

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Appalachian Utilities, Inc. for a :
Certificate of Public Convenience Evidencing :
the Pennsylvania Public Utility Commission's : A-2024-3046068
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 :
Utility Code, for approval of (1) the transfer to : A-2024-3046084
American Water Works Company, Inc., by : A-2024-3046092
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, Inc. use 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. :

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision denies the Application of Appalachian Utilities, Inc. (AUI, Appalachian, Applicant or Joint Applicant) filed with the Pennsylvania Public Utility Commission (Commission) seeking approval to transfer by sale of title of 40% of AUI's outstanding and issued stock from AUI's sole stockholder to AUI's operations manager (Stock Sale Application). This decision also denies the Joint Application of AUI and Pennsylvania-American Water Company (PAWC) filed with the Commission seeking approval to merge PAWC and AUI (Joint Application). The Stock Sale Application and Joint Application are denied because AUI and PAWC (collectively the Applicants or Joint Applicants) failed to meet their burden of proving that the transactions will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.

HISTORY OF THE PROCEEDINGS

Stock Sale Application, Joint Application, and Notices of Appearances

On February 2, 2024, AUI filed an Application for a Certificate of Public Convenience evidencing Commission approval of the transfer by sale of 40% of AUI's stock from Frank R. Sargent, Jr. to Kyle Gallagher at Docket No. A-2024-3046068. Notice of AUI's Application was published in the *Pennsylvania Bulletin* on February 17, 2024,¹ and in The Lock Haven Express, with a protest deadline of March 4, 2024.

Also on February 2, 2024, Appalachian and PAWC filed at Docket No. A-2024-3046084 (public) and Docket No. A-2024-3046092 (confidential version) respectively a Joint Application "for approval of: (1) the transfer to American Water

¹ 54 Pa.B. 881 (Feb. 17, 2024).

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; and (4) the abandonment by Appalachian Utilities, Inc. of all water service” (Joint Application). The Joint Application was published in the *Pennsylvania Bulletin* on February 17, 2024,² with a protest deadline of March 4, 2024.

On March 4, 2024, the Office of Small Business Advocate (OSBA) filed at Docket No. A-2024-3046068, a Notice of Intervention constituting a protest of the Stock Sale Application, a Public Statement and Verification and Notice of Appearance through its attorney, Sharon E. Webb, Esquire (Attorney Webb). On March 4, 2024, OSBA filed at Docket Nos. A-2024-3046084 and A-2024-3046092, a Notice of Intervention and Protest to the Joint Application, a Public Statement and Verification and Notice of Appearance through Attorney Webb.

On March 4, 2024, the Office of Consumer Advocate (OCA) filed at Docket No. A-2024-3046068 a Notice of Appearance through its attorneys, Christine Maloni Hoover, Esquire (Attorney Hoover) and Melanie J. El Atieh, Esquire (Attorney El Atieh). On March 4, 2024, OCA filed at Docket Nos. A-2024-3046084 and A-2024-3046092, a Protest to the Joint Application and a Public Statement through Attorneys Hoover and El Atieh.

On March 28, 2024, PAWC filed a Notice of Appearance through its attorneys, David P. Zambito, Esquire and Jonathan P. Nase, Esquire.

² 54 Pa.B. 881 (Feb. 17, 2024).

On March 29, 2024, Attorney Hoover filed a Withdrawal of Appearance.

Prehearing Conference, Hearing Notice, Protective Order

On May 10, 2024, a Notice was issued to the Parties informing them that the proceedings were assigned to Administrative Law Judge Conrad A. Johnson and Administrative Law Judge Charece Z. Collins (ALJs) and that a telephonic prehearing conference would be held before them on June 4, 2024, at 1:00 p.m.

On May 15, 2024, the ALJs issued a Prehearing Conference Order concerning regulations pertaining to prehearing conferences, 52 Pa.Code §§ 5.221-5.224, and directed the Parties to file and serve their respective Prehearing Memorandums by May 31, 2024. Appalachian, PAWC, OCA and OSBA filed Prehearing Memoranda. The Prehearing Conference was held as scheduled on June 4, 2024, resulting in the establishment of the procedural schedule and consolidation of the dockets.

On June 5, 2024, a Notice was issued to the Parties scheduling a telephonic hearing for October 3-4, 2024, and the ALJs issued a Prehearing Order on June 13, 2024.

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

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

On October 2, 2024, an evidentiary hearing was held before ALJ Johnson, at which time the Parties' written testimony and exhibits were admitted into the evidentiary record.

On November 1, 2024, Attorney Webb filed a Withdrawal of Appearance, and Steve S. Gray, Esquire filed a Notice of Appearance on behalf of OSBA.

In accordance with the litigation schedule, the Parties filed Main Briefs and Reply Briefs. Pursuant to the litigation schedule, the record closed upon the due date for filing Reply briefs, that is, November 7, 2024. Accordingly, this case is procedurally ready for ruling.

