



June 18, 2024

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VIA E-FILE

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

Re: Joint Application of Pennsylvania-American Water Company and Appalachian Utilities, Inc. Pursuant to Section 1102 of the Public Utility Code, for Approval of (1) the Transfer to American Water Works Company, Inc., by Merger, of All Property of Appalachian Utilities, Inc. Used and Useful in the Public Service; (2) the Transfer to Pennsylvania-American Water Company, by Merger, of All Property of Appalachian Utilities, Inc. Used or Useful in the Public Service, (3) the Right of Pennsylvania-American Water Company 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, and (4) the Abandonment by Appalachian Utilities, Inc. of All Water Service; Docket Nos. A-2024-3046068, A-2024-3046084, and A-2024-3046092

Petition for Protective Order

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is a Petition for Protective Order ("Petition"). As stated in the Petition, no party objects to the Petition. A copy of this filing is being served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito

Counsel for *Pennsylvania-American Water Company*

DPZ

Enclosures

cc: Honorable Administrative Law Judge Conrad A. Johnson
Honorable Administrative Law Judge Charece Z. Collins
Per Certificate of Service
Erin Fure, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Pennsylvania-American Water :
Company and Appalachian Utilities, Inc., Pursuant :
to Section 1102 of the Public Utility Code, for :
approval of (1) the transfer to American Water :
Works Company, Inc., by merger, of all property of :
Appalachian Utilities, Inc. used and useful in the :
public service; (2) the transfer to Pennsylvania- : Docket Nos. A-2024-3046068
American Water Company, by merger, of all : A-2024-3046084
property of Appalachian Utilities, Inc. used or useful : A-2024-3046092
in the public service, (3) the right of Pennsylvania- :
American Water Company 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, and (4) :
the abandonment by Appalachian Utilities, Inc. of all :
water service :

CERTIFICATE OF SERVICE

I hereby certify that I am this 18th day of June, 2024, serving the foregoing **Petition for Protective Order** upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by E-mail

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Respectfully submitted,



David P. Zambito, Esq.
Counsel for *Pennsylvania-American Water Company*

VERIFICATION

I, MICHAEL SALVO, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: JUNE 18, 2024



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE CHARECE Z. COLLINS
ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON**

Joint Application of Pennsylvania-American :
Water Company and Appalachian Utilities, :
Inc., Pursuant to Section 1102 of the Public :
Utility Code, for approval of (1) the transfer to :
American Water Works Company, Inc., by :
merger, of all property of Appalachian : Docket Nos. A-2024-3046068
Utilities, Inc. used and useful in the public : A-2024-3046084
service; (2) the transfer to Pennsylvania- : A-2024-3046092
American Water Company, by merger, of all :
property of Appalachian Utilities, Inc. used or :
useful in the public service, (3) the right of :
Pennsylvania-American Water Company 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, and (4) the :
abandonment by Appalachian Utilities, Inc. of :
all water service :

PETITION FOR PROTECTIVE ORDER

Pennsylvania-American Water Company (“PAWC”) and Appalachian Utilities, Inc. (“Appalachian”) (collectively, the “Joint Applicants”) file this petition pursuant to 52 Pa. Code § 5.365 for the protection from public disclosure of certain confidential and proprietary information that the Joint Applicants have submitted to and exchanged in discovery in the above matter and which the Joint Applicants anticipate submitting to and exchanging with the

Pennsylvania Public Utility Commission (“Commission”) and the parties during the course of these proceedings. In support, the Joint Applicants state as follows:

I. Procedural History

A. Docket Nos. A-2024-3046084 and A-2024-3046092

1. On September 22, 2023, American Water Works Company, Inc. (“American”), AUC Acquisition Company, LLC (“AUC”), Appalachian, and Frank R. Sargent, Jr., as sole shareholder of Appalachian, entered into an Agreement and Plan of Merger (“Merger Agreement”) by which American agreed to acquire Appalachian through the statutory merger of AUC with and into Appalachian (“AUC-Appalachian Merger”), with Appalachian as the surviving corporation. Promptly following the AUC-Appalachian Merger, Appalachian will be merged with and into PAWC, and PAWC will continue as the surviving corporation.

2. On February 2, 2024, the Joint Applicants filed a joint application (“Application”) at Docket Nos. A-2024-3046084 and A-2024-3046092 asking the Commission to approve the transfer, by merger, to American, and subsequently to PAWC, of all property and rights of Appalachian used or useful in the public service in accordance with the Merger Agreement under Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa C.S. § 1102(a). In the Application, PAWC also requested the Commission to grant PAWC the right to offer or furnish water service to the public in the Borough of Avis and Townships of Pine Creek and Dunnstable, Clinton County, Pennsylvania that are currently served by Appalachian.

