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October 23, 2024

VIA E-Filing

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

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

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-2024-3046084 & A-2024-3046092

APPALACHIAN UTILITIES, INC.’S MAIN BRIEF (PUBLIC VERSION)

Dear Secretary Chiavetta:

Enclosed you will find Appalachian Utilities, Inc.’s Main Brief (Public Version) in connection with the above-captioned proceeding. The confidential version of Appalachian Utilities, Inc.’s Main Brief will be filed by overnight delivery.

Secretary Rosemary Chiavetta

October 23, 2024

Page 2

If you should have any questions, please feel free to contact me.

Very truly yours,

/s/ Thomas J. Sniscak

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Todd S. Stewart

Counsel for Appalachian Utilities, Inc.

TSS/das

Enclosures

cc: Administrative Law Judge Conrad A. Johnson (cojohnson@pa.gov)
Per Certificate of Service

**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. :
 :
 : Docket No. A-2024-3046084
 : A-2024-3046092
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 : (CONSOLIDATED)
American Water Works Company, Inc., by :
merger, of all property of Appalachian Utilities, :
Inc. used and useful in the public service; (2) :
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 APPALACHIAN UTILITIES, INC.

PUBLIC VERSION

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Dated: October 23, 2024

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TABLE OF CONTENTS

I. PROCEDURAL HISTORY 1

II. STATEMENT OF THE CASE..... 3

 1. Background and Introduction 3

 2. Description of the Transaction..... 4

 3. Legal Standards..... 6

 a. Burden of Proof..... 6

 b. Burden of Production..... 7

 1. Sections 1102 and 1103 7

 2. Section 2102..... 9

III. SUMMARY OF ARGUMENT 9

IV. ARGUMENT 12

 1. Fitness 12

 2. Affirmative Public Benefits Test 13

 3. Recommended Conditions 19

V. CONCLUSION AND REQUEST FOR RELIEF 20

APPENDICES

- APPENDIX A – PROPOSED FINDINGS OF FACT
- APPENDIX B – PROPOSED CONCLUSIONS OF LAW
- APPENDIX C – PROPOSED ORDERING PARAGRAPHS

TABLE OF AUTHORITIES

Cases

<i>Application of Exelon Corporation et al. for Certificates of Public Convenience</i> , Docket Nos. A-2009-2093057 <i>et al.</i> (Opinion and Order entered June 25, 2009).....	11
<i>Burleson v. Pa. Pub. Util. Comm’n</i> , 443 A.2d 1373 (Pa. Cmwlth. 1982), <i>aff’d</i> , 461 A.2d 1234 (1983).....	7
<i>Cicero v. Pa. Pub. Util. Comm’n</i> , 300 A.3d 1106 (Pa. Cmwlth. 2023), <i>appeal granted</i> , No. 568 MAL 2023, 2024 WL 2988362 (Pa. June 14, 2024).....	8, 13
<i>City of York v. Pa. Pub. Util. Comm’n</i> , 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).....	8, 9, 13
<i>Concerned Taxpayers v. Commonwealth of Pennsylvania</i> , 33 Pa. Commonwealth Ct. 518, 382 A.2d 490 (1978).....	11
<i>Final Policy Statement on Acquisitions of Water and Wastewater Systems</i> , Docket No. M-00051926 (Final Policy Statement entered August 17, 2006).....	19
<i>Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton</i> , Docket No. A-2016-2537209 (Opinion and Order entered Oct. 19, 2016)	10
<i>Milkie v. Pa. Pub. Util. Comm’n</i> , 768 A.2d 1217 (Pa. Cmwlth. 2001)	7
<i>Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n</i> , 489 Pa. 109, 413 A.2d 1037 (1980).....	6
<i>Process Gas Consumers Group v. Pa. Pub. Util. Comm’n</i> , 84 Pa. Commonwealth Ct. 76, 480 A.2d 1273 (1984).....	11
<i>Raezer v. Raezer</i> , 428 Pa. 163, 236 A.2d 513 (1968).....	11
<i>Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n</i> , 578 A.2d 600 (Pa. Cmwlth. 1990)	6
<i>Se- Ling Hosiery, Inc. v. Margulies</i> , 364 Pa. 45, 70 A.2d 854 (1950).....	6
<i>Seaboard Tank Lines v. Pa. Pub. Util. Comm’n</i> , 502 A.2d 762, 764 (Pa. Cmwlth. 1985).....	8, 9, 12
<i>Sgarlat v. Board of Adjustment of Kingston Borough</i> , 407 Pa. 324, 180 A.2d 769 (1962).....	11
<i>Silver v. Zoning Board of Adjustment</i> , 381 Pa. 41, 112 A.2d 84 (1955)	11
<i>South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n</i> , 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992)	8, 9, 12
<i>Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n</i> ,	

138 A.2d 240, 243 (Pa. Super. 1985).....	8, 9
<i>Woods Schools v. Department of Education</i> , 100 Pa. Commonwealth Ct. 375, 514 A.2d 686 (1986).....	11

Statutes

15 Pa. C.S. § 1101, et seq.	5
66 Pa. C.S. § 332(a).....	6
66 Pa. C.S. § 1102(a)(1).....	7
66 Pa. C.S. § 1102(a)(2).....	7
66 Pa. C.S. § 1102(a)(3).....	8
66 Pa. C.S. § 1103(a)	7, 8, 21
66 Pa.C.S §1301.....	12
66 Pa.C.S. §1327.....	10, 11, 12, 19
66 Pa. C.S. § 1327(b)	19
66 Pa.C.S. § 1329.....	14
66 Pa. C.S. § 2102.....	8, 22
66 Pa. C.S. § 2102(b).....	9

Other Authorities

Business Corporation Law of 1988.....	5
---------------------------------------	---

Rules

52 Pa. Code §69.721(a).....	17
52 Pa. Code §69.721	10
52 Pa. Code § 69.711(e).....	19

I. PROCEDURAL HISTORY

On February 2, 2024, Appalachian Utilities, Inc. (“Appalachian” or “AUI”) filed an Application for Certificate of Public Convenience for approval to transfer by sale a non-controlling 40% of Outstanding and Issued Stock of Appalachian from its sole and presently 100% stockholder to its employee Operations Manager (“Appalachian Application”).

This Appalachian Application was filed as a preliminary and related first step toward the ultimate pending sale and merger, subject to Pennsylvania Public Utility Commission’s (“Commission”) approval, of Appalachian into the American Water Works companies and ultimately the transfer of service of Appalachian’s customers to Pennsylvania-American Water Company. That merger is the subject of a separate and concurrently-filed and related Joint Application at Docket Nos. A-2024-3046084 and A-2024-3046092 to approve a merger and related transactions by Pennsylvania-American Water Company and Appalachian (“Joint Application”). Consequently, Appalachian requested its Application at Docket No. A-2024-3046068 be considered and approved before and in coordination with the Commission’s consideration of the Joint Application.

