transfer of all necessary DEP permits, NAWC argues, the PUC should emphasize compliance with this requirement by the acquiring entity and should not unduly delay its decision based on limited documentation concerning the seller's compliance with DEP standards. Id. at 12.

NAWC also asserts that where DEP does not contest an application on environmental compliance grounds, the PUC should not need to spend resources reviewing a Class A applicant's history of environmental compliance. Id. at 15. Nevertheless, NAWC also recommends that the PUC only require the applicant to submit evidence of the selling entity's 3-year compliance history with DEP. Violations that occurred more than three years before the application is submitted constitute stale evidence of the seller's ability to comply with environmental requirements. Id. at 12. NAWC recommends that this be modified so the applicant need only produce copies of the DEP Sewage Facilities Planning Module Approval, or a waiver of that requirement, and that the requirement to produce copies of applicable Act 537 Plan documents for all affected municipalities relating to the acquired service area be removed. Id. at 13.

PAWC joins the comments of the NAWC that an existing utility's presumption of technical fitness should apply to presumed compliance with environmental obligations. PAWC argues that if DEP does not file a protest, that the environmental history of the company is satisfactory. PAWC Comments at 3. PAWC further states that an existing utility should not be required to establish a perfect record of compliance with environmental requirements; it need only establish, by a preponderance of the evidence, that it is fit and that the proposed transaction is in the public interest. Id. PAWC asserts that the PUC

can rely on DEP, as the agency statutorily charged with enforcing environmental laws, to protest an application if it has concerns about the acquiring entity's history of environmental compliance. PAWC further asserts that the PUC should conclude that if DEP did not file a protest, that the applicant's history of environmental compliance is satisfactory.

With respect to the Act 537 plan documentation requirement, proposed Section 3.501(b)(7)(v), PAWC joins NAWC's comments that the applicant need only produce copies of the DEP Sewage Facilities Planning Module Approval, or a waiver of that requirement. PAWC also recommends that the PUC should clarify whether the documents submitted are to reflect current plans or updates to reflect the acquisition. PAWC comments that instead of applying with existing plans the PUC should require the acquiring utility to obtain approval of an updated Act 537 plan prior to closing, which the applicant can then submit to the PUC, or a verification that the new plan has been approved. *Id.* at 3-4. PAWC contends that this approach would appropriately balance the regulatory responsibilities of DEP and the PUC. *Id.* at 4.

b. Disposition

Former Section 3.501(a)(6) requires certificated water and wastewater public utilities to provide proof of compliance with DEP standards and health department standards including NPDES permits, certified operators' certificates, and DEP compliance history in their acquisition application. We now find this information is unnecessary for Class A water and wastewater public utilities.

The PUC encourages regionalization as it should result in greater environmental and economic benefits to customers. It is important for the PUC to seek to protect consumers and also promote the long-term viability of utilities for the stability of customer service. It is antithetical to that purpose to impose needless costs on them. We now determine that requiring a Class A utility to file this information is unnecessary for acquisition applications as it is resource intensive and unduly burdensome on the acquiring utility.

Lastly, we agree in part with PAWC's contention that an existing utility's presumption of being technically fit should be understood to apply to its ability to comply with applicable environmental standards. The PUC takes note of Section 529 acquisitions which involve a Class A water or wastewater public utility being ordered to acquire the system and operations of a Class B or Class C water or wastewater public utility. There is a rebuttable presumption that a Class A water or wastewater public utility possesses the requisite financial, technical, and operational ability to operate as a regulated utility in Pennsylvania. While the PUC may presume that a Class A water or wastewater public utility is technically fit, which in turn establishes a rebuttable presumption of its compliance with applicable DEP environmental standards, the circumstances surrounding Section 529 proceedings indicate that the PUC should take a different approach for Class B and Class C water or wastewater public utilities. Consequently, the PUC will require Class B and Class C water and wastewater public utilities to submit evidence of their compliance with DEP environmental regulations and laws.

Therefore, we find that it is appropriate and reasonable that only Class B or Class C water or wastewater public utility must provide proof of compliance with the enumerated standards with their acquisition applications. Accordingly, these requirements are set forth in new Sections 3.514(b) and 3.514(c) in the final-form regulation.

10. Proposed Section 3.501(c)—Metering Verification

We proposed that a Class A, Class B, and Class C water or wastewater public utility include in its acquisition application 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, we proposed that the applicant would be required to provide a metering plan to the PUC.

a. Comments

NAWC takes issue with the proposed requirement in § 3.501(c) that 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. NAWC at 13. NAWC contends this is more appropriate for the Delaware River Basin Commission or Susquehanna River Basin Commission than for the PUC. *Id.* AQUA agrees with NAWC. AQUA at 9. IRRC also requests that the PUC explain how an applicant can comply with the metering of water resources under this subsection. IRRC at 4.

b. Disposition

If a public utility is acquiring an unmetered system, the public utility is required to ultimately comply with the requirement for all customers to be metered, under Section 65.7(a), 52 Pa. Code § 65.7(a). The requirement that was set forth in proposed Section 3.501(c) acts as a proactive way to ensure that the acquiring public utility will provide metered service to currently unmetered customers. As a result, we find the requirement that acquisition applications verify that all customers of the acquired system are properly metered, or that a metering plan exists to address unmetered customers, is appropriate and reasonable. Accordingly, we have incorporated this requirement in new Section 3.515 of the final-form regulation as reflected in Annex A.

F. New 52 Pa. Code § 3.516—Protests

As we mentioned above, the PUC has determined to delete its prior proposal regarding amending existing Sections 3.501 and 3.502 and is now restructuring Subchapter G of its regulations to create a new section that provides general information about protests of new applications for water and wastewater service, main extension applications and original cost valuation acquisition applications of existing water and wastewater systems. Notwithstanding, we will now discuss below the comments and replies that were related to prior proposals regarding protests.

1. Proposed Section 3.501(f)—Notice

In the NOPR, we proposed to amend the existing protest period after publication of the filed CPC application in the *Pennsylvania Bulletin* from 60 days to 30 days. We also proposed to require that an applicant shall do each of the following, if applicable:

- (1) Provide notice to acquired customers of the application at the time of filing with the PUC.
- (2) Provide notice to its existing customers if the applicant has been providing service to customers without a certificate of public convenience.
- (3) Publish notice of application as supplied by the Secretary, once a week for two (2) consecutive weeks in one newspaper of general circulation located in the service territory covered by the application and submit proof of publication to the PUC.

(4) Include conspicuous notice to acquired customers, and in the notice to be published, include that a mandatory connection ordinance applies if the application includes a request to provide service in an area covered by such a mandatory connection ordinance.

a. *Comments*

PAWC opposes the requirement that property owners in areas with a mandatory connection ordinance be given conspicuous notice that such an ordinance applies. PAWC contends that property owners already had an opportunity to participate in the political process when the ordinance was created. Should the notice exist, PAWC comments that it should be bold-faced type included in the newspaper notice required under section 3.501(f). PAWC argues that it should not have to pay to provide a second notice addressed only to a particular segment of the population affected by the application. PAWC Comments at 6.

NAWC requests that the PUC confirm in its order that the proposed 3.501(f) requirement only applies in cases involving de facto public utility service. NAWC at 13. AQUA agrees with NAWC. AQUA Comments at 9.

The OCA disagrees with the PUC's proposal to reduce notice requirements at the same time as reducing the available protest period. According to the OCA, together, the new regulations are not reasonable because they "adversely impacts the ability to be informed and to participate by those impacted by the proposed application." OCA Comments at 2. While the OCA recognizes that "newspapers in daily circulation are harder to find and that weekly requirements might be more realistic" than the current regulation which requires daily publication, the OCA believes additional methods of notification could be added to counteract this difficulty. Id. at 3-4. The OCA comments that the daily newspaper requirement could be replaced by multiple forms of direct notice, including bill inserts or electronic communication if the customer has opted for electronic billing, as well as website and social media posting. Id. at 4.

