



November 6, 2024

**VIA E-FILE**

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Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
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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

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply Brief of Pennsylvania-American Water Company in the above-referenced proceedings. 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: Honorable Administrative Law Judge Conrad A. Johnson  
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 6<sup>th</sup> day of November, 2024, serving the foregoing **Reply 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).

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Respectfully submitted,



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**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 :

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**REPLY BRIEF OF PENNSYLVANIA-AMERICAN  
WATER COMPANY**

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Dated: November 6, 2024

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AND NOW COMES PAWC,<sup>1</sup> pursuant to 52 Pa. Code § 5.501 and the Prehearing Order issued on June 13, 2024, to file this Reply Brief. For the reasons set forth herein and in PAWC's Main Brief, PAWC respectfully requests that the ALJ recommend approval of, and that the Commission approve, Appalachian's Application and the Joint Application.

For ease of reference, PAWC will use the same brief outline that it used in its Main Brief.

**I. Procedural History**

PAWC incorporates by reference the Procedural History contained in Section I of its Main Brief. In addition, on October 23, 2024, PAWC, Appalachian, the OSBA and the OCA filed Main Briefs.

**II. Statement of the Case**

PAWC incorporates by reference the Statement of the Case in Section II of its Main Brief.

**III. Legal Standards**

PAWC incorporates by reference the Legal Standards in Section III of its Main Brief.

**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 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, the sellers of the System, the existing customers of the System, the buyer of the System, the existing water customers of the buyer and the existing wastewater customers of the

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<sup>1</sup> For ease of reference, capitalized terms and acronyms used herein have the same meanings as set forth in PAWC's Main Brief, unless otherwise noted.

buyer. The OSBA has no objection to the Transaction but asks the Commission to condition its approval of the Transaction (this proposed condition is discussed below). The OCA opposes the Transaction. In the alternative, the OCA proposes that the Commission attach conditions to its approval of the Transaction.

The OCA failed to rebut the Joint Applicant's *prima facie* case. The only material detriment that the OCA identifies is an alleged adverse rate impact for the existing customers of Appalachian and all existing customers of PAWC. The Transaction will not have any rate impact on PAWC's existing wastewater customers unless the Commission decides that it is in the public interest to allow PAWC to allocate a portion of its wastewater revenue requirement to its water customers. This would result in a beneficial impact for PAWC's wastewater customers. Moreover, since PAWC can only allocate part of its wastewater revenue requirement to water customers if the Commission finds that it is *in the public interest* for this event to occur, as a matter of law, this event cannot be a reason for finding the Transaction is *against the public interest*.

With respect to the Transaction's rate impact for Appalachian's existing customers and PAWC's existing water customers, the OCA exaggerates the rate impact of the Commission's decision in this case, in part, by including the impact of the Commission's decision in other cases (*e.g.*, other acquisitions, including pending and future Section 1329 acquisitions). The Commission should decide this case based on its merits, not based on the possibility that the Commission might find that some other acquisition passes the affirmative public benefits test.

The OCA further exaggerates the rate impact of the Commission's decision in this case by assuming that customers will be harmed by a Commission decision granting PAWC an acquisition adjustment in the first base rate case in which the System is included. That assumption is not warranted. There are three possible outcomes in the first base rate case in which the System is

included: PAWC might not receive an acquisition adjustment because PAWC does not request it; PAWC might not receive an acquisition adjustment because the Commission denies PAWC's request; or PAWC might receive an acquisition adjustment because the Commission finds that the Transaction satisfies the requirements of Section 1327.<sup>2</sup> At this time, it is uncertain which scenario will come to pass.

The OCA also errs by under-counting the benefits of the Transaction. According to the OCA, the Transaction has only one benefit that "counts": Appalachian's customers would become eligible for a low-income customer assistance program. The OCA contends that all other benefits of the Transaction stem from the size and fitness of PAWC. This is incorrect. For example, PAWC benefits from the Transaction because it acquires a water system near three existing PAWC water systems. This benefit does not stem from PAWC's size and fitness; it stems from the location of the acquired system. In addition, PAWC's existing water customers benefit because PAWC will expand its water customer base, allowing them to share the costs of operating PAWC's system with more customers in every future rate case. This benefit does not stem from PAWC's size and fitness; it stems from the fact that Appalachian's 1,456 customers will now be PAWC customers.

Additionally, the OCA introduced no evidence to support its assertion that all the benefits of the Transaction (except one) stem from the size and fitness of PAWC. In contrast, PAWC introduced evidence to show that all the benefits of the Transaction stem from the facts of this particular case. The Commission's decision must be supported by substantial evidence; the Commission cannot rely on a mere assertion that benefits stem from PAWC's size and fitness.

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<sup>2</sup> Even if the Commission grants PAWC an acquisition adjustment, that result should not be considered a "detriment" that justifies disapproving the Transaction because, in enacting Section 1327 of the Code, the Legislature determined that it is in the public interest to allow an acquiring utility to recover the full amount of the purchase price in certain circumstances.

The Commission should find that the OCA failed to rebut PAWC's *prima facie* case because the OCA's assertion is unsupported by any evidence.

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

The OCA, like PAWC and Appalachian, asks the Commission to reject the OSBA's proposal to use the RRR to limit the amount that PAWC can recover as an acquisition premium, if PAWC requests and receives an acquisition premium in its next base rate case.

The OCA's Main Brief creates uncertainty about the OCA's proposed condition to limit the amount that PAWC can recover as an acquisition adjustment in a future base rate case. Based on the OCA's testimony, PAWC's Main Brief construed the OCA's proposed condition as requesting that the Commission prohibit PAWC from even requesting an acquisition adjustment for the Transaction. The OCA's Main Brief, however, arguably can be construed as requesting an order in this case that indicates how the Commission will rule in the future, if PAWC requests an acquisition adjustment. The Commission should not issue an advisory opinion in this case that ties its hands in a future case. It would be improper for the Commission to demonstrate a predisposition as to how it may resolve a future base rate case claim.

The OCA's Main Brief contends that the Commission has broad authority to impose just and reasonable conditions when it approves an acquisition. The Commission's authority, though broad, is not unlimited. The Commission does not have authority to impose a condition that contradicts the Code because such a condition would be unreasonable. To the extent that the OCA asks the Commission to prohibit PAWC from requesting an acquisition adjustment in a future base rate case, the OCA is asking the Commission to impose a condition that contradicts Section 1327(b) of the Code. Twenty years ago, the Commission acknowledged this right and encouraged

acquiring utilities to request an acquisition adjustment in a subsequent rate case rather than the acquisition proceeding. There is no reason for the Commission to modify its position now by stripping PAWC of its right to request an acquisition adjustment in a subsequent base rate case.

To the extent that the OCA asks the Commission to issue a decision in this acquisition proceeding that indicates how the Commission will rule on a request for an acquisition adjustment in a future base rate proceeding, the OCA's Proposed Condition contradicts Section 1327(a). Section 1327(a) states that, if an acquiring utility can prove that an acquisition satisfies nine criteria, the acquiring utility is entitled to a rebuttable presumption that it can place the acquired system's purchase price into rate base. The OCA's Proposed Condition asks the Commission to modify this statute to say that, regardless of whether PAWC can show that the Transaction satisfies the nine criteria, PAWC cannot place the System's purchase price into rate base.

Finally, the OCA's Main Brief notes that nothing forces PAWC and Appalachian to Close on the Transaction. If PAWC and Appalachian find the Commission's condition unacceptable, they can walk away from the Transaction. This is an argument for disapproving the OCA's proposed condition, not for approving it. The Commission should find that the Transaction affirmatively benefits the public in a substantial way without the OCA's proposed condition. Therefore, the Commission should want the parties to Close on the Transaction. The Commission should not jeopardize the Transaction by imposing an unnecessary condition that might cause the parties to walk away from the Transaction.

## **V. Argument**

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

PAWC incorporates by reference Section V.A. of its Main Brief. No party disputes PAWC's fitness to acquire the System. Consequently, the Commission should find that PAWC is technically, financially and legally fit to acquire the System.

**B. Affirmative Public Benefits Test**

The affirmative public benefits test is a simple test: identify all the benefits of an acquisition, identify all the detriments of an acquisition, and then weigh them against each other. In the weighing process, it is the weight of the benefits and detriments that matters, not the number of benefits and detriments. *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-2022-30337047 (Opinion and Order entered Nov. 16, 2023) (Statement of Vice Chairman Kimberly Barrow at 4). If the benefits outweigh the detriments, the Transaction produces net benefits and the Transaction should be approved. If the detriments outweigh the benefits, the Transaction should be disapproved.

To make the net benefits assessment even easier, PAWC suggests weighing the benefits against the detriments for each major stakeholder group affected by the Transaction: the public-at-large, the sellers of the System, the existing customers of the System, the buyer of the System, the existing water customers of the buyer and the existing wastewater customers of the buyer. PAWC's Main Brief demonstrated that the Transaction yields a net benefit for each major stakeholder group. As a result, the Transaction affirmatively benefits the public in a substantial way. Even if the ALJ or the Commission finds that the Transaction does not benefit any particular stakeholder group(s), the net benefits of the Transaction, considered as a whole, outweigh the net detriments of the Transaction.

Appalachian also argues that the Transaction affirmatively benefits the public in a substantial way and should be approved. The OSBA does not oppose the Transaction with one caveat: if the Commission approves the Transaction, *and* if PAWC seeks an acquisition adjustment for the System in a subsequent rate case, the OSBA recommends that the acquisition premium be limited to 34% above the depreciated original cost. OSBA Main Brief pp. 5, 6. 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.

The OCA contends that the Transaction should be denied or, alternatively, conditioned. OCA Main Brief, p. 6. One proposed condition is that “[n]o acquisition premium or goodwill amount, *i.e.*, amounts higher than depreciated original costs, may be included in PAWC’s ratemaking rate base or capital structure in a future rate case.” OCA Main Brief p. 29.

The Joint Applicants have established a *prima facie* case that the Transaction affirmatively benefits the public in a substantial way. No party has rebutted that *prima facie* case. Consequently, the ALJ should recommend, and the Commission should approve the Transaction.

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

**a. Benefits**

PAWC established a *prima facie* case that the Transaction benefits the public-at-large.

Among other benefits:

- the Transaction promotes the Commission’s policy favoring regionalization and consolidation (a) because PAWC has three existing systems near the Appalachian System that can share equipment and personnel with the System and (b) because of economies of scale that Appalachian could not achieve in the absence of the Transaction;
- the Transaction promotes public safety because PAWC has a better record of compliance with the Underground Utility Line Protection Law than does Appalachian;
- the Transaction benefits the public-at-large because PAWC sponsors and participates in local community events and donates money to organizations in the communities it serves, whereas there is no evidence of similar public benefits from Appalachian’s ownership.

PAWC Main Brief pp. 13-17.

The OCA attempts to rebut this *prima facie* case by asserting that every benefit of the Transaction except one stems from PAWC’s size and fitness. The one exception is that the Transaction would make Appalachian’s customers eligible for a low-income customer assistance

program. OCA Main Brief p. 19. The OCA, however, does not explain why eligibility for a low-income customer assistance program does *not* stem from PAWC's size and fitness, but every other benefit of the Transaction *does* stem from that source. How does the Commission determine whether a benefit stems from the purchasing utility's size and/or fitness? What criteria should be applied and why? The OCA fails to address any of these questions.

Moreover, the OCA failed to produce any evidence to support its assertion that all the specific benefits of this particular Transaction (except one) stems from PAWC's size and fitness. It simply asserts "All transactions with PAWC allow PAWC to bring its expertise, access to capital, and employees to the table; however, such is really about PAWC's size and technical and legal fitness." OCA Main Brief p. 18. PAWC, in contrast, introduced evidence that every benefit of the Transaction stems from the specific facts of this particular case. Evidence of benefits cannot be ignored based simply on an *assertion* that those benefits stem from the buying utility's size and fitness. The Commission's decision must be based on substantial evidence of record. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). The OCA could have introduced evidence to support its assertion that every benefit of the Transaction (except one) stems from the Company's size and fitness, but chose not to do so. As a result, the OCA did not rebut PAWC's *prima facie* case.

The OCA further asserts that, as PAWC grows, its business risks grow. OCA Main Brief p. 18. The OCA failed to introduce any evidence to indicate that there is anything unique about this Transaction that increases PAWC's business risks. Apparently, the OCA believes that all acquisitions increase the acquiring utility's business risks. The Commission should not apply the affirmative public benefits test in a manner that would cause all acquisitions to be disapproved.

The OCA argues that, as the owner of a public utility, Mr. Sargent must continue to own and operate the System until he can sell it to another owner. OCA St. No. 1 p. 9. But to whom can he sell it? According to the OCA, he cannot sell it to a large, fit public utility like PAWC because there are almost no benefits that “count.” Obviously, he cannot sell it to an unfit public utility. No small public utility would be able to purchase the System, which is operating at a significant deficit and needs substantial capital improvements.

The OCA would effectively prevent any sale of Appalachian. This result would be against the public interest. Owners of systems such as Appalachian, which question their own viability in the near future, should be permitted (even encouraged) to sell before they do become non-viable.

For all of the above reasons, the ALJ should recommend, and the Commission should find, that the OCA has not rebutted PAWC’s *prima facie* case that the Transaction benefits the public-at-large.

**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**

PAWC established a *prima facie* case that the Transaction benefits the sellers of the System, in part, because they will receive the proceeds of the sale. PAWC Main Brief pp. 17-18. The OCA agrees that the Transaction benefits the sellers of the System. OCA Main Brief p. 7. Consequently, the OCA has not rebutted PAWC’s *prima facie* case.

**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**

PAWC established a *prima facie* case that the Transaction has benefits for Appalachian's existing customers. PAWC's Main Brief pp. 18-21. Among other things, PAWC offers a low-income customer assistance program, whereas Appalachian does not. Even the OCA admits that this is a benefit of the Transaction that does not stem from the size and fitness of PAWC. Therefore, even according to the OCA's logic, this benefit of the Transaction "counts."

No other benefit of the Transaction "counts" according to the OCA. As stated above, according to the OCA, every other benefit of the Transaction stems from the size and fitness of PAWC and therefore should be ignored. As also stated above, however, the OCA's assertion about the source of the benefits fails to rebut PAWC's *prima facie* case because it is unsupported by any evidence. PAWC introduced evidence that demonstrates each benefit flows from the facts of this specific Transaction. OCA's assertion about the source of each benefit is insufficient to rebut PAWC's evidence.

One benefit of the Transaction for Appalachian's customers is that they will be able to share the costs of operating and upgrading the System with over 680,000 other customers. PAWC Main Brief p. 25. The OCA will no doubt argue that this benefit does not "count" because it stems from PAWC's size. The problem with this argument is that the OCA contends that one detriment

of the Transaction for PAWC’s existing water customers is that they will subsidize Appalachian’s customers until Appalachian’s customers pay Zone 1 rates. OCA Main Brief pp. 2, 10, 15, 16. The OCA cannot have it both ways. The OCA cannot say that, if PAWC’s customers subsidize Appalachian’s customers, the detriment to PAWC’s customers “counts” in the net benefits assessment but the benefit to Appalachian’s customers does not “count.”

The OCA further alleges that no benefits of the Transaction “count” because Appalachian is not a “troubled” system; Appalachian is presently providing “adequate” service. OCA Main Brief pp. 5, 6, 8. The OCA admits “[a]s the largest water and wastewater utility in Pennsylvania, it is clear that PAWC has relatively more sophistication and financial and technical ability to ensure that [Appalachian] comes into and remains in compliance with all of DEP reporting requirements more quickly than [Appalachian] could on its own.” OCA’s Main Brief p. 14. Nevertheless, according to the OCA, it is in the public interest for the Commission should deny these benefits to the customers of Appalachian because Appalachian is presently providing “adequate” service.

PAWC and Appalachian introduced extensive evidence showing that, even if Appalachian is currently providing “adequate” service, Appalachian probably will not continue to provide “adequate” service in the future. *See, e.g.*, PAWC Main Brief pp. 17-18, 20. Appalachian is a financially troubled system; it has lost more than \$120,000 since January 1, 2023.<sup>3</sup> Appalachian’s financial condition will not improve in the near future. Appalachian needs to make expensive capital improvements (for example, Appalachian must address its NRW, which is approaching 20% (a level the Commission considers excessive, 52 Pa. Code § 65.20(4))). Appalachian will

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<sup>3</sup> Appalachian lost more than \$90,000 in 2023 and more than \$30,000 through mid-September of 2024. AUI St. No. 1-R p. 6; AUI St. No. 1-RJ p. 3.

also need to incur significant expenses to comply with the Commission's lead service line replacement requirements. PAWC Main Brief pp. 19, 20, 23.

The OCA claims that Appalachian is capable of continuing to provide "adequate" service in the future because it could borrow money or it could file a rate case. OCA Main Brief p. 14. Appalachian produced extensive evidence demonstrating that the OCA's proposed "fix" for Appalachian's financial woes is not as easy as the OCA suggests. Borrowing money from private banks is difficult because of Appalachian's financial situation; borrowing money from PENNVEST has numerous costly strings attached; and rate cases are expensive and may not produce the desired result. AUI St. No. 1-RJ pp. 3-7.

Another problem with the OCA's argument is that it is based on *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) but it ignores a critical passage from that decision. In *Cicero*, the Commonwealth Court disapproved a proposed acquisition because "the System is already providing and is capable of providing the same or similar benefits *without the acknowledged rate increase that will occur as a result of the acquisition.*" *Cicero*, 300 A.3d p. 1119 (emphasis added). Appalachian's owners testified that, if the Transaction is disapproved, they would need a rate increase that they described as "massive," AUI St. No. 1-R p. 19, or "huge." AUI St. No. 1-R p. 5, for the reasons discussed on page 23 of PAWC's Main Brief. Where, as here, an acquired system's ratepayers would need to pay a large increase in rates to provide the same benefits they would receive from the acquisition, *Cicero* is distinguishable. As a result, the improvements in service from the Transaction should "count" as benefits of the Transaction.

For all the above reasons, the OCA has failed to rebut PAWC's *prima facie* case that the Transaction has benefits for Appalachian's existing customers.

**b. Detriments**

The only identified detriment of the Transaction for Appalachian’s existing customers is its alleged rate impact. Contrary to the OCA’s Main Brief, pp. 20, 26, PAWC does not ask the Commission to ignore the rate impact of the Transaction. It is well-settled that, in evaluating an acquisition, the Commission must consider, at least in a general fashion, the rate impacts of an acquisition when determining if an acquisition passes the affirmative public benefits test.<sup>4</sup> *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 829 (Pa. 1972). Therefore, PAWC analyzes in detail the rate impacts of this Transaction for Appalachian’s existing customers and PAWC’s existing customers. PAWC’s Main Brief pp. 21-24 and 27-29, 30.

The OCA exaggerates the rate impact of the Commission’s decision in this proceeding in several ways. The OCA calculates the rate impact of this proceeding as including the rate impact of post-acquisition capital improvements. OCA Main Brief p. 12. The OCA also contends that, if the Transaction is approved, Appalachian’s existing customers will face “sizeable and frequent rate increases in the future.” OCA Main Brief pp. 2, 10, 16.

The Commission should not calculate the rate impact of its decision in this case by including every conceivable ratemaking decision the Commission might make in the future. If the

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<sup>4</sup> However, this does not mean that the Commission must or should make ratemaking decisions in an acquisition proceeding. For example, in *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) (“*Scranton*”), the Commission ruled on an acquisition but refused to adjudicate ratemaking issues related to the acquisition. The OCA claims that *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055 (Pa. Cmwlth. 2018) *alloc. denied*, No. 703 MAL 2018 (Pa. 2019) somehow overruled the *Scranton* decision. This is false. *McCloskey* involved a Section 1329 acquisition. In such a proceeding, unlike this Section 1103 acquisitions, the Commission must make a ratemaking decision (the amount that the acquiring entity may place into rate base as a result of the acquisition). 66 Pa. C.S. § 1329(c)(2). Moreover, *McCloskey* did not construe 66 Pa. C.S. § 1327. The Commission has construed that section of the Code as allowing utilities to elect whether to request an acquisition adjustment in the acquisition proceeding or in a subsequent base rate case. In fact, the Commission has encouraged utilities to request an acquisition adjustment in a subsequent base rate case. *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, pp. 15-16 (quoted in PAWC’s Main Brief p. 42). That is exactly what PAWC did here. As a result, ratemaking decisions should be made in that base rate case, not this acquisition proceeding.

Commission calculates the rate impact of its decision using the methodology suggested by the OCA, no acquisition would ever be approved because the adverse rate impact of every acquisition would be infinite and would inevitably outweigh all the benefits of the acquisition. Instead, the rate impact of the Commission's decision to approve an acquisition should be limited to the increase in the rate base of the acquiring entity based on the Commission's approval of the acquisition.

The OCA contends that the general probable rate harm of the proposed transaction is known and not speculative based on this record. OCA Main Brief p. 22. The OCA asks the Commission to assume that PAWC will receive an acquisition adjustment pursuant to Section 1327 of the Code in the first base rate case in which the System is included. That is false. In the first base rate case that includes Appalachian, there are three possible outcomes. At this time, it is unknown which scenario will come to pass.

First, PAWC might not receive an acquisition adjustment because it might not ask for one. PAWC introduced testimony that, at this time, it is unknown whether the Company will request a Section 1327 acquisition adjustment. The OCA urges the Commission to reject this testimony as not credible. OCA Main Brief p. 23. It is the OCA's argument that should be rejected.

In putting together a rate case, PAWC considers the case as a whole, taking many factors into account (including the overall affordability of rates). At this time, it is premature to state with certainty what the Company will propose regarding one small aspect of its next base rate case. If PAWC does not request an acquisition adjustment, the System would be placed into PAWC's rate base at its depreciated original cost.

Second, PAWC might not receive an acquisition adjustment because the Commission might deny a request for an acquisition adjustment.<sup>5</sup> In this scenario, the System would be placed into PAWC's rate base at the System's depreciated original cost.

Third, the Commission could grant PAWC's request for an acquisition adjustment. The Commission would only grant an acquisition adjustment if it finds that the Transaction satisfies all the elements in Section 1327. In enacting Section 1327, the Legislature determined that the public interest favors granting an acquisition adjustment to an acquiring utility in certain circumstances. If those circumstances are met, as a matter of law, the resulting rate impact should not be considered a "harm" that justifies finding the acquisition is against the public interest. To the contrary, the Commission's finding that PAWC is entitled to an acquisition adjustment would further demonstrate that the Transaction affirmatively benefits the public in a substantial way.

The rate impact of the Transaction is speculative in another sense. It is unclear whether the rate impact from approving the Transaction would be less than or greater than the rate impact from disapproving the Transaction. *See* PAWC's Main Brief pp. 22-23. The OCA claims there is no evidence of the rate impact for Appalachian's existing customers if the Transaction is disapproved. OCA Main Brief p. 9. This is false. The record contains considerable evidence addressing this point.

The sellers of the System testified that, if the Transaction is disapproved, they will need a rate increase in the near term that is "massive," AUI St. No. 1-R p. 19, or "huge." AUI St. No. 1-

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<sup>5</sup> In ruling on a request for a Section 1327 acquisition adjustment, one factor that the Commission would consider is whether the purchase price of the System is reasonable. 66 Pa. C.S. § 1327(a)(6). Here, the OCA argues that the Commission should ensure that PAWC cannot ask for an acquisition adjustment in the future because the System's purchase price is excessive. OCA Main Brief pp. 12-14. If PAWC requests an acquisition adjustment in the future, the OCA can litigate the reasonableness of the purchase price at that time. There is no need for the Commission to address the issue now.

R p. 5. Rates have not increased since 2016, and inflation and new regulatory requirements since then require a significant increase. In addition, the System needs to make capital improvements. A rate case will be costly in and of itself. Finally, the System is currently operating at a significant annual deficit. Considering all these factors, and the System's small customer base, the resulting rate impact will be considerable. *See* PAWC Main Brief p. 23 and sources cited therein. Of course, 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, the OCA contends that Appalachian's customers will face higher rates immediately. OCA Main Brief p. 15. This is false. If the Transaction is approved, PAWC will adopt Appalachian's rates at Closing and there will be no immediate impact on the rates of Appalachian's existing customers.<sup>6</sup> PAWC St. No. 1 p. 19. Rates will not change until PAWC's first base rate case in which the System is included. At this time, it is unknown when that rate case will be filed. OCA St. No. 1 p. 11.

In the medium term, the outcome of PAWC's first base rate case that includes the System is speculative, for the reasons discussed above. 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 ratemaking 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 benefit Appalachian's existing customers because their rates would remain the same rather than increasing by a "massive"

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<sup>6</sup> The OCA contends that PAWC's adoption of Appalachian's rates is a "delay of a known harm." OCA Main Brief p. 17. This is false. If rates stay the same, the Commission's decision to approve an acquisition has no immediate rate impact.

amount. In the medium and long term, it is unclear whether System customers would experience a rate harm or a rate benefit from the Transaction.

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

The Transaction has one benefit that even the OCA believes "counts" in the net benefit assessment: PAWC will offer Appalachian's customers the opportunity to participate in a low-income assistance program. PAWC respectfully submits that many other benefits of the Transaction for Appalachian's customers should "count" in the net benefits assessment.

In contrast, the rate impact of the Transaction is uncertain. PAWC might or might not request an acquisition adjustment in the future. The Commission might or might not grant an acquisition adjustment in the future. Rates for Appalachian's customers might or might not increase more if the Transaction is disapproved than if it is approved.

The ALJ and the Commission should follow the wise precedent established in *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-2022-30337047 (Opinion and Order entered Nov. 16, 2023) p. 62, where the Commission stated: "The 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.*"

For all the above reasons, the ALJ and the Commission should find that the OCA has not rebutted PAWC's *prima facie* case that the Transaction produces a net benefit for the existing customers of Appalachian.

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

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

PAWC established a *prima facie* case that the Transaction benefits PAWC as the buyer of the System, in part, because it will grow its business by acquiring a System that is near three existing PAWC systems, allowing PAWC to run all four systems more efficiently and effectively.<sup>7</sup>

PAWC Main Brief pp. 25-26. No party has rebutted PAWC’s *prima facie* case.

PAWC incorporates by reference Section V.4.a of its Main Brief.

##### **b. Detriments**

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

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

Considering that the Transaction has benefits but no detriments for PAWC, PAWC continues to argue that 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**

PAWC established a *prima facie* case that the Transaction has benefits for PAWC’s existing water customers. PAWC Main Brief pp. 27. These benefits include adding additional customers to the entire PAWC system to share future infrastructure investment costs. This benefit cannot be discounted based on PAWC’s size and fitness; this benefit stems from 1,456 Appalachian customers joining PAWC’s customer base.

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<sup>7</sup> The Commission has recently acknowledged that it must consider an acquisition’s impact on the acquiring entity when evaluating an acquisition. *Application of 52 Pa. Code § 3.501 to Certificated Water and Wastewater Utility Acquisitions, Mergers and Transfers*, Docket No. L-2020-3017232 (Final Rulemaking Order entered Oct. 25, 2024) p. 55 (“the PUC also seeks to ensure that the viability of the acquiring public utility will not be impaired by the acquisition.”).

This benefit should not be discounted because it occurs whenever one utility buys another utility. By gaining more customers, PAWC becomes a stronger, more financially stable company. The Supreme Court of Pennsylvania considered this factor in *City of York*. 295 A.2d at 829.

Gaining a larger customer base is a critical benefit of the Transaction for both PAWC and its existing customers. The Commission should not ignore one of the primary reasons for the acquiring entity to engage in an acquisition. If the Commission would ignore this benefit (among others), there is little reason for one utility to acquire another and the Commission's policy favoring regionalization and consolidation in the water and wastewater industries would be frustrated.

**b. Detriments**

The only detriment that the OCA identifies for PAWC's existing water customers is an alleged adverse rate impact. The OCA, however, overestimates the rate impact of the Commission's decision in this proceeding for PAWC's existing customers.

First, the OCA exaggerates the rate impact of the Commission's decision *in this proceeding* by including the impact of other proceedings, including pending and future Section 1329 applications. OCA's Main Brief p. 16. The Commission must make decisions based on the merits of the case before it; it cannot find that *this acquisition* fails to affirmatively benefit the public in a substantial way because the Commission might find that *another acquisition* affirmatively benefits the public in a substantial way.

Second, the OCA calculates the rate impact of the Commission's decision in this proceeding by including the capital improvements that PAWC plans to make to the System. OCA's Main Brief p. 15. The amount (if any) that PAWC can recover in rates due to post-Closing capital improvements in the System, is not a direct result of the Commission's decision in this acquisition proceeding – it is a direct result of the Commission's decision in a subsequent base rate

case. It should not be included when calculating the rate impact of the Commission's decision in this acquisition proceeding. *See* Section V.B.3, *supra*.

Just as it did with regard to the existing customers of Appalachian, the OCA erroneously contends that the Transaction will cause rates to increase immediately for PAWC's existing customers. OCA Main Brief p. 15. The Transaction will have no impact on rates for PAWC's existing customers until the first base rate case in which the System is included. According to the OCA, the fact that rates for PAWC's existing customers will not increase at Closing means that the adverse rate impact is delayed. OCA Main Brief pp. 16-17. This is false. If rates do not change, there is no rate impact. If rates change later, due to the Commission's decision in a base rate case, that is a direct result of the Commission's decision in the base rate case; it is not a direct result of the Commission's decision in this acquisition proceeding.

It is unclear precisely what impact PAWC's first base rate case that includes the System will have on rates for PAWC's existing water customers. At this time, there are many unknowns regarding PAWC's proposal in its next base rate case, including when PAWC will file the case, whether PAWC will request an acquisition adjustment for the System, and how PAWC will propose to allocate any revenue deficiency from the System. The outcome of that case is also unknown. Nevertheless, PAWC introduced testimony demonstrating that, even if the Commission would grant a request for an acquisition adjustment in the full amount of the purchase price, the resulting rate impact for PAWC's existing water customers would be *de minimis*. PAWC St. No. 3-R pp. 6-7; PAWC St. No. 3-RJ pp. 5-6.

Finally, the OCA repeatedly argues that PAWC's existing water customers would be harmed because they would subsidize the cost of providing service to Appalachian's existing customers. PAWC disputes the accuracy of this statement, based on the facts of this case. PAWC

Main Brief p. 24. To the extent that the OCA's assertion is true, however, that subsidy would benefit the existing customers of Appalachian and should be considered a benefit of the Transaction to those customers. Considering the small number of Appalachian's customers and the large number of PAWC's customers, the benefit to Appalachian's customers would outweigh the detriment to PAWC's customers.

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

The Transaction has benefits for PAWC's existing water customers. These benefits outweigh the *de minimis* rate increase that would result for PAWC's existing water customers in "scenario 3" (in which the Commission grants a request for an acquisition adjustment). A finding that the Transaction satisfies the requirements of Section 1327, however, further demonstrates that the Transaction is in the public interest; it does not warrant a finding that the Transaction is against the public interest. For all the above reasons, the ALJ and the Commission should find that the OCA has not rebutted PAWC's *prima facie* case that the Transaction produces a net benefit for the existing water customers of PAWC.

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

**a. Benefits**

PAWC established a *prima facie* case that the Transaction will benefit PAWC's existing wastewater customers, PAWC Main Brief p. 30, in part, 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. By growing PAWC's water customer base, the Transaction will help keep rates stable for PAWC's existing wastewater customers.

Significantly, this result is not a detriment for Appalachian's existing customers or PAWC's existing water customers. If an event only occurs when the Commission finds it is in the

public interest for that event to occur, that event cannot provide a reason for the Commission to find this Transaction is *against* the public interest.

**b. Detriments**

The OCA contends “all existing PAWC customers” will pay higher rates because of the Transaction. OCA Main Brief p. 8. This statement is clearly false with regard to PAWC’s existing wastewater customers. To the extent that the Transaction affects the rates of PAWC’s wastewater customers at all, it will result in reduced rates if the Commission finds that it is in the public interest for PAWC to allocate some of its wastewater revenue requirement to water customers.

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

No party has rebutted PAWC’s *prima facie* case that the Transaction has benefits but no detriments for PAWC’s existing wastewater customers. Consequently, the ALJ should find that 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**

PAWC has established a *prima facie* case that the Transaction’s benefits outweigh its detriments for every significant stakeholder group affected by the Transaction. No party has rebutted that *prima facie* case for *any* stakeholder group. 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 a whole. Consequently, the ALJ should recommend, and the Commission should find, that the Transaction affirmatively benefits the public in a substantial way.

**C. Recommended Conditions**

**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**

**a. Background**

The OSBA asks the Commission to impose a condition that would apply in the first base rate case in which the System is included. That condition would establish a cap on the amount that PAWC can recover in rates, if the Commission finds that PAWC satisfies the criteria for an acquisition adjustment pursuant to Section 1327. That cap would be 34% of the depreciated original cost of the System (calculated by including contributions in aid of construction). OSBA Main Brief p.6. For ease of reference, this proposal will be referred to here as “the OSBA’s Proposed Condition.”

The OCA also asks the Commission to impose a condition that would prevent PAWC from receiving an acquisition adjustment in the full amount of the System’s purchase price. For ease of reference, this proposal will be referred to here as “the “OCA’s Proposed Condition.”

The precise nature of the OCA’s condition is unclear. In testimony, the OCA phrased the proposed condition as “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 (emphasis added). This phrasing suggests that the OCA is asking the Commission to tie PAWC’s hands in preparing its base rate filing. In the OCA’s Main Brief, however, the proposed condition is phrased as: “No acquisition premium or goodwill amount, *i.e.*, amounts higher than depreciated original costs, *may be included* in PAWC’s ratemaking rate base or capital structure in a future rate case.” OCA Main Brief p. 29. This language arguably asks the Commission to render a decision in this acquisition proceeding that indicates how the Commission will rule if

PAWC requests an acquisition adjustment in a future base rate case. This Reply Brief will address both interpretations.

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

PAWC's Main Brief argued that the OSBA's Proposed Condition was premature because it is unknown at this time whether PAWC will request an acquisition adjustment in the first base rate case in which the System is included. Considering this uncertainty, the Commission should not grant the OSBA's Proposed Condition. Time should not be spent litigating hypothetical scenarios that are not yet 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 Jun. 25, 2009) p. 15. To the extent that the OCA asks the Commission to issue a decision in this acquisition proceeding that indicates how the Commission will rule on a request for an acquisition adjustment in a future proceeding, the OCA's Proposed Condition should be rejected for the same reason.

Additionally, to the extent that the OCA and the OSBA ask the Commission to issue a decision in this acquisition proceeding that indicates how the Commission will rule on a request for an acquisition adjustment in a future base rate proceeding, those requests should be denied because the Commission should not issue an advisory opinion. *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 Aug. 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 issue a decision in this case that will tie its hands in a future proceeding when the issue is presented.

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

The OCA's Main Brief argues that the OSBA's Proposed Condition should be rejected because it is not reasonable as required by 66 Pa. C.S. § 1103. PAWC agrees that the OSBA's Proposed Condition is not just and reasonable, in part, because it is contrary to the Code. Section 1327 states that, if an acquiring utility satisfies nine criteria, it is rebuttably presumed that the acquiring utility can include the full purchase price of the system in rate base. *See* Section V.C.1.c of PAWC's Main Brief.

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

The OCA contends that Section 1103(a) gives the Commission broad authority and discretion to impose "just and reasonable" conditions on acquisitions. OCA Main Brief pp. 24-25, 29. The Commission's authority may be broad, but it is not unlimited.<sup>8</sup> One obvious limitation is that the Commission cannot impose a condition that contradicts the Code. For example, the Commission could not condition its approval of an acquisition on a requirement that the acquiring utility donate to a political candidate. Such a condition would contradict 66 Pa. C.S. § 319(a)(10).

To the extent that the OCA asks the Commission to prohibit PAWC from requesting an acquisition adjustment in a future base rate case, the OCA is asking the Commission to impose a condition that contradicts Section 1327(b) of the Code. That statute gives an acquiring utility the right to request an acquisition adjustment in a subsequent base rate case rather than an acquisition proceeding. Almost twenty years ago, the Commission not only recognized this right, but

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<sup>8</sup> The OCA's argument that a Certificate is a revocable privilege misses the mark. The issue presented here is not the nature of a Certificate. The issue is whether Section 1103(a) gives the Commission unlimited authority to impose a condition on a Certificate. It does not. Section 1103(a) does not give the Commission authority to impose a condition that would modify Section 1327 by taking away an acquiring utility's statutory right to request an acquisition adjustment in a subsequent base rate case.

encouraged acquiring utilities to exercise it by requesting acquisition adjustments in rate proceedings rather than acquisition proceedings. *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 (Final Policy Statement entered Aug. 17, 2006) at 15-16 (quoted in PAWC's Main Brief p. 42).

To the extent that the OCA asks the Commission to issue a decision in this acquisition proceeding that indicates how the Commission will rule on a request for an acquisition adjustment in a future base rate proceeding, the OCA's Proposed Condition contradicts Section 1327(a). Section 1327(a) states that, if an acquiring utility can prove that an acquisition satisfies nine criteria, the acquiring utility is entitled to a rebuttable presumption that it can place the acquired system's purchase price into rate base. The OCA's Proposed Condition asks the Commission to modify this statute to say that, regardless of whether PAWC can show that the Transaction satisfies the nine criteria, PAWC cannot place the System's purchase price into rate base.

The OCA argues that Section 1327 merely affects the notice that must be given in acquisition proceedings. OCA Main Brief pp. 24, 31. This is false. Section 1327 gives the acquiring utility the option of requesting an acquisition adjustment in the acquisition proceeding or a subsequent base rate case. If the acquiring utility elects to request an acquisition adjustment in the application proceeding, Section 1327 requires it to give customers a special notice of the acquisition and the proposed increase in rates. But where, as here, the acquiring utility does not give customers that special notice, the utility retains the right to request an acquisition adjustment in the first base rate case in which the acquired system is concluded. *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, pp. 15-16.

The OCA complains that Section 1327 gives the acquiring utility (and only the acquiring utility) the right to elect when it will request an acquisition adjustment. OCA Main Brief p. 32.

That is the way the law is written. If the OCA believes the law is unsatisfactory, its remedy is to go to the Legislature to re-write the law. The Commission does not have the authority to re-write it. PAWC Main Brief pp. 37-38.

The OCA contends “To protect consumer interests, any purchase price premium that exceeds depreciated original cost for the sole benefit of the AUI shareholder should be paid for by PAWC’s shareholders and not ratepayers.” OCA Main Brief p. 30. The Commission’s role in ruling on a proposed acquisition is to consider how the Transaction will affect all affected parties – not just consumer interests. *Middletown Tp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674, 683 (Pa. Cmwlth. 1984). The Legislature has determined that it is in the public interest to allow an acquiring utility to obtain an acquisition adjustment in certain circumstances. 66 Pa. C.S. § 1327. To promote the public interest, the Commission should preserve PAWC’s right to request an acquisition adjustment pursuant to Section 1327.<sup>9</sup>

The OCA further contends “Section 1311(b) of the Public Utility Code mandates that valuation of utility property be at depreciated original cost.” OCA Main Brief p. 30. That is false. Section 1311(b) establishes a general rule, but the Code contains specific provisions for valuing assets in certain circumstances. *See, e.g.*, 66 Pa. C.S. §§ 1327 and 1329. The rules of statutory construction require that a specific rule control over a general rule, if they irreconcilably conflict. 1 Pa. C.S. § 1933. If PAWC can prove that it satisfies the criteria in Section 1327, the special provision in Section 1327 would control over the general rule in Section 1311(b).

For all the reasons set forth above, in addition to those set forth in PAWC’s Main Brief Section V.C.1.d, the OCA’s Proposed Condition should be rejected.

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<sup>9</sup> The OCA has not, and cannot, explain why it is in the public interest to deny PAWC an acquisition adjustment if the Transaction satisfies the criteria in Section 1327.

**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**

The OCA argues that the Commission should approve the Transaction, subject to condition, because PAWC and Appalachian are not required to Close on the Transaction; if they are dissatisfied with the condition(s) imposed by the Commission, they could walk away from the Transaction. OCA Main Brief p. 32. This is actually an argument for *rejecting* the OCA's Proposed Condition, not approving it. If the Commission concludes (as it should) that the Transaction affirmatively benefits the public in a substantial way, the Commission should not jeopardize that Transaction by attaching a condition that could make the parties decide not to Close. The Commission should want the parties to Close on a Transaction that affirmatively benefits the public in a substantial way.

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

The OCA's Main Brief continues to argue that the OCA's Proposed Condition should be granted "to protect consumer interests." OCA Main Brief p. 30. The OCA's Main Brief, however, fails to acknowledge the safeguards that are already in place to protect consumers. These safeguards are discussed in Section V.C.1.f of PAWC's Main Brief. Considering these safeguards, it is neither just nor reasonable to harm PAWC by depriving it of its statutory right to request an acquisition adjustment in a subsequent base rate case.

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

PAWC incorporates by reference Section V.C.1.g of its Main Brief.

**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's Main Brief continues to request that the Commission order PAWC to submit a cost of service study in its next base rate case. OCA Main Brief p 29. The OCA's Main Brief, however, contains no argument supporting this request.

As noted in Section V.D.2 of PAWC's Main Brief, it is unclear what type of cost of service study the OCA is requesting (a revenue requirement study or a class cost of service study). There is no need for either type of cost of service study for the System. A separate revenue requirement study is not warranted because of the relatively small size of the System. The rate impact of the acquisition for PAWC's existing customers, if any, will be *de minimus*. A class cost of service study for the System is not needed because PAWC intends to gradually move the System toward Zone 1 rates. PAWC St. No. 3-RJ p. 12.

The OCA's proposal to require PAWC to submit a cost of service study should be denied.

**D. Other Issues**

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

PAWC incorporates by reference Section V.D.1 of its Main Brief. No other party addressed this issue. For the reasons set forth in PAWC's Main Brief, PAWC respectfully requests that the ALJ recommend, and the Commission approve, the Merger Agreement pursuant to 66 Pa. C.S. § 2102.

**2. Approval of the Stock Transfer**

PAWC incorporates by reference Section V.D.2 of its Main Brief. No other party addressed this issue. For the reasons set forth in PAWC's Main Brief, PAWC respectfully requests that the ALJ recommend, and the Commission approve, the stock transfer pursuant to 66 Pa. C.S. § 1103.

## **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,



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