On February 7, 2024, the Commission issued a Secretarial Letter directing Appalachian to file a notice in a newspaper having a general circulation in the area involved and file proof of publication with the Commission before March 4, 2024.

Proof of Publication was filed on February 15, 2024.

No Appalachian customer or municipality in Appalachian’s service territory filed a Protest to either of the above Applications.

On March 4, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Protest, Public Statement and Verification. Additionally, on March 4, 2024, the OSBA filed a Notice of Appearance for Sharon E. Webb.

On March 4, 2024, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention, Protest, Public Statement and Verification as well as the Notice of Appearance for Christine Maloni Hoover and Melanie J. El Atieh.

On March 29, 2024, the OCA filed a Notice Withdrawing the Appearance of Christine Maloni Hoover.

On May 10, 2024, the Commission issued a Call-In Prehearing Conference Notice scheduling this matter for a Call-In Prehearing Conference on June 4, 2024 at 1:00 PM before Administrative Law Judge Conrad A. Johnson and Administrative Law Judge Charece Z. Collins.

A prehearing Conference was held on June 4, 2024 at which time various procedural matters were addressed and a Schedule for the litigation of this matter was established.

On July 11, 2024, the Joint Applicants served the Direct Testimony of Frank R. Sargent, Jr. (AUI St. No. 1) on behalf of Appalachian, and Pennsylvania American Water Company (“PAWC”) served the Direct Testimonies of Marcus Kohl (PAWC St. No. 1), Michael J. Guntram (PAWC St. No. 2) and Ashley Everette (PAWC St. No. 3).

On August 16, 2024, the Office of Consumer Advocate (“OCA”) served the testimony of Morgan N. DeAngelo (OCA St. No.1) and the Office of Small Business Advocate (“OSBA”) served the Direct Testimony of Kevin C. Higgins (OSBA St. No. 1).

On August 30, 2024, Appalachian served the Rebuttal Testimony of Frank R. Sargent, Jr. (AUI St. 1-R), PAWC served the Rebuttal Testimonies of Marcus Kohl (PAWC St. No. 1-R), and Ashley E. Everette (PAWC St. NO. 3-R).

On September 16, 2024, OSBA served the Surrebuttal Testimony of Kevin C. Higgins (OSBA St. No. 1-S) and OCA served the Surrebuttal Testimony of Morgan DeAngelo (OCA St. No. 1-SR).

On September 26, 2024, Appalachian Served the Rejoinder Testimony of Frank R. Sargent, Jr. (AUI St. No. 1-RJ). PAWC served the Rejoinder Testimony of Marcus Kohl (PAWC St. No. 1-RJ) and Ashely E. Everette (PAWC St. No. 3-RJ).

An evidentiary hearing commenced telephonically on October 2, 2024, with the Honorable Conrad A. Johnson presiding. At the hearing, all of the previously served testimony and accompanying exhibits were admitted into the record without cross examination by agreement of the parties. Main Briefs are due October 23, 2024, and this brief is intended to comply with that requirement.

II. STATEMENT OF THE CASE

1. Background and Introduction

This case is about a small rural water company in Clinton County whose owner and CEO, Frank Sargent, Jr. who as a senior citizen has reached the age where he will retire. He has owned and operated AUI for nearly 30 years. (AUI St. No. 1, 2:11-19). In the past two years, AUI has lost money, \$90,185.90 in 2023 and \$31,711.31 in 2024 to date, which means AUI is earning insufficient revenue to pay its expenses. (AUI St. No. 1-R, 2:10-19; AUI St. No. 1-RJ2:17-3:5; AUI Exhibit No. RJ-1). Rather than seeking a rate increase that would have burdened the customers during the bleak days of the Covid pandemic, and even though a rate increase is justified (AUI St. No. 1, 4:6-14), Mr. Sargent took the prudent step of looking for a company to take over the water company that he has shepherded for almost 30 years, to make sure that it “is in good hands and will continue to provide the excellent service that we have managed all these years.”

(AUI St. No. 1, 2:10-14). Selling to American and PAWC was the answer. Mr. Sargent also wanted to reward the loyalty and dedication of a longtime employee, Kyle Gallagher, who is his Co-Director and the Operations Manager of Appalachian. (AUI St, No. 1, 2:11-19). That reward comes in the form of a transfer of 40% of Mr. Sargent's stock (he is presently the sole 100% shareholder of Appalachian) to Mr. Gallagher. (AUI St. No.1, 2, 11-19; Exhibit FRS-1).

It should not go without mention that there were no protests to the Application (other than those of the OCA and OSBA), not a single customer, not a local government unit, no one who would care about the company that provides water for 1456 customers thought the Merger was a bad idea or expressed any concerns about future rates or PAWC taking on the responsibility of providing them with a vital commodity. The absence of concern speaks volumes about the reputation and credibility of both parties to this transaction and should be appropriately considered.

Appalachian is now a small and financially and technically struggling water company and is a public utility regulated by the Pennsylvania Public Utility Commission ("Commission"). AUI has 1,456 customers -- 1353 residential, 83 commercial, 3 industrial, 7 public and 9 fire protection -- in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County ("System"). Appalachian's last rate case was in 2015. PAWC is also a public utility whose service territory includes 417 communities with a combined population of approximately 2,400,000. PAWC has a total of 683,201 water customers in Pennsylvania. (PAWC St. No. 1, p. 8)

2. Description of the Transaction

Pursuant to an Agreement and Plan of Merger, (Attached to the Joint Application as **Appendix "B"**) by and among American, AUI Acquisition Company ("AUI"), Appalachian, and Frank R. Sargent, Jr., as sole shareholder, dated September 22, 2023 ("Agreement"), American will acquire Appalachian through the statutory merger of AUI with and into Appalachian (the

“AUI-Appalachian Merger”) at a closing date to be determined when the parties meet certain terms and conditions of the Agreement. Pursuant to the Agreement, at the effective time of the AUI-Appalachian Merger, all issued and outstanding shares of the capital stock of Appalachian shall be cancelled and extinguished and converted to the right to receive American Common Stock equal to the merger consideration identified in Article 2.7 of the Agreement. (PAWC St. No. 1 p. 3)

On the closing date of the AUI-Appalachian Merger, the issued and outstanding shares of the capital stock of Appalachian shall be surrendered to American in exchange for American Common Stock in accordance with the Agreement. At the time of the AUI-Appalachian Merger closing, Pennsylvania-American and Appalachian will be affiliated with each other. Both entities will be wholly-owned subsidiaries of American, a Delaware corporation. The AUI-Appalachian Merger is authorized by the Business Corporation Law of 1988, 15 Pa. C.S. § 1101, et seq., and pursuant to said Act, a Statement of Merger will be filed with the Department of State. (PAWC St. No. 1, p.3).