As to property owner notice in the service territory to be acquired, the OCA supports the PUC's proposed conspicuous notice requirement for those areas that have mandatory connection ordinances. The OCA believes this should take the form of mailed direct notice to property owners, as well as website and social media postings on both seller and buyer sites. Id. at 4-5. The OCA comments that the notice should be "a plain language notice that informs customers of the application and the proposed acquisition. The notice also should inform customers of the impact on their rates and service resulting from the proposed acquisition." Id. at 4. The notice should also contain information on billing schedules, discount programs, and ways to get additional information and how to take further action. Id.

PMAA does not believe that public notice requirements should be reduced. PMAA contends that this increases the likelihood that members of the public will miss an application. PMAA Comments at 2.

Given the objections of the OCA, IRRC requests that the PUC explain the rationale for the shortened protest period and the decreased notification requirements published in newspapers. IRRC Comments at 4. IRRC also asks the PUC to explain how the benefits of these particular amendments, a more streamlined application process, outweigh the potential negative impact of less participation by the public and interested parties in the

review of applications. Id. IRRC also notes that the first and second sentence of Section 3.501(f) are repetitive, and suggests deletion of the second sentence, accordingly. Id. at 5.

b. *Reply Comments*

CAUSE-PA agrees with OCA and PMAA that combining a shorter protest period with lesser public notice requirements are not just and reasonable. CAUSE-PA Reply Comments at 3-4. CAUSE-PA believes that shortening the public protest period, while at the same time curtailing public notice requirements, could effectively foreclose public participation in acquisition proceedings. Id. at 3. CAUSE-PA recognizes that newspaper publication may no longer be the best method to provide notice and agrees with OCA's recommendation by providing direct notice as well as posting information on websites and social media of the buyer and seller. CAUSE-PA comments that if the newspaper notice requirements are lessened, then the PUC should adopt OCA's recommendations. Id. at 4-5.

OCA's reply comments emphasize that revisions to the notice requirements, reducing newspaper notice, must include multiple options to ensure customers receive sufficient notice when the water or wastewater system that serves them is being acquired. OCA's proposal for multiple notices suggests direct notice to seller's customers via mail or electronic communication, as well as information posting on websites and social media. OCA Reply Comments at 6-7. OCA opposes PAWC's statement that property owners had an opportunity to participate in the political process that created the mandatory interconnection ordinance. OCA points out that the property owner could have purchased their property after the interconnection ordinance and the assumption that all owners understand what a mandatory interconnection ordinance is, is likely an incorrect assumption. Id. at 7-8. OCA also discusses the notion that direct notice would require a second notice. OCA argues that if direct notice is provided to the customers of all sellers, then no second notice would be needed. Id. at 8.

NAWC opposes OCA's recommendation that the seller's customers receive direct notice of an acquisition. NAWC Reply Comments at 1. NAWC contends that unlike Section 1329 of the Public Utility Code, applications under 52 Pa. Code § 3.501 do not finally decide rate issues. Further, NAWC comments that direct notice to customers of the seller increases time and cost, and is ultimately passed to ratepayers. Id. at 1-2. NAWC also argues that direct notice should not include a prediction of the impact on rates, out of concern that the applicant could be sued if their rate change prediction is incorrect. NAWC concludes that any direct notice should be fairly similar to newspaper notice, providing only notification of the filing, where interested parties can get more information, including the deadline for a protest or intervention. Id. at 2.

NAWC also opposes OCA's recommendation that property owners receive direct notice if there is a mandatory connection ordinance in the territory. NAWC is unclear as to what benefit will be gained by telling customers that a mandatory connection applies. In NAWC's view, the direct notice to property owners constitutes a second direct notice to customers of the selling utility, and because the contents of the notices would be different, the second direct notice would only increase confusion and cost. Id. at 3. NAWC also comments that if the property owner's notice is only to be sent to property owners who are not already customers of the selling utility, sending out that notice will be very difficult. Id.

c. Disposition

When an applicant files for a CPC to provide brand new water or wastewater public utility service in the Commonwealth of Pennsylvania or an existing certificated water or wastewater public utility files for a CPC to provide service outside of its certificated service territory (via a main extension) or to acquire the assets of another regulated utility under Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), Section 5.14 of our existing regulations requires notice to be provided in the *Pennsylvania Bulletin* and, as directed by the Secretary, in a newspaper of general circulation serving the geographical territory affected by the application. As such, an uncertificated entity must provide notice to its existing customers of its application to become a certificated water or wastewater public utility and publish notice of the application as supplied by the Secretary, once a week for two (2) consecutive weeks in one newspaper of general circulation located in the service territory covered by the application and submit proof of publication to the PUC. This filing requirement will be incorporated in the new Sections 3.513(d), 3.514(f) and 3.515(f) of the final-form regulation as set forth in the accompanying Annex.

Additionally, a notice regarding a main extension that will result in providing water or wastewater beyond existing certificated service territory boundaries and an application to acquire an existing water or wastewater system shall be published in the *Pennsylvania Bulletin* and notice published once a week for two (2) consecutive weeks in one newspaper of general circulation located in the service territory covered by the application along with proof of publication to the PUC. This filing requirement will be incorporated in new Sections 3.514(f) and 3.515(f) of the final-form regulation as set forth in the accompanying Annex.

Concerning our prior proposal to require notice to customers in an area covered by a mandatory connection ordinance, we find the arguments of PAWC and NAWC are unpersuasive. We will not mandate that proposed or existing, certificated water and wastewater public utilities send direct, individualized notices related to mandatory connection ordinances. However, we determine that both proposed water and wastewater public utilities as well as existing, certificated water and wastewater public utilities must include a conspicuous statement in the application notice to be published in the *Pennsylvania Bulletin* and in a newspaper of general circulation to alert customers when a mandatory connection ordinance applies. Publishing a statement in the application notice concerning the existence of a mandatory connection ordinance, when applicable, strikes a balance between the concerns raised by the various stakeholders with the costs associated with furnishing direct, individualized notice and not providing notice at all. We will incorporate in the final-form rule-making a requirement that notice of an application include a conspicuous statement apprising the public when there is a mandatory connection ordinance. Accordingly, the PUC incorporates this requirement within the new Sections 3.513(d) (relating to notice of an application for a new water or wastewater system), 3.514(f) (relating to notice of extensions of water distribution or wastewater collection mains), and 3.515(f) (relating to acquisitions of an existing water or wastewater system).

Our goal is also to ensure that the selling entity's customers are provided direct notice of proposed rate increases. We take note of the Commonwealth Court's ruling in *McCloskey v. Pa. Pub. Util. Comm'n* 195 A.3d 1055 (Pa. Cmwlth. 2018) (*McCloskey*), where the Court

vacated a Commission order regarding an acquisition and remanded the matter to the PUC for further proceedings based on its determination that the ratepayers' due process rights were violated because notice provided to them in a newspaper of general circulation in the service territory did not meet the requirement of individual notice to all ratepayers in accordance with 52 Pa. Code § 53.45 (relating to notice of new tariffs and tariff changes).³¹

The *McCloskey* Court looked to *Barasch v. Pa. Pub. Util. Comm'n*, 546 A.2d 1296, 1305-1306 (Pa. Cmwlth. 1988) (*Barasch*) as instructive on the question of whether individualized notice to a ratepayer is required. In *Barasch*, a public utility sought authorization from the PUC to pass charges to ratepayers from privately negotiated contracts authorized by the federal Public Utility Regulatory Policies Act of 1978 (PURPA). Under those contracts, the public utility was obligated to purchase the energy and capacity of a 43-megawatt generating unit for a period of 30 years. The public utility agreed to pay a variable energy charge for each kilowatt-hour produced by the project at a rate equal to actual monthly experienced energy costs of "proxy units" of the utility. In addition, West Penn Power Company agreed to make a capacity payment of 3.3¢ per kilowatt-hour, which it calculated to be the levelized value cost (at the time of signing the contract) of the capacity that it could avoid over the term of the contract. In addressing whether ratepayers were entitled to notice, the Commonwealth Court stated that:

Applying analyses from these cases to the present case, we conclude, first, that substantial property interests are involved here. If the contract between West Penn and [Milesburg Energy, Inc.] provided only for payment of *energy costs*, then the contract could not have the effect of increasing customers' bills, and this case very likely would not be before us. If customers' bills do not change, they have no money at risk, and presumably they have no other interest in whether their utility pays given energy costs to a fuel supplier or to a [qualifying facility].

