

COMMONWEALTH OF PENNSYLVANIA



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March 4, 2024

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

Re: Joint Application of PAWC and Appalachian Utilities, Inc. (Appalachian) for approval of the transfer to American Water Works Company, Inc. (American) by merger of all property of Appalachian used and useful in the public service.
Docket Nos. A-2024-3046084
A-2024-3046092

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceedings.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Deputy Consumer Advocate
PA Attorney I.D. # 50026
CHoover@paoca.org

Enclosures:

cc: The Honorable Charles E. Rainey (**email only:** crainey@pa.gov)
Paul Diskin, BTUS (**email only:** pdiskin@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

*4857-2045-8667

CERTIFICATE OF SERVICE

Joint Application of PAWC and :
Appalachian Utilities, Inc. (Appalachian) :
for approval of the transfer to American : Docket No. A-2024-3046084
Water Works Company, Inc. (American) : A-2024-3046092
by merger of all property of Appalachian :
used and useful in the public service. :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, upon 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:

Dated this 4th day of March 2024.

SERVICE BY E-MAIL ONLY

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Phone: (717) 783-5048
Dated: March 4, 2024
*4877-5089-5275

Melanie J. El Atieh
Senior Assistant Consumer Advocate
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of PAWC and Appalachian Utilities, Inc. (Appalachian) for approval of the transfer to American Water Works Company, Inc. (American) by merger of all property of Appalachian used and useful in the public service. :
: Docket No. A-2024-3046084
: Docket No. A-2024-3046092

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to 52 Pa. Code §§ 5.51, *et seq.*, the Office of Consumer Advocate (OCA) files with the Pennsylvania Public Utility Commission (Commission) this Protest to the Joint Application of Pennsylvania-American Water Company (PAWC) and Appalachian Utilities, Inc. (Appalachian). In support of this Protest, the OCA provides the following information:

1. The protestant is:

Patrick Cicero, Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
717-783-5048

Throughout this Protest, the protestant will be referred to as the Office of Consumer Advocate or OCA.

2. The OCA's attorneys are:

Christine Maloni Hoover
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3. The OCA is authorized by law to represent the interests of Pennsylvania's utility consumers in all matters before the Commission. 71 Pa. Stat. Ann. §§ 309-1 *et seq.* (Purdon's 1990).

4. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102(a)(1)-(3).

5. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a). *See City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1973) (*City of York*); *see also Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007). Moreover, the proposed transaction must "affirmatively promote the service,

accommodation, convenience, or safety of the public in some substantial way.” *City of York* at 828.

6. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

7. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this Application.

a. PAWC states that it “The Transaction will have no immediate effect on the rates for water service to be charged to Pennsylvania-American and Appalachian’s existing customers.” Application ¶ 27. As the Application does not provide information regarding original cost and accumulated depreciation of the Appalachian water utility plant in service and PAWC has not yet performed an original cost study, it is not known what American’s claimed addition to rate base will be. While the amount of rate base addition, and thus the impact on revenue requirement, will not be known/determined until the future base rate case when the Appalachian assets are included, the uncertainty is exacerbated because it is not known whether PAWC will seek an acquisition adjustment under Section 1327 of the Public Utility Code, 66 Pa. C.S. § 1327. The risk associated with a potential, future claim for an acquisition adjustment should be considered in assessing the reasonableness of the proposed transaction.

b. The Application does not provide sufficient information to support a finding that acquired and existing customers will affirmatively benefit as a result of this proposed transaction. Application ¶¶ 23-25. PAWC should furnish the record with additional information to assist the Commission's determination whether to approve the transaction and whether conditions on such approval are necessary.

8. It is possible that the OCA's issues will be resolved through the exchange of information by formal and informal discovery. Thus, the OCA files this Protest, in part, to allow the parties time to explore this possibility and collect the facts necessary to complete the record before the Commission.

WHEREFORE, the OCA respectfully requests that the application not be granted at this time. The OCA respectfully requests that the Application be referred to the Office of Administrative Law Judge for further proceedings and hearings.

Respectfully submitted,

/s/Christine Maloni Hoover
Christine Maloni Hoover
Deputy Consumer Advocate
PA Attorney I.D. # 50026
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Melanie El Atieh
Senior Assistant Consumer Advocate
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Dated: March 4, 2024

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the Joint Application filed by Pennsylvania-American Water Company (PAWC) and Appalachian Utilities, Inc. (Appalachian).

On August 3, 2023, PAWC and Appalachian jointly filed an Application under Section 1102(a) of the Public Utility Code for approval of a transfer by merger. The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interests of PAWC and Appalachian customers. Through its participation in this proceeding, the Consumer Advocate seeks to prevent ratepayers from paying costs that are unreasonable or otherwise violative of the Public Utility Code. The Consumer Advocate will investigate the proposed transaction and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

PAWC provides water services for more than 680,000 customers across Pennsylvania. Appalachian serves approximately 1,456 customers in the Borough of Avis and Townships of Pine Creek and Dunnstable, Clinton County, Pennsylvania.