Promptly following the AUI-Appalachian Merger, Appalachian will be merged with and into Pennsylvania-American, and Pennsylvania-American will continue as the surviving corporation (the “Proposed Merger”). The Proposed Merger is authorized by the Business Corporation Law of 1988, Pa. C.S. §1101, et seq., and pursuant to said Act, a Statement of Merger will be filed with the Department of State. Joint Applicants will advise the Commission of the effective date of the Proposed Merger. Appalachian will then cease to exist, and all of Appalachian’s assets, properties and rights that are necessary for the operation of the System and the Company will ultimately be transferred by merger to Pennsylvania-American (the “Transaction”). (PAWC St. No.1, 3:1-4-2)

Upon approval of the merger, but preceding the closing of the merger, Appalachian will cause 40% of the capital stock of Appalachian, presently owned by Frank R. Sargent, to be transferred to Kyle Gallagher. The stock transfer is contingent upon the approval of the merger.

PAWC does not, however, request an acquisition adjustment under Section 1327 as part of this proceeding. (PAWC St. No. 1-RJ, 2:19-21). Rather, there are many steps that must occur before the issue of a Section 1327 acquisition adjustment is before the Commission: if the Commission grants approval of the Joint Application, PAWC would in the future decide whether it would seek to recover the purchase price over net book value, then PAWC would need to file a base rate case which includes the former Appalachian serviced territory, and finally PAWC would need to make a request under Section 1327 within that rate case. (PAWC St. No. 1, pp.3-5). The Commission would then decide that matter and set “just and reasonable rates.” Section 1301 of the Public Utility Code, 66 Pa.C.S Section 1301.

3. Legal Standards

a. Burden of Proof

The Joint Applicants, as the parties seeking affirmative relief from the Commission, have the burden of proof in this proceeding. 66 Pa. C.S. § 332(a). The Joint Applicants must establish their case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In other words, the Joint Applicants’ evidence must be more convincing, even by the smallest amount, than the evidence presented by the other parties. *Selling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Any finding of fact necessary to support the Commission’s decision must be supported by substantial evidence, which is such evidence that a reasonable mind might accept as adequate to support a conclusion. 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*, 489 Pa. 109, 413 A.2d 1037 (1980).

b. Burden of Production

The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, 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 proceeding. 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 burden of production establishes a *prima facie* case by presenting substantial record evidence in support of the proposed action, the burden of production shifts to the other parties. If the other parties present evidence of co-equal value or weight, the burden of going forward with some additional evidence to rebut the opposing party's evidence then shifts back to PAWC. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts; the burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

1. Sections 1102 and 1103

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." 66 Pa. C.S. § 1103(a). 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 authorized" by a Certificate granted under the Code. 66 Pa. C.S. § 1102(a)(1). A Certificate is also required for any public utility to "abandon

or surrender, in whole or in part, any service.” 66 Pa. C.S. § 1102(a)(2). A Certificate is required for any public utility or an affiliated interest of a public utility to transfer to any 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. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1985). The fitness of a currently certificated public utility is presumed. *See, e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

An applicant for a Certificate 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 v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The affirmative public benefit 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), appeal granted,

No. 568 MAL 2023, 2024 WL 2988362 (Pa. June 14, 2024). Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Id.*

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

2. 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).

III. SUMMARY OF ARGUMENT

In this consolidated matter, PAWC and Appalachian seek approval to merge, and Appalachian seeks authorization to transfer 40% of the stock of its sole owner, to a long-term employee contingent upon approval of the merger. The determinations to be made in this case are simple: in order for a Certificate of Public Convenience to be issued, PAWC first 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. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1985). While the fitness of a currently certificated public utility is presumed, *See, e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992), the record demonstrates that there is no doubt and no controversy regarding PAWC’s fitness to own and operate AUI’s system. Nor is there any opposition to the stock transfer directly, although it has the potential to be disrupted by an unwarranted adverse determination on the merger.

The primary contested issue is whether there are substantial affirmative benefits to be had from the transaction, and OCA and OSBA claim there is a negative impact of the merger on the AUI system and its ratepayers, and PAWC’s present ratepayers that outweighs the many substantial affirmative benefits PAWC and Appalachian identify and discuss below. More

specifically, the OCA and to a lesser extent OSBA argue that there is a potential, if not speculative, *rate* impact of the merger. The OCA insists that if the merger is to be approved and thus meet the standard of affirmative benefits, it must include a condition that if/when PAWC were to seek to include some portion of the AUI assets into PAWC's rate base in a future rate case, that the addition be limited to depreciated original cost of those assets. This insistence not only lacks requisite legal ripeness, but it would essentially veto the Legislature by pre-empting Section 1327 of the Public Utility Code, 66 Pa.C.S. Section 1327 which, consonant with the Commission's own Policy Statement at 52 Pa.Code §69.721, encourages larger water utilities to acquire small and technically or financially challenged companies like Appalachian.

The OCA and OSBA positions negating and jumping the proverbial ratemaking gun must be rejected for a number of reasons, the primary reason being a clear lack of ripeness (discussed later in this Brief) combined with the fact that this proceeding is not a rate case or a Section 1327 claim. Under longstanding precedent, the Commission has been clear on this point; namely, that the issue of what portion of the purchase price can be included in rate base cannot happen until there is a rate case where all the costs and expenses of the acquiring and acquired utility can be considered. *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) ("*City of Scranton*"). In *City of Scranton*, the Commission considered arguments raised by the OCA and OSBA regarding the rate impacts of the acquisition, but rejected them as being premature:

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. *Id.* Slip Op. at p. 50.

The same rationale that the Commission applied in *City of Scranton* should be applied here; a Chapter 11 acquisition case is not the place to consider ratemaking issues that properly should be determined in a Chapter 13 rate proceeding when and if a claim is made by the utility. Even if it were proper to decide here, which it is not, neither OCA nor OSBA presented rate case information or support for what they see as a rate change somewhere in the future. Instead, they speculate and clearly have no supernatural powers to determine what future economic conditions and future cost of service will be at the time of a future rate case.

The issue is simply not ripe for adjudication at this stage: a case must be "ripe" for adjudication before it can be heard. *Woods Schools v. Department of Education*, 100 Pa. Commonwealth Ct. 375, 514 A.2d 686 (1986); *Sgarlat v. Board of Adjustment of Kingston Borough*, 407 Pa. 324, 180 A.2d 769 (1962). There must be an actual, palpable cause of action before a case will be "ripe" for adjudication. *Concerned Taxpayers v. Commonwealth of Pennsylvania*, 33 Pa. Commonwealth Ct. 518, 382 A.2d 490 (1978). Hence, hypothetical or abstract questions are precluded. *Raezer v. Raezer*, 428 Pa. 163, 236 A.2d 513 (1968); *Silver v. Zoning Board of Adjustment*, 381 Pa. 41, 112 A.2d 84 (1955). This requirement applies to formal proceedings before administrative agencies including the Commission. *Process Gas Consumers Group v. Pa. Pub. Util. Comm'n*, 84 Pa. Commonwealth Ct. 76, 480 A.2d 1273 (1984). To do otherwise, particularly in the case of an acquisition where a claim has not been made under § 1327, as is the case here, OCA's conjecture of rate harm is premature. Simply stated, the OCA's speculative harm claim is not ripe, and arguing that the Commission foreclose that statutory section as a basis for addressing acquisition costs in a future ratemaking proceeding, is a legal ploy that

seeks in reality to write section 1327 out of the Code, thereby negating what elected state representatives have decided. In short, what OCA and OSBA are urging is bad policy; seeking to have an agency eliminate its own ability to apply a statute that it is required to enforce.

No party to this proceeding has or can dispute that PAWC has not made a claim to include the AUI assets in rate base, and until it does, the issue of the proper value to be included, if any at all, is not ripe, would not be based on a record and would be bad policy. *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). The Commission accepting OCA's demand to make ignoring § 1327 a condition of approving an acquisition, would cast doubt on the Commission's integrity and ability to conduct a proper ratemaking process in the future if and when such claim is made and that the Commission, as it is required by law, must determine "just and reasonable rates" under its mandate in Section 1301 of the Public Utility Code, 66 Pa.C.S Section 1301.

IV. ARGUMENT

1. 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). The record demonstrates that PAWC is technically, financially and legally fit and no party has challenged PAWC's fitness. Indeed neither OCA nor OSBA has claimed in testimony that PAWC lacks fitness in any respect.

PAWC is technically fit to own and operate the Systems. 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 is financially fit to own and operate the Systems. PAWC is the Commonwealth’s largest water and wastewater provider, with total assets of \$6.6 billion and annual revenues of \$818 million for 2022. PAWC St. No. 3, p. 4. For the twelve months ending December 31, 2022, PAWC had an operating income of approximately \$357 million and a net income of approximately \$236 million. PAWC St. No. 3, p. 4. These operating results produced cash flows from operations of approximately \$300 million. (PAWC St. No. 1 p. 12; PAWC Exhibits MK-3 and MK-4; PAWC St. No. 3 p. 3).

PAWC is legally fit to own and operate the Systems. 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 Systems. PAWC St. No. 1, p. 11; PAWC St. No. 2 p. 9-10.

PAWC has presented in this case that it is technically, financially and legally fit to own and operate the Systems. No party has even attempted to rebut this *prima facie* case. Therefore, the ALJ should find that PAWC is technically, financially, and legally fit to own and operate the Systems.

2. **Affirmative Public Benefits Test**

As noted above, the 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*. The affirmative public benefit 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), *appeal granted*, No. 568 MAL 2023, 2024 WL 2988362 (Pa. June 14, 2024). Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Id.* In this case, as is obvious from the record, there is ample evidence of the benefit to all constituencies and no credible argument that any group will be disadvantaged or harmed by the Transaction or by the Commission setting “just and reasonable” rates in the future. It also is clear that the harm of not approving the merger is certain, AUI will almost certainly fail, and the public will be left with one more troubled asset to potentially go through the process under Section 529 of the Public Utility Code, 66 Pa.C.S §529.

AUI is a privately held system with one shareholder who is aging and wants after 30 years of being President of the Company to retire, AUI is faced with numerous technical, system, regulatory challenges as described by Mr. Sargent, has very limited options to access capital to make the necessary improvements so that AUI can continue to legally operate. AUI St. No. 1, 3:12-22. AUI’s ability to borrow is constrained because of the size of the company and the low levels of income from present rates. (AUI St. No. 1, 3:12-16). It is clear from the record that Appalachian will need a substantial rate increase over its small number of customers in the event the merger is not consummated, because it refrained from increasing rates, including substantial rate case expense costs, and instead sought a company to buy AUI. (AUI St. No. 1, 4:15-22). AUI has had some regulatory challenges in its recent history, (AUI St. No. 1-R, 6:5-12) which have been resolved, but for which the underlying cause, being short staffed without the resources to hire more staff, cannot be resolved without an increase in rate revenue. (AUI St. No. 1-R, 6:10-7:3).

Contrary to the flippant remarks of OCA's witness (OCA St. No. 1-SR, 8:21-9:4), AUI's problems are not easily resolved by either: 1) "simply" borrowing money through a Pennvest loan (AUI St. No. 1-RJ, 3:6-6:20), or 2) seeking a rate increase. The process for obtaining Pennvest financing - which Mr. Sargent described in detail, and which was either overlooked by OCA's witness or ignored -- is neither simple nor inexpensive; and filing for a rate increase is very expensive and time-consuming. (AUI St. No.1-RJ, 6:21-7:23). A rate case is inevitable absent a merger because rates have not increased since 2015. However, rate cases inflict a disproportionate burden on small water companies because the expense related to such proceedings for small companies when they are contested, which is almost always the case, is a much greater percentage of the increase, if any, ultimately obtained than it is for larger companies. (AUI St. No. 1-RJ, 7:1-23). AUI has been presently (last two years) operating at a deficit which is not sustainable. (AUI St. No. 1-RJ, 3:1-5; AUI Exhibit RJ-1). In short, while AUI is treading water for now, but it cannot continue to do so. These circumstances make it clear that the proposed merger is the only plausible option for the continued provision of service to AUI's customers.

In light of the foregoing brief recitation of the circumstances of AUI's current existence, it should be clear that all parties that have a stake in this matter are benefitted by the Transaction. AUI's current customers benefit by having their water service provided in a manner that complies with the appropriate regulatory requirements, which is not a given considering AUI's recently resolved notices of violation from DEP (AUI St. No. 1-R, 6:5-12), and the plethora of new regulatory requirements that will need to be addressed very soon. (AUI St. No. 1-R, 6:12-20) Customers also will benefit from the vast expertise and **\$6 million plus** (PAWC St. No. 1, p. 13) capital investment that PAWC will bring to bear in the AUI territory post-merger to ensure that service is updated to more modern standards and is consistent and compliant with environmental

and operational requirements. Present rates for AUI customers are lower than they must be for AUI to continue to serve them, and so a rate increase is inevitable, regardless of who ultimately owns and operates AUI. However, customers will not have a rate increase following the merger until PAWC files its next rate case and if, and only if, the Commission decides what the “just and reasonable” rates should be. The continuity of having Commission-made rates is a benefit. Contrary to OCA’s view, paying “just and reasonable” rates set by the Commission in a future rate case is neither a “presumptive disbenefit” nor anything that should hamper this necessary and beneficial merger. The amount of any such increase is not known, but it should be pointed out that the AUI purchase will not presently cause a significant revenue deficiency for PAWC. (PAWC St. No. 3-RJ, 8:20-25). Accordingly, approving the merger does not cause any harm. Any post-merger rate impact will first be reviewed and approved by the Commission, which ensures there will be no undue increase, and no harm to customers by setting “just and reasonable” rates.

PAWC’s existing customers are similarly situated and will not be materially harmed by the Transaction. In addition to adding more customers to the system to dilute the impacts of the costs of running a large water company, another benefit of this transaction is that there are several PAWC systems nearby that will be able to share the costs with AUI customers of employees and equipment as well as expend the number of PAWC staff that would be available in emergency situations. (PAWC St. No. 1 p. 16; PAWC St. No. 1-RJ pp. 4-5). Appalachian has had trouble in getting contractors and necessary help. (AUI St. 1-RJ 8:16-22). Advancing regionalism is a benefit, in general, of mergers, but here, because of the close proximity of PAWC’s other neighboring assets, it was a critical element of the transaction. Having assets, both mechanical and human in close proximity allows for sharing and optimizing the deployment of those assets in a manner that stand-alone systems simply do not enjoy, and it should be counted as a benefit, despite

OCA witness DeAngelo's uninformed and out of her lane opinion to the contrary. (AUI St. No. 1-RJ, 8:1-11)

It is not contested that the transaction will cause, at most, a 26 cents per year rate impact on PAWC existing customers (PAWC St. No. 3-RJ, 8:20-25.) Contrary to Ms. DeAngelo's comments that the capital improvement costs of the required improvements should be included in the revenue deficiency; recovery of those dollars is subject to a rate case and can be allowed by the Commission or not, and therefore they are not a foregone conclusion and are not appropriately classified as a cost. Also, as with all capital costs, they are used to improve facilities and continue to provide benefits to ratepayers, thus categorizing them as harm is not justified.

This merger case is an example of an owner that is trying to do the right thing and is now being punished by what amounts to unnecessary delay and litigation costs. Unlike some systems that wait until the water quality drops, the system is leaking profusely, and/or the bills are not being paid and it is in receivership, Mr. Sargent responsibly sought a buyer for the AUI system before those things happened. Approval of the merger as proposed would avoid the collateral baggage that is likely to occur, and instead will benefit all Pennsylvanians when those things don't happen. The increase in regionalism, which the Commission strongly supports in its Policy Statement at 52 Pa. Code 69.721(a) and the maintenance of appropriate standards to ensure that every Pennsylvanian has future assured access to clean drinking water is another benefit of the merger shared by the general public.

PAWC as a corporate entity also will benefit because it will gain more scale, more customers to spread the costs of business and better ability to access capital markets on better terms that come with greater size and financial *gravitas*. (PAWC St. No. 1 p. 12; PAWC Exhibits MK-3 and MK-4; PAWC St. No. 3 p. 3.)

It is clear that when one places the benefits of the transaction on the scale: over \$6 million in necessary improvements, a better future for AUI customers that could not be obtained by Appalachian alone, water service that will comply – into the future – with all regulatory requirements, and the improved service obtained by having other sister systems close by, to name but a few, versus the future that will occur absent a merger, it is clear that for all constituencies, the merger is by far a net benefit.

In stark contrast, the only contested view is the speculative and premature objection of the OCA’s witness who by her qualifications attached to her first round of testimony is notably inexperienced in all aspects of water system management or as to PENNVEST. (AUI St. No. 1-RJ, 1:19-2:9). Ms. DeAngelo, claims that merger as proposed does not provide substantial benefits and should only be approved with a condition that “PAWC not be permitted to claim more than depreciated original cost of the Appalachian System in rate base in the first rate case after closing.” Ms. DeAngelo’s insistence that Pennsylvania law or Section 1327 should be ignored or repealed by administrative action and her conclusion that a rate increase for AUI customers that could be sought by PAWC post-merger somehow equals harm, when even she does not argue that rate relief is not needed, is contrived and is wrong. The record is clear that without change, AUI is destined to fail - it needs to hire additional staff, engage in required and very expensive regulatory compliance initiatives, and it needs a major rate increase to support these needs. None of these needs are reasonably contested. Mr. Sargent made clear that the size of the rate increase absent a merger would be “massive”. (AUI St. No. 1-R, 6:15-7:3). Yet Ms. DeAngelo claims that a merger with a company that can begin to solve those problems on day one, without an immediate rate case, will be harmful because the acquiring entity might seek to recover more than depreciated book value in rates in some future rate case. Ms. DeAngelo testifies that the speculative chance

that PAWC might include the actual purchase price in rates versus the very real benefits of PAWC being on the ground solving AUI's problems is a potential harm that should defeat all the benefits of the merger, absent a condition she seeks which as stated above, is an attempt to write Section 1327 out of the Public Utility Code. The OCA's position is untenable contrary to sound policy and must be rejected because it defies practical reality.

3. Recommended Conditions

As discussed above, OCA seeks to impose a condition on the merger that it be permitted only if PAWC is prohibited from seeking to include the purchase price, which is greater than depreciated book value, in base rates. The basis of the condition is that while there are "minor" benefits of the merger – such as AUI continuing to be able to provide compliant service or remain solvent – that could be sufficient to allow the merger to be approved, but that there is one known harm – a potential future rate increase – that outweighs these so-called "minor" benefits. OCA's position is wrong for several reasons. First, this is not a Section 1327 proceeding and no claim has been made in this case and so any attempt to address such a claim is not ripe and cannot be addressed here. Second, OCA admits that AUI needs rate relief and even suggests a rate increase is needed but views the speculative future PAWC rate case as a harm, and the massive present rate increase that AUI would need to submit absent a merger as being acceptable, with no explanation as to why. Finally, the so-called harm on which Ms. DeAngelo bases her claim is expressly authorized by a statute, 66 Pa. C.S. § 1327, and simply cannot be viewed, for our purposes here, as a detriment. OCA may not like § 1327, but it is the law and the Commission should not and cannot agree to do anything less than enforce the statute as written.

The Commission's Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926 (Final Policy Statement entered August 17, 2006) continues to

reflect the appropriate vehicle to address Section 1327 requests for acquisition adjustments, is in the next rate case.¹ What the OCA proposes would foreclose that ability and force the Commission to consider the issue now on a record that is insufficient for the task. The OCA's proposed condition is essentially a restatement of the view the OCA took during the process leading up to the Policy Statement, which was rejected by the Commission then and should be rejected by the Commission here. The OCA's condition to demand original cost minus depreciation, to negate Section 1327, and to ignore that those issues are for a future rate case, must be rejected.

V. CONCLUSION AND REQUEST FOR RELIEF

The evidence presented in this case shows that AUI is compliant with the applicable regulations today, but that it cannot maintain that status, because it is losing money, the cost of everything is increasing and the regulatory requirements are multiplying. The proposed merger is the best solution for AUI, its customers and PAWC and its customers. There is no harm to anyone from the transaction and all effected constituencies will benefit in some fashion. It is clear that

¹¹ The Commission's Policy Statement clearly expresses the Commission's view:

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.*

regardless of whether the merger is approved there will be a rate case, and in the case the merger is not approved a very significant rate increase will be needed. PAWC rates for AUI customers, assuming the merger is approved, will be frozen until its next rate case. In contradiction the OCA ignores the inevitability of the future rate needs of AUI and instead claims that if the merger is completed, AUI rates will increase. Its position cannot defeat the logic of AUI's position, and the merger should be approved as submitted.

WHEREFORE, for all the foregoing reasons, Appalachian Utilities, Inc. 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 unprotested transfer by sale of 40% of the issued and outstanding stock of Appalachian Utilities, Inc., from Frank Sargent, Jr. to Kyle Gallagher contingent on the Joint Application for merger being approved.
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,

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Dated: October 23, 2024

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APPENDICES

APPENDIX A

PROPOSED FINDINGS OF FACT

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

APPENDIX A: PROPOSED FINDINGS OF FACT

APPENDIX A
PROPOSED FINDINGS OF FACT

PENNSYLVANIA-AMERICAN WATER COMPANY

Pennsylvania-American Water Company (“PAWC”) is a subsidiary of American Water Works Company, Inc. (“American Water”). It is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. PAWC St. No. 1 p. 8.

As of December 31, 2023, PAWC furnished water service to approximately 683,201 customers in Pennsylvania. PAWC St. No. 1, p. 8.

APPALACHIAN UTILITIES, INC.

Appalachian Utilities, Inc. (“Appalachian”) is a regulated public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania engaged in the business of treating, storing, supplying, distributing and providing water service to the public in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County. AUI St. No 1 p. 1. As of February 2024, Appalachian furnished water service to approximately 1,456 customers within Avis Borough, Pine Creek Township, and Dunstable Township in Clinton County, Pennsylvania. AUI St. No. 1 p. 1.

Appalachian is currently providing reasonable and adequate service to its customers, but is just getting by; it has not made major upgrades that will be needed to comply with regulatory

requirements. In addition, it has operational issues that need to be addressed. Appalachian cannot address these issues without a huge rate increase, which will be needed immediately absent the merger. AUI St. No. 1-R pp. 5, 6.

Appalachian is at a turning point, with the need for substantial capital in the immediate future, but without the ability to secure it due to its small size and general circumstances. AUI St. No. 1-R p. 6.

Appalachian is unlikely to remain viable absent a merger because of the difficulty of obtaining the large rate increases necessary to get rates to cover cost of service, and to secure a reliable source of capital. AUI St. No. 1-R p. 5.

OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (the “OCA”) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

OFFICE OF SMALL BUSINESS ADVOCATE

The Office of Small Business Advocate (the “OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

APPALACHIAN’S SYSTEM

Appalachian’s water system (the “System”) consists of two separate systems (Woolrich and Avis) 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. It has 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.

APPALACHIAN’S APPLICATION

Appalachian filed its Application on February 2, 2024 at Docket No. A-2024-3046068 (the “Application”).

Frank R. Sargent is currently the President, Director, and only shareholder of Appalachian. AUI St. No. 1 p. 1.

The Application seeks Commission approval for Mr. Sargent to transfer 40% of Appalachian’s stock to Kyle Gallagher. Mr. Gallagher is the Co-Director and Operations Manager of Appalachian. The stock transfer is intended to reward the loyalty and dedication of a key employee. AUI St. No. 1 p. 2.

The proposed stock transfer would occur prior to, and be contingent upon, Commission approval of PAWC’s acquisition of Appalachian. AUI St. No. 1 p. 2.

THE JOINT APPLICATION

PAWC and Appalachian’s Joint Application seeks approval of PAWC’s acquisition of Appalachian (the “Transaction”), which is described in more detail below. The Joint Application requests Commission approval of:

The transfer to American Water of all the capital stock of Appalachian and merger with AUI Acquisition Company, LLC (“Merger Sub”) of all property and rights of Appalachian used and useful in the public service in accordance with the Agreement and Plan of Merger (the “Merger Agreement”);

The transfer to PAWC, by merger, of all the property and rights of Appalachian used and useful in the public service in accordance with the Merger Agreement;

PAWC’s right to begin to offer, render, furnish and supply water service in Appalachian’s service territory;

Appalachian’s abandonment, due to the merger of Appalachian into PAWC, of public utility service;

An arrangement with affiliated interests pursuant to 66 Pa. C.S. § 2102; and

The issuance of any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code (“Code”). PAWC St. No. 1 p. 3.

PAWC is seeking the right to provide water service in the same territory that is currently served by Appalachian. PAWC St. No. 1 p. 11.

After the Transaction, Mr. Sargent will retire but Mr. Gallagher will become an employee of PAWC. Considering his intimate knowledge of the System, his continued employment will provide continuity during the transition. AUI St. No. 1 p. 3.

THE SALE PROCESS

Mr. Sargent would like to retire. Selling Appalachian to PAWC satisfies his desire to ensure that Appalachian remains in good hands and will continue to provide excellent service. AUI St. No. 1 p. 2.

Appalachian is unlikely to remain viable in the future, absent a merger. Appalachian has chosen to be acquired while it is still able to provide adequate service. AUI St. No. 1-R p. 6.

The negotiation of the Merger Agreement was conducted over several months by PAWC and Appalachian. These were arm's length negotiations. PAWC is not affiliated with Appalachian. PAWC St. No. 1 p. 7.

THE TRANSACTION

American Water, Merger Sub, Appalachian, and Frank R. Sargent, Jr., as sole shareholder of Appalachian, entered into the Merger Agreement on September 22, 2023, by which American Water will acquire Appalachian through a two-step process: (1) first, the statutory merger of Merger Sub with and into Appalachian, with Appalachian as the surviving corporation ("Appalachian-Merger Sub Merger"), and (2) second, the statutory merger of Appalachian with and into PAWC, with PAWC as the surviving corporation ("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 converted to the right to receive American Water Common Stock equal to the merger consideration identified in Article 2.7 of the Agreement. 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 Water. 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.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] PAWC

St. No. 1 p. 6.

POST-CLOSING OPERATION OF THE SYSTEM

The System will be operated as a stand-alone water district. There are no plans to interconnect the System to any existing PAWC water systems. PAWC St. No. 2 p. 5.

The System will be incorporated into PAWC's North Central Area operations. Employees in this district support each other when appropriate and necessary, particularly in emergencies. All operations and employees within PAWC and the American Water footprint have access to each other when circumstances require or when a specialized skill or experience is required to support local issues. PAWC St. No. 2 p. 4.

POST-CLOSING RATES

PAWC will incorporate Appalachian's rates into PAWC's water tariff as a separate rate zone.

PAWC St. No. 1 p. 7.

30. Immediately upon Closing, Appalachian's customers will be subject to PAWC's prevailing water tariff on file with the Commission with respect to miscellaneous fees and charges and rules and regulations for water service. Appalachian's customers will move to monthly billing from the bi-monthly billing model currently followed by Appalachian. PAWC St. No. 1 p. 7

PAWC'S LEGAL FITNESS

PAWC has a good history of complying with the Code and other applicable laws, including environmental laws. There are no pending legal proceedings that would suggest that PAWC is

not legally fit to provide service to customers of the System. PAWC St. No. 1, p. 11; PAWC St. No. 2 p. 9-10.

PAWC'S FINANCIAL FITNESS

PAWC has a long-demonstrated history of financial stability. PAWC had total assets of approximately \$7.3 billion as of December 31, 2023. PAWC had net income of approximately \$300 million for the 12 months ending December 31, 2023. PAWC has the financial stability and wherewithal to acquire the System and operate it in the public interest. PAWC St. No. 1 p. 12; PAWC Exhibits MK-3 and MK-4; PAWC St. No. 3 p. 3.

PAWC'S TECHNICAL FITNESS

PAWC has significant water and wastewater operations throughout Pennsylvania. PAWC St. No. 1, pp. 12-13.

PAWC currently 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 has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable water services to the residents of the service area. PAWC St. No. 1, p. 9.

A 50-person team of American Water corporate engineers has handled a wide variety of system assessments, treatment process evaluations and design reviews for water and wastewater treatment systems in order to improve operations and prioritize capital improvements. PAWC St. No. 2 p. 8.

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. In fact, PAWC is often called upon by the Commission to step in and resolve troubled water and wastewater systems, resolving compliance issues and providing the excellent service that customers expect and deserve. PAWC St. No. 1 p. 13.

Very recently, PAWC was granted receivership of the East Dunkard Water Authority by the Commission, taking over a troubled water system that was unable to maintain compliance and was under a Compliance Order by the Pennsylvania Department of Environmental Protection. Since taking over operation of the East Dunkard system, PAWC has implemented numerous changes resulting in improved water quality and more efficient operations. Other recent examples include the 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. In all these examples, PAWC 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.

IMPACTS OF THE TRANSACTION

In business and finance, “To consolidate (consolidation) is to combine assets, liabilities, and other financial items of two or more entities into one.”² The Transaction promotes consolidation by combining two public utilities into one. PAWC St. No. 1, p. 16.

Consolidating Appalachian with PAWC will reduce costs, such as by eliminating the need for each utility to file tariffs and reports required by the Commission. PAWC. St. No. 1 p. 17.

² <https://www.investopedia.com/terms/c/consolidate.asp>

Consolidating Appalachian with PAWC will also reduce costs for the System because: (a) PAWC can buy supplies at lower rates because PAWC can buy in greater bulk, and (b) PAWC can move equipment around its system, mitigating the need for the System to purchase equipment. PAWC St. No. 1 p. 20.

The System is located near two existing PAWC operations, Nittany and Boggs, adding valuable scale to the area. Both current PAWC water systems are groundwater systems. Having these similar facilities nearby allows PAWC to operate all three systems efficiently, sharing resources and expertise easily. PAWC St. No. 1 p. 16; PAWC St. No. 1-RJ pp. 4-5.

The System is also located near PAWC's Milton system. Equipment used at Milton will be used in the Appalachian System as needed. PAWC St. No. 1-R p. 3; PAWC St. No. 1-RJ p. 5.

If the Transaction is approved and closing occurs, the owners of Appalachian will receive the proceeds of the Transaction and Mr. Sargent will be able to exit the water industry. PAWC St. No. 1 p. 18.

As a small water company, Appalachian has experienced increased difficulty raising the necessary capital to allow for the continual improvement of the System. A water system requires constant repair and improvement, in addition to addressing increases in operations expense and complexity. Bringing the buying power and greater financial wherewithal of PAWC to bear on these sorts of expenses will ensure that the System continues to provide quality service. AUI St. No. 1 p. 4.

PAWC has not requested an acquisition adjustment pursuant to 66 Pa. C.S. § 1327 in this proceeding. In fact, PAWC has not even decided whether it will seek an acquisition adjustment pursuant to Section 1327. PAWC St. No. 1-R pp. 3-4; PAWC St. No. 1-SR pp. 2-3.

The rate base attributable to the Transaction will not be decided in this proceeding. PAWC St. No. 1 p. 18; PAWC St. No. 3-R p. 3.

If the Transaction is approved, rates for Appalachian's customers will not increase immediately; PAWC will assume Appalachian's existing rates upon acquisition. These rates will remain in effect until the Commission approves other rates for Appalachian's customers. PAWC St. No. 3 p. 6. The timing of PAWC's next rate case is unknown. PAWC St. No. 3-R p. 1.

If the Transaction is disapproved, the current owners of Appalachian are likely to request a rate increase. Appalachian St. No. 1 p. 4; PAWC St. No. 3-R p. 8. Considering Appalachian's small rate base, this rate increase is likely to be substantial. AUI St. No. 1 p. 6; AUI St. No. 1-R p. 2; PAWC St. No. 3-R p. 9. The last rate increase for Appalachian was filed in 2015. AUI St. No. 1 p. 4. Since that time, there has been substantial inflation in virtually every facet of AUI's operations. AUI St. No. 1 p. 4; AUS St. No. 1-R p. 2. Additionally, there are new requirements for water companies, such as completing an inventory of service lines. AUI St. No. 1 p. 4; AUI St. No. 1-R pp. 2-3.

In the long term, PAWC anticipates moving Appalachian's customers to PAWC's Zone 1 rates over a number of years and several rate cases. In the long term, rates would also continue to increase if Appalachian remained a stand-alone system. PAWC St. No. 3-R p. 6.

If the Transaction is approved, Appalachian's 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. PAWC St. No. 1 p. 18. This increased customer base helps stabilize per-customer costs over the long term. AUI St. No. 1 pp. 3-4, 6; PAWC St. No. 1 p. 19.

Appalachian has no formal low-income customer service assistance programs, nor any formal income-based repayment options. Upon closing, the System's customers would become eligible

for PAWC's customer assistance program. For water customers, this program offers two main services: (1) grants of up to \$500 per year and (2) a tiered discount on water service charges and water usage charges based on percentage of Federal Poverty Level. PAWC also offers payment arrangements and budget billing to qualifying residential customers. PAWC's collaboration and coordination with the Pennsylvania Department of Human Services allowed over 13,000 PAWC customers to receive low-income household water assistance program grants in 2022. PAWC St. No. 2 p. 16; PAWC St. No. 3 pp. 6-7.

Appalachian's non-revenue water is approximately 20% (close to the level that the Commission considers excessive). PAWC will make capital improvements in the System, including replacing mains financed by its distribution system improvement charge ("DSIC"). PAWC will replace mains at a faster rate than Appalachian currently replaces mains, which will enhance the reliability of service and reduce non-revenue water. PAWC St. No. 1 p. 22.

PAWC will install remote monitoring equipment and perform leak detection. Leaking assets will be identified and a plan will be developed and implemented to reduce non-revenue water.

Appalachian does not have the personnel, access to advanced equipment, or expertise to address non-revenue water like PAWC will be able to do. PAWC St. No. 2 p. 7.