However, because of the length of the term of this contract and its legally enforceable guarantees of delivery of power, the contract provides for *capacity* payments as well as energy payments. Because West Penn will begin making capacity cost credit payments before the time when the capacity is actually needed, which West Penn projects to be in 1995, pass-through of these payments to West Penn's customers will result, at least in the near term, in substantial increases in their bills unrelated to their current consumption of power—a substantial property interest. Additionally, even if West Penn had no contract with a [qualifying facility], West Penn's customers would have a substantial property interest in assuring that future capacity charges to them for construction by West Penn itself were properly justified and calculated. We see no reason to disregard that interest because the capacity charges are to be assessed sooner rather than later.

Barasch, 546 A.2d at 1305, *opinion modified on denial of reargument*, 550 A.2d 257 (Pa. Cmwlth. 1988) (footnotes omitted) (emphasis in original). The Commonwealth Court determined that under *Barasch* individualized notice is required any time the outcome of the proceeding binds the PUC to increase rates.

³¹ While *McCloskey* dealt with a 1329 FMV acquisition, we are focusing solely on the customer notice requirements for acquisitions applications and not the applicable cost valuation of the acquired assets.

As we previously noted, acquiring utilities do not generally propose raising rates in acquisition proceedings, but propose rate increases in later base rate proceedings. However, we are concerned about the due process rights of the selling utility's customers should the acquiring utility propose to increase rates in its acquisition application. Accordingly, in circumstances where the acquiring utility does not simply adopt the selling utility's existing rates, along with providing notice in the *Pennsylvania Bulletin* and a newspaper of general circulation as required by 52 Pa. Code § 5.14³², the PUC will also require in the final-form regulation, that the acquiring water or wastewater public utility, within 14 days after filing an acquisition application with the PUC, provide direct notice to all of the selling utility's customers of the application and of any proposed increase in rates. We acknowledge that direct notice requires an expense on the part of the acquiring utility. However, given that the systems to be acquired are generally smaller systems with fewer customers, we believe this will mitigate against undue expense for the acquiring utility while ensuring due process for the selling utility's customers. Direct notice shall be in the form of a separate mailing to each of the selling utility's customers and shall include (1) a comparison of the rates before and for the first year after the acquisition and (2) information regarding whether the proposed rates are higher than the rates of the selling water public utility or wastewater public utility. We find that providing direct notice via bill inserts may conflict with the selling utility's existing billing procedures, and may also be insufficient notice under these circumstances given that the selling utility's customers may have opted to receive electronic billing in lieu of a paper bill. Further, paper bills are issued monthly, and therefore the selling utility's customers might not receive direct notice via bill insert up to a month after the acquisition application has been filed with the PUC. Accordingly, we shall incorporate this filing requirement in the new Section 3.515(f) of the final-form regulation as set forth in the accompanying Annex.³³

2. Proposed Section 3.501(h)(1)

We proposed to reorganize and accordingly renumber the subsections setting forth the existing requirements for applicants to, at the time of filing with the PUC, serve by registered or certified mail, return receipt requested, a complete copy of the application with exhibits to be served upon (1) each city, borough, town, township, county and related planning office which is included, in whole or in part, in the proposed service area; (2) the statutory advocates and DEP's central and regional offices; and (3) upon any 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 one mile of the service area proposed in the application.

a. Comments

In order to reduce the number of copies of applications that are served on entities that do not have a genuine

³² The PUC will address the 60-day notice referenced in Section 5.14, Regulations Governing the Public Utility Commission's General Provisions, 52 Pa Code Chapters 1, 3, 5 (relating to Rules of Administrative Practice and Procedure; Special Provisions; and Formal Proceedings), Docket No. L-2023-3041347, Order entered August 22, 2024.

³³ In their comments before IRRC, NAWC/PAWC asks whether the PUC is requiring direct notice to the selling utility's customers of the application and any proposed increase in rates. NAWC/PAWC states that the subsection concerning notice should clearly advise applicants of what they must do to provide public notice of the application. NAWC/PAWC ask the PUC to clarify the direct notice requirements. NAWC/PAWC further avers that requiring direct notice for all acquisitions, including proceedings where rate base is not being established, is unreasonably overbroad. In this regard, NAWC/PAWC argue that direct notice is expensive and time consuming and that direct notice is only required where an adjudication's outcome binds the PUC to increase rates. NAWC/PAWC Comments at 6–8. We are requiring direct notice in the circumstances set forth herein. The Annex reflects the same.

interest in the proceeding, NAWC recommends that acquiring utilities only be required to serve the application on utilities, municipal corporations, or authorities whose service territories about the service area proposed in the application, and not also "within 1 mile of the service area proposed in the application," as is currently required by Section 3.501(f)(2). NAWC Comments at 14. AQUA agrees. AQUA Comments at 9.

b. Disposition

We find that the existing requirement for applicants to service the application on any 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 occurs within one mile of the service area proposed in the application is effective as currently written. The language provides both a clear service requirement for abutting territories and leaves some geographic flexibility where nearby service territories may not overlap but could potentially be impacted by the acquisition and desire to file a protest.

Additionally, the 1-mile requirement also anticipates instances where the exact geographic boundaries of a nearby entity providing public water or wastewater service may not be known. We find that the requirement for applications to be served upon any 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 occurs within one mile of the service area proposed in the application is appropriate and reasonable. Therefore, we specifically adopt all the existing requirements for applicants to, at the time of filing with the PUC, serve by registered or certified mail, return receipt requested, a complete copy of the application with exhibits to be served upon (1) each city, borough, town, township, county and related planning office which is included, in whole or in part, in the proposed service area; (2) the statutory advocates and DEP's central and regional offices; and (3) upon any 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 one mile of the service area proposed in the application in new Sections 3.513(c), 3.514(e) and 3.515(e) of the final-form regulation as set forth in the accompanying Annex.

3. Proposed Section 3.502(d)—Protests

We proposed to amend Section 3.502(d), concerning timing for filing of protests to acquisition applications, by shortening the protest period from 60 days to 30 days, except upon good cause shown. We reasoned that shortening the protest period to 30 days would improve the speed of the application process, without imposing too restrictive of a time burden on potential protests. We also proposed that, in determining whether good cause has been shown for a protest beyond the revised 30-day protest period, the PUC will take into account whether the scheduling of a municipal meeting has caused hardship for filing a timely protest.

a. Comments

NAWC supports the PUC's proposal to shorten the current protest period of 60 days. However, NAWC contends that the PUC should allow the Secretary to shorten the protest period when warranted. On the other hand, NAWC argues that the PUC should fix the maximum protest time at thirty days, without allowing a good cause exception. NAWC suggests this is how 52 Pa. Code 5.53

functions, as the general regulation for protests. NAWC Comments at 16-17. AQUA agrees with NAWC. AQUA Comments at 9.