FINDINGS OF FACT

The Parties

1. Applicant Appalachian Utilities, Inc. is a jurisdictional public utility engaged in the business of treating, storing, supplying, distributing and providing water service to approximately 1,456 customers in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County, Pennsylvania. Of the 1,456 customers, 1,353 are residential, 83 commercial, 3 industrial, 7 public, 9 fire protection, and one is other. AUI St. No 1 p. 1, 4.

2. Applicant Pennsylvania-American Water Company, a subsidiary of American Water Works Company, Inc. (American Water), is a jurisdictional public utility, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public in Pennsylvania, and collecting, treating, transporting and disposing of wastewater for the public in Pennsylvania. As of December 31, 2023,

PAWC provides water service to approximately 683,201 customers. PAWC St. No. 1 p. 8.

3. The Office of Consumer Advocate is a statutory advocate with authority and duty to represent the interest of utility consumers as a party before the Commission. 71 P.S. § 309-4.

4. The Office of Small Business Advocate is a statutory advocate with authority and duty to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

AUI's Water System and the Stock Sale Application

5. Frank R. Sargent (Mr. Sargent) is the President, Director, and sole shareholder of AUI. AUI St. No. 1 p. 1; OCA St. 1 at 9.

6. Kyle Gallagher (Mr. Gallagher) is the Co-Director and Operations Manager of AUI. AUI St. 1 p. 2.

7. AUI's water system (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. 2 p. 2.

8. The Woolrich system has two wells. It has 1,000,000 gallons of storage. PAWC St. 2 p. 3.

9. The Avis system has two wells. Finished water from these wells is supplied to the distribution system or is stored at the Avis Storage Reservoir. PAWC St. 2 p. 3.

10. AUI is currently providing reasonable and adequate service to its customers. AUI St. 1-R pp. 5, 6.

11. AUI has not filed a rate case for a rate increase since 2015. AUI St. 1 at 4.

12. On October 30, 2023, Mr. Sargent as the seller and Mr. Gallagher as the buyer entered into a Stock Purchase Agreement under which Mr. Sargent, as the sole shareholder of AUI, agreed to sell 40% of his AUI stock (400 shares) to Mr. Gallagher for \$400, the Purchase Price, and Mr. Gallagher agreed to the \$400 Purchase Price. Appalachian Exhibit FRS-1, Attachment 1.

13. On February 2, 2024, AUI filed a Stock Sale Application at Docket No. A-2024-3046068 requesting Commission approval for the sale of 40% of AUI's stock to Mr. Gallagher. Stock Sale Application ¶¶ 6-7.

14. Mr. Gallagher is not a party to this consolidated proceeding.

15. Mr. Gallagher was not called as a witness in this consolidated proceeding.

The Joint Application

16. On February 2, 2024, PAWC and AUI filed a Joint Application requesting a Commission order granting PAWC a Certificate of Public Convenience authority through a series of transactions to acquire AUI, thereby resulting in PAWC as the surviving entity offering water services to current AUI customers. PAWC St. 1 at 3; OCA St. 1 at 3.

17. AUI seeks approval of the Joint Application to facilitate the retirement of Mr. Sargent, its current president and sole shareholder. AUI St. 1 at 2.

18. AUI as a public utility corporation exists separate and distinct from its president and sole shareholder, Mr. Sargent. This means AUI can continue to operate upon Mr. Sargent's retirement, and they must continue to operate as a jurisdictional public utility. OCA St. 1 at 9.

The Proposed Purchase Price

19. As of December 31, 2023, the AUI's System's depreciated original cost (DOC), minus customer Contributions In Aid of Construction (CIAC) is \$1,396,252. OCA St. 1R at 5; OSBA St. 1, p. 7, Table KCH-1.

20. PAWC'S proposed purchase price is substantially higher than the DOC minus customer CIAC for the year ended December 31, 2023. OCA St. 1R at 5. (*See Confidential version*).

21. PAWC is paying in excess of net book value for AUI based on DOC as of December 31, 2023. OCA St. 1R at 5. (*See Confidential version*).

22. PAWC estimates that its decision to pay an amount for the System would result in a substantial revenue deficiency every year. OCA St. 1SR at 8. (*See Confidential version*).

23. PAWC estimates that under its ownership, and including the capital investment projected by PAWC, there will be a significant revenue deficiency every year. OCA St. 1 at 12; OCA St. 1SR at 8. (*See Confidential version*).

24. The purchase price per customer for AUI is higher than three out of the four Section 1102 acquisitions in the last six years. The AUI purchase price per customer is the highest of the water utility Section 1102 (only) acquisitions, ranging between 9% and 26% higher. OCA St. 1 at 14.

Consequences of Joint Application Approval and Alternatives to Acquisition

25. Approval of the Joint Application will likely result in sizeable and frequent rate increases in the future for AUI customers as customers of PAWC. OCA St. 1 at 6; OCA St. 1SR at 9.

26. Based on existing rates, current AUI customers using 4,000 gallons per month pay current AUI rates of \$41.68. OCA St. 1 at 6; OCA St. 1SR at 9.