PAWC has a capital plan for the System, based on preliminary cost estimates of projects required for increased supply and reliability, and other recurring capital work needed in the ordinary course of business. PAWC St. No. 2 p. 5. This capital plan projects capital improvements of \$6,262,500 in the System in the first five years after closing on the Transaction. PAWC Exhibit MJG-3.

Appalachian's financial position does not indicate that it is capable of financing significant capital improvements. In the last five years, Appalachian averaged only about \$45,900 of net

income, but in 2023, Appalachian's Annual Report to the Commission reflected a net loss of more than \$90,000. PAWC St. No. 3-R.

PAWC has specialized staff to manage each segment of its business. Appalachian does not. As a result, the merger will cause service to improve, and the short staff situations the System currently faces will be gone. PAWC has more operational and management assets than Appalachian, which provides greater benefits to customers. AUI St. No. 1 p. 6.

PAWC will, upon closing, test each hydrant to determine if any fire hydrants do not meet standards for flow and residual pressure. The System will be surveyed and water assets will be loaded into PAWC's GIS system to include pipe sizes and elevations. Hydraulic and water quality modeling will be performed to ensure all hydrants provide the necessary fire service. Estimated costs for these activities are included in PAWC's capital improvement plan for Appalachian. PAWC St. No. 2 p. 10.

PAWC will ensure uninterrupted power to critical infrastructure, which will help improve system reliability. Appalachian does not plan to improve system reliability related to power outages. PAWC St. No. 1 p. 22.

PAWC has a Commission-approved lead service line program. Docket No. P-2017-2606100. PAWC is better equipped than Appalachian to provide notice and updates to customers in emergency situations. PAWC St. No. 1-R p. 5.

PAWC does not anticipate that the acquisition of the System 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 a financially sound business that can financially support the acquisition of the System as well as the on-going operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public. PAWC St. No. 3 pp. 3-4.

The purchase price for the System is significantly less than PAWC's average net utility plant in service for other water customers. PAWC St. No. 3-RJ p. 4.

PAWC would gain approximately 1,456 additional water customers as a result of the Transaction, making it a larger, financially stronger and more stable public utility. PAWC St. No. 1 p. 24.

Increasing the total number of PAWC's customers will benefit PAWC's existing customers because more PAWC customers can share future infrastructure costs. Increasing the number of customers promotes stable rates across the entire PAWC System. PAWC St. No. 1 p. 25.

PAWC is not simply looking to grow as a business, but to be a solution for systems that are experiencing some of the challenges that Appalachian is experiencing. PAWC believes that, by acquiring other systems, it is ensuring that safe and reliable service is provided to more customers. In addition, PAWC focuses attention on environmental compliance. PAWC St. No. 1-RJ p. 6.

Rates for PAWC's existing customers will not increase immediately as a result of the Transaction. PAWC St. No. 1 p. 26; PAWC St. No. 3-R p. 6.

Even if PAWC does seek an acquisition adjustment in its next base rate case, and even if the Commission allows that recovery, the rate impact for PAWC's customers would be *de minimus*. PAWC St. No. 3-R pp. 6-7, 10.

APPENDIX B: PROPOSED CONCLUSIONS OF LAW

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PROPOSED CONCLUSIONS OF LAW

The Pennsylvania Public Utility Commission has jurisdiction over the subject matter of, and the parties to, these application proceedings. 66 Pa. C.S. §§ 1102, 1103.

Appalachian Utilities, Inc. (“Appalachian”), as the applicant, has the burden of proof at Docket No. A-2024-3046068. 66 Pa. C.S. § 332(a).

Pennsylvania-American Water Company (“PAWC”) and Appalachian (together, the “Joint Applicants”), as the Joint Applicants, have the burden of proof at Docket Nos. A-2024-3046084 and A-2024-3046092. 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. 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 to be entitled to a verdict in its favor. “[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 (Pa. Cmwlth. 1993).

To establish a sufficient case and satisfy their burden of proof, the Joint Applicants’ evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The decision of the Pennsylvania Public Utility Commission (“Commission”) 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).

A certificate of public convenience 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 authorized” 66 Pa. C.S. § 1102(a)(1).

A certificate of public convenience is also required for “any public utility . . . to acquire from, or to transfer to, . . . any person or corporation, including a municipal corporation, by any method or device whatsoever the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

A certificate of public convenience is also required for “any public utility . . . to abandon or surrender, in whole or in part, any service.” 66 Pa. C.S. § 1102(a)(2).

In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the system being acquired. *Seaboard Tank Lines, Inc. v Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985).

A certificated public utility 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).

The Joint Applicants demonstrated, by a preponderance of the evidence, that PAWC is technically, financially, and legally fit to own and operate the Appalachian water system.

An applicant for a certificate of public convenience 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*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

The affirmative public benefits test is a “net benefits assessment.” This test 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), *petitions for alloc. granted* 47-49 MAP 2024.

The Joint Applicants demonstrated, by a preponderance of the evidence, that PAWC’s acquisition of Appalachian affirmatively promotes the service, accommodation, convenience or safety of the public in a substantial way.

66 Pa. C.S. § 1311(b) provides that the value of property acquired by a public utility is placed into rate base as the original cost of the property when first devoted to public service less depreciation.

66 Pa. C.S. § 1327(a) provides that, if a public utility acquires property from another public utility at a cost in excess of the original cost less depreciation, there is a rebuttable presumption that the excess is reasonable and shall be included in rate base if the public utility can satisfy nine criteria.

66 Pa. C.S. § 1327(b) creates a process by which the Commission may approve a Section 1327(a) acquisition adjustment outside the context of a rate case if certain criteria are met.

The Joint Applicants carried the burden of proving that PAWC did not seek a determination under Section 1327(b) in this proceeding.

The appropriate context for addressing the potential rate effects of a Section 1102 acquisition is a base rate proceeding, not the acquisition proceeding. *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.

In an acquisition proceeding, the Commission should not prejudge rate issues arising from the acquisition. *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) pp. 70-71.

The Commission should not render advisory opinions. *Joint Petition of Metropolitan Edison Company et al. for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order on Reconsideration entered August 3, 2010) (“We are persuaded that the *June 2010 Order* should not include an advisory opinion on an [electric distribution company’s] ability to roll smart meter costs into base rates in a future base rate proceeding. That issue should be left for consideration in an appropriate future case.”).

The Commission should not address issues that are not ripe for review. *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) (time should not be spent litigating hypothetical scenarios that are not yet ripe for review).

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).

The Plan of Merger between American Water Works Company, AUI Acquisition company, Appalachian Utilities, Inc., and Frank R. Sargent, Jr. as sole shareholder, is reasonable and consistent with the public interest as it provides for a merger post-acquisition that will reduce costs and create efficiencies.

APPENDIX C: PROPOSED ORDERING PARAGRAPHS

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

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 (the “Application”), 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 (the “Joint Application”).

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.

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. § 1102(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. (the “Agreement”);
- (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;

(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.

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.

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

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 acquisition contemplated in the Joint Application in a lawful manner.

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.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: October 23, 2024