PAWC agrees with NAWC that the protest period should be no longer than 30 days, and the Secretary should have discretion to establish a protest period as short as 15 days. PAWC argues that municipal entities should not be given special treatment due to their schedules. PAWC argues that they could hold executive sessions or special meetings in order to comply with the shorter protest period, and that municipal entities have solicitors who are paid to ensure their clients meet legal deadlines. PAWC Comments at 4.

The OCA disagrees with the PUC's proposal to shorten the standard protest period from 60 days to 30 days. OCA Comments at 2-3, 5. The OCA agrees that shortening the protest period to 15 days would have been inappropriate. But as to a 30-day period, the OCA comments that shortening the protest period is unnecessary and that it is unreasonable to expect the general public to be able to respond to an application published in the *Pennsylvania Bulletin* within 30 days from that publication. *Id.* at 2. The OCA comments that not all protests are filed by sophisticated protesters, and that 60 days would allow customers adequate time to respond, especially when they receive notice by mail or by bill insert. *Id.* at 2-3. The OCA concludes that a 60-day protest period is especially necessary when an individual or business would be required to connect to the system, such as through a mandatory connection ordinance. *Id.* at 3. The OCA does not believe a 60-day protest period causes additional costs to utilities. *Id.* The OCA also comments that the PUC should include language in Section 3.502 that explicitly notes that a standard protest form is available on the PUC's website. *Id.* at 5.

PMAA states that the 60-day protest period should not be shortened because doing so could adversely impact the ability of the public to intervene. PMAA Comments at 2.

IRRC noted the OCA's and PMAA's opposition to shortening the protest period from 60 to 30 days and asked the PUC to address this issue in its response to comments on this section of the rulemaking. IRRC noted that Subsection (d) is being amended to allow the protest period to be extended for "good cause shown," and that the PUC "will take into account whether scheduling a municipal meeting has caused hardship for a timely protest." IRRC seeks clarification as to whether the scheduling of a municipal meeting is the only reason a protest could be extended, and an explanation of how the PUC will implement this "good cause" provision. IRRC Comments at 4.

b. Reply Comments

NAWC maintains that 30 days is a sufficient protest period and opposes OCA's proposal to retain a 60-day protest period. NAWC Reply Comments at 3-4. NAWC explains that a protest is a simple filing that requires the filer to establish standing and explain why it opposes the application. NAWC argues that protesters should be required to file without delay, because referral to an Administrative Law Judge can cause significant delay on its own. *Id.* at 4. Further, NAWC points out that many parties will receive direct notice of an application, and therefore actually get more notice than just the *Pennsylvania Bulletin*, which usually takes approximately two weeks to be posted after an application is filed. *Id.* at 4, fn. 4.

CAUSE-PA suggests that even the current 60-day protest period may be too short given municipal meeting

schedules and other barriers to public input. CAUSE-PA Reply at 3. CAUSE-PA contends that reducing the protest period from 60 to 30 days does not present sufficient time for the public to review and evaluate the impacts of an application, especially for businesses, community groups, and nonprofits who must retain counsel in order to participate. CAUSE-PA Reply Comments at 4.

OCA reiterates its initial comments that a 60-day comment period is appropriate for most situations, which are not emergencies. OCA states that most applications are not for troubled wastewater systems, and that there has been no showing that most applications need to be addressed on a more expedited timeframe. If there is a situation that requires a faster timeframe for consideration, utilities are permitted to seek a shorter protest period. OCA Reply Comments at 3-6.

c. Disposition

Given our public pronouncement to evaluate our processes in order to promote and realize efficiencies in its licensing, application, and certification procedures in accordance with Governor Shapiro's Executive Order 2023-07, we find that shortening the existing 60-day protest period to 30 days is in the public interest. See Building Efficiency in Commission Application and Certification Procedures, Docket No. M-2024-3047172 (Joint Motion of Chairman Stephen M. DeFrank and Commissioner Ralph V. Yanora dated April 4, 2024). We recognize the importance of municipalities weighing in on applications. Additionally, we allow for a protest to be filed beyond 30 days for "good cause shown." To the extent that municipalities require an extension of time to file a protest they are at liberty to make such a request. Accordingly, we have adopted a 30-day protest period in new 3.516(b) of the final-form regulation as set forth in accompanying Annex A.

Concerning the OCA's proposal to include language about the availability of application forms, we note that Section 3.551, 52 Pa. Code § 3.551 (relating to official forms), already states that forms for applications, petitions, complaints and other matters are available on the PUC's website or from the Secretary of the Commission. Therefore, we find that it is duplicative and unnecessary to adopt OCA's proposal as to Section 3.502(d). However, the PUC will be creating new forms related to a certificated water or wastewater public utility's request to provide service outside of its existing certificated service territory or to acquire an existing public water or wastewater system in Pennsylvania.

G. Section 65.16—System Of Accounts For Water Utilities And Section 66.2 (Previously Proposed As Section 3.503)—System Of Accounts For Wastewater Utilities

In the NOPR, we proposed the creation of Section 3.503 to mirror the proposed updates at 52 Pa. Code § 65.16, concerning system of accounts for water utilities, and provide the same requirements for wastewater utilities. We previously acknowledged that the proposed Section 3.503 was intended to act as a placeholder reference until such time as the proposed revisions to Chapter 66 of the PUC's regulations concerning wastewater service became final.

1. Comments

IRRC notes that the PUC's Chapter 66 regulations, relating to wastewater service, were included in Rulemaking to Implement Act 120 of 2018, Docket No. L-2020-3019521 (Fiscal # 57-330; IRRC # 3298). IRRC points out that the Chapter 66 rulemaking was approved

by IRRC at its May 19, 2022 Public Meeting and was published as a final rule in the *Pennsylvania Bulletin* at 52 Pa.B. 4096 (July 23, 2022). Since Chapter 66 has been promulgated, IRRC encourages the PUC to delete Section 3.503 from the final-form regulation under consideration in this proceeding and move it to Chapter 66. IRRC Comments at 5.

In addition, IRRC points out that the proposed Subsection 3.503(d) and the proposed change to the existing Subsection 65.16(d) (relating to system of accounts for water utilities), would provide that public utilities subject to this section shall have until “1 year from the effective date of this section” to convert to the most recent system of accounts of the NARUC. IRRC asks the PUC to amend the quoted language in both subsections to allow the Legislative Reference Bureau (LRB) to insert a specific date of compliance when this rulemaking is published as a final regulation. IRRC Comments at 6.

2. Disposition

Since the issuance of the ANOPR in this matter, the amendments to the wastewater regulations at Chapter 66 became effective on July 23, 2022.³⁴ See 52 Pa.B. 4096 (July 23, 2022). The PUC has incorporated the language proposed for Section 3.503 with the wastewater regulations at Chapter 66 by creating a new Section 66.2 (relating to system of accounts for wastewater public utilities) in our final-form regulations. Accordingly, we have deleted the previously proposed Section 3.503 in its entirety from the final-form regulation and incorporated it in Chapter 66 of our regulations as set forth in the accompanying Annex A.

We note that the NARUC Uniform System of Accounts (USoA) reports for water and wastewater utilities set forth in Sections 65.16 and 66.2 of the attached Annex A are periodically adjusted by NARUC to account for economic changes. The Commission will consider adopting any changes to the NARUC USoA reports published after the effective date of the regulations set forth in the attached Annex A by a subsequent rulemaking process.

Conclusion

We thank all the commenters for their comments and reply comments on this rulemaking proceeding. For the reasons stated above, we are entering this Final-Form Rulemaking Order, consisting of a Preamble and an Annex A, which will be served as noted in the Ordering Paragraphs. Thereafter, it will be delivered with a regulatory packet to the Legislative Committees and IRRC. If the matter proceeds further, it will be delivered with a regulatory packet to the Office of Attorney General and the Governor’s Office of the Budget. If it proceeds further after that, it will be delivered with a regulatory packet to the LRB for publication in the *Pennsylvania Bulletin*.