27. Using the rates that were effective on August 7, 2024, as a result of the most recent PAWC rate case order, PAWC's current Rate Zone 1 customers using 4,000 gallons would pay \$93.89 per month, or \$52.21 more each month. OCA St. 1 at 6, 12; OCA St. 1SR at 9.

28. It would take years for AUI customers to move to PAWC's Rate Zone 1 rates and, in the meantime, other customers would be subsidizing this system. OCA St. 1 at 6; OCA St. 1SR at 9.

29. There are no plans to physically interconnect this system and PAWC plans to run it as a standalone system. PAWC Statement No. 2 at 5.

30. AUI is currently an operating water utility that does not have any known Department of Environmental Protection (DEP) violations or Corrective Action Plans. OCA St. 1 at 9; Exh. MND-1.

31. The scope or magnitude of any rate increase to AUI's existing customers if the Joint Application is not approved remains undetermined. OCA St. 1 at 11.

32. The timing and scope of any AUI rate case is within AUI's control. OCA St. 1 at 11.

33. The timing of PAWC's next rate case is within PAWC's control, and when PAWC will come in for another base rate case that would include AUI customers, if the Joint Application is approved remains undetermined. OCA St. 1 at 11.

34. Based on PAWC's recent base rate case and acquisition activity, PAWC has made frequent and sizeable requests for general rate increases to include its investments in its systems and also its aggressive acquisition activity, and PAWC's rates also include more sizeable expenses due its large size, and PAWC's rates include application of DSIC, for which AUI does not currently use or charge customers. OCA St. 1 at 11-12.

35. PAWC has not identified the existence of either company-owned (from main to curb stop) or customer-owned lead service lines in the AUI system at this time. OCA St. 1 at 12; Exh. MND-3.

36. There are resources available to AUI such as low-interest loans and grants from PENNVEST that AUI could apply for, which could help mitigate some of the costs for design, engineering, and construction. OCA St. 1SR at 8-9.

37. As a jurisdictional public utility, AUI could file a rate case to seek rate relief if its revenues are insufficient. OCA St. 1SR at 9.

LEGAL STANDARDS

A. Actions Requiring a Certificate of Public Convenience

Under Section 1102 of the Code, a public utility, only upon application and approval of the application by the Commission as evidenced by a certificate of public convenience, may undertake certain actions. Specifically, Section 1102(a)(3) of the Code requires an application and Commission approval of the following:

For any public utility or an affiliated interest of a public utility ... to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.^[3]

The sale and merger proposed under the Applications are within the scope of Section 1102(a)(3) of the Code.

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Code, the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”⁴

³ 66 Pa.C.S. § 1102(a)(3).

⁴ 66 Pa.C.S. § 1103(a).

The Pennsylvania Supreme Court has explained the Commission, in issuing a certificate of public convenience, must find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”⁵ In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”⁶

B. Utility Stock Transfer Under 66 Pa.C.S. § 1102(a)(3)

As explained in 52 Pa. Code § 69.901(a)(2):

Recently the Commission has examined 66 Pa.C.S. § 1102(a)(3) and determined that the transfer of stock or other voting interest of a utility’s parent is jurisdictional regardless of the remoteness of the transaction if the effect of the transaction is to change the control of a utility. *Joint Application of Commonwealth Telephone Company, et al.*, A-310800,F.0006, (October 22, 1993). Furthermore, the Commission has held that a transaction resulting in a change of the de facto controlling interest in a utility or its parent, regardless of the tier in the corporate organization, constitutes a change of control of the utility and is jurisdictional under 66 Pa.C.S. § 1102(a)(3). *Joint Application of Paging Network of Pittsburgh, Inc. et al.*, A-330013,F.0005.^[7]

The Commission issued a Statement of Policy on October 22, 1994, to establish clear standards regarding the circumstances under which Commission approval

⁵ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*); *see also*, *Popowsky v. Pa. Pub. Util. Comm’n*, 611, 937 A.2d 1040, 1057 (Pa. 2007) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”).

⁶ 66 Pa.C.S. § 1103(a).

⁷ 52 Pa. Code § 69.901(a)(2).

is required for the transfer of a utility's stock. The standards, in pertinent part, are as follows:

(1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, regardless of the tier.

(2) For purposes of this section, a controlling interest is an interest, held by a person or group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the transaction. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.^[8]

C. Burden of Proof

Since AUI and PAWC are the parties that filed the Applications at issue in this proceeding, they have the burden of proof to establish they are entitled to the relief requested.⁹

The Applicants have the burden of proving that the proposed acquisition and merger will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”¹⁰

⁸ 52 Pa. Code § 69.901(b)(1)-(b)(2).

⁹ 66 Pa.C.S. § 332(a).

¹⁰ *City of York*, at 828.

Pursuant to Section 1103 of the Code, PAWC must show that that it is technically, legally, and financially fit to own and operate the assets of the utilities that it seeks to acquire.¹¹ As a certificated public utility, there is a rebuttable presumption that the PAWC possesses the requisite fitness.¹²

D. Substantial Affirmative Benefits of the Transaction

Recently, the Commonwealth Court upheld prior precedent that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition.¹³ The Court explained that 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.¹⁴ Furthermore, the Court clarified that:

Where...there are **no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the [Certificate of Public Convenience] under Section 1103(a).^[15]

¹¹ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

¹² *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

¹³ *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlth. 2023) (*Cicero*). Notably, *Cicero* is pending the Pennsylvania Supreme Court's appellate review at consolidated Dockets 47 MAP 2024, 48 MAP 2024, 49 MAP 2024.

¹⁴ *Cicero*, at 1119.

¹⁵ *Id.* (emphasis in original).

The Court explained that providing the same services as are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits consistent with *City of York*, especially if the existing system is already operating safely and reliably. Moreover, the public benefits arising from aspirational statements or benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms.¹⁶

DISCUSSION

A. Positions of the Parties on the Stock Sale Application

1. AUI's Position

In support of its position in requesting Commission approval of the Stock Sale Application, AUI submits that the goal of its president, Mr. Sargent, is to reward the loyalty and dedication of AUI's Co-Director and Operations Manager, Mr. Gallagher, by selling to Mr. Gallagher 40% of the shares of AUI stock prior to the sale of AUI to PAWC. AUI St. 1 at 2.

2. PAWC's Position

Concerning the Stock Sale Application, PAWC's position is as follows:

Appalachian's Application seeks Commission approval of a transfer of 40% of Appalachian's stock from Frank R. Sargent, Jr. (the President, Director and sole shareholder of

¹⁶ *Cicero*, at 1120.

Appalachian) to Kyle Gallagher (the Co-Director and Operations Manager of Appalachian). This transfer is intended to reward the loyalty and dedication of a key employee of Appalachian. AUI St. No. 1 p. 2. After the stock transfer, until closing on the Transaction (“Closing”), Mr. Sargent will remain the majority shareholder in Appalachian, holding 60% of the shares of Appalachian stock.

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

PAWC Main Brief at 3-4.

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

PAWC Main Brief at 17.

3. OCA’s Position

OCA did not submit any evidence on its position relevant to the Stock Sale Application.

4. OSBA's Position

OSBA did not submit any evidence on its position relevant to the Stock Sale Application.

B. Analysis of Stock Sale Application

The Commission has jurisdiction to consider AUI's Stock Sale Application because under the October 30, 2023, Stock Purchase Agreement between AUI and Mr. Gallagher, Mr. Gallagher will buy 40% of AUI's stock. *See* Appalachian Exhibit FRS-1, Attachment 1. The Stock Purchase Agreement if approved would result in Mr. Gallagher holding a controlling interest in AUI. By definition, "a controlling interest is an interest, held by a person or a group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the transaction."¹⁷

Notably, in filing its Stock Transfer Application, AUI states it's filing for "a Certificate of Public Convenience for approval to transfer by sale a *non-controlling* 40% of AUI's stock." *See* Appalachian Exhibit FRS-1, cover letter to the Commission's Secretary's Bureau (emphasis added). The Stock Transfer Application avers, "[u]nder the terms of the Agreement, Seller will remain the beneficial holder of 60% of the outstanding shares, the largest voting interest, in Appalachian Utilities. In that respect, majority 'control' of the Company will remain with President Mr. Frank Sargent Jr." Stock Transfer Application at ¶ 6.

¹⁷ 52 Pa. Code § 69.901(b)(2).

During the prehearing conference AUI argued as follows:

Forty percent is not a controlling interest. There's no change in who essentially would be calling the shots. That would still be Mr. Sargent who is the president and presently the 100 percent stockholder.

What this application boils down to is a generous and magnanimous recognition of a long-standing, excellent employee and it really is almost like a management decision to pay compensation which -- again, the policy statement was probably more concerned with a bunch -- let's give an example of three parties that own 20 percent together with larger, larger companies having the controlling interest.

But here this isn't the case. This is, again, one that -- and I hate to say it, a no-brainer, but this is just a management prerogative under the managerial discretion doctrine. Which is well-established in the case law to transfer it but since the Commission is saying 20 percent or more you have to get certificate, we are honoring that.

Tr. 14-15.

Here, AUI misapprehends the term “control” as defined in the Commission’s policy statement. Control does not mean owning a majority of the utility’s shares or having the largest voting interest. Control means the beneficial owner has “at least 20% of the voting interest in the utility.”¹⁸

Since the Stock Transfer Application proposes to transfer/sell to Mr. Gallagher for a 40% controlling interest in AUI, AUI had the burden of proving that the proposed transaction “affirmatively promote the ‘service, accommodation, convenience,

¹⁸ 52 Pa. Code § 69.901(b)(2).

or safety of the public’ in some substantial way.”¹⁹ It is clear from the testimony of AUI’s president that the driving force behind the Stock Transfer Application is to reward Mr. Gallagher for his dedication and loyalty to AUI. AUI St. 1 at 2. Mr. Gallagher did not join in the Stock Transfer Application, nor did Applicant AUI call Mr. Gallagher to offer any testimony or evidence as how the sale of a 40% controlling interest in AUI would provide a substantial affirmative benefit to the public. While rewarding a loyal employee for dedicated service is admirable, such a reward is not substantial evidence to warrant approval of the Stock Transfer Application.

C. Ruling on Stock Transfer Application

After due consideration of the evidence and arguments of the Parties, a ruling is required that Applicant AUI failed to establish its burden of proving that approval of the Stock Transfer Application will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” Accordingly, in the ordering paragraphs below, the Stock Transfer Application will be denied.

D. Consideration of the Joint Application

Initially it must be stated here that denial of the Stock Transfer Application directly impacts consideration of the Joint Application. More pointedly, denial of the Stock Transfer Application collapses the Joint Application. In other words, the Joint Application becomes moot. AUI’s president testified as follows:

Q: What is the purpose of your testimony in this consolidated proceeding?

¹⁹ *See City of York.*

A: As suggested by the question, this consolidated proceeding has two distinct but related purposes or steps. The first is to approve the transfer of 40% of Appalachian's stock to Kyle Gallagher, which would occur or "close" before and [be] contingent upon approval of the second step; namely, the transactions stated in the Joint Application for American and PAWC to acquire Appalachian via merger.

AUI St. 1 at 2.

AUI did not present any evidence as to its intent to proceed with seeking approval of the Joint Application, if the Stock Transfer Application was denied. During the prehearing conference AUI represented the following:

On behalf of Appalachian, we certainly -- to us it makes sense that these cases be consolidated and considered at the same time. I think that would be most cost-effective.

This [approval of the Stock Transfer Application] is really just a pre-conditional step within Appalachian. Now, if it didn't get approved, it would be a client decision. And at this point where the clients' position is that this is what he wants to do, to reward this long-standing employee. Now, if it is not approved, then I don't think he could make that decision in the abstract.

....

But what is going to happen is, the 40/60 application has to be approved first so when they go to finalize this transaction, the payout goes to separate individuals rather than just to Mr. Sargent who then would have to give -- somehow or other transfer something to Mr. Gallagher.

It's just the logical way to do it. It's sequential and it makes sense. It has tax ramifications if it's not done that way that are unnecessary and not favorable.

Tr. 18-20 (emphasis added).

AUI did not present any evidence as to its intent to proceed with seeking approval of the Joint Application, if the Stock Transfer Application was denied. While AUI claims the “close” of the Stock Transfer Application is contingent upon approval of the Joint Application, the reverse is true. The Joint Application cannot be approved without approval of the Stock Transfer Application. AUI and PAWC have structured the sale of AUI’s stock and the merger of AUI into PAWC in such a fashion that the stock sale is an integral part or component of the merger. Again, without approval of the stock sale, the Joint Application collapses. Therefore, the Joint Application cannot be approved.

E. Positions of the Parties on the Joint Application

Assuming AUI wishes to proceed with the Joint Application without approval of the Stock Transfer Application and for the purposes of argument, the positions of the Parties are considered below.

1. AUI’s Position

AUI’s summarized its position as follows. *See* AUI’s Main Brief at 9-12. AUI submits that in this consolidated proceeding, 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.²⁰ While the fitness of a currently certificated public utility is presumed, *See, e.g., South Hills Movers, Inc. v. Pennsylvania. Public Utility Commission*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992), the record demonstrates that

²⁰ *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).

there is no doubt and no controversy regarding PAWC's fitness to own and operate AUI's system.

AUI offers that 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 are discussed 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. AUI argues that 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. AUI argues that this insistence not only lacks requisite legal ripeness, but it would essentially veto the Legislature by pre-empting Section 1327 of the Public Utility Code²¹ 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.

AUI contends that OCA's and OSBA's 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 combined with the fact that this proceeding is not a rate case or a Section 1327 claim. AUI argues, 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

²¹ 66 Pa.C.S. § 1327 (Section 1327).

all the costs and expenses of the acquiring and acquired utility can be considered.²²AUI argues that 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 [the Commission's Bureau of Investigation and Enforcement] 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.^[23]

According to AUI, 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.²⁴ 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.

²² *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*).

²³ *Id.* Slip Op. at p. 50.

²⁴ 66 Pa.C.S. §§ 1101–1104; 66 Pa.C.S. §§ 1301–1360.

AUI asserts that 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.²⁵ The Commission accepting OCA's demand to make ignoring Section 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.²⁶

Concerning the affirmative benefits of the Commission approving the Applications, AUI submits the following. *See* AUI Main Brief at 14-17.

AUI asserts that it 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; AUI has very limited options to access capital to make the necessary improvements so that AUI can continue to legally operate. AUI St. 1, 3:12-22. AUI maintains that its ability to borrow is constrained because of the size of the company and the low levels of income from present rates. AUI St. 1, 3:12-16. AUI asserts 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. 1, 4:15-22. AUI offers that it has had some regulatory challenges in its recent history, AUI St. 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

²⁵ *Application of Exelon Corp. for Certificates of Pub. Convenience*, Docket Nos. A-2009-2093057 *et al.* (Opinion and Order entered June 25, 2009).

