

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Application of Appalachian Utilities, Inc. Public Meeting held June 18, 2025
for Approval to Transfer 40% 3046068-OSA
of Outstanding and Issued Stock; Docket No. A-2024-3046068
Joint Application of
Pennsylvania American Water Company
and Appalachian Utilities Inc.**

**JOINT MOTION OF CHAIRMAN STEPHEN M. DeFRANK &
VICE CHAIR KIMBERLY M. BARROW**

Before the Commission are Exceptions to the Initial Decision in the subject referenced case. Appalachian Utilities, Inc. (Appalachian or Company) seeks approval to sell 40% of its equity shares from its sole existing shareholder to the Company's Director of Operations (Stock Sale Application). Further, Appalachian and Pennsylvania American Water Company (PAWC) jointly seek approval, post stock sale, for PAWC to purchase Appalachian (Utility Sale Application).

Appalachian is an existing Commission regulated water utility providing service to 1,456 customers in portions of Clarion County. The Utility Sale Application details the depreciated original cost of Appalachian at \$1,396,252. The Utility Sale Application also details the asset purchase agreement price agreed upon. However, the Utility Sale Application labels the asset purchase agreement price confidential. As such, the public is not privy as to how much PAWC is proposing to pay for Appalachian.

We understand that the instant Application was filed pursuant to Section 1102 of the Public Utility Code.¹ Therefore, this proceeding does not have any direct bearing on the ratemaking treatment of the costs paid by the parties pursuant to the asset purchase agreement. However, both the depreciated original cost and the asset purchase agreement could be pricing indicators utilized by PAWC in a future rate case proceeding. We further note that, should PAWC seek to utilize an expense adjustment pursuant to Section 1327 of the Public Utility Code, it would be required to publicly disclose that adjustment, whether it was equal to the difference between the asset purchase agreement and the depreciated original cost, or any other proposed premium sought for rate recovery in excess of the depreciated original cost.²

Given this, we find it to be extraordinary for the parties to claim confidential protection for the asset purchase agreement price. While not germane to ratemaking at this point, it is reasonable for the asset purchase agreement price to be transparent so that the public, notably the existing PAWC customers and its potentially new 1,456 customers, can be aware of the potential for future ratemaking implications associated with this transaction.

However, we must acknowledge that the parties here, and the presiding Administrative Law Judges, all agreed to label the asset purchase agreement price confidential. PAWC filed a Petition for Protective Order (Petition) on June 18, 2024, no parties filed Answers, and Administrative Law Judges Conrad A. Johnson and Charece Z. Collins granted the Petition on June 26, 2024, maintaining the

¹ 66 Pa C.S. § 1102

² 66 Pa C.S. § 1327

confidential labelling of the asset purchase agreement price "...throughout and after the conclusion of the proceeding."

The Commission's Rules of Practice and Procedure permit issuance of protective orders limiting the availability of certain proprietary or confidential information.³ The party seeking the protective order has the burden to establish that the potential harm to the party of providing the information would be substantial and the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.⁴ If that burden is satisfied, the least restrictive means of limitation which will provide the necessary protection from disclosure will be applied.⁵

In considering whether to issue a protective order, the Commission, pursuant to Section 5.365(a), should consider the following factors:

- (1) The extent to which the disclosure would cause unfair economic or competitive damage.
- (2) The extent to which the information is known by others and used in similar activities.
- (3) The worth or value of the information to the party and to the party's competitors.
- (4) The degree of difficulty and cost of developing the information.
- (5) Other statutes or regulations dealing specifically with disclosure of the information.

The Commission's regulations further provide detail regarding restrictions placed on the proprietary material, access to proprietary material by representatives of parties, special restrictions and the return of proprietary information at the conclusion of the proceeding.⁶

Section 5.365, however, must be balanced against Commission regulations that also provide that the Commission's records, including the record of this proceeding, may be accessed by the public pursuant to 52 Pa. Code §§ 1.71-1.77. In particular, Section 1.71 of the Commission's regulations provides: "The Commission's record maintenance system is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the act and other applicable laws."⁷ In addition, the interests of keeping material proprietary or confidential must be viewed in light of the Pennsylvania Right to Know Law, 65 P.S. § 67.102, and the Confidential Security Information Act, 35 P.S. § 2141.2, et seq. (CSI Act).

Noting these circumstances, along with the fact that any price above the depreciated original cost sought for recovery in a future rate proceeding must be public, we find it prudent to direct PAWC and Appalachian to file comments in an expedited fashion that either provide more rationale as to why the purchase price should not be public when the transaction involves one regulated water utility buying another, or, alternatively, request the removal of the confidential designation of the asset purchase agreement price.

³ 52 Pa. Code §§ 5.362 and 5.365

⁴ Petition for Protective order of GTE North Inc., 1996 Pa PUC LEXIS 95, Docket No. G-00940402 (Order entered August 8, 1996); ITT Communications Services' Petition for a Protective Order, 1991 Pa PUC LEXIS 193, Docket No. R-912017 (Order entered November 5, 1991).

⁵ 52 Pa. Code § 5.365(a)

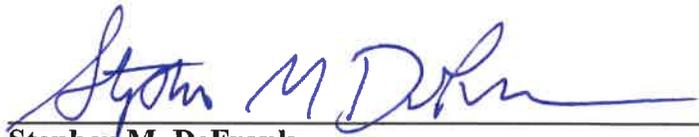
⁶ 52 Pa. Code §§ 5.365(c)-(g)

⁷ 52 Pa. Code § 1.71

THEREFORE, WE MOVE THAT:

1. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.
2. Within ten (10) days of the entry date of the Opinion and Order, Appalachian Utilities, Inc. and Pennsylvania American Water Company shall file written comments justifying the confidential treatment of the asset purchase agreement price or requesting removal of the confidential designation of the asset purchase agreement price.
3. Within fifteen (15) days of the entry date of this Opinion and Order, the parties to this proceeding may file written reply comments limited to responding to the issues raised and the subject matter discussed in the comments.
4. The Office of Special Assistants shall review the comments and reply comments submitted and prepare an Opinion and Order for a future public meeting, consistent with this Joint Motion.

June 18, 2025
Date



Stephen M. DeFrank
Chairman



Kimberly M. Barrow
Vice Chair