Accordingly, under Sections 501, 1101, 1102, 1103, 1311(b), and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1101, 1102, 1103, 1311(b), and 1501; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769, No. 240, 45 P.S. §§ 1201 and 1202, referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(b); Section 745.5 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 promul-

gated thereunder at 4 Pa. Code §§ 7.231—7.234, we have finalized the regulations as set forth in Annex A, attached hereto; *Therefore*,

It Is Ordered:

1. That the Public Utility Commission hereby adopts the final-form regulations as set forth in Annex A.

2. That the Secretary is directed to serve this Revised Final-Form Rulemaking Order (Preamble and Annex A) upon certificated water public utilities and certificated wastewater public utilities, the Pittsburgh Water and Sewer Authority, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all parties that filed comments or reply comments at this docket. The Revised Final-Form Rulemaking Order (Preamble and Annex A) will be posted and made available electronically on the Public Utility Commission’s website.

3. That the Law Bureau will deliver this Revised Final-Form Rulemaking Order (Preamble and Annex A), with the regulatory packet, on the same day to:

a. The Majority and Minority Chairs of the Senate Committee on Consumer Protection and Professional Licensure and the Majority and Minority Chairs of the House Consumer Protection, Technology and Utilities Committee.

b. The Independent Regulatory Review Commission, with confirmations of receipt from the Legislative Committees.

4. That upon approval by the Independent Regulatory Review Commission, the Law Bureau is directed to deliver this Revised Final-Form Rulemaking Order (Preamble and Annex A), with the regulatory packet, to the Office of Attorney General for approval as to legality and form and to the Governor’s Office of the Budget for a fiscal note.

5. That upon final approvals by the Legislative Committees, the Office of the Attorney General, and the Governor’s Office of the Budget, the Law Bureau is directed to deliver this Revised Final-Form Rulemaking Order (Preamble and Annex A), with the regulatory packet, to the Legislative Reference Bureau for publication of the Formal-Form Rulemaking Order (Preamble and Annex) in the *Pennsylvania Bulletin*.

6. That the final-form regulations will become effective 120 days after publication in the *Pennsylvania Bulletin*.

7. That the Commission will create new application forms to address requests by certificated water and wastewater public utilities to provide service outside of their existing certificated service territory or to acquire another existing public water or wastewater system under 52 Pa. Code § 3.551 and that said forms will be located on the PUC’s website or from the Secretary of the Commission.

8. The contact persons for this Revised Final-Form Rulemaking are Tiffany Tran, Assistant Counsel, Law Bureau, (717) 783-5413, tiftran@pa.gov, Hayley Hinken, Assistant Counsel, Law Bureau, (717) 214-9594, hhinken@pa.gov, Karen Thorne, Regulatory Review Assistant, Law Bureau (717) 772-4597, kathorne@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.

MATTHEW L. HOMSHER,
Secretary

³⁴ Rulemaking to Implement Act 120 of 2018 at 52 Pa. Code Chapters 65 and 66, Docket No. L-2020-3019521 (Final Rulemaking Order entered February 24, 2022).

ORDER ADOPTED: May 8, 2025

ORDER ENTERED: May 8, 2025

Statement of Commissioner Kathryn L. Zerfuss

The revised 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.³⁵ 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.³⁶

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 rulemaking since it began, I am not confident that the revised 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 extensions of water distribution mains or wastewater collection mains and acquisitions of an existing water or wastewater system.³⁷ 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 revised 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.³⁸ 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,³⁹ which is a complete departure from the Com-

mission’s current rules of practice and procedure. While the Commission is currently evaluating comments on similar amendments to protest periods in another pending rulemaking,⁴⁰ 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 revised 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 language of the revised final rulemaking, and I will be dissenting on this matter.

May 8, 2025

KATHRYN L. ZERFUSS,
Commissioner

(Editor’s Note: See 55 Pa.B. 4776 (July 12, 2025) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 57-337 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 3. SPECIAL PROVISIONS

Subchapter G. WATER PUBLIC UTILITY AND WASTEWATER PUBLIC UTILITY PROCEEDINGS

Sec.	
3.501.	{Reserved}.
3.502.	{Reserved}.
3.511.	Purpose.
3.512.	Definitions.
3.513.	Requirements to become a certificated water public utility or a certificated wastewater public utility.
3.514.	Extensions of water distribution mains or wastewater collection mains.
3.515.	Acquisitions of an existing water system or a wastewater system by a certificated water public utility or certificated wastewater public utility.
3.516.	Protests.

(Editor’s Note: Sections 3.503—3.510 are intentionally not used.)

§ 3.501. {Reserved}.

§ 3.502. {Reserved}.

§ 3.511. Purpose.

This subchapter establishes the information required to be incorporated in the following:

(1) Applications to obtain a certificate of public convenience from the Commission to become a certificated water public utility or a certificated wastewater public utility in the Commonwealth.

(2) Applications filed by a Class A, Class B or Class C water public utility or a Class A, Class B or Class C wastewater public utility seeking to obtain a certificate of public convenience to do one of the following:

(i) Provide service beyond its certificated service territory.

³⁵ The revised Final Rulemaking addresses the following: (1) the filing requirements applicable to CPC applications 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.

³⁶ 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.

³⁷ The revised 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).

³⁸ Revised Final Rulemaking Order at 83-84.

³⁹ Annex at 27-28, § 3.516.

⁴⁰ 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).

(ii) Acquire the assets of an existing water public utility or wastewater public utility, whether privately or municipally owned, when the valuation of the assets to be acquired are booked at the original cost of the acquired system when first devoted to the public service less the applicable accrued depreciation and related contributions as prescribed under 66 Pa.C.S. § 1311 (relating to valuation of and return on the property of a public utility).

§ 3.512. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

Acquisition—The purchase of one public utility by another, the merger of two or more public utilities, or the purchase of used or useful utility assets by one public utility from another public utility as these terms are used in 66 Pa.C.S. § 1102 (relating to enumeration of acts requiring certificate).

Act 537 Plan—The comprehensive plan for the provision of adequate sewage systems adopted by a municipality or municipalities possessing authority or jurisdiction over the provision of such systems and submitted to and approved by the DEP and as may be revised under section 5 of the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5).

Affiliate—An entity that is an affiliated interest of the applicant as defined in 66 Pa.C.S. § 2101 (relating to definition of affiliated interest).

Applicant—A person, corporation or municipal corporation seeking to obtain a certificate of public convenience from the Commission.

Application—A written request for permission or authorization filed with the Commission.

Certificated wastewater public utility—A person, corporation or municipal corporation that has been authorized by the Commission or the Commonwealth to provide wastewater public utility service.

Certificated water public utility—A person, corporation or municipal corporation that has been authorized by the Commission or the Commonwealth to provide water public utility service.

Class A wastewater public utility—A certificated wastewater public utility that keeps its accounts in conformity with § 66.2(a) (relating to system of accounts for wastewater public utilities).

Class B wastewater public utility—A certificated wastewater public utility that keeps its accounts in conformity with § 66.2(b).

Class C wastewater public utility—A certificated wastewater public utility that keeps its accounts in conformity with § 66.2(c).

Class A water public utility—A certificated water public utility that keeps its accounts in conformity with § 65.16(a) (relating to system of accounts).

Class B water public utility—A certificated water public utility that keeps its accounts in conformity with § 65.16(b).

Class C water public utility—A certificated water public utility that keeps its accounts in conformity with § 65.16(c).

Comprehensive plan—A document adopted by a municipal corporation which establishes an overall plan and recommended actions relevant to the current and future

land use and growth management needs of the area under the Pennsylvania Municipalities Planning Code (53 P.S. §§ 10101—11202).