²⁶ 66 Pa.C.S § 1301.

revenue. AUI St. 1-R, 6:10-7:3. AUI claims a rate case is inevitable absent a merger because rates have not increased since 2015. AUI argues that rate cases inflict a disproportionate burden on small water companies because of the expense related to such proceedings for small companies when they are contested. AUI St. 1-RJ, 7:1-23. AUI maintains that over the last two years the company has been operating at a deficit which is not sustainable. AUI St. 1-RJ, 3:1-5; AUI Exhibit RJ-1. AUI suggests that the proposed merger is the only plausible option for the continued service to AUI's customers.

Continuing with its position AUI asserts that current customers benefit from the transaction and merger 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. 1-R, 6:5-12), and the plethora of new regulatory requirements that will need to be addressed very soon. AUI St. 1-R, 6:12-20. According to AUI, its customers will benefit from the vast expertise and \$6 million plus (PAWC St. 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.

AUI concludes that present rates for its 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. AUI suggests that 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. Thus, AUI offers that the continuity of having Commission-made rates is a benefit. AUI adds that the amount of any such increase is not known, and AUI argues that the AUI purchase will not presently cause a significant revenue deficiency for PAWC. 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, according to AUI.

2. PAWC’s Position

PAWC summarizes its position as follows. *See* PAWC Main Brief at 8-10. PAWC asserts this proceeding centers around two issues: (1) Does the Transaction affirmatively benefit the public in a substantial way? (2) Should the Commission impose conditions on its approval of the Transaction?

PAWC posits that the Joint Applicants have established a prima facie case that the Transaction’s benefits outweigh its detriments for each of the major stakeholder groups affected by the Transaction: the public-at-large (all residents of the Commonwealth, whether or not they are customers of PAWC or Appalachian), the sellers, Appalachian’s existing customers, PAWC, PAWC’s existing water customers, and PAWC’s existing wastewater customers. According to PAWC, the Transaction does not have a material adverse rate impact for Appalachian’s existing customers or PAWC’s existing customers, even if PAWC retains the right to request an acquisition adjustment to place the full amount of the purchase price into a rate base. PAWC argues that even if the Transaction’s benefits do not outweigh its detriments for any particular stakeholder group(s), the number and weight of the Transaction’s benefits, taken as a whole, outweigh the number and weight of the Transaction’s detriments, taken as whole.

PAWC notes that OSBA proposes that, if the merger is approved and if PAWC requests an acquisition adjustment in the first base rate case in which Appalachian is included, the Commission should not allow PAWC to recover an acquisition adjustment of more than 1.34 times the AUI’s system’s depreciated original cost. PAWC argues this proposed condition should be rejected for several reasons, including the following: (1) the proposed condition is premature (the Commission should

not address hypothetical situations, nor should the Commission make rate-making decisions in acquisition proceedings); (2) the proposed condition contradicts the clear and explicit terms of Section 1327 of the Code (which allows a utility to receive an acquisition adjustment in the full amount of the AUI's system's purchase price) and Section 1103(a) of the Code does not give the Commission authority to modify statutes.

PAWC notes that OCA proposes that, if the Commission approves the Joint Application, it should prohibit PAWC from requesting a Section 1327 adjustment in the first base rate case in which Appalachian is included. PAWC argues this proposed condition should be rejected for several reasons, including the following: (1) the proposed condition is premature (the Commission should not make rate-making decisions in acquisition proceedings); (2) the proposed condition contradicts the clear and explicit terms of Section 1327 of the Code (which allows a utility to request an acquisition adjustment in a subsequent base rate case) and Section 1103(a) of the Code does not give the Commission authority to modify statutes; (3) the proposed condition is not necessary to protect consumers and would harm PAWC; and (4) the proposed condition is bad public policy because it will undermine Section 1327 and give rise to unnecessary litigation.

PAWC contends that OCA also proposes that the Commission require PAWC to submit cost of service studies for Appalachian, and for the PAWC system without Appalachian, when the Company files its next base rate case. PAWC submits that considering Appalachian's small size relative to PAWC, there is no need for a separate revenue requirement study. Additionally, PAWC contends it intends to gradually move Appalachian's existing customers to Rate Zone 1 rates, as such there is no need for a class cost of service study. Consequently, PAWC argues this proposed condition should also be rejected and the Commission should approve the acquisition.

Concerning the affirmative public benefits will result from the Commission's approval of the acquisition, PAWC argues several points. The Transaction promotes regionalization because PAWC has several nearby systems (Nittany, Boggs and Milton). PAWC St. No. 1 p. 16; PAWC St. 1-R p. 3; PAWC St. 1-RJ pp. 4-5. The Nittany and Boggs systems, like the Appalachian System, are groundwater systems. PAWC has a large staff of qualified professionals and they will bring better management practices such as better physical security plans and business continuity plans, as well as enhanced customer service. PAWC St. 1 p. 9; PAWC St. 2 p. 8; PAWC St. 2 p. 10.

Continuing with its position, PAWC submits that the Transaction will achieve economies of scale that benefits customers which include (1) PAWC's ability to obtain supplies at lower rates because of PAWC's ability to buy in bulk; (2) PAWC's ability to move equipment around its system, whereas, Appalachian must buy or rent equipment it needs; (3) PAWC has engineers on staff to perform tasks rather than contracting the work out at higher costs; and (4) PAWC maintains a local state accredited laboratory for Coliform which reduces cost and allows for quicker turnaround in boil water situations, thereby benefitting customers. PAWC St. 1 pp. 20-21. PAWC suggests that Appalachian does not have the same breadth of resources or "economies of scale." AUI St. 1 p. 5. PAWC claims that the Transaction will also benefit the public-at-large because PAWC has a better record of compliance with the Underground Utility Line Protection Law, than does Appalachian.²⁷ PAWC St. No. 2 p. 13.

PAWC also contends that if the stock transfer and merger are approved, Mr. Sargent will achieve several goals: Mr. Sargent will reward a dedicated employee by transferring stock to that employee; Mr. Sargent and Mr. Gallagher will benefit from the proceeds of the sale; Mr. Sargent will be able to exit the business and retire; Mr.

²⁷ 73 P.S. §§ 176-186.

Gallagher (who is familiar with the AUI's system) will work for PAWC and assist in the transition; and Appalachian will be sold to a company that can provide reasonable and adequate service to Appalachian's customers in the future. PAWC St. 1 pp. 6, 7, 18; AUI St. No. 1 p. 2. Thus, PAWC concludes that the Transaction benefits the sellers of Appalachian by allowing them to avoid significant future expenses and other challenges. AUI St. 1-5 pp. 5-6; *See also*, AUI St. 1-R p. 6 (Appalachian is currently providing reasonable and adequate service at just and reasonable rates, but its future is doubtful).

3. OCA's Position

OCA summarizes its position as follows. *See* OCA Main Brief at 6-7. OCA asserts that PAWC's request for approval of its proposed purchase of the AUI's water system should be denied, or alternatively conditioned, because PAWC failed to establish that the proposed transaction would result in substantial affirmative public benefit. OCA claims that PAWC's averred benefits are either not benefits at all – because they do not differ in any substantial way from the technical, legal, or financial capability of AUI – or they do not outweigh the adverse rate impact on existing PAWC customers and to-be-acquired AUI customers. OCA argues that the rate harm of the purchase price must be considered by the Commission in its weighing of harms and benefits in determining whether the transaction as proposed would produce affirmative public benefit. OCA contends that the general probable rate harm of the proposed transaction is known and not speculative, and the timing of the rate harm is tied directly to PAWC's next base rate case filing where it can seek to include in ratemaking rate base the acquisition premium above depreciated original cost.

OCA submits that Mr. Sargent, the sole shareholder of AUI, wants to exit the business; however, OCA notes that AUI is a jurisdictional public utility with a statutory obligation to serve its customers pursuant to the requirements of the Public Utility Code. OCA concedes that Mr. Sargent will benefit from being paid the proposed

acquisition premium; however, OCA argues both existing PAWC consumers and to-be-acquired AUI consumers will be harmed in the future rate case absent the Commission imposing a just and reasonable condition that 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 submits that the Commission can impose a just and reasonable condition on the certificate to enable a finding of affirmative public benefit. OCA contends that considering that the Public Utility Code mandates that valuation of utility property be at depreciated original cost, to protect consumer interests, any purchase price premium that exceeds depreciated original cost for the sole benefit of AUI's only shareholder should be paid for by PAWC's shareholders and not ratepayers. Thus, OCA recommends that the Commission condition approval on no acquisition premium or goodwill amount (*i.e.*, amounts higher than depreciated original costs) to be included in PAWC's ratemaking rate base or capital structure. OCA argues this condition is just and reasonable, and absent the inclusion of this condition in approving the transaction, the Commission should reject Joint Application.

4. OSBA's Position

The OSBA does not oppose the merger between PAWC and Appalachian with one caveat. OSBA submits that if the Commission approves the merger and PAWC seeks to include the Appalachian acquisition in rate base in a subsequent rate case, the OSBA recommends that the acquisition premium that is eligible for inclusion in rate base be limited to 34% above the depreciated original cost. While the PAWC's overall rate base is not being determined in the instant proceeding, the OSBA is raising this issue because it believes it is appropriate for the Commission to consider the rate base implications as part of its assessment of the potential public benefits and detriments of the merger. OSBA St. 1 pp. 8-9; OSBA Main Brief at 5-7.

According to OSBA, this amount, 34% above the depreciated original cost, is derived using the Reasonableness Review Ratio (RRR), which is a new valuation metric that the Commission has adopted as a guideline in its evaluation of Section 1329 applications.²⁸ The RRR will be equal to the ratio of fair market value to depreciated original cost of a barometer group of similarly situated investor-owned water utility companies. OSBA St. 1, at 19. The Commission calculates that the RRR is currently 1.68.²⁹

The OSBA is cognizant of the fact that the Commission will use the RRR as a metric in evaluating Section 1329 cases, and technically it would not be directly applicable to an acquisition or merger between two investor-owned utilities as proposed in this proceeding. OSBA asserts that the Parties, the ALJ, and the Commission are all fully aware of the impact that Section 1329 has had on water and wastewater rates across the Commonwealth. Therefore, the OSBA recommends utilizing the proposed RRR in this manner to provide a useful benchmark for determining the appropriate acquisition premium that is eligible for inclusion in customer rates.

F. Analysis of Joint Application

In this proceeding the Joint Applicants had the burden of proving that the proposed acquisition and merger would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”³⁰ It is clear from the testimony of Joint Applicant AUI’s president that the driving force behind the Joint Application is that its president and sole stockholder wishes to retire. AUI St, 1-

²⁸ 66 Pa.C.S. § 1329 (Section 1329).

²⁹ See Docket No. M-2016-2543193, Tentative Supplemental Implementation Order, February 1, 2024, at 7.

³⁰ *City of York*.

R at 4. While the Commission is not unsympathetic to the owners' desire to retire, this is not ground to warrant approval of the Joint Application.

Additionally, as OCA argues, the evidence is lacking proof of substantial affirmative benefits to the public. As OCA argues PAWC's averred benefits of the merger are either not benefits at all – because they do not differ in any substantial way from the technical, legal, or financial capability of AUI – or they do not outweigh the adverse rate impact on existing PAWC customers and to-be-acquired AUI customers. Additionally, OCA established approval of the Joint Application will likely result in sizeable and frequent rate increases in the future for AUI customers as customers of PAWC. OCA St. 1 at 6; OCA St. 1SR at 9. Rate harm of the purchase price must be considered by the Commission in its weighing of harms and benefits in determining whether the transaction as proposed would produce affirmative public benefit. As OCA notes the general probable rate harm of the proposed transaction is known and not speculative, and the timing of the rate harm is tied directly to PAWC's next base rate case filing where it can seek to include in ratemaking rate base the acquisition premium above depreciated original cost. Additionally, AUI is currently providing reasonable and adequate service to its customers. AUI St. 1-R pp. 5, 6. Approval of the Joint Application would result in a revenue deficiency OCA St. 1 at 12; OCA St. 1SR at 8. (*See Confidential version*). Considering the above Findings of Fact as well as harm to ratepayers, approval of the Joint Application is not warranted.

G. Ruling on Joint Application

After due consideration of the evidence and arguments of the Parties, a ruling is required that Joint Applicants AUI and PAWC failed to establish their burden of proving that approval of the Joint Application will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” Accordingly, in the ordering paragraphs below, the Joint Application will be denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. *See* 66 Pa.C.S. §§ 1102, 1103.

2. As the proponent of an order in this proceeding, the Applicant and Joint Applicants have the burden of proof to establish that they are entitled to the relief they are seeking. 66 Pa.C.S. § 332(a).

3. The Applicant and Joint Applicants have the burden of proving that the proposed acquisition and merger will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

4. The Commission’s prior approval, evidenced by a certificate of public convenience, is required:

For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or devise whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa.C.S. §1102(a)(3).

5. The Commission may issue a certificate of public convenience 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).

6. The Commission must conduct a “net benefits assessment,” whereby the proposed substantial benefits of a transaction must outweigh the harms caused by the transaction, should the Commission approve the Application. *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).

7. The Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.” *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. 2018).

8. The Commission is charged with deciding whether the impact of rates is outweighed by other positive factors that served as a substantial public benefit. *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055 (Pa. Cmwlth. 2018).

9. To qualify as benefits of a transaction, the services, expertise, or fitness provided by the acquiring utility must differ substantially from the benefits already provided by the system operator, and must be specific to the transaction in question, not merely arising out of the fitness of the acquiring utility. *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwlth. 2023).

10. The Commission must weigh the impact of the proposed merger on all affected parties, not just certain groups. *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674 (Pa. Cmwlth. 1984).

11. An applicant must demonstrate that a proposed acquisition provides an affirmative public benefit, meaning that the benefits of the transaction outweigh the adverse impacts of that transaction, when all affected parties are considered. 66 Pa.C.S.

§§ 1102, 1103; *Application of CMV Sewage Co., Inc.*, Docket No. A-230056F2002 (Opinion and Order entered Dec. 23, 2008).

12. Benefits which derive from the acquiring utility's technical, managerial, and financial fitness are not sufficient to satisfy the utility's burden under *City of York* to find substantial affirmative benefits, where the system being acquired provides similar benefits. *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlth. 2023).

13. Only those benefits which are specific to the transaction before the Commission are considered substantial; and only those benefits may be weighed against the harm which would result from the proposed transaction. *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlth. 2023).

14. The Applicant and the Joint Applicants failed to sustain their burden of proof to establish that they are entitled to the relief they are seeking. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the 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. filed at Docket No. A-2024-3046068 is hereby denied.

2. That the 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, Inc. use 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 filed at Dockets Nos. A-2024-3046084 and A-2024-3046092 is hereby denied.

3. That Docket Nos. A-2024-3046068, A-2024-3046084 and A-2024-3046092 be marked closed.

Date: February 20, 2025

/s/
Conrad A. Johnson
Administrative Law Judge