



November 14, 2022

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg PA 17120

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

Reply Comments of National Association of Water Companies – Pennsylvania Chapter on Notice of Proposed Rulemaking Order

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission in the above-referenced matter are the Reply Comments of the National Association of Water Companies – Pennsylvania Chapter. Copies are being served as shown on the attached Certificate of Service.

If you have any question or concern about this filing, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *National Association of Water Companies – Pennsylvania Chapter*

DPZ/kmg
Enclosure

cc: Christian McDewell, Esq. (Law Bureau)
Clinton McKinley (Bureau of Technical Utility Services)
Paul Zander (Bureau of Technical Utility Services)
J.T. Hand, President, National Association of Water Companies – Pennsylvania Chapter

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of 52 Pa. Code § 3.501 to Certificated Water :
and Wastewater Utility Acquisitions, Mergers, and : L-2020-3017232
Transfers :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Reply Comments of the National Association of Water Companies – Pennsylvania Chapter on the Notice of Proposed Rulemaking Order**, upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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Respectfully,



David P. Zambito, Esq.
Counsel for *National Association of Water
Companies – Pennsylvania Chapter*

Date: November 14, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of 52 Pa. Code § 3.501 to Certificated Water :
and Wastewater Utility Acquisitions, Mergers, and : L-2020-3017232
Transfers :

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF WATER
COMPANIES – PENNSYLVANIA CHAPTER ON
THE NOTICE OF PROPOSED RULEMAKING ORDER**

AND NOW COMES the National Association of Water Companies – Pennsylvania Chapter (“NAWC”), pursuant to the Notice of Proposed Rulemaking Order (“NOPR Order”) entered in this matter on December 16, 2021, and published in the *Pennsylvania Bulletin* on August 13, 2022, 52 Pa.B. 4926, to file these Reply Comments with the Pennsylvania Public Utility Commission (“Commission”).¹

I. REPLIES TO THE COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE (“OCA”)²

A. The Commission Should Not Require Direct Notice to Customers of the Seller

NAWC opposes the OCA’s recommendation that the Commission require direct notice of the acquisition be sent to the seller’s customers. OCA Comments pp. 4. According to the OCA, the notice should inform customers of the impact on their rates and service resulting from the

¹ Reply Comments were due 30 days after Comments were due (*i.e.*, on Friday, November 11, 2022). Due to the Commission being closed on that day, NAWC is submitting these comments on the next business day, pursuant to 52 Pa. Code § 1.12(a).

² The Office of Small Business Advocate (“OSBA”) did not file comments. On November 10, 2022, the OSBA filed a letter with the Commission indicating that it supported the OCA’s Comments.

proposed acquisition, tell them about any bill discount programs of the buyer, and advise them about how they can get additional information and take additional action. *Id.*

First, NAWC objects to the proposal to require direct notice. The Commission's proposal does not pertain to acquisitions pursuant to 66 Pa. C.S. § 1329, in which certain rate issues are finally decided (namely, the fair market value rate base). Due process does not require individual notice of applications pursuant to 66 Pa. C.S. §§ 1101-1103. Direct notice increases the cost of the proceedings—costs that are ultimately passed on to ratepayers. In addition, direct notice increases the time necessary to complete an application proceeding, due to the time required to notify all customers of the seller. This delay can adversely affect the public interest, as in the case of a troubled system or a system that has environmental challenges that need to be addressed quickly.

Second, NAWC objects to the proposed content of the notice. Acquisitions pursuant to Sections 1101-1103 have no immediate impact on rates, and predicting the impact on rates in the future is speculative. Moreover, in today's litigious society, the entity that sends the notice could be sued at some time in the future if the notice's predicted impact on rates and service is not as accurate or as thorough as a customer (with the benefit of hindsight) believes it should have been. If direct notice is required (which it should not be), the notice should be very similar to the newspaper notice that is currently given, advising customers of: the filing of the application, where they can get a copy of the application, the deadline for filing a protest or notice of intervention, etc.

B. Direct Notice to Property Owners

The OCA also recommends that the Commission require applicants to send direct notice of the application to property owners in the acquired service territory, if there is a mandatory connection ordinance in the service territory. OCA Comments p. 5.

NAWC opposes this requirement. It is unclear what benefit would be gained by telling customers that a mandatory connection ordinance that is currently in effect will continue to apply after the acquisition. Moreover, the OCA's proposal appears to be a second direct notice requirement, in addition to the direct notice that must be given to all customers of the system being acquired. Sending multiple notices to customers, with different contents, will cause confusion among customers of the seller. (It will also increase the cost of the proceeding, which will ultimately be passed on to ratepayers.) The Commission should not require that more than one direct notice to be sent to customers about any particular application.