Corporation—The term as defined in 66 Pa.C.S. § 102 (relating to definitions).

DEP—Department of Environmental Protection of the Commonwealth.

Equivalent dwelling unit—A unit of measurement that is based on the flow characteristics of an average single-family residence in terms of sewage quantity and constituent quality.

Extension—The extension of a water main or a wastewater main including the pipe, elbows, tees, valves, reducers, service taps and other appurtenances which may be part of the facilities required to provide water public utility service or wastewater public utility service.

Main—The pipe of a public utility system, excluding service laterals, located in a public highway, street, alley or private right-of-way, which is used in collecting and conveying wastewater or transporting and distributing water.

Municipal authority—A body politic and corporate created or incorporated under 53 Pa.C.S. §§ 5601—5623 (relating to Municipality Authorities Act).

Municipal corporation—The term as defined in 66 Pa.C.S. § 102.

Municipally owned public wastewater system—A wastewater system owned or operated by a municipal corporation.

Municipally owned public water system—A water system that is owned or operated by a municipal corporation.

NPDES—The National Pollution Discharge Elimination System.

New wastewater system—A wastewater system that is newly constructed or proposed after the effective date of this rule by an applicant or an existing wastewater system that is owned or operated by an uncertificated entity.

New water system—A water system that is newly constructed or proposed after the effective date of this rule by an applicant or an existing water system that is owned or operated by an uncertificated entity.

Person—The term as defined in 66 Pa.C.S. § 102.

Planned development—An area of land, controlled by a landowner, to be developed into a collection of structures that may include residential, commercial or industrial uses.

Professional engineer—A professional engineer (PE), licensed to practice engineering in this Commonwealth under the Engineer, Land Surveyor and Geologist Registration Law (63 P.S. §§ 148—158.2), that is responsible for designing the new water system or new wastewater system.

Proposed public utility—An applicant that seeks to obtain a certificate of public convenience from the Commission to become a certificated water public utility or a certificated wastewater public utility.

Public utility—A person or corporation owning or operating equipment or facilities in this Commonwealth for diverting, developing, pumping, impounding, distributing or furnishing water or for wastewater collection, treatment or disposal to the public for compensation. The term does not include a person or corporation, not otherwise a

public utility, who or which furnishes service only to himself or itself, or a bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.

Public Utility Code—66 Pa.C.S. §§ 101—3316 (relating to Public Utility Code).

Public wastewater system—A wastewater system for the collection or collection and treatment of wastewater from two or more lots, or two or more equivalent dwelling units and the treatment or disposal, or both, of the wastewater at another site.

Public water system—A water system which provides water to the public for human consumption and that serves at least 15 service connections or at least 25 people daily for at least 60 days of the year. Water for human consumption includes water that is used for drinking, bathing and showering, cooking, dishwashing or maintaining oral hygiene.

Service connection—The facilities necessary to provide the customer service, including the water service line or wastewater service lateral, the main tap, meter and other related facilities.

Service territory—The geographical area in which a certificated water public utility or a certificated wastewater public utility has obtained Commission or Commonwealth authorization to provide public utility service.

Tariff—The schedule of rules and charges of a certificated water public utility or certificated wastewater public utility for its respective water public utility service or wastewater public utility service as filed with and approved by the Commission or effective by operation of law under which the public utility is required to provide public utility service.

Uncertificated entity—A person or corporation that is providing water public utility service or wastewater public utility service to the public for compensation in this Commonwealth without first obtaining a certificate of public convenience from the Commission or a municipal corporation, other than a municipal authority, that is providing water public utility service or wastewater public utility service outside of its corporate boundaries without first obtaining a certificate of public convenience from the Commission.

Wastewater—The term as defined in 66 Pa.C.S. § 102.

Wastewater public utility service—The term as defined in 66 Pa.C.S. § 102.

Wastewater system—The equipment and facilities owned or operated by an entity for the processing of wastewater and includes any activity related to such processing, including collecting, handling, treating, transporting, disposing and delivery of wastewater.

Water public utility service—The term as defined in 66 Pa.C.S. § 102.

Water system—The equipment and facilities owned or operated by an entity for diverting, developing, pumping, impounding, treating, distributing or furnishing water.

§ 3.513. Requirements to become a certificated water public utility or a certificated wastewater public utility.

(a) *Application requirements for a new water or wastewater system.* An application to obtain a certificate of public convenience to become a certificated water public utility or a certificated wastewater public utility through a new water or wastewater system shall be submitted in

writing on forms provided by the Commission in accordance with § 3.551 (relating to official forms) and shall be accompanied by information or documentation reasonably necessary to enable the Commission to determine if granting the application is in the public interest as prescribed by 66 Pa.C.S. § 1103. An application under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and filing specifications) and must include the following:

(1) *General information.* Identify the following:

(i) Name of applicant.

(ii) Address.

(iii) Affiliates that own or operate a public water system or a public wastewater system in this Commonwealth or any other jurisdiction.

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

(i) A description by bearing angles and distances.

(ii) The location and route of the proposed water system or proposed wastewater system, existing and proposed streets, streams and water surfaces, and the direction of flow of the existing and proposed water system or wastewater system.

(iii) Topography and elevation, including the elevations of major facilities and service areas.

(iv) A description of all nearby public water systems or public wastewater systems, including location, service areas, primary facilities, system capabilities, hydraulic profile and contact person and phone number.

(v) Identification of current proposed and potential future service areas and that of neighboring public water systems.

(3) *Plant in service and general system information.*

(i) A proposed public utility shall provide the following:

(A) Professional engineer's reports and letters signed by a professional engineer.

(I) A copy of the professional engineer's report that includes design plans and a full description of the proposed water system or wastewater system with the size, quantities and materials of facilities and the manner, including the approximate time schedule for installation of the various facilities of the water system or wastewater system to be constructed in the proposed service territory.

(II) A certification letter from a professional engineer that the subject water system was designed and constructed in compliance with §§ 65.17 and 65.18 (relating to standards of design; and standards of construction).

(B) A breakdown of the cost of construction, by major plant category, including the sources of funds used to construct the proposed water system or wastewater system.

(C) A breakdown of pipe sizes, quantities and materials used for construction for all transmission and distribution or collection, conveyance and disposal facilities.

(D) A valid certified operator's certificate appropriate to the facilities to be operated.

(E) The most recent 5-year DEP compliance of affiliates of the applicant that own or operate a public water system or a public wastewater system in this Commonwealth or any other jurisdiction with an explanation of each violation.

(i) An uncertificated entity 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 copy of the engineering report accompanied by a certification letter from a professional engineer that the water system was designed and constructed in compliance with §§ 65.17 and 65.18.

(C) All valid certified operator's certificates appropriate to the facilities being operated.

(D) The most recent 5-year compliance history with DEP with an explanation of each violation.

(4) *Information about customers.* The applicant shall demonstrate its ability to provide adequate water public utility service or adequate wastewater public utility service to meet present and future customer demands.

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

(ii) An uncertificated entity shall submit the number of connections by customer class at the time that the application is filed with the Commission and in the first year, fifth year and tenth year of proposed operation, as well as estimated water usage or gallons of wastewater treated in each of those years.

(5) *Information regarding rates.*

(i) A proposed public utility shall provide a proposed initial tariff that includes proposed rates, proposed rules and proposed conditions of service in the format specified by the Commission (classified rate schedule).

(ii) An uncertificated entity shall provide a proposed initial tariff that includes proposed rates, proposed rules and proposed conditions of service. The uncertificated entity shall provide written notice to its customers indicating that it has filed an application for authority and the proposed rates in the application and shall provide a copy of this notice and a verification statement confirming that notice required under this section has been provided.

(6) *Cost of service.*

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

(ii) An uncertificated entity shall file its most recent Federal Income Tax Returns (corporation) or related Schedule C forms (partnership or sole proprietorship). It shall also provide its projected first-year operating revenue, operation and maintenance expenses, annual depreciation and taxes under its initial tariff. If the projected first-year operating revenue, operation and maintenance expenses, annual depreciation and taxes reflect a net operating loss, the uncertificated entity shall describe in detail how the operating loss will be subsidized, supported by an analysis of its future viability as a certificated public utility.

(7) *Information on affected water systems and wastewater systems.* An applicant shall do the following:

(i) Identify each operator of a municipally owned public water system or municipally owned public wastewater system that is providing water public utility service or wastewater public utility service within the municipality or municipalities in which the applicant seeks to become a certificated water public utility or a certificated wastewater public utility.

(ii) Identify the other certificated water public utilities or certificated wastewater public utilities providing water public utility service or wastewater public utility service within the municipality or municipalities in which the applicant seeks to provide water public utility service or wastewater public utility service.

(iii) Identify the other certificated water public utilities or municipally owned public water systems, or certificated wastewater public utilities or municipally owned wastewater systems, that are directly adjacent to, abut or are situated within one mile of the applicant's proposed facilities.

(iv) If one or more of the entities in subparagraphs (i)—(iii) asserts a willingness or interest in serving the territory directly, the applicant shall demonstrate that, when considering both the cost of service and the quality of service, the customers in the proposed service territory would be better served by the applicant than by another entity.

(8) *Metered service.*

(i) A proposed public utility shall submit evidence that the water sources and customers are metered in accordance with § 65.7 (relating to metered service).

(ii) An uncertificated entity shall submit evidence that the water sources and customers that are metered or provide a plan for furnishing metered water service in the proposed service territory in accordance with § 65.7.

(9) *Design and compliance.*

(i) A copy of applicable DEP public water supply and dam safety permits or water quality management permits or NPDES permits issued under section 7 of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.7) and sections 6, 202, 207 and 501 of The Clean Streams Law (35 P.S. §§ 691.6, 691.202, 691.207 and 691.501).

(ii) A copy of the letter or letters signed by an authorized representative of the relevant governmental entity or entities confirming that the applicant does comply or does not meet all the applicable requirements. A signed letter from the governmental entity will be construed as evidence of the applicant's proof of compliance or noncompliance with the following mandates:

(A) Applicable design, construction and operation standards of DEP, including 25 Pa. Code §§ 109.702, 109.703 and 109.709 (relating to operation and maintenance plan; facilities operation; and cross-connection control program) and 25 Pa. Code Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).

(B) Applicable Act 537 Plan documents for all affected municipalities relating to the acquired service territory, as required under section 5 of the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5).

(C) Applicable design, construction and operation standards and requirements of the county health department.

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

(E) Applicable requirements of any Statewide water plan, including any local watershed areas.

(F) Applicable requirements of any officially adopted county, multi-municipal or municipal comprehensive plan or plans, and applicable zoning designations and ordinances, including any necessary amendments.

(b) *Filing.* The applicant shall file with the Commission the original application 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 original application must contain the required information in subsection (a)(1)—(9) as exhibits. An affidavit of service showing the identity of those served under subsection (c) must accompany the original application filed with the Commission.

(c) *Service.*

(1) At the time of filing, the applicant shall cause a complete copy of the application with exhibits to be served by registered mail 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 territory or service territories.

(ii) The Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and DEP's central office and regional office or offices for the proposed service territory or territories.

(iii) Each certificated water public utility or certificated wastewater public utility whose service territory abuts or is within one mile of the service territory proposed in the application.

(iv) A municipally owned public water system or municipally owned public wastewater system whose service territory abuts or is within one mile of the service territory proposed in the application.

(v) The applicant must demonstrate that it has contacted each entity identified in subparagraphs (i) and (iv).

(d) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin*. 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 service territory or territories 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 a conspicuous statement that such an ordinance applies.

(e) *References.* Subsection (a) supplements § 5.11 (relating to applications generally).

§ 3.514. Extensions of water distribution mains or wastewater collection mains.

(a) A certificated water public utility or a certificated wastewater public utility seeking to extend a main to provide service to a property beyond its certificated service territory including those situated within a planned development shall provide with its application:

(1) *General information.* A copy of the developer's application for service or a certified statement from the owners of parcels of land in the extension area that they are requesting service.

(2) *Map of extended service territory.* A map or plan of suitable scale and detail highlighting the boundaries of the geographical area encompassing the proposed distribution or collection main extension, including the following:

(i) A description by bearing angles and distances.

(ii) The location or route of the extended water or wastewater system.

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

(3) *Plant in service and general system information.*

(i) An engineering report that contains a full description of the proposed distribution or collection main extension for the water system or wastewater system and the manner, including the pipe sizes, quantities and material used for construction for all transmission and distribution or collection facilities and the approximate time schedule for installation of the various component facilities of the main extension.

(ii) A certification letter from a licensed engineering firm that the proposed main extension for the water system or wastewater system was designed and constructed in compliance with §§ 65.17 and 65.18 (relating to standards of design; and standards of construction).

(iii) A breakdown of the cost of construction including the sources of funds used to construct the extension facilities.

(iv) A valid certified operator's certificate appropriate to the facilities being operated.

(4) *Design and compliance.*

(i) A copy of applicable public water supply permits or water quality management permits or NPDES permits.

(ii) Copies of letters signed by an authorized representative of the relevant governmental entities confirming that the applicant complies with or does not meet all the applicable requirements regarding the collection or distribution main extension. The signed letter from the governmental entity shall be construed as evidence of the applicant's proof of compliance or noncompliance with the following mandates:

(A) Applicable design, construction and operation standards of DEP, including 25 Pa. Code §§ 109.702 and 109.709 (relating to operation and maintenance plan; and cross-connection control program) and 25 Pa. Code Chapter 94 (relating to municipal wasteload management).

(B) Applicable design, construction and operation standards and requirements of the county health department.

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

(D) Applicable requirements of the current Pennsylvania State Water Plan, including any local watershed areas.

(E) Applicable requirements of any officially adopted Act 537 Plan, county, multi-municipal or municipal comprehensive plans, and applicable zoning designations and ordinances, including evidence of preliminary plan approval for the anticipated planning development subdivi-

sion and final plan approval whenever such approval is granted or necessary amendments.

(F) A certification letter from a professional engineer that indicates the system is capable to meet a defined fire flow.

(b) *DEP compliance history.*

(1) If the applicant is a Class B or Class C water public utility, it shall provide a 5-year history of compliance with DEP regulations with an explanation of each violation.

(2) If the applicant is a Class B or Class C wastewater public utility, it shall provide a 5-year history of compliance with DEP regulations with an explanation of each violation.

(c) *Financials.*

(1) If the applicant is a Class B or Class C water public utility, it shall provide a copy of its last annual financial report filed with the Commission and a summary of earnings for the past 5 years.

(2) If the applicant is a Class B or Class C wastewater public utility, it shall provide a copy of its last annual financial report filed with the Commission and a summary of earnings for the past 5 years.

(d) *Information on affected water systems and wastewater systems.*

(1) Identify each operator of a municipally owned public water system or municipally owned public wastewater system that is providing water public utility service or wastewater public utility service within the municipalities in which it seeks to extend its distribution main.

(2) Identify the other certificated water public utilities or certificated wastewater public utilities providing water public utility service or wastewater public utility service within the municipalities in which the applicant seeks to extend its distribution main.

(3) Identify the other certificated water public utilities or municipally owned public water systems or certificated wastewater public utilities or municipally owned public wastewater systems that are directly adjacent to, abut or are situated within one mile of the proposed extension of its distribution main.