3. On March 4, 2024, Sharon E. Webb, Esquire on behalf of the Office of Small Business Advocate (“OSBA”) filed a Protest, Notice of Appearance, Notice of Intervention, Public Statement and Verification in this proceeding.

4. On March 4, 2024, Melanie J. El Atieh, Esquire and Christine Maloni Hoover, Esquire on behalf of the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement in this proceeding.

5. On March 4, 2024, PAWC filed its Proof of Publication.

6. On March 28, 2024, David P. Zambito, Esquire and Jonathan P. Nase, Esquire entered their appearances as additional counsel for PAWC.

7. On March 29, 2024, the OCA filed a Withdrawal of Appearance of Christine Maloni Hoover, Esquire.

8. On May 10, 2024, a Call-In Prehearing Conference Notice was issued scheduling a prehearing conference for June 4, 2024 before ALJs Johnson and Collins at 1:00 p.m.

9. On May 15, 2024, ALJs Johnson and Collins issued a Prehearing Conference Order.

10. On May 31, 2024, PAWC, Appalachian, and the OCA filed Prehearing Conference Memoranda.

11. The Prehearing Conference was held as scheduled on June 4, 2024. At that time, a procedural schedule was agreed-to, as were discovery rule modifications.

B. Docket No. A-2024-3046068

12. On February 2, 2024, Appalachian filed an Application for approval to transfer by sale a non-controlling 40% of outstanding and issued stock from its sole shareholder to its employee Operations Manager. This application is a preliminary and related first step toward the ultimate sale and merger of Appalachian into PAWC.

13. On February 15, 2024, Appalachian filed its proof of publication.

14. On March 4, 2024, the OSBA filed its Notice of Intervention, Public Statement and Verification. Sharon E. Webb, Esq., also entered her Notice of Appearance

15. On March 4, 2024, Melanie J. El Atieh, Esquire and Christine Maloni Hoover, Esquire on behalf of the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement in this proceeding.

16. On March 29, 2024, the OCA filed a Withdrawal of Appearance of Christine Maloni Hoover, Esquire.

17. On May 10, 2024, a Call-In Prehearing Conference Notice was issued scheduling a prehearing conference for June 4, 2024 before ALJs Johnson and Collins at 1:00 p.m.

18. On May 15, 2024, ALJs Johnson and Collins issued a Prehearing Conference Order.

19. On May 31, 2024, Appalachian, the OSBA and the OCA filed Prehearing Conference Memoranda.

20. The Prehearing Conference was held as scheduled on June 4, 2024. At that time, Docket No. A-2024-3046068 was consolidated with Docket Nos. A-2024-3046084 and A-2024-3046092.

II. Background

21. The Joint Application and discovery materials that have already been exchanged, along with additional materials that the Joint Applicants anticipate exchanging in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or as a courtesy to parties, contain information that the Joint Applicants consider confidential and proprietary.

III. Legal Standards

22. Section 5.365(a) of the Commission’s regulations provide that a petition for protective order will be granted “when a party demonstrates that the potential harm to the party of

providing the [confidential or proprietary] information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process." The factors that the Commission evaluates include: "(1) The extent to which the disclosure would cause unfair economic or competitive damage. (2) The extent to which the information is known by others and used in similar activities. (3) The worth or value of the information to the party and to the party's competitors. (4) The degree of difficulty and cost of developing the information. (5) Other statutes or regulations dealing specifically with disclosure of the information." *See* 52 Pa. C.S. § 5.365(a)(1)-(5).

IV. The ALJ Should Issue the Requested Protective Order

23. Disclosure of confidential and proprietary information contained in the materials the Joint Applicants have exchanged, or anticipate will be exchanged during these proceedings, would cause the Joint Applicants unfair economic or competitive disadvantage because the information that the Joint Applicants would seek to protect is not generally known, is valuable to the Joint Applicants, derives value in part due to the Joint Applicants' efforts to maintain the confidentiality of the information, and could be valuable to competitors (and, in turn, harmful to the Joint Applicants) if disclosed publicly.

24. The issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to be confidential or proprietary would serve administrative economy and efficiency by obviating the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

25. The proposed protective order included with this Petition is in the usual accepted form, consistent with due process rights and evidentiary burdens. It allows parties to retain the right to question or challenge the confidential or proprietary nature of information; to challenge the admissibility of confidential or proprietary information; to refuse or object to the production of confidential or proprietary information on any proper ground; to seek disclosure of confidential or proprietary information beyond that allowed in the Protective Order; and to seek additional measures of protection beyond those provided in the Protective Order. The Protective Order also provides that the party claiming that the information is confidential or proprietary retains the burden of demonstrating that such designation is necessary and appropriate.

