

COMMONWEALTH OF PENNSYLVANIA



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March 29, 2024

Via Electronic Filing

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

Re: Application of Appalachian Utilities, Inc.
for a Certificate of Public Convenience
Evidencing the Pennsylvania Public Utility
Commission's Approval of the Transfer of
40% of Outstanding and Issued Stock in
Appalachian Utilities, Inc. /
Docket No. A-2024-3046084,
A-2024-3046092,
A-2024-3046068

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Melanie Joy El Atieh
Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. # 209323
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Enclosures:

cc: The Honorable ALJ Conrad Johnson (**email only**: cojohnson@pa.gov)
The Honorable ALJ Charece Collins (**email only**: charcollin@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Joint Application of PAWC and :
Appalachian Utilities, Inc. (Appalachian) :
for approval of the transfer to American : Docket Nos. A-2024-3046084
Water Works Company, Inc. (American) : A-2024-3046092
by merger of all property of Appalachian : A-2024-3046068
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 Prehearing Memorandum, 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 31st day of May 2024.

SERVICE BY E-MAIL ONLY

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/s/ Melanie Joy El Atieh
Melanie Joy El Atieh
Deputy Consumer Advocate
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Dated: May 31, 2024

Pennsylvania Office of Consumer Advocate (OCA) submits the following Prehearing Conference Memorandum.

I. INTRODUCTION AND PROCEDURAL HISTORY

On February 2, 2024, Pennsylvania American Water Company (PAWC) and Appalachian Utilities, Inc. (Appalachian) (collectively, the Joint Applicants), filed a joint application (Joint Application) pursuant to Section 1102 and 1103 of the Code, 66 Pa. C.S. §§ 1102, 1103, requesting an order granting Certificate of Public Convenience (CPC) authority to: (1) the transfer, to American Water Works Company, Inc. (AWK), by merger, of all property of Appalachian used or useful in the public service, (2) the transfer, to PAWC, by merger of all property of Appalachian used or useful in the public service, (3) the right of PAWC to begin to offer, render, furnish and supply water service to the public in the Borough of Avis and Townships of Pine Creek and Dunnstable, Clinton County, Pennsylvania, currently served by Appalachian, and (4) the abandonment by Appalachian of all water service to the public. Application ¶ 1.

Appalachian is a regulated public utility corporation since October 26, 1995 organized and existing under the laws of the Commonwealth of Pennsylvania engaged in treating, storing, supplying, distributing, and providing water service to approximately, 1,456 customers of which 1,353 are residential, 83 are commercial, 3 are industrial, 7 are public, 9 are fire protection and 1 is other within Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County (“System”). Application ¶ 4.

On March 4, 2024, the OCA filed a Protest to the Joint Application pursuant to 52 Pa. Code Sections 5.51, *et seq.* to protect the interests of PAWC and Appalachian’s water customers. Additional information is required to determine if approval of the Joint Application is necessary for the accommodation or convenience of the public.

II. ISSUES

Based upon a preliminary analysis of the Joint Application, the OCA has compiled a list of issues. They are as follows:

1. Section 1103 requires that the proponents of a merger demonstrate that the merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. 66 Pa. C.S. § 1103(a); *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). As such, the OCA submits that additional information is required to determine if approval of the Joint Application is in fact necessary for the accommodation or convenience of the public. The law is clear that, for an acquisition to be approved, there must be a showing of substantial affirmative benefits.
2. The Joint Application provides general assurances that the proposed transaction will have “no detrimental effect on the water service” provided to current PAWC and Appalachian customers. Application ¶ 23. The OCA submits that this broad promise deserves significant scrutiny for all impacted customers. The provisions of the Application may not be in the public interest and the Commission must carefully scrutinize all of related issues. The proposed tariffs and rates will need to be thoroughly reviewed to ensure that they comply with all applicable Commission regulations and the laws of Pennsylvania.
3. PAWC has failed to provide sufficient information in the application to fully address the rate impact associated with this case and its various rate proposals. While rates will not be determined in this case, the rate impact of the proposed acquisition must be considered in this case when weighing the relative merits of whether this application should be approved. It is also not known whether PAWC will seek acquisition adjustments under Section 1327 of the Public Utility Code, 66 Pa. C.S. Section 1327, for the system. The risk associated with a potential future claim for acquisition adjustments should be considered in assessing the reasonableness of the proposed transaction.

The OCA submits that the proposed tariffs and rates will need to be thoroughly reviewed to ensure that they are in compliance with all applicable Commission regulations and the laws of

Pennsylvania. The OCA reserves the right to address any additional issues that arise during the course of the proceeding.

III. DISCOVERY

The OCA has served one set of interrogatories on the Joint Applicants to date. The OCA proposes that all future discovery due dates should be “in-hand” and electronic service on the due date will satisfy that requirement. The OCA further proposes that hard copy service of discovery responses should not be required.

This proceeding is not under a statutory timeline, and as a result the OCA’s requested modification are as follows:

1. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes shall be served within ten (15) calendar days of service of the interrogatories or requests for production.
2. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within five (5) calendar days of service; unresolved objections shall be served in writing on the propounding party within eight (8) calendar days of service of the interrogatories and/or requests for production.
3. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within seven (7) calendar days of service of written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within three (3) calendar days of service of such motions.

5. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.

6. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

7. Answers to on-the-record data requests will be served within five (5) calendar days.

IV. WITNESSES

The OCA has identified Morgan DeAngelo, OCA Regulatory Analyst, as a witness is in this proceeding and is in the process of securing additional potential expert witnesses for this matter. The OCA will promptly advise the ALJ and parties when its witnesses and their area of testimony is determined.

The OCA specifically reserves the right to call additional witnesses, as necessary. If the OCA determines that additional witnesses will be necessary for any portion of its case, it will notify all parties of record immediately.

V. PROPOSED SCHEDULE AND AMOUNT OF TIME NEEDED FOR HEARINGS

The OCA requests that the dates included in any litigation schedule in this matter be considered “in-hand” dates and that electronic service on the due date will satisfy the “in-hand” requirement, without provision of hard copies.

Due to the unavailability of the OCA witness between July 26 and August 12, the OCA proposes the following schedule if an expedited transcript is ordered for briefing; however, the OCA remains open to discussing dates with counsel and the ALJs for purposes of setting a litigation schedule:

<u>Date</u>	<u>Event</u>
July 2, 2024 or ?	Joint Applicants' Direct Testimony
August 16, 2024	Other Parties' Direct Testimony
August 30, 2024	Rebuttal Testimony
September 16, 2024	Surrebuttal Testimony
September 26, 2024	Written Rejoinder
October 2, 2024	Telephonic Evidentiary Hearings
October 23, 2024	Main Briefs
November 6, 2024	Reply Briefs

VI. PUBLIC INPUT HEARING

At this time, the OCA is not requesting a Public Input Hearing. However, the OCA reserves the right to make such request if the OCA determines that one is necessary.

VII. CUSTOMER NOTICE

It is not specified in the Joint Application if direct notice has been provided to the Appalachian customers. If not, the OCA requests that the Joint Applicants be directed to provide direct notice within a reasonable period.

VIII. SERVICE ON THE OCA

The OCA will be represented in this case by Deputy Consumer Advocate, Melanie Joy El Atieh. All documents should be served on the OCA as follows:

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IX. SETTLEMENT

The OCA will participate in settlement discussions in this matter at the appropriate time.

Respectfully submitted,

/s/ Melanie Joy El Atieh
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Counsel for:
Patrick M. Cicero
Consumer Advocate

DATED: May 31, 2024