If the proposal is for a notice that would only be sent to property owners who are not already customers of the system (and so would not receive the notice that OCA proposes be sent to customers), the Commission should consider the practical difficulties of complying with this requirement. The applicants would have difficulty identifying every property owner that is not a customer, in order to send a notice to them. This might require comparing the real estate tax rolls to the seller's customer list. NAWC questions whether the cost of this requirement is worth the benefits.

C. Length of Protest Period

The OCA supports maintaining the existing 60-day protest period after publication in the *Pennsylvania Bulletin*.³ NAWC disagrees that it is "unreasonable to expect the general public to

³ The Pennsylvania Municipal Authorities Association ("PMAA") also supports maintaining the 60-day protest period.

be able to respond in 30 days.”⁴ NAWC continues to believe that 30 days is adequate to review and evaluate an application in order to decide whether to become a party to the proceeding. If a person or corporation is interested in filing a protest, they should be required to do so promptly so that the proceeding may move forward without unreasonable delay. In this regard, it is worth noting that a protest is not an extensive legal pleading. The protestant simply has to establish its standing and explain why it opposes the application.⁵ The result of a protest filing is then a referral of the proceeding to the Commission’s Office of Administrative Law Judge for a full-fledged evidentiary proceeding at which a protestant can more-fully detail its opposition.⁶

II. REPLIES TO THE COMMENTS OF THE COALITION FOR AFFORDABLE UTILITY SERVICE AND ENERGY EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”)

NAWC opposes CAUSE-PA’s proposal to require applications to include an assessment of the impact of a proposed acquisition on the low income customers of the acquiring utility and the acquired utility, and to require applicants to provide a plan to mitigate any identified economic impact on these groups of customers. CAUSE-PA p. 5. NAWC also opposes CAUSE-PA’s

⁴ It should be noted that likely protestants – such as the public advocates, surrounding municipalities and nearby system operators – would have more than the required notice because of direct service of a copy of the application upon them when the application is originally filed with the Commission. It usually takes approximately two weeks for notice of an application to be published in the *Pennsylvania Bulletin*. Submissions to the *Pennsylvania Bulletin* must be provided to the Legislative Reference Bureau by the Wednesday of the week before the week of the Saturday edition of the *Pennsylvania Bulletin* in which the notice appears. This effectively provides the public advocates, surrounding municipalities, and nearby system operators with 75 days in which to file a simple protest – which is more than sufficient time.

⁵ A 60-day protest period stands in stark contrast to the 20-day filing deadline for other, much-more intensive responsive pleadings. *See, e.g.*, 52 Pa. Code §§ 5.61, 5.62 (providing for a 20-day period for the filing of an answer and new matter to a complaint or petition); *see also Pa.R.Civ.P.* 1361 (providing for a 20-day period to file an answer, new matter, and counterclaim to a civil complaint).

⁶ In recent years, there have also been significant delays in getting an initial prehearing conference scheduled before an Administrative Law Judge; thereby further delaying a transaction or extension of service that is necessary and proper for the service, convenience and accommodation of the public. Between awaiting the end of the protest period and awaiting the scheduling of a prehearing conference, it could take between 75 and 120 days just to get an application case started – depending on whether the application is protested.

recommendation that the Commission 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. CAUSE-PA p. 9.

Applications already include a discussion of how the acquisition will have substantial affirmative public benefits. As part of this discussion, most applications by Class A utilities discuss the benefits of the acquisition for low-income customers. In many cases, the seller has few if any programs for low-income customers, whereas the acquiring Class A public utility does have programs for low-income customers. As a result, applications already contain information establishing that the transaction benefits this segment of the public (as well as other segments of the public). The additional information requested by CAUSE-PA is not warranted in order to show that the transaction satisfies the applicable legal standard, and so should not be required in every case.

III. NAWC STANDS BY ITS COMMENTS REGARDING LEAD SERVICE LINES AND DAMAGED WASTEWATER SERVICE LATERALS

Finally, NAWC reiterates its Comments opposing the Commission’s proposal that a Class A water or wastewater acquisition application include “an inventory or estimate of lead service lines and damaged wastewater service laterals existing within the system.” NAWC Comments pp. 8-10. Class A utilities will be required to comply with the proposed regulations at 52 Pa. Code §§ 65.55 and 66.35 after the acquisition is completed, whereas, in many cases, the selling utility would not address the problem if the acquisition does not occur. NAWC respectfully submits that this simple fact powerfully demonstrates that the acquisition is in the public interest. Mounds of supporting information reinforcing this conclusion are not necessary.

IV. CONCLUSION

NAWC thanks the Commission for the opportunity to submit these Reply Comments on the NOPR Order. NAWC looks forward to working with the Commission and other stakeholders on the issues raised in the NOPR Order.

Respectfully submitted,



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