26. Counsel for the Joint Applicants contacted Counsel for the OSBA and OCA, and they advise that they do not object to the entry of the proposed protective order.

WHEREFORE the Joint Applicants respectfully request that the Honorable Administrative Law Judges Conrad A. Johnson and Charece Z. Collins enter the Protective Order included with this Petition.

Respectfully submitted,



David P. Zambito, Esquire (PA ID #80017)
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Counsel for *Pennsylvania-American Water Company*

Date: June 18, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE CHARECE Z. COLLINS
ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON**

Joint Application of Pennsylvania-American :
Water Company and Appalachian Utilities, :
Inc., Pursuant to Section 1102 of the Public :
Utility Code, for approval of (1) the transfer to :
American Water Works Company, Inc., by :
merger, of all property of Appalachian : Docket Nos. A-2024-3046084
Utilities, Inc. used and useful in the public : A-2024-3046092
service; (2) the transfer to Pennsylvania- :
American Water Company, by merger, of all :
property of Appalachian Utilities, Inc. used or :
useful in the public service, (3) the right of :
Pennsylvania-American Water Company 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, and (4) the :
abandonment by Appalachian Utilities, Inc. of :
all water service :

PROTECTIVE ORDER

THEREFORE, upon consideration of the petition for protective order filed by Pennsylvania-American Water Company (“PAWC”) and Appalachian Utilities, Inc. (“Appalachian”) (collectively, the “Joint Applicants”) in the above matters and any response thereto,

IT IS ORDERED:

1. That the Petition for a Protective Order is granted with respect to all materials and information identified in Paragraph 2 below, which are filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That materials subject to this Protective Order are all correspondence, documents, data, information, excerpts, summaries, studies, methodologies and other materials (including materials derived therefrom) which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or provided as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY INFORMATION” or “CONFIDENTIAL AND PROPRIETARY” or “PRIVILEGED AND CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”).

3. That, in addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL MATTER” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Protective Order pertaining to such material.

4. That Proprietary Information and Highly Confidential Information produced in this proceeding shall be made available, solely for use in this proceeding, to PAWC; Appalachian; the Office of Consumer Advocate (“OCA”); and the Office of Small Business Advocate (“OSBA”); and additional parties, if any. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

5. That Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel, upon execution of the attached Appendix A, may afford access to Proprietary Information made available by another party ("the producing party") to the party's expert(s) and staff (except that the Consumer Advocate, the Deputy Consumer Advocate, the Small Business Advocate, and support staff in OCA and OSBA need not execute Appendix A, provided that OCA's and OSBA's counsel execute Appendix A). Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding. Any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b. Highly Confidential Information. Where information is asserted to be Highly Confidential Information, it will be made available for inspection and review as provided for in this Protective Order and copying only as specified herein. The producing party shall permit counsel for PAWC, Appalachian, OCA and OSBA and other counsel to take custody of a copy of such Highly Confidential Information, provided that it shall not be copied, except for counsel, and PAWC's, Appalachian's, the OCA's, and the OSBA's in-house staff, independent consultants, or non-lawyer representatives, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by the OCA or OSBA to the Consumer Advocate, the Deputy Consumer Advocate, the Small Business Advocate, or eligible in-house staff without the need for execution of Appendix A. Additionally, such Highly Confidential Information may be provided by the OCA or OSBA or other counsel to its eligible independent consultants (as defined in 52 Pa. Code § 5.365(d)) or other non-lawyer representatives who are assisting counsel with these proceedings, provided that

such consultants and non-lawyer representatives execute and return the attached Appendix A to the producing party pursuant to Paragraph 6 of this Protective Order.

c. No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information, shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall, except as specifically exempted under Paragraph 5(b) of this Protective Order, deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as Appendix A. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or type-written designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

8. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

9. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in paragraph 8 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to Order of the Administrative Law Judge, the Commission or appellate court. Unresolved challenges arising under paragraph 10 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

10. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. This Protective Order shall continue to be binding throughout and after the conclusion of this proceeding.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties

may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: _____

Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADMINISTRATIVE LAW JUDGE CHARECE Z. COLLINS
ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON

Joint Application of Pennsylvania-American :
Water Company and Appalachian Utilities, :
Inc., Pursuant to Section 1102 of the Public :
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Pennsylvania-American Water Company 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, and (4) the :
abandonment by Appalachian Utilities, Inc. of :
all water service :

ACKNOWLEDGMENT

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the receiving party).

The undersigned has read the Protective Order dated _____, 2024, and understands that it deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of paragraph 5 of the Protective Order prior to submitting this Acknowledgement.

[Signature appears on next page.]

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE