



October 23, 2024

**VIA E-FILE**

**David P. Zambito**

Direct Phone 717-703-5892  
Direct Fax 215-989-4216  
dzambito@cozen.com

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, A-2024-3046092

**Main Brief of Pennsylvania-American Water Company**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Public Version of the Main Brief of Pennsylvania-American Water Company in the above-referenced proceedings. The Proprietary Version of the Main Brief will be filed via Sharepoint. A copy of this document has been 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

Enclosure

cc: 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 :           Docket Nos. A-2024-3046068  
Water Works Company, Inc., by merger, of all :                           A-2024-3046084  
property of Appalachian Utilities, Inc. used and :                           A-2024-3046092  
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 :

**CERTIFICATE OF SERVICE**

I hereby certify that I am this 23<sup>rd</sup> day of October, 2024, serving the foregoing **Main Brief of Pennsylvania-American Water Company** 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**

Thomas J. Sniscak, Esq.  
Todd S. Stewart, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth St.  
Harrisburg, PA 17101  
tjsniscak@hmslegal.com  
tsstewart@hmslegal.com  
Counsel for *Appalachian Utilities, Inc.*

Sharon E. Webb, Esq.  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1st Floor  
Harrisburg, PA 17101  
swebb@pa.gov  
Counsel for *Office of Small Business Advocate*

Kevin Higgins  
Energy Strategies  
111 East Broadway, Suite 1200  
Salt Lake City, UT 84111  
khiggins@energystrat.com  
Consultant for *Office of Small Business Advocate*

Melanie J. El Atieh, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
MelAtieh@paoca.org  
Counsel for *Office of Consumer Advocate*

Morgan DeAngelo  
Regulatory Analyst  
Office of Consumer Advocate  
555 Walnut Street,  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
MDeAngelo@paoca.org

Respectfully submitted,



---

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Joint Application of Pennsylvania-American :  
Water Company and Appalachian Utilities, :  
Inc., Pursuant to Section 1102 of the Public : Docket Nos. A-2024-3046084  
Utility Code, for approval of (1) the transfer to : A-2024-3046092  
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 :

**MAIN BRIEF OF PENNSYLVANIA-AMERICAN  
WATER COMPANY (PUBLIC VERSION)**

Erin K. Fure, Esq. (PA ID 312245)  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Telephone: 717-550-1556  
E-mail: Erin.Fure@amwater.com

David P. Zambito, Esq. (PA ID 80017)  
Jonathan P. Nase, Esq. (PA ID 44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: 717-703-5892  
Facsimile: 215-989-4216  
E-mail: dzambito@cozen.com  
E-mail: jnase@cozen.com

*Counsel for Pennsylvania-American  
Water Company*

Dated: October 23, 2024

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AND NOW COMES Pennsylvania-American Water Company (“PAWC” or the “Company”), pursuant to 52 Pa. Code § 5.501 and the Prehearing Order issued in this matter on June 13, 2024, to file this Main Brief. For the reasons set forth herein, PAWC respectfully requests that Administrative Law Judge Conrad A. Johnson (the “ALJ”) recommend approval of, and that the Pennsylvania Public Utility Commission (“Commission”) approve, (a) the application filed by Appalachian Utilities, Inc. (“Appalachian”) on February 2, 2024 (“Appalachian’s Application”); and (b) the joint application filed by PAWC and Appalachian (the “Joint Applicants”) on February 2, 2024 (the “Joint Application”).

### **I. Procedural History**

On February 2, 2024, Appalachian filed its Application requesting Commission approval of a transfer of 40% of Appalachian’s stock from Frank R. Sargent, Jr. to Kyle Gallagher (the “Stock Transfer”). Additional information about the Stock Transfer is provided in Section II.B., *infra*. Appalachian’s Application received Docket No. A-2024-3046068. Notice of Appalachian’s Application was published in the Pennsylvania Bulletin, 54 Pa. B. 911 (Feb. 17, 2024) and The Lock Haven Express.

Also on February 2, 2024, the Joint Applicants filed the Joint Application requesting Commission approval of the acquisition, by merger, of Appalachian (the “Transaction”). Detailed information about the Transaction is provided in Section II.C, *infra*. The Joint Application received Docket Nos. A-2024-3046084 and A-2024-3046092. Notice of the Joint Application was published in the Pennsylvania Bulletin, 54 Pa. B. 911 (Feb. 17, 2024) and The Lock Haven Express.

Appalachian’s Application and the Joint Application were consolidated for purposes of hearing and disposition.

On March 4, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Public Statement and Verification. The OSBA is represented in this matter by Sharon E. Webb, Esq. Also on March 4, 2024, Christine Maloni Hoover, Esq. and Melanie J. El Atieh, Esq., entered their appearances on behalf of the Office of Consumer Advocate (“OCA”). On March 29, 2024, Ms. Hoover withdrew her appearance.

On March 28, 2024, David P. Zambito, Esq. and Jonathan P. Nase, Esq., entered their notices of appearance as additional counsel on behalf of PAWC.

The case was assigned to the ALJ and Administrative Law Judge Charece Collins (together, the “ALJs”). On May 10, 2024, the Commission issued a notice of a Prehearing Conference to be held on June 4, 2024. The ALJs issued their Prehearing Conference Order on May 15, 2024. Appalachian, PAWC, the OCA and the OSBA filed Prehearing Memoranda. The Prehearing Conference was held as scheduled on June 4, 2024. The ALJs issued their Prehearing Order on June 13, 2024.

On June 18, 2024, PAWC and Appalachian filed a Petition for Protective Order. They represented that the OSBA and the OCA did not object to the proposed protective order. An Order Granting Petition for Protective Order was issued on June 26, 2024.

On August 7, 2024, the Commission issued a Judge Change Notice indicating that Administrative Law Judge Collins was no longer assigned to this matter.

On October 2, 2024, an Evidentiary Hearing was held before the ALJ, at which time the parties’ written testimony and exhibits were admitted into the evidentiary record.

## **II. Statement of the Case**

### **A. Appalachian and Its Water System**

Appalachian provides water service to the public in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County. As of February 2024, Appalachian furnished water service to approximately 1,456 customers. AUS St. No. 1 p. 1.

Appalachian's water system (the "System") consists of two systems that normally run separately but are interconnected in case the need arises to feed water from one system to the other. PAWC St. No. 2 p. 2. The Woolrich system has two wells and 1,000,000 gallons of storage. PAWC St. No. 2 p. 3. The Avis system has two wells. Finished water from these wells is supplied to the distribution system or is stored in the 1,000,000 gallon Avis Storage Reservoir. PAWC St. No. 2 p. 3. A map of Appalachian's service territory can be found at PAWC Exhibit MJG-2.

### **B. The Stock Transfer**

Appalachian's Application seeks Commission approval of a transfer of 40% of Appalachian's stock from Frank R. Sargent, Jr. (the President, Director and sole shareholder of Appalachian) to Kyle Gallagher (the Co-Director and Operations Manager of Appalachian). This transfer is intended to reward the loyalty and dedication of a key employee of Appalachian. AUI St. No. 1 p. 2. After the stock transfer, until closing on the Transaction ("Closing"), Mr. Sargent will remain the majority shareholder in Appalachian, holding 60% of the shares of Appalachian stock.

The stock transfer would occur prior to, and is contingent upon, PAWC's acquisition of Appalachian in the Transaction. After Closing, Mr. Sargent will retire and Mr. Gallagher will become an employee of PAWC. AUI St. No. 1 pp. 2-3.

### **C. The Transaction**

The Joint Application seeks Commission approval of a transaction by which PAWC will ultimately acquire Appalachian. American Water Works Company (“American”); AUI Acquisition Company, LLC (the “Merger Sub”); Appalachian and Mr. Sargent entered into an Agreement and Plan of Merger (“Merger Agreement”), which provides for a two-step acquisition process. **PAWC Exhibit MK-1 (CONFIDENTIAL)**. First, the Merger Sub will merge with and into Appalachian, with Appalachian as the surviving corporation (the “Appalachian – Merger Sub Merger”). Second, Appalachian will merge with and into PAWC, with PAWC as the surviving corporation (the “PAWC – Appalachian Merger”). PAWC St. No. 1 p. 5.

At the effective time of the Appalachian – Merger Sub Merger, all issued and outstanding shares of the capital stock of Appalachian will be cancelled and extinguished and converted to the right to receive American Common Stock equal to the merger consideration. At the time of the Appalachian – Merger Sub Merger Closing, PAWC and Appalachian will be affiliated with each other. Both entities will be wholly-owned subsidiaries of American. PAWC St. No. 1 p. 5.

Promptly following the Appalachian – Merger Sub Merger, Appalachian will be merged with and into PAWC and PAWC will continue as the surviving corporation. Appalachian will then cease to exist. PAWC St. No. 1 p. 6.

### **III. Legal Standards**

#### **A. Burden of Proof**

The Joint Applicants are the parties seeking affirmative relief from the Commission. Therefore, they have the burden of proof in these proceedings. 66 Pa. C.S. § 332(a). The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

The burden of production determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party with the burden of production fails to introduce sufficient evidence, the opposing party is entitled to receive a favorable ruling. Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to its position. The burden of production goes to the legal sufficiency of a party's case.

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (1993). To establish a sufficient case and satisfy their burden of proof, the Joint Applicants must show, by a preponderance of the evidence, that they are entitled to the relief they are seeking. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, their evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

**B. Section 1103 of the Pennsylvania Public Utility Code**

Pursuant to Section 1103 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1103(a), the Commission may issue a certificate of public convenience (“Certificate”) upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” A Certificate is required 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 previously authorized by the Commission. 66 Pa. C.S. § 1102(a)(1). A Certificate is also required for any public utility to abandon service. 66 Pa. C.S. § 1102(a)(2). Finally, a Certificate is required for any public utility or an affiliated interest of a public utility to transfer to any person or corporation, by any method (including the sale or transfer of stock and including a merger), any tangible or intangible property used and useful in the public service. 66 Pa. C.S. § 1102(a)(3).

An applicant for a Certificate must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwltth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1985). A currently certificated public utility is rebuttably presumed to be fit. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwltth. 1992).

A Certificate is to be granted “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.” 66 Pa. C.S. § 1103(a). An applicant for a Certificate must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828

(1972). This standard is known as the affirmative public benefits test. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1052-1053 (Pa. 2007).

In determining whether an acquisition passes the affirmative public benefits test, the Commission is to weigh all factors for and against the acquisition. *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlth. 2018) *alloc. denied*, No. 703 MAL 2018 (Pa. Apr. 23, 2019). The Commission is to consider the acquisition's impact on all affected parties, not merely a particular group or a particular geographic area. *Middletown Tp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674, 683 (Pa. Cmwlth. 1984). Nevertheless, for an acquisition to pass the affirmative public benefits test, it is not necessary that every customer benefit from the acquisition, *Popowsky*, 937 A.2d at 1061, nor must the acquisition be absolutely necessary. *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014).

The affirmative public benefits test is a "net benefits assessment." This requires a showing that, on net, the public is better off because of the transaction than it would have been in the absence of the transaction. *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, Nos. 568-570 MAL 2023 (Pa. Jun. 14, 2024).

In granting a Certificate, the Commission may impose such conditions as it deems just and reasonable. 66 Pa. C.S. § 1103(a).

### **C. Section 2102**

Section 2102 of the Code, 66 Pa. C.S. § 2102, requires that written and unwritten agreements between a public utility and an affiliated interest be filed with the Commission for approval. "The commission shall approve such [affiliated interest] contract or arrangement . . . if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest." 66 Pa. C.S. § 2102(b).

#### **D. Transfer of Stock**

The Commission has jurisdiction over a “transaction or series of transactions resulting in the elimination of a controlling interest” of utility stock when “the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent.” 52 Pa. Code § 69.901(b)(2). In this case, a series of transactions will result in the complete elimination of the controlling interest in Appalachian (Mr. Sargent will ultimately go from the owner of 100% of Appalachian’s stock to a holder of 0% of Appalachian’s stock (but will hold stock in American)).

#### **IV. Summary of Argument**

This case centers around two issues:

1. Does the Transaction affirmatively benefit the public in a substantial way? This question should be answered in the affirmative.

The Joint Applicants have established a *prima facie* case that the Transaction’s benefits outweigh its detriments for each of the major stakeholder groups affected by the Transaction: the public-at-large (all residents of the Commonwealth, whether or not they are customers of PAWC or Appalachian), the sellers, Appalachian’s existing customers, PAWC, PAWC’s existing water customers, and PAWC’s existing wastewater customers. In part, this is because the Transaction does not have a material adverse rate impact for Appalachian’s existing customers or PAWC’s existing customers, even if PAWC retains the right to request an acquisition adjustment to place the full amount of the purchase price into rate base. No party has rebutted that *prima facie* case. Since the Transaction benefits all affected stakeholder groups, the Transaction affirmatively benefits the public in a substantial way.

Even if the Transaction’s benefits do not outweigh its detriments for any particular stakeholder group(s), the number and weight of the Transaction’s benefits, taken as a whole,

outweigh the number and weight of the Transaction's detriments, taken as whole. As a result, the ALJ and the Commission should find that the Transaction affirmatively benefits the public in a substantial way.

2. Should the Commission impose conditions on its approval of the Transaction? This question should be answered in the negative.

The OSBA proposes that, if the merger is approved and if PAWC requests an acquisition adjustment in the first base rate case in which Appalachian is included, the Commission should not allow PAWC to recover an acquisition adjustment of more than 1.34 times the System's depreciated original cost. This proposed condition should be rejected for several reasons, including the following: (1) the proposed condition is premature (the Commission should not address hypothetical situations, nor should the Commission make rate-making decisions in acquisition proceedings); (2) the proposed condition contradicts the clear and explicit terms of Section 1327 of the Code (which allows a utility to receive an acquisition adjustment in the full amount of the System's purchase price) and Section 1103(a) of the Code does not give the Commission authority to modify statutes.

The OCA proposes that, if the Commission approves the Joint Application, it should prohibit PAWC from requesting a Section 1327 adjustment in the first base rate case in which Appalachian is included. This proposed condition should be rejected for several reasons, including the following: (1) the proposed condition is premature (the Commission should not make rate-making decisions in acquisition proceedings); (2) the proposed condition contradicts the clear and explicit terms of Section 1327 of the Code (which allows a utility to request an acquisition adjustment in a subsequent base rate case) and Section 1103(a) of the Code does not give the Commission authority to modify statutes; (3) the proposed condition is not necessary to protect

consumers and would harm PAWC; and (4) the proposed condition is bad public policy because it will undermine Section 1327 and give rise to unnecessary litigation.

The OCA also proposes that the Commission require PAWC to submit cost of service studies for Appalachian, and for the PAWC system without Appalachian, when the Company files its next base rate case. It is unclear what the OCA is requesting. Considering Appalachian's small size relative to PAWC, there is no need for a separate revenue requirement study. Moreover, considering that PAWC intends to gradually move Appalachian's existing customers to Rate Zone 1 rates, there is no need for a class cost of service study. Consequently, this proposed condition should also be rejected.

## **V. Argument**

### **A. PAWC's Technical, Financial and Legal Fitness**

An applicant for a Certificate must demonstrate that it is technically, financially, and legally fit to own and operate the system. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). No party contested PAWC's fitness, but PAWC introduced extensive evidence to demonstrate its fitness.

PAWC is technically fit to own and operate the System. PAWC employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting, and customer service. PAWC St. No. 1 p. 9; PAWC St. No. 2 p. 8. A 50-person team of American corporate engineers has

handled a wide variety of system assessments, treatment process evaluations and design reviews for water and wastewater treatment systems to improve operations and prioritize capital improvements. PAWC St. No. 2 pp. 8-9. PAWC is experienced in undertaking and completing water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. PAWC St. No. 1 p. 13.

PAWC is often called upon by the Commission to step in and resolve troubled water and wastewater systems. For example, in recent years, PAWC acquired Winola Water Company, Delaware Sewer Company, Clean Treatment Sewage Company, Nittany Water Company, Wildcat Park Corporation, and the Sewer Authority of the City of Scranton, among others, and quickly improved the reliability and safety of those systems by investing the necessary capital to move the systems toward regulatory compliance. PAWC St. No. 1 p. 13. On February 8, 2024, PAWC was appointed Receiver for the East Dunkard Water Authority to help resolve its many challenges. PAWC St. No. 1 p. 13.

PAWC is financially fit to own and operate the System. As of December 31, 2023, PAWC had total assets of approximately \$7.3 billion. PAWC St. No. 1 p. 12; PAWC St. No. 3 p. 3. For the twelve months ending December 31, 2023, PAWC had operating income of approximately \$465 million and net income of approximately \$300 million. PAWC St. No. 3 p. 3.

PAWC can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve the System. PAWC St. No. 3 p. 4. PAWC will initially fund the acquisition with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 3 p. 5. PAWC does not anticipate the Transaction will have a negative impact on PAWC's cash flows, credit ratings or access to capital and, therefore, will not deteriorate in any manner PAWC's ability

to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. No. 3 p. 5.

PAWC is legally fit to own and operate the System. PAWC has a good history of complying with the Code and other applicable laws, including environmental laws, and there are no pending legal proceedings that would suggest PAWC is not legally fit to provide service to customers of the System. PAWC St. No. 1 pp. 11-12; PAWC St. No. 2 pp. 9-10.

PAWC has presented a *prima facie* case that it is technically, financially and legally fit to own and operate the System. No party has rebutted this *prima facie* case. Therefore, the ALJ should find that PAWC is technically, financially, and legally fit to own and operate the System.

#### **B. Affirmative Public Benefits Test**

The Joint Applicants must also demonstrate that the Transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York*, 295 A.2d at 828. The affirmative public benefits test is a “net benefits assessment.” An acquisition provides an affirmative public benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Tp.*, 482 A.2d at 683.

The Transaction affirmatively benefits the public in a substantial way because the Transaction benefits all the stakeholder groups impacted by the Transaction: the public-at-large (all residents of the Commonwealth, whether or not they are customers of PAWC or Appalachian), the sellers of the System, Appalachian’s existing customers, PAWC, and the existing water and wastewater customers of PAWC. If the Commission finds that the Transaction’s detriments

outweigh its benefits for any particular stakeholder group(s), the Commission should weigh all the Transaction's benefits against all its detriments and find that the benefits of the Transaction, considered as a whole, substantially outweigh its detriments. Consequently, the Transaction should be approved.

**1. The Transaction's Benefits Outweigh its Detriments for the Public-at-Large**

**a. Benefits**

The Transaction benefits all members of the public-at-large (all residents of the Commonwealth, whether or not they are customers of PAWC or Appalachian) by promoting the regionalization and consolidation of the water industry. The Commission has adopted a statement of policy that states:

The Commission believes that further consolidation of water and wastewater systems within this Commonwealth may, with appropriate management, result in greater environmental and economic benefits to customers. The regionalization of water and wastewater systems through mergers and acquisitions will allow the water industry to institute better management practices and achieve greater economies of scale.

52 Pa. Code § 69.721 (Water and wastewater system acquisitions).

The Transaction promotes consolidation because, in business and finance, "To consolidate (consolidation) is to combine assets, liabilities, and other financial items of two or more entities into one."<sup>1</sup> The Transaction promotes consolidation by merging two public utilities into one.

The Transaction promotes regionalization because PAWC has several nearby systems (Nittany, Boggs and Milton).<sup>2</sup> PAWC St. No. 1 p. 16; PAWC St. No. 1-R p. 3; PAWC St. No. 1-

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<sup>1</sup> <https://www.investopedia.com/terms/c/consolidate.asp>

<sup>2</sup> Systems need not be interconnected to promote regionalization. PAWC St. No. 1-R p. 3; OCA St. 1SR p. 5.

RJ pp. 4-5. The Nittany and Boggs systems, like the Appalachian System, are groundwater systems.

Having these similar facilities nearby allows us to operate the systems efficiently, sharing resources and expertise easily. A regionalized system provides for additional staffing and equipment generally, and in the event of emergencies such as a main break, will allow for faster resolution.

PAWC St. No. 1 p. 16. *See also* AUI St. 1-RJ p. 8.

The Commission has stated that “the goal of regionalization and consolidation is not simply to acquire as many water and wastewater systems as possible and combine them into one system, but to consolidate systems in a way that benefits customers.” *Application of Pennsylvania-American Water Company to Acquire the Wastewater Collection and Conveyance System of the Borough of Brentwood*, Docket No. A-2021-3024058 (Opinion and Order entered Mar. 4, 2024), p. 76. This Transaction clearly benefits customers. *See* Sections V.B.3, V.B.5, and V.B.6 *infra*.

PAWC has a large staff of qualified professionals, PAWC St. No. 1 p. 9; PAWC St. No. 2 p. 8, and will bring better management practices (such as better physical security plans and business continuity plans, PAWC St. No. 2 p. 10, as well as enhanced customer service, PAWC St. No. 2 pp. 14-16) to Appalachian’s service territory. The Transaction will also achieve economies of scale that benefit consumers. Examples include:

- PAWC’s ability to obtain supplies (such as mains, treatment chemicals and purchased power costs (electricity, natural gas and diesel fuel)) at lower rates because PAWC is able to buy in bulk;
- PAWC’s ability to move equipment (such as emergency generators, portable pumps, excavating equipment, and vacuum-jetter trucks) around its system, whereas the System currently must buy or rent any equipment it needs;
- PAWC’s staffed engineering department allows it to perform planning, design construction management services internally rather than contracting the work out at higher cost to consulting engineers; and
- PAWC maintains a local state accredited laboratory for Coliform which reduces costs and allows for quicker turnaround in boil water situations,

benefitting the customers by ensuring that safe water is available sooner than it might have otherwise been.

PAWC St. No. 1 pp. 20-21.

The difference [between Appalachian and PAWC] is that PAWC has economies of scale that [Appalachian] does not. They can centralize an inventory system and lower the per unit cost, they buy products (chemicals, etc.) in bulk that we could never imagine. The same is true for services, and PAWC has its own lab, which saves money on testing. Also, PAWC has a much greater ability to attract and retain qualified personnel, which will become more of an issue as we move forward and more of our business becomes technology oriented.<sup>3</sup>

AUI St. No. 1 p. 5.

The Transaction will also benefit the public-at-large because PAWC has a better record of compliance with the Underground Utility Line Protection Law, 73 P.S. § 176 *et seq.*, than does Appalachian. PAWC St. No. 2 p. 13. PAWC has staff dedicated to completing the dig notifications required by the law. Appalachian has limited resources to respond timely to One Call tickets and relies on outside contractors. PAWC St. No. 2 p. 13. In this respect, the Transaction promotes public safety as well as reliable utility service because it mitigates the risk of injuries, property damage and interruptions in all types of utility service due to utility line strikes.

The OCA contends that the testimony of PAWC and AUI is “generalized” and therefore insufficient to prove that the Transaction promotes regionalization and consolidation. OCA St. 1-RJ p. 8. This assertion should be rejected. The testimony of AUI and PAWC establishes that the Transaction will promote regionalization because the System is located near several existing PAWC systems and establishes in detail how Appalachian will be integrated into the PAWC system in a way that benefits customers.

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<sup>3</sup> Appalachian has challenges with staffing. AUI St. 1 pp. 5-6. It also has difficulty finding qualified contractors in its area. AUI St. No. 1-RJ p. 8

The OCA further contends that the Transaction promotes regionalization and consolidation because of PAWC's size, technical and legal fitness. OCA St. 1SR p. 5. Consequently, the OCA suggests those benefits should be disregarded based on *Cicero*, 300 A.3d at 1119 (“[h]olding that these services and upgrades that are the result of the acquiring utility's size and fitness are substantial affirmative public benefits is not consistent with *City of York* and its progeny.”).

This argument should be rejected. The benefits from regionalization and consolidation flow from the specific facts of this case: PAWC is acquiring a system that is located near several existing PAWC systems. By doing so, PAWC can achieve synergies and economies of scale that benefit consumers, consistent with the Commission's statement of policy. The Commission should not ignore these actual benefits of the Transaction.

Additionally, the Commission should consider what would happen if the Transaction is disapproved. Disapproving the Transaction would not promote regionalization and consolidation; it would merely maintain the *status quo*.

Finally, the Transaction has other benefits for the public-at-large in addition to promoting regionalization and consolidation. PAWC sponsors and participates in local community events and provides environmental and firefighting support grants. In 2023, PAWC donated more than \$1,490,000 to organizations in the communities it serves through grants, scholarships, and general charitable giving across 390 organizations across Pennsylvania. PAWC St. No. 1 p. 9. Through collaboration with the American Water Charitable Foundation, the Company provided an additional \$481,900 in funding to non-profit organizations in Pennsylvania. PAWC St. No. 1 p. 10. Additionally, PAWC and its employees play active roles in supporting environmental and educational initiatives related to water, from watershed cleanups to educational programs focused on drinking water and source water protection, as well as supporting youth education, health and

wellness initiatives, community sustainability projects and more to address community-specific needs. PAWC St. No. 1 p. 10. There is no evidence that Appalachian has provided similar financial and other support to its community.

**b. Detriments**

No party has identified any detriments of the Transaction for the public-at-large.

**c. Conclusion: The Transaction's Benefits Outweigh its Detriments for the Public-at-Large**

Considering that the Transaction has benefits but no detriments for the public-at-large, the Transaction has net benefits for this stakeholder group.

**2. The Transaction's Benefits Outweigh its Detriments for the System's Sellers**

**a. Benefits**

If the Stock Transfer and the Transaction are approved, Mr. Sargent will achieve several goals: Mr. Sargent will reward a dedicated employee by transferring stock to that employee; Mr. Sargent and Mr. Gallagher will benefit from the proceeds of the sale; Mr. Sargent will be able to exit the business and retire; Mr. Gallagher (who is intimately familiar with the System) will work for PAWC and assist in the transition; and Appalachian will be sold to a company that can provide reasonable and adequate service to Appalachian's customers in the future. PAWC St. No. 1 pp. 6, 7, 18; AUI St. No. 1 p. 2.

Just as important, the Transaction benefits the sellers of Appalachian by allowing them to avoid significant future expenses and other challenges:

At this moment, AUI is just getting by, but we have not been able to make major upgrades that will be needed to comply with regulatory requirements (lead pipe inventory, etc.), and we know we have operational issues that need to be addressed, to name a few. There is no possible way that AUI can address these challenges without a huge rate increase, which will be needed immediately absent the merger, and which imposes its own costs and time burdens that take

management away from doing their “regular” jobs. As to whether AUI can remain viable in the future, it remains a significant uphill battle for AUI to obtain the large increases necessary to get rates to cover cost of service, and to secure a reliable source of capital. So, to answer the question directly – I seriously doubt AUI can remain viable absent a merger, and the facts do not suggest that it will. That is why [Appalachian] has chosen to be acquired while it is still able to provide adequate service – to spare its customers and the company the problems and detriments that will certainly arise in the very near future if there is not change.

AUI St. No. 1-5 pp. 5-6. *See also*, AUI St. No. 1-R p. 6 (Appalachian is currently providing reasonable and adequate service at just and reasonable rates, but its future is doubtful).

The OCA contends that there are other options besides the proposed Transaction. For example, the OCA criticizes Appalachian for not developing a succession plan. OCA St. 1 p. 8. This argument should be rejected. The Commission need not find that an acquisition is absolutely necessary. *Hess*. Instead, the Commission must find that the benefits of the acquisition outweigh the detriments. The OCA does not dispute that the Transaction benefits the System’s sellers. OCA St. 1 p. 8.

**b. Detriments**

No party has identified any detriments of the Transaction for the sellers.

**c. Conclusion: The Transaction’s Benefits Outweigh its Detriments for the Sellers**

Considering that the Transaction has benefits but no detriments for the System’s sellers, the Transaction produces net benefits for this stakeholder group.

**3. The Transaction’s Benefits Outweigh its Detriments for the Existing Customers of Appalachian**

**a. Benefits**

The Transaction has numerous benefits for the customers of Appalachian. Customers of Appalachian are members of the public-at-large, and so will benefit from the Transaction in the same way as all other members of the public-at-large. *See* Section V.B.1., *supra*.

The Transaction also has unique benefits for the existing customers of Appalachian.

The Transaction will benefit the Appalachian Customers financially because those customers will become part of a system with a large customer base, allowing them to share the costs of system improvements with many other customers. Customers of small systems are constantly exposed to the risk of rate spikes in the event of a significant expense for the system. This is more than just a hypothetical possibility for the customers of Appalachian; a significant expense could be required due to new regulatory requirements such as revisions to the Lead and Copper Rule and newly established limits for per- and polyfluoroalkyl substances (“PFAS”) in Pennsylvania. It is worth noting that the Environmental Protection Agency (“EPA”) recently finalized more stringent limits than those established by the [Pennsylvania Department of Environmental Protection]. The Transaction will significantly reduce this risk of rate spikes to Appalachian Customers.

PAWC St. No. 1 p. 19-20. *See also*, AUI St. No. 1 p. 3.

Customers will also benefit because they will become eligible for customer assistance from their utility. Appalachian currently has no customer assistance program. PAWC St. No. 1 p. 20; PAWC St. No. 2 pp. 16-17. PAWC currently offers two forms of customer assistance. First, PAWC provides discounts to low-income customers. There are four tiers of discounts, depending on the customer’s percentage of Federal Poverty Level. Water discounts range from 30% to 90% on water service charges and 20% to 80% of water usage charges. PAWC Hearing Exhibit No. 1 pp. 6-7. In addition, PAWC offers hardship grants to income-eligible water customers. In 2023, PAWC provided grants averaging \$347 to 3,144 water customers. PAWC St. No. 1 p. 9. Some Appalachian customers will participate in PAWC’s customer assistance program immediately, others will benefit if by participating in the program in the future, but all will benefit by knowing that, if they experience hard times, assistance is available if they ever need it.

If the Transaction is approved, PAWC will make capital improvements to the System totaling more than \$6.25 million within the first five years of closing. PAWC St. No. 2 p. 5, PAWC Exhibit MJG-3. If the Transaction is disapproved, in contrast, Appalachian lacks the funds to

make those same capital improvements because Appalachian is losing money. PAWC St. No. 3-RJ pp. 7-8. Appalachian lost more than \$90,000 in 2023 and, through September 17, 2024, had net income of -\$31,711. AUI St. No. 1-R p. 6; AUI St. No. 1-RJ p. 3. These figures make borrowing money difficult from private banks. AUI St. No. 1-RJ p. 3. The Pennsylvania Infrastructure Investment Authority (“PENNVEST”) does not appear to offer grants to privately-owned utilities and has so many costly requirements for loans that few privately-owned utilities opt for PENNVEST loans. AUI St. No. 1-RJ pp. 3-6. Appalachian could file a rate case to finance capital improvements, but rate cases are expensive and do not always provide the desired funding level. AUI St. No. 1-RJ pp. 6-7.

Appalachian is currently providing reasonable and adequate service, but its ability to continue to do so in the future is doubtful. AUI St. 1-R. This is not just due to the financial pressures on Appalachian, discussed above. Appalachian has only three employees. With this staffing level, it is difficult to keep up with increasingly complex regulatory requirements. PAWC St. No. 1 p. 13-14.

Appalachian’s non-revenue water (“NRW”) is almost 20% (a level the Commission considers excessive). PAWC St. No. 1 pp. 21-22. “Once Appalachian’s assets are in PAWC’s GIS system, PAWC will install remote monitoring equipment and perform leak detection. Leaking assets in the distribution system will be identified and then a plan to reduce [NRW] will be developed and implemented.” PAWC St. No. 2 p. 7. Appalachian does not have the personnel, access to advanced equipment, or expertise to address NRW as well as PAWC. *Id.*

As recommended by the Commission’s Statement of Policy regarding Public Fire Protection Service and System Hydraulic Monitoring, 52 Pa. Code §§ 69.1051-1054, PAWC has a plan for bringing Appalachian’s fire protection service up to PAWC’s operating standards. After

Closing, PAWC will test each hydrant, load all System assets into PAWC's GIS system, and perform hydraulic and water quality monitoring to ensure hydrants provide the necessary fire service. PAWC St. No. 2 p. 10.

Appalachian's customers will also benefit from PAWC's enhanced customer service, PAWC St. No. 2 pp. 14-16, and its superior capabilities for notifying customers in emergency situations. PAWC St. No. 1-R p. 5. In addition, PAWC has developed and implemented a lead service line replacement program, PAWC St. No. 1 p. 23, whereas Appalachian has not yet submitted a lead service line replacement program to the Commission. *Cf.* PAWC St. No. 1 p. 23.

#### **b. Detriments**

The general rule is that a utility's property is placed into rate base at its depreciated original cost. 66 Pa. C.S. § 1311(b)(1). The OSBA does not seem to object to the Transaction if PAWC places the System into rate base at its depreciated original cost. OSBA witness Higgins testified:

I do not oppose the merger between PAWC and Appalachian, with one condition. If the Commission approves the merger and PAWC seeks to include an acquisition premium associated with Appalachian in a subsequent rate case, I recommend that the premium that is eligible for inclusion in rate base be limited to 34% above the depreciated original cost.

OSBA St. No. 1 p. 3.

The OCA admits that the Transaction has some benefits, but contends:

In my view, the only means by which the Commission can approve this transaction based on the record is if it specifically conditions the issuance of a [Certificate] on PAWC not being permitted to claim more than the depreciated original cost of the system in rate base.... *By conditioning the grant of [Certificate] authority as I recommend, it would enable the Commission to make a finding of affirmative benefits based on the record evidence.*

OCA St. No. 1 pp. 16-17 (emphasis added).

In Section V.C., *infra*, PAWC will explain why the Commission should reject the conditions proposed by the OCA and the OSBA. In this Section, PAWC explains why the

Transaction does not have a material adverse rate impact for Appalachian's existing customers *even if* PAWC can, in the first base rate case that includes the System, request an acquisition adjustment to place the full amount of the purchase price into rate base.

First, PAWC might not request an acquisition adjustment for the System. Even if it does, customers and other stakeholders will have the right to contest that request. The rate impact of the Transaction for Appalachian's existing customers is completely speculative because the Commission could deny PAWC's requested acquisition adjustment. In that situation, PAWC will place the System into rate base at depreciated original cost. As discussed above, both the OCA and the OSBA appear to agree that the Transaction's benefits outweigh the detriments if the System is placed into PAWC's rate base at depreciated original cost.

Second, the Commission will only grant an acquisition adjustment if it finds that PAWC meets the nine criteria set forth in Section 1327 for obtaining an acquisition adjustment. If the Commission makes such a finding, the Code allows PAWC to place the full amount of the purchase price into rate base *because the Legislature has determined that such a result is in the public interest*. If the Legislature has determined that the public interest favors granting an acquisition adjustment, as a matter of law, the resulting rate impact should not be considered a "harm" that justifies finding the Transaction does not affirmatively benefit the public in a substantial way. To the contrary, the Commission's finding that PAWC is entitled to an acquisition adjustment further demonstrates that the Transaction affirmatively benefits the public in a substantial way.

Third, even if PAWC retains the right to request an acquisition adjustment in the amount of the purchase price, the Transaction might *benefit* the existing customers of Appalachian because it could result in a lower rate impact than disapproving the Transaction. This is because the record

clearly shows that rates will increase for Appalachian's existing customers regardless of whether the Transaction is approved.

If the Transaction is disapproved, Appalachian will need to increase rates in the near term. PAWC St. No. 1 p. 19; PAWC 3-R pp. 5-6. Appalachian has described the necessary increase as "massive," AUI St. No. 1-R p. 3, because (1) rates have not been increased since 2016; (2) inflation and new regulatory requirements since 2016 require a significant increase; (3) Appalachian needs to make expensive capital improvements to continue to provide reasonable and adequate service; (4) the rate case itself will be costly; and (5) Appalachian has a small customer base to shoulder the burden. AUI St. 1 pp. 4-6; AUI St. No. 1-R p. 2. Furthermore, if the Transaction is disapproved, Appalachian's rates will continue to increase in the long term, PAWC St. No. 3-R p. 6, due to continuing inflation and the constant need to repair and improve the System. AUI St. No. 1 p. 3.

If the Transaction is approved, in contrast, there will be no immediate impact on the rates of Appalachian's existing customers. PAWC will adopt Appalachian's rates at Closing. PAWC St. No. 1 p. 19. Rates will not increase until PAWC's first base rate case in which the System is included. At this time, it is unknown when that will be. OCA St. No. 1 p. 11. At this time, the result of that rate case is completely speculative. PAWC might not request an acquisition adjustment. Even if it does, there is no assurance that the Commission will grant it. In the long term, PAWC expects to move the System to PAWC's Zone 1 rates. This will probably take several rate cases, over a number of years, based on such rate-making principles as gradualism and avoidance of rate shock to customers. PAWC St. No. 3-R p. 6.

In summary: In the short term, approving the Transaction would clearly have a beneficial rate impact for Appalachian's existing customers because they would avoid a "massive" rate

increase. In the long term, it is unknown whether, years from now, PAWC's Zone 1 rates would be greater or less than Appalachian's rates. Under these facts, the Commission cannot find that the Transaction will have a material adverse impact on either the short-term or the long-term rates of Appalachian's existing customers.

This case is the opposite of *Cicero*, 300 A.2d at 1119, where the Commonwealth Court of Pennsylvania ("Commonwealth Court") overturned a Commission order approving an acquisition, in part, because the acquired system was capable of providing the same benefits that it would receive from the acquisition *without the rate increase that would occur as a result of the acquisition*. In this case, in contrast, Appalachian is not capable of providing the same benefits that it would receive from the acquisition without a "massive" rate increase.

For all the above reasons, the Commission should find that the Transaction does not have a material adverse rate impact for Appalachian's existing customers *even if* PAWC can, in the first base rate case that includes the System, request an acquisition adjustment to place the full amount of the purchase price into rate base.

**c. Conclusion: The Transaction's Benefits Outweigh its Detriments for Appalachian's Existing Customers**

In performing the net benefits assessment, the Commission considers not just the number of benefits and detriments, but the weight to be given to each benefit/detriment. *Application of Pennsylvania-American Water Company Pursuant to 66 Pa. C.S. §§ 1102 and 1329 for the Acquisition of the Butler Area Sewer Authority's Wastewater Collection and Treatment System*, Docket No. A-2022-303037047 ("BASA") (Statement of Vice Chairman Kimberly Barrow at p. 4) ("[t]he stated benefits to this transaction outnumber the harms; however, those benefits do not **outweigh** the harms." (emphasis in original)). Some of the Transaction's benefits for

Appalachian's existing customers are material in and of themselves. For example, being able to share the costs of operating the System with over 680,000 other customers is a material benefit for the 1,459 existing customers of Appalachian. Other benefits (such as reducing NRW, enhancing customer service, providing better physical security planning and public fire protection, and offering a customer assistance program) may not be material in and of themselves, but are certainly material when considered as a whole.

In contrast, the only identified detriment of the Transaction is that PAWC can, in the first base rate case that includes the System, request an acquisition adjustment to place the full amount of the purchase price into rate base. This possibility does not constitute a material adverse rate impact for Appalachian's existing customers.

Balancing the material benefits of the Transaction against the absence of any material detriments, the Commission should find that the benefits outweigh the detriments for Appalachian's existing customers. *See also, BASA* at 63 (“[t]he benefits of the acquisition outweigh the detriments for PAWC’s existing wastewater customers *when considering the uncertainty of the extent of the rate impacts on PAWC’s existing customers and the certainty of the benefits.*” (emphasis added)).

#### **4. The Transaction's Benefits Outweigh its Detriments for PAWC**

##### **a. Benefits**

Section 1103 requires the Commission to determine if the acquisition affirmatively benefits the public in a substantial way. To accomplish this objective, the Commission must consider the acquisition's impact on *all* affected stakeholders. *Middletown Tp.*, 482 A.2d at 683. One affected stakeholder is the buyer. Significantly, in *City of York*, 295 A.2d at 829, the Supreme Court of

Pennsylvania noted that, where an acquisition affirmatively benefits the buyer, the ultimate beneficiaries are the utility's ratepayers.

This Transaction benefits the buyer because PAWC is acquiring a system that is near three existing PAWC systems, including two other groundwater systems. PAWC St. No. 1 p. 16; PAWC St. No. 1-R p. 3; PAWC St. No. 1-RJ pp. 4-5. By giving PAWC a greater presence in the region, this acquisition will help PAWC run all four systems more efficiently and effectively. Additionally, PAWC will gain an additional 1,456 water customers, which should make the Company a stronger, more financially stable utility. PAWC St. No. 1 p. 24. Finally, PAWC is paying a reasonable price for the acquisition; the purchase price of the System is less than PAWC's average net plant in service for other water customers. PAWC St. No. 1 pp. 24-25; PAWC St. No. 3R p. 4.

**b. Detriments**

No party identified any detriments of the Transaction for PAWC. PAWC entered into the Transaction knowing that it faces a risk: If PAWC does not request a Section 1327 acquisition adjustment, or if the Commission denies a request for a Section 1327 acquisition adjustment, shareholders will pay the difference between the purchase price and the depreciated original cost of the System. Even considering this risk, the Transaction is not expected to have a negative impact on PAWC's cash flows, credit ratings or access to capital, and therefore will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate and reasonable service to its existing customers at just and reasonable rates. PAWC St. 3 p. 5.

**c. Conclusion: The Transaction's Benefits Outweigh its Detriments for the Buyer**

Considering that the Transaction has benefits but no detriments for PAWC, the Transaction produces net benefits for this stakeholder group.

**5. The Transaction's Benefits Outweigh its Detriments for the Existing Water Customers of PAWC**

**a. Benefits**

Water customers of PAWC are members of the public-at-large. Therefore, they will benefit from the Transaction in the same way as all other members of the public-at-large. Additionally, PAWC's existing water customers will benefit from the Transaction as it will make PAWC a larger, financially stronger and more stable company. As discussed above, PAWC's customers are the ultimate beneficiaries of these improvements.

The Transaction also has unique benefits for PAWC's existing water customers. The most important benefit is that the Transaction expands PAWC's water customer base by 1,456 customers (an increase of 0.21% in PAWC's water customer base). By adding additional customers to the entire PAWC, system, there are more customers to share future infrastructure investment costs. Increasing the number of customers promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. PAWC St. No. 1 p. 25.

**b. Detriments**

As discussed above, with regard to the Transaction's detriments for the existing customers of Appalachian, both the OCA and the OSBA request a condition taking away PAWC's right, pursuant to Section 1327, to request an acquisition adjustment in the full amount of the purchase

price. In Section V.C., *infra*, PAWC will explain why the Commission should reject the conditions proposed by the OCA and the OSBA. In this Section, PAWC explains why the Transaction does not have a material adverse rate impact for PAWC's existing water customers *even if* PAWC can, in the first base rate case that includes the System, request an acquisition adjustment to place the full amount of the purchase price into rate base.

First, PAWC might not request an acquisition adjustment for the System. Even if it does, customers and other stakeholders will have the right to contest that request. The rate impact for PAWC's existing water customers is completely speculative because the Commission could deny PAWC's requested acquisition adjustment. In that situation, PAWC will place the System into rate base at depreciated original cost. Both the OCA and the OSBA appear to agree that the Transaction's benefits outweigh the detriments if the System is placed into PAWC's rate base at depreciated original cost.

Second, the Commission will only grant an acquisition adjustment if it finds that PAWC meets the nine criteria set forth in Section 1327 for obtaining an acquisition adjustment. If the Commission makes such a finding, the Code allows PAWC to place the full amount of the purchase price into rate base *because the Legislature has determined that such a result is in the public interest*. If the Legislature has determined that the public interest favors granting an acquisition adjustment, as a matter of law, the resulting rate impact should not be considered a "harm" that justifies finding the Transaction does not affirmatively benefit the public in a substantial way. To the contrary, the Commission's finding that PAWC is entitled to an acquisition adjustment further demonstrates that the Transaction affirmatively benefits the public in a substantial way.

Third, even if PAWC requests and receives an acquisition adjustment in the full amount of the purchase price, the impact on PAWC's existing water customers would be *de minimus*.

According to the OCA, PAWC would receive an acquisition adjustment of [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] The actual impact will likely be even less if the Commission allows Appalachian's rates to move toward consolidation with PAWC's Zone 1 rates. PAWC St. No. 3-R pp. 6-7; PAWC St. No. 3-RJ pp. 5-6. Such a small rate impact should not be ignored, but it should receive little weight in the Commission's net benefits assessment.

The OCA asserts that the Transaction will be a detriment to PAWC's existing customers because they will subsidize Appalachian's customers until Appalachian's existing customers come up to Zone 1 rates. OCA St. 1SR p. 9. There is no support for this assertion:

[T]he revenue deficiency associated with the Appalachian System is fairly minimal. PAWC's Zone 1 rates are applicable to most water customers statewide and are set based on the cost to serve all water customers. Those rates do not reflect the cost of serving the Appalachian customers, specifically. As noted previously, the rate base per Appalachian customer is significantly lower than PAWC's overall water customer plant in service per customer. Therefore, the cost to serve these customers may also be less. There is no evidence that increasing rates gradually will harm other existing customers, and in any event, the level of rate increase to Appalachian's customers is another issue better reserved for a future rate case.

PAWC St. No. 3-RJ p. 10.

**c. Conclusion: The Transaction's Benefits Outweigh its Detriments for PAWC's Existing Water Customers**

The Transaction will benefit PAWC's water customers in several ways, such as by allowing them to share the costs of operating the PAWC system with 1,456 more customers in every future base rate case. In contrast, the Transaction might cause a slight rate increase for PAWC's existing water customers (if the Commission grants an acquisition adjustment in the full

amount of the purchase price), but that is completely speculative. In any event, a rate increase from an acquisition adjustment should not be considered a “harm” because the Legislature found that the public interest favors giving an acquiring public utility an acquisition adjustment under certain circumstances.

For all the above reasons, the Commission should find that the benefits of the Transaction outweigh the detriments for PAWC’s existing water customers.

**6. The Transaction’s Benefits Outweigh its Detriments for PAWC’s Existing Wastewater Customers**

**a. Benefits**

Wastewater customers of PAWC are members of the public-at-large. Therefore, they will benefit from the Transaction in the same way as all other members of the public-at-large. Additionally, PAWC’s existing wastewater customers will benefit from the Transaction as it will make PAWC a larger, financially stronger and more stable company. As discussed above, PAWC’s customers are the ultimate beneficiaries of these improvements.

The Transaction also has unique benefits for PAWC’s wastewater customers. The Transaction will benefit PAWC’s existing wastewater customers because a portion of PAWC’s wastewater revenue requirement may be allocated to PAWC’s water customers if the Commission finds that such a result is in the public interest. 66 Pa. C.S. § 1311(c). By adding more water customers to PAWC’s system, the Transaction should help keep rates stable for PAWC’s wastewater customers because a portion of the wastewater revenue requirement can be spread among more water customers.

**b. Detriments**

No party has identified any material detriments of the Transaction for PAWC’s wastewater customers.

**c. Conclusion: The Transaction’s Benefits Outweigh its Detriments for PAWC’s Existing Wastewater Customers**

Considering that the Transaction has benefits but no detriments for PAWC’s existing wastewater customers, the Transaction produces net benefits for this stakeholder group.

**7. Summary: When All the Transaction’s Benefits are Weighed Against All the Transactions’ Detriments, the Benefits Substantially Outweigh the Detriments**

The Transaction’s benefits outweigh its detriments for each of the major stakeholder groups. Therefore, when the Commission weighs all the Transaction’s benefits against all its detriments, the Commission should find that the benefits of the Transaction substantially outweigh its detriments.

Even if the Commission finds that the Transaction’s benefits do not outweigh its detriments for any particular stakeholder group(s), the Commission should find that the number and weight of the Transaction’s benefits, taken as a whole, outweigh the number and weight of the Transaction’s detriments, taken as whole. In other words, the Commission should find that the Transaction affirmatively benefits the public in a substantial way.

**C. Recommended Conditions**

“The Commission, in granting [a Certificate] may impose such conditions as it may deem to be just and reasonable.” 66 Pa. C.S. § 1103(a). In this case, the OCA proposes two conditions and the OSBA proposes one condition. The OSBA’s proposed condition is similar to one of the OCA’s proposed conditions in that both proposals would prevent PAWC from recovering an

acquisition adjustment in the full amount of the System's purchase price in a future base rate case. Those two proposed conditions will be discussed together. This brief will then discuss the OCA's remaining proposal.

**1. The Commission Should Deny the OSBA's and the OCA's Proposed Conditions Preventing PAWC From Recovering the Full Amount of the System's Purchase Price In a Future Base Rate Case**

The conditions proposed by the OSBA and the OCA should be denied for a variety of reasons. Before explaining those reasons, this brief will provide background information on the proposed conditions.

**a. Background**

The Code provides that “[t]he value of the property of the public utility included in the rate base shall be the original cost of the property when first devoted to the public service less the applicable accrued depreciation.” 66 Pa. C.S. § 1311(b). As a result, when an acquisition is approved, the acquired system's depreciated original cost is generally placed into the acquiring utility's rate base.

The Code does not prohibit a utility from paying more than depreciated original cost to acquire property. In fact, the Code presumes that a utility will sometimes pay more than depreciated original cost to acquire property. *See, e.g.*, 66 Pa. C.S. § 1327(a) (“acquisition cost greater than depreciated original cost”). In this case, the purchase price is greater than the depreciated original cost of the System.

If a utility pays more than depreciated original cost for property, the utility's shareholders generally finance the difference between the purchase price and the depreciated original cost. However, an acquiring utility can request an acquisition adjustment pursuant to Section 1327 of the Code in the first base rate case in which the property is included. In that base rate case, the

acquiring utility has the burden of proving that the acquisition meets each of nine criteria for receiving an acquisition adjustment. One such criterion is that the acquired utility's purchase price is reasonable. 66 Pa. C.S. § 1327(a)(6). If the acquiring utility proves that the acquisition meets each of the nine criteria, there is a rebuttable presumption that the full amount of the purchase price is reasonable and shall be included in rate base.

All parties to the rate case have the right to oppose this request for an acquisition adjustment and rebut the presumption provided for under Section 1327. If the Commission rejects the request for an acquisition adjustment, the acquiring utility's shareholders finance the difference between the acquired system's purchase price and its depreciated original cost. If the Commission approves the request, the full amount of the purchase price is included in rate base. 66 Pa. C.S. § 1327(a).

The OCA and the OSBA propose conditions that would prevent PAWC from recovering the full amount of the purchase price for the System pursuant to Section 1327. According to the OCA, the Transaction's benefits do not outweigh its harms unless the Commission imposes a condition that "PAWC shall not be permitted to claim more than depreciated original cost in rate base in the first base rate case after closing the Appalachian Transaction." OCA St. 1 pp. 16-17; OCA St. 1SR p. 10.

The OSBA does not oppose the merger, with one condition. According to OSBA witness Higgins: "If the Commission approves the merger and PAWC seeks to include an acquisition premium associated with Appalachian in a subsequent rate case, I recommend that the premium

that is eligible for inclusion in rate base be limited to 34% above the depreciated original cost.”<sup>4</sup>

OSBA St. No. 1 p. 3.

In the alternative, the OSBA does not oppose the OCA’s proposed condition. OSBA St. 1-S p. 4.

**b. The Conditions Proposed by the OSBA and the OCA Are Neither Just Nor Reasonable Because They Are Premature**

The OSBA asks the Commission to impose the following condition: (1) If the Commission approves the merger, and (2) if PAWC seeks to include an acquisition premium associated with Appalachian in a subsequent rate case, then (3) in that subsequent base rate case, PAWC cannot receive an acquisition adjustment of more than 34% above the depreciated original cost. OSBA St. No. 1 p. 3. This condition is neither just nor reasonable because it is premature. PAWC is not requesting a rate base determination in this proceeding. PAWC St. No. 1-R p. 3; PAWC St. No. 1-SR p. 2. In fact, PAWC has not yet made a determination whether it will seek recovery of the full amount of the purchase price or whether it will place the depreciated original cost of the System into rate base. PAWC St. No. 1-R p. 5.

Time should not be spent litigating hypothetical scenarios. *Application of Exelon Corporation et al. for Certificates of Public Convenience*, Docket Nos. A-2009-2093057 *et al.* (Opinion and Order entered June 25, 2009). Considering that it is unclear whether PAWC will even seek an acquisition adjustment in a future base rate case, and that no party has presented evidence on whether PAWC meets the criteria for an acquisition adjustment, the Commission

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<sup>4</sup> In calculating the acquisition premium, the OSBA recommends including contributions in aid of construction in the depreciated original cost. OSBA St. No. 1 p. 8.

should not address the question of what amount PAWC can recover as an acquisition adjustment.<sup>5</sup>

The Commission should not issue a decision in this case that ties its hands in a future case, when the issue is actually presented. The condition proposed by the OSBA therefore should be rejected.

In addition, the OSBA's proposed condition and the OCA's proposed condition are premature in the sense that they ask the Commission to make rate-making decisions in an acquisition proceeding. Unlike a Section 1329 acquisition, a Section 1102 acquisition does not establish the amount that the Company will place into rate base as a result of the acquisition. Consequently, the Commission has held that ratemaking issues should be decided in base rate cases, not Section 1102 acquisition proceedings. *See, e.g., Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209 (Opinion and Order entered Oct. 19, 2016) p. 50:

As to the concerns raised by I&E and the OCA regarding the alleged detriments of the acquisition to PAWC's existing customers, we note that these concerns center on the potential rate effects of the acquisition. However, we are not in a position to thoroughly adjudicate ratemaking issues relating to the acquisition in this proceeding. Nor do we find that this acquisition proceeding is the appropriate context for addressing these rate issues. The record does not contain sufficient evidence to allow us to evaluate the specific effects of the acquisition on PAWC's revenue requirement or to decide cost allocation and rate design matters. Such issues are better reserved for a future base rate proceeding.

For all of the above reasons, the conditions proposed by the OSBA and the OCA should be rejected as neither just nor reasonable because they are premature.

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<sup>5</sup> In addition, as discussed in the next subsection, the Commission should reject the OSBA's proposal because it is contrary to the Code, which permits PAWC to recover the full amount of the purchase price. 66 Pa. C.S. § 1327(a).

**c. The OSBA's Proposed Condition Is Neither Just Nor Reasonable Because It is Contrary to the Code**

The OSBA's proposed condition stems from *Valuation of Acquired Municipal Water & Wastewater Systems – Act 12 of 2016 Implementation*, Docket No. M-2016-2543192 (Final Supplemental Implementation Order entered Jul. 2, 2024) (“2024 FSIO”), which implements 66 Pa. C.S. § 1329 (valuation of acquired water and wastewater systems). The 2024 FSIO adopted a reasonableness review ratio (“RRR”) for use in evaluating Section 1329 acquisitions. The OSBA argues that the RRR “could be utilized to calculate a useful benchmark for the appropriate acquisition premium that is eligible for inclusion in rate base.” OSBA St. No. 1-S p. 3.

The current RRR is 1.68 times the depreciated original cost of the acquired system. *Bureau of Technical Utility Services Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303 (Aug. 2, 2024). The OSBA contends that PAWC should be allowed to recover only 1.68 times the depreciated original cost of the System – but half of this amount should be paid by customers and half by shareholders. As a result, the OSBA argues that PAWC should only be allowed to place into rate base an amount equal to 1.34 times the System's depreciated original cost. OSBA St. No. 1 p. 9.