(e) *Service.*

(1) At the time of filing, a complete copy of the application with exhibits shall 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 extended service territory or service territories.

(ii) The Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and DEP's central office and regional office or offices situated in the proposed extended service territory or territories.

(iii) Each affected water system and wastewater system described in subsection (d)(1) and (2).

(f) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin*. 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 service territory or territories 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 a conspicuous statement that such an ordinance applies.

§ 3.515. Acquisitions of an existing water system or a wastewater system by a certificated water public utility or certificated wastewater public utility.

(a) Applications for the acquisition of an existing water system or existing wastewater system shall incorporate the following information. The applicant may request a waiver of certain requirements, under § 1.91 (relating to applications for waiver of formal requirements):

(1) *General information.*

(i) A copy of the executed purchase agreement and evidence that each entity was authorized to enter into the purchase agreement.

(ii) The cost of the property of the acquired system as shown on the balance sheet of the transferor.

(iii) The depreciation and amortization reserves applicable to the property, estimated if not ascertainable from books and records.

(2) *Additional documentation.*

(i) *Map of acquired service territory.* A map or plan of suitable scale and detail delineating the boundaries of the new service area on an existing service area map or as a new service area map, including the location or route of the existing water or wastewater system.

(ii) *Plant in service and general system information.*

(A) A full description of the acquired water system or wastewater system, including a list of all major facilities and appurtenances such as wells, tanks, pumps and structures.

(B) If the acquisition application is filed by a Class B or Class C water public utility or a Class B or Class C wastewater public utility, the quantity and material used for construction for all transmission and distribution or collection facilities.

(C) A distribution system map showing the location of major facilities, pipe sizes, fire flow and pressure zones or a collection system map showing the location of major facilities, pipe sizes, gravity or force main designation and direction of flow.

(D) A statement of contributions toward the construction of the system; the contributions shall be subdivided to show those subject to refund and those which are not.

(E) If the acquisition application is filed by a Class B or Class C water public utility or a Class B or Class C wastewater public utility, an identification of the DEP-permitted productive or treatment capacity of sources, treatment facilities, major distribution or collection facilities.

(F) A copy of a valid certified operator's certificate from the acquiring company appropriate to the facilities being operated.

(G) A list of planned water or wastewater system improvements, including upgrades required by DEP or the acquiring public utility's existing system, or both, along with the associated estimated costs.

(iii) *Design and compliance.*

(A) Copies of letters signed by an authorized representative of the relevant governmental entities confirming

that the system of the selling entity does comply or does not meet all the applicable requirements. The signed letter from the governmental entity shall be construed as evidence of proof of compliance or noncompliance with the following mandates:

(I) A copy of applicable DEP public water supply and dam safety permits or water quality management permits or NPDES permits issued under section 7 of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.7) and sections 6, 202, 207 and 501 of The Clean Streams Law (35 P.S. §§ 691.6, 691.202, 691.207 and 691.501).

(II) Applicable design, construction and operation standards of DEP, including 25 Pa. Code §§ 109.702 and 109.709 (relating to operation and maintenance plan; and cross-connection control program).

(III) Applicable Act 537 Plan documents for all affected municipalities relating to the acquired service territory, as required by section 5 of the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5).

(IV) Applicable design, construction and operation standards and requirements of the county health department.

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

(VI) Applicable requirements of the current Pennsylvania State Water Plan, including any local watershed areas.

(VII) Applicable requirements of any officially adopted county, multi-municipal or municipal comprehensive plans, and applicable zoning designations and ordinances, including any necessary amendments.

(iv) *Customers.* If the acquisition application is filed by a Class B or Class C water public utility or a Class B or Class C wastewater public utility, the number of customers of the selling entity by class of customer, related water consumption or wastewater gallons treated in the previous calendar year, and the future number of estimated connections for the next 5 years with the estimated demand, by year.

(v) *Rates.* A proposed initial tariff shall be submitted with the application that must include rates, proposed rules and conditions of service and a copy of the customer notice to be sent to all customers of the selling utility.

(b) *DEP compliance history.*

(1) If the acquisition application is filed by a Class B or a Class C water public utility, it shall provide a 5-year history of compliance with DEP regulations with an explanation of each violation.

(2) If the acquisition application is filed by a Class B or a Class C wastewater public utility, it shall provide a 5-year history of compliance with DEP regulations with an explanation of each violation.

(c) *Financials.*

(1) If the acquisition application is filed by a Class B or Class C water public utility, it shall provide a copy of its last annual financial report filed with the Commission and a summary of earnings for the past 5 years.

(2) If the applicant is a Class B or Class C wastewater public utility, it shall provide a copy of its last annual report and a summary of earnings for the past 5 years.

(d) *Information on affected water systems and wastewater systems.* Identify the other certificated water public

utilities or certificated wastewater public utilities or municipally owned public water systems or municipally owned public wastewater systems that are directly adjacent to, abut or are situated within one mile of the acquired system.

(e) *Service of acquisition application.*

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

(i) The planning office of each municipal corporation that is included in whole or in part in the service territory or service territories of the selling water public utility or wastewater public utility.

(ii) The Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and DEP's central office and regional office or offices located in the service territory of the selling entity.

(iii) Each certificated water public utility or certificated wastewater public utility, or a municipally owned public water system or municipally owned public wastewater system whose service territory abuts or is within one mile of the acquired service territory or service territories.

(f) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin*.

(1) The applicant shall 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 service territory or territories 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 a conspicuous statement that such an ordinance applies.

(2) In applications where the acquiring utility is proposing to adopt rates other than the selling utility's existing rates, the applicant shall also, within 14 days after filing the application with the Commission, provide direct notice to the selling utility's customers of the application and of any proposed increase in rates. Such direct notice shall be in the form of separate mailings to the service addresses of all customers of the selling utility and shall include the following information:

(i) A comparison of the rates before and for the first year after the acquisition.

(ii) Information regarding whether the proposed rates are higher than the rates of the selling water public utility or wastewater public utility.

§ 3.516. Protests.

(a) *Protests.* A person objecting to an application filed under §§ 3.513, 3.514 and 3.515 (relating to requirements to become a certificated water public utility or a certificated wastewater public utility; extensions of water distribution mains or wastewater collection mains; and acquisitions of an existing water system or a wastewater system by a certificated water public utility or certificated wastewater public utility) shall file with the Secretary of the Commission and serve upon the applicant, or the applicant's attorney if the applicant is represented, a written protest which must contain the following:

(1) The applicant's name and the docket number of the application.

(2) The name, business address and telephone number of the protestant.

(3) The name, business address, Pennsylvania attorney identification number and telephone number of the protestant's attorney or other representative.

(4) A statement of the nature of the protestant's interest in the application.

(b) *Protest filings.*

(1) A protest, if filed, must be filed and served within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be at least 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.

(2) 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).

(3) 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.

(4) A protest will be treated as a pleading.

(c) *Participation in a proceeding.* Upon the filing of a timely protest the protestant will be allowed to participate in the proceeding as a party intervenor. Statutory advocates may participate in any proceeding based on their statutory right of participation.

(d) *Motions.* The applicant may, within 20 days after the closing date for the filing of protests, file a motion or motions to strike, to dismiss or for amplification as provided in § 5.101 (relating to preliminary objections).

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 65. WATER SERVICE

Subchapter A. SERVICE GENERALLY

§ 65.16. System of accounts for water public utilities.

(a) A public utility having annual jurisdictional operating revenue of \$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 \$200,000 or more but less than \$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 \$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 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 Water Utilities* prescribed by N.A.R.U.C.

CHAPTER 66. WASTEWATER SERVICE

Subchapter A. SERVICE GENERALLY

§ 66.2. System of accounts for wastewater public utilities.

(a) A public utility having annual jurisdictional operating revenues 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) A public utility 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. and published prior to the effective date of this section.

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