A Commission Implementation Order does not establish a binding norm and has the same effect as a statement of policy. 2024 FSIO at 31, citing *Chapter 14 Implementation*, Docket No. M-00041802F0002 (Declaratory Order entered Nov. 21, 2005) at 12-13 (note omitted). Therefore, the OSBA's proposed condition represents a litigant's recommendation, based on a statement of policy intended for applications governed by a different section of the Code.

If PAWC requests an acquisition adjustment in the first base rate case in which the System is included, the Commission should follow the governing statute: Section 1327 of the Code. That statute clearly and explicitly states that, if a utility satisfies the nine criteria for an acquisition adjustment, there is a rebuttable presumption that the *full amount of the purchase price* is reasonable and shall be included in rate base. 66 Pa. C.S. § 1327(a).<sup>6</sup>

The OSBA's proposed condition would effectively modify Section 1327 by depriving PAWC of its statutory right to recover the full amount of the acquisition's purchase price. As an agency created by the General Assembly, the Commission has only the powers given to it by the General Assembly, either explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). Those powers do not include modifying statutes. *2024 FSIO* p. 90.

Section 1103 cannot be construed as authorizing the Commission to impose a condition that modifies a statute. In construing statutes, it is presumed that the General Assembly does not intend to violate the Constitution of this Commonwealth. 1 Pa. C.S. § 1922(2). Interpreting Section 1103 as empowering the Commission to impose a condition that modifies a statute would violate the non-delegation doctrine, which prevents the General Assembly from delegating its power to make and repeal laws to another branch of government. *See, e.g., West Phil. Achievement Charter Elem. Sch. v. Sch. Dist. of Phil.*, 132 A.3d 957 (Pa. 2016); *Protz v. Worker's Comp. App. Bd.*, 161 A.3d 827 (Pa. 2017); David N. Wecht<sup>7</sup> and Lawrence McIntyre, Nondelegation in

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<sup>6</sup> PAWC agrees with the OCA that the RRR was developed for use in acquisitions pursuant to Section 1329 of the Code and should not be used in this proceeding. OCA St. 1R pp. 3-4. PAWC, however, disagrees with the OCA's characterization of this proceeding as a Section 1327 proceeding. OCA St. 1R p. 4 (the RRR "should not be used in situations where a utility is seeking a Section 1327 acquisition adjustment such as this case."). PAWC has not requested an acquisition adjustment in this proceeding. PAWC St. No. 1-R p. 3. This case is an acquisition proceeding pursuant to 66 Pa. C.S. § 1103.

<sup>7</sup> A Justice of the Supreme Court of Pennsylvania.

Pennsylvania, 46 *Harv. J. of Law & Pub. Policy* 377 (2023). The Commission is an independent administrative commission of the Commonwealth, not part of the Legislative Branch.

Additionally, the rules of statutory construction require every statute to be construed to give effect to all its provisions. 1 Pa. C.S. § 1921(a). It would not be just or reasonable for the Commission to impose a condition pursuant to Section 1103(a) that would not give effect to Section 1327, which permits the recovery of an acquisition adjustment of the full amount of the purchase price of a system.

For all the above reasons, the OSBA's proposed condition should be rejected.

**d. The OCA's Proposed Condition is Neither Just Nor Reasonable Because It is Contrary to the Code**

Unlike the OSBA's proposed condition, the OCA's proposed condition asks the Commission to issue an order that bars PAWC from even asking for an acquisition adjustment in a future base rate case. This proposal contradicts the clear and explicit language of Section 1327(b), which gives a utility the option of asking for an acquisition adjustment in an application proceeding or a subsequent base rate case. The OCA's proposed condition would effectively modify Section 1327(b) of the Code by depriving PAWC of its statutory right to request an acquisition adjustment in a subsequent base rate case.

As discussed in the preceding subsection, the Commission does not have the authority to modify statutes and Section 1103(a) cannot be read as giving the Commission authority to impose a condition that modifies or fails to give effect to a statute. Such an interpretation would violate the Commonwealth's Constitution and the rules of statutory construction.

In *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, Docket Nos. A-110300F0095 *et al.* (Order entered Jun. 20, 2001), the Commission ruled on a

request by the OCA for conditions guaranteeing that GPU's existing ratepayers would not be adversely affected by costs and liabilities associated FirstEnergy's generating plants.<sup>8</sup> The applicants argued that those conditions were unnecessary because FirstEnergy's ability to recover such costs could be addressed through the normal ratemaking process. The Commission found that the normal ratemaking process was not capable of providing this guarantee and adopted conditions guaranteeing that the costs and liabilities of FirstEnergy's generating plants would not be charged to GPU's ratepayers. *Id.* at xlvii-xlviii.

The *GPU-FirstEnergy Merger Order*, however, did not involve a statute that explicitly gave the acquiring entity the right to claim the contested expenses in a subsequent base rate case. It is therefore distinguishable from this case, in which the proposed condition would deprive the acquiring entity of a statutory right to make a claim in a subsequent base rate case.

For all of the above reasons, the OCA's proposed condition should be rejected.

**e. The Conditions Proposed by the OCA and the OSBA are Neither Just Nor Reasonable Because the Transaction Passes the Affirmative Public Benefits Test Without the Proposed Conditions**

Even if Section 1103(a) gives the Commission authority to impose the OCA's and the OSBA's proposed conditions, the Commission should not do so. As discussed in detail above, the Transaction's benefits outweigh the detriments, considered as a whole. Therefore, the Transaction satisfies the affirmative public benefits test and should be approved without the proposed conditions. The Commission should not arbitrarily impose unnecessary conditions on an

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<sup>8</sup> GPU previously divested itself of its generating assets, but FirstEnergy had substantial generating assets.

acquisition. The proposed conditions are neither just nor reasonable because they are not necessary to make the Transaction pass the applicable legal test.

**f. The OCA’s Proposed Condition Is Neither Just Nor Reasonable Because It Is Not Necessary to Protect Consumers and Would Harm PAWC**

Even if Section 1103(a) gives the Commission authority to impose the OCA’s proposed condition, the Commission should not do so. The OCA claims that its proposed condition is just and reasonable because PAWC must be prohibited from claiming an acquisition adjustment to mitigate rate harm to the existing customers of Appalachian and PAWC. OCA St. No. 1 pp. 16-17. As discussed several times above, a rate increase due to a Commission finding that an acquisition adjustment is justified should not be considered a “harm” because the Legislature determined that an acquisition adjustment is in the public interest in certain circumstances.

The OCA fails to mention the many safeguards that are already in place to mitigate rate impacts on customers. PAWC St. No. 1-SR p. 2. To obtain an acquisition adjustment, PAWC would have to request it in the first base rate case in which the System is included. In that case, PAWC would bear the burden of proving that it meets the detailed statutory requirements for an acquisition adjustment, and customers and other stakeholders could introduce evidence contesting PAWC’s claim. In that case (unlike this case), the Commission would have all the relevant evidence before it to determine whether an acquisition adjustment is justified. PAWC will not receive any acquisition adjustment unless the Commission finds that PAWC has satisfied all nine criteria in Section 1327.

The Commission has ultimate rate setting authority and can render the decision that will result in just and reasonable rates within the context of a base rate case. The Commission can and should be trusted to make the proper determination when an issue is ripe for decision and properly

raised. The OCA's proposed condition shows a total lack of confidence in the Commission because it seeks to have a rate issue that is not yet ripe predetermined during an acquisition proceeding.<sup>9</sup> The Commission should be trusted to render an appropriate decision if a Section 1327 claim is before it in the context of a future rate case.

Considering all the protections that already exist under Section 1327, the OCA's proposed condition is neither just nor reasonable because it is unnecessary to protect consumers. Moreover, the OCA's proposal is neither just nor reasonable because it would harm PAWC. The OCA's proposal would deprive the Company from *ever* exercising its statutory right to request an acquisition adjustment and have its day in court on that request. As a result, the OCA's proposal would prevent the Company from receiving an acquisition adjustment *even if* the Transaction satisfies all the criteria in Section 1327. In essence, the OCA's proposal would overrule the outcome intended by the Legislature when it enacted Section 1327. This result would be neither just nor reasonable.

**g. The OCA's Proposed Condition is Neither Just Nor Reasonable Because it Would be Bad Public Policy**

Even if Section 1103(a) gives the Commission authority to impose the OCA's proposed condition, the Commission should not do so because it would be bad public policy. First, such a decision would undermine the Legislature's intent in enacting Section 1327. Section 1327 was intended to give the owners of challenged systems an incentive to sell to a capable public utility. PAWC St. No. 1-RJ. It was also intended to give capable public utilities an incentive to buy a

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<sup>9</sup> This case is an application pursuant to Sections 1102/1103, not an application pursuant to Section 1329, in which the Commission decides the amount to be added to the acquiring utility's rate base as a result of the acquisition. The amount to be added to PAWC's rate base will be decided in a subsequent rate base proceeding, regardless of whether the Company requests a Section 1327 acquisition adjustment.

challenged public utility. Capable public utilities will be reluctant to purchase a challenged public utility if the Commission can take away their right to even request an acquisition adjustment.

Second, the OCA's proposed condition would undermine administrative efficiency. The OCA asks the Commission to rule that, if a utility does not request a Section 1327 acquisition adjustment in an acquisition proceeding, the Commission can take away the utility's right to *ever* request a Section 1327 acquisition adjustment for that acquisition. The consequences of such a ruling are clearly foreseeable – and clearly undesirable.

Any utility that is considering requesting an acquisition adjustment will be forced to request a Section 1327 acquisition adjustment during the acquisition proceeding. This choice will lead to the litigation of many acquisition proceedings that would otherwise be uncontested, clogging the Commission's dockets. This choice would also prevent an acquiring utility from pursuing the much more efficient approach of requesting an acquisition adjustment for several acquisitions in a single base rate case. Instead, the acquiring utility would need to litigate the issue in every acquisition proceeding. This result would further undermine administrative efficiency.

Almost twenty years ago, the Commission expressed its preference that acquiring entities request acquisition adjustments in rate cases rather than acquisition proceedings:

We note OCA's comment that proposed Section 69.711(e) of the policy statement appears to be inconsistent with Section 1327(b) of the Code. We agree with this assessment. We recognize that an acquiring utility that is eligible to receive a 1327(a) acquisition adjustment can request such an adjustment before the acquisition is consummated or prior to its next filed rate case. *See* 66 Pa. C.S. § 1327(b). Therefore, we will modify Section 69.711(c) of the policy statement so that it states expressly that an acquiring utility can elect to request a 1327(a)-acquisition adjustment in accordance with Section 1327(b) of the code or during its next rate case. *Nevertheless, given the interrelationship of acquisition adjustments and just and reasonable rates, the Commission prefers that an acquiring utility request a 1327(a) acquisition adjustment during its next filed rate case and not outside the context of a rate case.*

*Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 (Final Policy Statement entered Aug. 17, 2006) at 15-16 (emphasis added). There is no reason for the Commission to change its position; acquisition adjustments continue to be more closely related to just and reasonable rates than affirmative public benefits.

For all the above reasons, the OCA's proposed condition should be rejected.

**2. The Commission Should Deny the OCA's Proposed Condition Requiring PAWC to Submit a Cost of Service Study In Its Next Base Rate Case**

The OCA proposes a condition that “[a]t the time of filing its next base rate case, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the [Appalachian] system and will also provide a separate cost of service study for the AUI system.” OCA St. No. 1 p. 18. It is unclear what the OCA is proposing.

PAWC initially interpreted this proposed condition as requesting a separate revenue requirement study:

A separate cost of service study for a newly acquired system means PAWC will provide a separate revenue requirement study for the system. Completing a separate revenue requirement study means that PAWC must fully separate costs for the acquired system, including keeping depreciation rates separate from PAWC's base operations.

PAWC St. No. 3-RJ p. 11. A separate revenue requirement study should not be required for Appalachian in PAWC's next base rate case. The System is very small compared to PAWC's water operations. Regardless of whether PAWC requests recovery of an acquisition premium, the rate impact of the acquisition on the rates of PAWC's existing customers, if any, will be *de minimus*. PAWC. St. 3-RJ p. 11. Under these circumstances, the cost of requiring PAWC to complete the two studies requested by the OCA is not warranted.

In her Surrebuttal Testimony, OCA witness DeAngelo explained that, to the best of her knowledge, a cost of service study has never been done for the Appalachian System. In support of this statement, she cited Appalachian’s two most recent rate cases. She further stated “in order to accurately reflect the Appalachian System now owned by PAWC and placed in a new rate zone, a cost-of-service study should be completed.” OCA St. 1SR p. 10.

A revenue requirement study was completed for Appalachian in each of its last two rate cases. Ms. DeAngelo appears to be utilizing the term “cost-of-service study” to refer narrowly to a class cost of service study that separates costs by customer class. PAWC St. No. 3-RJ p. 12.

There is no indication that a class cost of service study for Appalachian is needed when PAWC files its next base rate case. PAWC intends to gradually move Appalachian’s rates toward Zone 1 rates. PAWC St. No. 3-RJ p. 12. The OCA agrees with this approach. OCA St. 1SR p. 9. Under these circumstances, a class cost of service study for the System is not warranted and the OCA’s proposed condition should be rejected.

#### **D. Other Issues**

##### **1. Section 2102 Approval of the Transaction**

The Joint Application includes a request that the Commission approve an arrangement with affiliated interests pursuant to 66 Pa. C.S. § 2102 because, following Closing on the Appalachian – Merger Sub Merger, PAWC and Appalachian will briefly be affiliated entities (both entities will be wholly-owned subsidiaries of American). Pursuant to the Merger Agreement, Appalachian will then be merged with and into PAWC and PAWC will continue as the surviving corporation. PAWC St. No. 1 pp. 5-6.

The Commission is to approve an affiliated interest agreement if that agreement is reasonable and consistent with the public interest. 66 Pa. C.S. § 2102(b). The Merger Agreement

provides for an acquisition that satisfies the requirements of Section 1103, including the affirmative public benefits test. Therefore, the ALJ should approve the Merger Agreement as reasonable and consistent with the public interest.

## **2. Approval of the Stock Transfer**

The Commission should approve the transfer of Appalachian's stock from Frank R. Sargent, Jr. to Kyle Gallagher. No party has contested the Stock Transfer. PAWC fully supports Appalachian's request that the Commission approve the Stock Transfer.

## **VI. Conclusion and Request for Relief**

WHEREFORE, for all the foregoing reasons, Pennsylvania-American Water Company requests:

1. That the Honorable Administrative Law Judge Conrad A. Johnson recommend approval of, and the Pennsylvania Public Utility Commission approve: (a) the Application filed by Appalachian Utilities, Inc. on February 2, 2024 at Docket No. A-2024-3046068, and (b) the Joint Application filed by Pennsylvania-American Water Company and Appalachian Utilities, Inc. on February 2, 2024 at Docket Nos. A-2024-3046084 and A-2024-3046092.

2. That the Pennsylvania Public Utility Commission issue a certificate of public convenience evidencing its approval of the transfer by sale of 40% of the issued and outstanding stock of Appalachian Utilities, Inc., from Frank Sargent, Jr. to Kyle Gallagher.

3. That the Pennsylvania Public Utility Commission issue such certificates of public convenience as may be necessary to evidence its approval under 66 Pa. C.S. § 1103(a) of:

(a) the transfer to American Water Works Company, Inc. by merger, of all property and rights of Appalachian Utilities, Inc. used or useful in the public service in accordance with the Agreement and Plan of Merger dated September 22, 2023 between American Water

Works Company, AUI Acquisition Company, Appalachian Utilities, Inc. and Frank R. Sargent, Jr.;

(b) the transfer to Pennsylvania-American Water Company by merger, of all property and rights of Appalachian Utilities, Inc. used or useful in the public service, in accordance with the Agreement and Plan of Merger;

(c) the commencement by Pennsylvania-American Water Company of water service to the public in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County, Pennsylvania, currently served by Appalachian Utilities, Inc.; and

(d) the abandonment by Appalachian Utilities, Inc. of all water service to the public in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County, Pennsylvania.

4. That the Pennsylvania Public Utility Commission permit Pennsylvania-American Water Company to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Joint Application as Appendix “N,” and the implementation of all other rates, and the rules and regulations regarding conditions of Pennsylvania-American Water Company’s water service, as reflected in Pennsylvania-American Water Company’s prevailing water tariff, to become effective immediately upon completion of the proposed merger.

5. That the Pennsylvania Public Utility Commission approve the Agreement and Plan of Merger pursuant to 66 Pa. C.S. § 2102 (approval of contracts with affiliated interests).

6. That the Pennsylvania Public Utility Commission issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in the Application and the Joint Application in a lawful manner.

7. That nothing herein shall be construed as an approval or determination of rate base, costs, or expenses for the purpose of just or reasonable rates.

8. Within ten (10) days after Closing has occurred, Pennsylvania-American Water Company and Appalachian Utilities, Inc. shall notify the Pennsylvania Public Utility Commission that Closing has occurred.

Respectfully submitted,



Erin K. Fure, Esq. (PA ID 312245)  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Telephone: 717-550-1556  
E-mail: Erin.Fure@amwater.com

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David P. Zambito, Esq. (PA ID 80017)  
Jonathan P. Nase, Esq. (PA ID 44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Telephone: 717-703-5892  
Facsimile: 215-989-4216  
E-mail: dzambito@cozen.com  
E-mail: jnase@cozen.com

Counsel for *Pennsylvania-American  
Water Company*

Dated: October 23, 2024

## **APPENDIX A**

### **PROPOSED FINDINGS OF FACT**

PAWC incorporates by reference the Proposed Findings of Fact in Appalachian's Main Brief, and requests that the Administrative Law Judge recommend the adoption of, and the Commission adopt, those Proposed Findings of Fact.

## **APPENDIX B**

### **PROPOSED CONCLUSIONS OF LAW**

PAWC incorporates by reference the Proposed Conclusions of Law in Appalachian's Main Brief, and requests that the Administrative Law Judge recommend the adoption of, and the Commission adopt, those Proposed Conclusions of Law.

## **APPENDIX C**

### **PROPOSED ORDERING PARAGRAPHS**

PAWC incorporates by reference the Proposed Ordering Paragraphs in Appalachian's Main Brief, and requests that the Administrative Law Judge recommend the adoption of, and the Commission adopt, those Proposed Ordering Paragraphs.