

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held June 18, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr., Statement, Concurring In Result Only
Ralph V. Yanora

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.

A-2024-3046068

Joint Application of Pennsylvania-American
Water Company and Appalachian Utilities, Inc.,
Pursuant to Section 1102 of the Public Utility Code,
for approval of (1) the transfer to American Water
Works Company, Inc., by merger, of all property of
Appalachian Utilities, Inc. used and useful in the
public service; (2) the transfer to Pennsylvania-American
Water Company, by merger, of all property of Appalachian
Utilities, Inc. used or useful in the public service; (3) the right
of Pennsylvania-American Water Company to begin to offer,
render, furnish and supply water service to the public in the
Borough of Avis and Townships of Pine Creek and Dunnstable,
Clinton County, Pennsylvania; and (4) the abandonment by
Appalachian Utilities, Inc. of all water service

A-2024-3046084

A-2024-3046092

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Pennsylvania-American Water Company (PAWC or the Company) and Appalachian Utilities, Inc. (AUI or Appalachian), filed on March 12, 2025, in the above-captioned proceeding. The Exceptions were filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on February 20, 2025. Reply Exceptions were filed by the Office of Consumer Advocate (OCA) on March 21, 2025. For the reasons stated, *infra*, we shall hold the ALJ's Initial Decision, and the Exceptions and Reply Exceptions filed thereto, in abeyance, and direct PAWC and Appalachian to file comments regarding the confidential labelling of the asset purchase agreement price.

I. History of the Proceeding

In this consolidated matter, PAWC and AUI seek approval to merge, and AUI seeks authorization to transfer 40% of the stock of its sole owner, to a long-term employee, contingent upon approval of the merger with PAWC.

Specifically, in the Joint Application filed with the Commission by PAWC and AUI (collectively, the Joint Applicants) on February 2, 2024, pursuant to Section 1102(a) of the Public Utility Code (Code), 66 Pa.C.S. § 1102(a), the Joint Applicants requested that the Commission issue such Certificates of Public Convenience (CPC), as may be necessary to evidence its approval under Sections 1102(a), 1103, and 2102 of the Code, 66 Pa.C.S. §§ 1102(a), 1103, and 2102, of: (1) the transfer to American Water Works Company, Inc. (American Water), by merger, of all property of AUI used and useful in the public service; (2) the transfer to PAWC, by merger, of all property of AUI used and useful in the public service; (3) the right of PAWC to begin to offer, render, furnish, and supply water service to the public in the Borough of Avis and

the Townships of Pine Creek and Dunnstable, Clinton County, currently served by AUI; (4) the abandonment by AUI of all water service to the public; and (5) all other approvals necessary, including affiliated interest approvals pursuant to Section 2102 of the Code, 66 Pa.C.S. § 2102 (Joint Application). Joint Application at ¶¶ 1, 26.

The Commission published notice of the Joint Application in the *Pennsylvania Bulletin* on February 17, 2024, with a protest deadline of March 4, 2024. 54 Pa. B. 911.

Also on February 2, 2024, AUI filed its Application requesting that the Commission issue a CPC evidencing its approval under Section 1102(a) of the Code, 66 Pa.C.S. § 1102(a), and the Commission's Statement of Policy in Section 69.901 of the Commission's Regulations, 52 Pa. Code § 69.901, of the transfer by sale of 40% of the issued and outstanding stock of AUI from present 100% majority stockholder Mr. Frank R. Sargent, Jr., President, Director, and current sole Shareholder of AUI, to Mr. Kyle Gallagher, Co-Director, and Operations Manager of AUI (Stock Sale Application).

The Commission published notice of the Stock Sale Application in the *Pennsylvania Bulletin* on February 17, 2024, with a protest deadline of March 4, 2024. 54 Pa. B. 881.

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. Additionally, at Docket Nos. A-2024-3046084 and A-2024-3046092, the OSBA filed a Notice of Intervention and Protest to the Joint Application, a Public Statement and Verification and Notice of Appearance.

Also, on March 4, 2024, the OCA filed, at Docket No. A-2024-3046068, a Notice of Appearance. Additionally, at Docket Nos. A-2024-3046084 and A-2024-3046092, the OCA filed a Protest to the Joint Application and a Public Statement.

On March 28, 2024, PAWC filed a Notice of Appearance of Additional Counsel.

On May 10, 2024, a Notice was issued to the Parties informing them that the proceeding was assigned to ALJs Johnson and Charece Z. Collins.

A Telephonic Prehearing Conference took place on June 4, 2024, during which counsel for PAWC, Appalachian, the OCA, and the OSBA participated. At the conference, several matters were discussed, including the Parties' request to consolidate the Stock Sale Application with the Joint Application.

On June 13, 2024, the Commission issued the Prehearing Order of ALJs Johnson and Collins which adopted the litigation schedule, the Parties' request to

consolidate the dockets, and the other procedural matters agreed upon at the prehearing conference.¹

On June 18, 2024, the Joint Applicants filed a Petition for Protective Order (Petition), pursuant to 52 Pa. Code § 5.365, for protection from public disclosure of certain confidential and proprietary information that the Joint Applicants have submitted to and exchanged in discovery in the above matter and which the Joint Applicants anticipated submitting to and exchanging with the Commission and the Parties during the proceedings. The Joint Applicants further represented that the OSBA and the OCA do not object to the entry of the proposed protective order. Petition at 6. No Parties filed Answers to the Petition.

On June 26, 2024, the Commission issued the ALJs' Order Granting Petition for Protective Order (*June 2024 Order*), which granted the Joint Applicants' Petition.

On August 7, 2024, the Commission issued a Judge Change Notice wherein the Parties were informed that ALJ Collins was no longer assigned to this proceeding.

¹ The litigation schedule, set forth in the ALJ's Prehearing Order, provided for the filing of testimony, hearings, and briefs as follows:

Direct Testimony of Joint Applicants:	July 11, 2024
Direct Testimony of Advocates:	August 16, 2024
Rebuttal Testimony:	August 30, 2024
Surrebuttal Testimony:	September 16, 2024
Rejoinder Testimony:	September 26, 2024
Evidentiary Hearing:	October 2-3, 2024
Main Briefs:	October 23, 2024
Reply Briefs (or Joint Settlement Petition):	November 6, 2024

Prehearing Order at 6.

The telephonic evidentiary hearing was held, as scheduled, on October 2, 2024. All active Parties moved to have their pre-submitted testimonies and exhibits entered into the record. As there were no objections, all documents and exhibits were entered into the record at the time of hearing. At the conclusion of the hearing, the active Parties agreed that the October 3, 2024 evidentiary hearing was unnecessary and could be cancelled.

Main Briefs were filed on October 23, 2024, by PAWC, AUI, the OCA, and the OSBA. Thereafter, Reply Briefs were filed on November 6, 2024, by PAWC, AUI, and the OCA.

In the Initial Decision issued on February 20, 2025, ALJ Johnson denied the Stock Sale Application filed by AUI, as well as the Joint Application, finding that the Joint Applicants did not meet their burden of establishing that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. I.D. at 2, 19, 32.

As discussed, *supra*, PAWC and Appalachian filed Exceptions on March 12, 2025. Reply Exceptions were filed by the OCA on March 21, 2025.

II. Overview of the Transaction

PAWC, a subsidiary of American Water, is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 418 communities in 37 counties and serves a combined population of over 2.4 million customers across the Commonwealth. As of December 31, 2023, PAWC furnished water service to approximately 682,201 customers in Pennsylvania. PAWC St. 1 at 8.

Appalachian is a regulated public utility that, as of February 2024, provided water service to approximately 1,456 customers (1,353 residential, 83 commercial, 3 industrial, 7 public, 9 fire protection, and 1 “other”) in Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County. AUI St. 1 at 1. Appalachian’s water system (System) consists of two (2) separate systems (Woolrich and Avis) that normally run separately but are interconnected in the event that the need arises to feed water from one system to the other.² PAWC St. 2 at 2.

The Joint Applicants seek Commission approval of the following, by which PAWC will ultimately acquire Appalachian:³

- The transfer to American Water of all of the capital stock of Appalachian and merger with AUI Acquisition Company, LLC (Merger Sub)⁴ of all

² The Woolrich system consists of two (2) wells (Well Nos. 3 and 4) and 1,000,000 gallons of storage. The Avis system has two (2) wells (Well Nos. 5 and 6). Finished water from these wells is supplied to the distribution system or is stored in the 1,000,000-gallon Avis Storage Reservoir. PAWC St. 2 at 2-3. A map of Appalachian’s service territory can be found at PAWC Exhibit MJG-2.

³ As discussed *infra*, prior to the sale of Appalachian to PAWC, Appalachian’s witness and owner, Mr. Sargent, requests to transfer 40% of the shares of Appalachian stock to Mr. Gallagher, Co-Director and Operations Manager of Appalachian. AUI St. 1 at 2. According to Appalachian, its Stock Sale Application is contingent on approval of the Joint Application. *Id.* at 1-5.

⁴ A “Merger Sub”, also known as a “Merger Subsidiary,” is a newly formed, wholly owned subsidiary of the acquiring company, used to facilitate an indirect acquisition of a target company. In this instance, the Joint Applicants propose that the Merger Sub merge with Appalachian in a reverse triangular merger, meaning that the Merger Sub is merged with and into Appalachian, and Appalachian survives as a wholly owned subsidiary of American Water; rather than a forward triangular merger, wherein Appalachian would be merged with and into the Merger Sub, and the Merger Sub survives. As can be seen by the structure of the transaction, reverse triangular mergers can offer certain tax advantages, as the transaction can be structured as a stock purchase rather than an asset purchase. *See* PAWC M.B. at 4; <https://privateequitybro.com/merger-subsidiaries-key-strategic-advantages-explained/>, accessed May 14, 2025.

property and rights of Appalachian used and useful in the public service in accordance with the Agreement and Plan of Merger (Merger Agreement);

- The transfer to PAWC, by merger, of all the property and rights of Appalachian used and useful in the public service in accordance with the Merger Agreement;
- PAWC's right to begin to offer, render, furnish, and supply water service in Appalachian's service territory;
- Appalachian's abandonment, due to the merger of Appalachian into PAWC, of public utility service;
- Pursuant to 66 Pa.C.S. § 2102, approval of an arrangement with affiliated interests; and
- Issuance of any other approvals or certificates appropriate, customary, or necessary under the Code.

See Joint Application at ¶¶ 1, 8, 9, and 37. For the sake of brevity, PAWC's proposed acquisition of Appalachian will be referred to as the transaction.

On September 22, 2023, American Water, Merger Sub, Appalachian, and Mr. Sargent, as the sole shareholder of Appalachian, entered into the Merger Agreement, which provides for a two-step acquisition process: (1) first, the statutory merger of the Merger Sub with and into Appalachian, with Appalachian as the surviving corporation (Appalachian – Merger Sub Merger); and (2) second, the statutory merger of Appalachian with and into PAWC, with PAWC as the surviving corporation (PAWC – Appalachian Merger). PAWC M.B. at 4 (citing PAWC Exh. MK-1 (Confidential)).⁵

⁵ The Joint Application includes a request that the Commission approve an arrangement with affiliated interests pursuant to 66 Pa.C.S § 2102 because, following closing on the Appalachian – Merger Sub Merger, PAWC and Appalachian will be affiliated entities for a brief period (both will be wholly-owned subsidiaries of American Water). See Joint Application at ¶ 1.

At the effective time of the Appalachian – Merger Sub Merger, all issued and outstanding shares of the capital stock of Appalachian shall be cancelled and extinguished and converted to the right to receive American Water Common Stock equal to the merger consideration identified in Article 2.7 of the Merger Agreement. Promptly following the Appalachian – Merger Sub Merger, Appalachian will be merged with and into PAWC; Appalachian will cease to exist; and PAWC will continue as the surviving corporation.⁶ PAWC M.B. at 4. The Merger Agreement established a purchased price, labeled as confidential. PAWC St. 1 at 6.

PAWC further seeks Commission approval to incorporate Appalachian’s rates into PAWC’s water tariff as a separate rate zone. A *pro forma* tariff supplement for PAWC’s proposed Appalachian rate zone post-merger is attached to the Joint Application as Appendix N. See Joint Application at ¶ 36.

As previously indicated, contingent upon Commission approval of the Joint Application, Appalachian, through its Stock Sale Application, seeks Commission approval of a transfer of 40% of Appalachian’s stock from Mr. Sargent to Mr. Gallagher.⁷ Stock Sale Application ¶¶ 6-7. Appalachian’s Stock Sale Application is accompanied by: (1) a Stock Purchase Agreement (Attachment 1); (2) a Written Consent of Sole Shareholder and Directors (Attachment 2); (3) a Balance Sheet for Calendar Year 2022 (Attachment 3); and (4) a Profit and Loss Statement for Calendar Year 2022 (Attachment 4). It has been indicated by Appalachian that this transfer is intended to reward the loyalty and dedication of Mr. Gallagher, as a key employee of Appalachian. AUI St. 1 at 2.

⁶ PAWC indicated that that a Statement of Merger for both the Appalachian – Merger Sub Merger and the PAWC – Appalachian Merger will be filed with the Department of State, pursuant to 15 Pa.C.S. § 1101, *et seq.* PAWC St. 1 at 5-6.

⁷ Mr. Gallagher is not a party to this consolidated proceeding.

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. AUI Exh. FRS-1, Attachment 1.⁸

III. Legal Standards

A. Burden of Proof, 66 Pa.C.S. § 332(a)

As the proponent of a rule or order in this proceeding, the 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). The Joint Applicants must establish their case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Joint Applicants' evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

⁸ We note that, according to Paragraph 4.4 (Acknowledgement of Merger Agreement) of the Stock Purchase Agreement, Mr. Gallagher acknowledges that as a shareholder of Appalachian, upon execution of the Stock Purchase Agreement, he will be bound by the terms of the Merger Agreement. Stock Purchase Agreement at 3-4.

B. Certificate of Public Convenience, 66 Pa.C.S. §§ 1102, 1103

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a CPC prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa.C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a CPC from the Commission prior to a utility or an affiliated interest of a utility to acquire or transfer to any person or corporation by any method, property used or useful in the public service. 66 Pa.C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a CPC required under Section 1102:

A certificate of public convenience shall be granted . . . only if the commission shall find or determine that the granting of such certificate *is necessary or proper for the service, accommodation, convenience or safety of the public.* The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa.C.S. § 1103(a) (emphasis added); *see also, Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 763, 764-65 (Pa. Cmwlth. 1985) (*Seaboard Tank Lines*).

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will

affirmatively benefit the public.” *Id.* (overruling in part, *Northern Pennsylvania Power Co. v. Pa. PUC*, 5 A.2d 133, 134 (Pa. 1939)).

The Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky v. Pa. PUC, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*).

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, 937 A.2d at 1061. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

One of the factors that the Supreme Court identified in *City of York* for the Commission to consider in determining whether there is an affirmative public benefit is:

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general

effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.

City of York, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court held that 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. PUC*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). While *McCloskey* held that rate impact must be addressed, it recognized that “the Commission is charged with deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.” 195 A.3d at 1067.

The Commission and the courts have held that granting a CPC need not be “absolutely necessary” in order to be in the public interest. *See Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014) (*Hess*). The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.” *Id.* In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “*all affected parties*, and not merely one particular group or geographic subdivision.” *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis in original); *see also Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967), *aff’d*, 252 A.2d 589 (Pa. 1969) (where public benefit included companies and customers other than the proponent utility).

Recently, in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, 320 A.3d 667 (Table) (Pa. 2024) (*Cicero*), the Commonwealth Court held

that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. 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. *Cicero* at 1119. 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] under Section 1103(a).

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. *Id.* at 1118. 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. *Id.* at 1120.

In order to obtain a CPC, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service. *McCloskey*, 195 A.3d at 1058. An existing CPC holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992) (*South Hill Movers*). It is the protestant's burden to rebut that presumption. *Lehigh Valley Transp.* at 58. Where an Applicant is both presumed fit and

sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy.
Id.

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

A utility is required to obtain a certificate of public convenience under Section 1102(a)(3) of the Code when a transfer of voting interest constitutes a change in *de facto* control of the utility or its parent. *See* 52 Pa. Code § 69.901; *see also* *Policy Statement Regarding Interpretation of 66 Pa.C.S. § 1102(a)(3)*, Docket No. M-00930490, 1994 WL 932348 (Pa. P.U.C.), 1994 Pa. PUC LEXIS 56 (Order entered September 13, 1994) (*Policy Statement Order*). The Policy Statement in Section 69.901 of our Regulations provides, in pertinent part, as follows:

69.901. Utility stock transfer under 66 Pa.C.S. § 1102(a)(3)

(a) *Background.*

(1) Commission jurisdiction over the acquisition or transfer of public utility property is governed by 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate). The ambiguous language in 66 Pa.C.S. § 1102(a)(3) has historically caused considerable uncertainty among the Commission, its staff and the industry regarding what type of transaction requires Commission approval. This uncertainty has been particularly apparent regarding stock transfers which may equate to the transfer of utility property.

(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. In view of these Commission holdings, it is necessary to further define and establish clear standards regarding what transfer of voting interest constitutes a change in de facto control and thereby constitutes the transfer or acquisition of utility property within the intendment of 66 Pa.C.S. § 1102(a)(3).

(b) *Policy.*

(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 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. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.

52 Pa. Code § 69.901.

D. Affiliated Interests, 66 Pa.C.S. §§ 2101, 2102

Approval of a public utility's contracts or arrangements with affiliated interests is governed under Chapter 21 of the Code, 66 Pa.C.S. § 2101, *et seq.* Section 2102(a), 66 Pa.C.S. § 2102(a), provides, in relevant part, the following:

(a) General rule.—No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission.

Section 2102(b) sets forth the standard for the Commission's approval of affiliated interest agreements, which is that the agreement "shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest." Specifically, Section 2102(b) of the Code, 66 Pa.C.S. § 2102(b), provides, in pertinent part, the following:

(b) Filing and action on contract.—It shall be the duty of every public utility to file with the commission a verified copy of any such contract or arrangement, or a verified summary as described in subsection (a) of any such unwritten contract or arrangement...The commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest...No such contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to the

public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

An affiliated interest is defined in the Code to include:

- (1) Every corporation and person owning or holding directly or indirectly 5% or more of the voting securities of such public utility.
- (2) Every corporation and person in any chain of successive ownership of 5% or more of voting securities.
- (3) Every corporation 5% or more of whose voting securities are owned by any person or corporation owning 5% or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of 5% or more of voting securities.
- (4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of 5% or more of voting securities.
- (5) Every corporation operating a public utility or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to utilities, which has one or more officers or one or more directors in common with such public utility, to every other corporation which has directors in common with such public utility where the number of such directors is more than one-third of the total number of the utility's directors.
- (6) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over

the policies and actions of such public utility even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section. As used in this part substantial influence means any corporation or person which or who stands in such relationship to the public utility that there is an absence of free and equal bargaining power between it or him and the public utility.

(7) Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons, or both, with which or whom they are related by ownership or blood relationship, or both, or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated.

66 Pa.C.S. § 2101(a).

IV. Initial Decision⁹

In the Initial Decision, the ALJ made thirty-seven (37) Findings of Fact and reached fourteen (14) Conclusions of Law. *See* I.D. at 5-11, 33-35.

ALJ Johnson began by explaining that the Commission's Policy Statement regarding utility stock transfer under 66 Pa.C.S. § 1102(a)(3) provides guidance regarding when the Commission has jurisdiction over a transaction resulting in a new controlling interest, including defining what is a controlling interest. The ALJ noted that

⁹ As discussed, *infra*, ALJ Johnson began by addressing Appalachian's Stock Sale Application, which he denied. According to the ALJ, this conclusion collapsed the Joint Application, and the Joint Application became moot because there was no evidence that Appalachian would proceed with the Joint Application if the Stock Sale Application was denied. *See* I.D. at 19.

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.” I.D. at 17 (citing 52 Pa. Code § 69.901(b)(2)).

Therefore, the Stock Purchase Agreement, if approved, would result in Mr. Gallagher holding a controlling interest in Appalachian, since according to the Stock Purchase Agreement between Appalachian and Mr. Gallagher, Mr. Gallagher will buy 40% of Appalachian’s stock. I.D. at 17 (citing AUI Exh. FRS-1, Attachment 1).

Having concluded that a CPC under Section 1102(a)(3) is required for approval of the Stock Sale Application, the ALJ explained that Appalachian must demonstrate that granting such a CPC will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” I.D. at 18-19 (citing *City of York*).

The ALJ denied Appalachian’s Stock Sale Application, reasoning that while rewarding a loyal employee for dedicated service is admirable, such a reward is not substantial evidence to warrant approval of the Stock Sale Application. I.D. at 19.

The ALJ added that “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.” I.D. at 21. Therefore, the ALJ concluded that his denial of the Stock Sale Application caused the Joint Application to “collapse” and become “moot.” *Id.* at 19.

V. Discussion

Before the Commission are Exceptions to the Initial Decision in the subject referenced case. In its Stock Sale Application, Appalachian seeks approval to sell 40% of its equity shares from its Director and sole existing shareholder (*i.e.*, Mr. Sargent) to the Company's Co-Director and Operations Manager (*i.e.*, Mr. Gallagher). Further, through their Joint Application, Appalachian and PAWC jointly seek approval, post stock sale, for PAWC to purchase Appalachian.

As previously noted, Appalachian is an existing Commission regulated water utility providing service to 1,456 customers in portions of Clarion County. AUI St. 1 at 1. The Joint Application details the depreciated original cost of Appalachian at \$1,396,252. OCA St. 1R at 5; OSBA St. 1 at 7, Table KCH-1. The Joint Application also details the asset purchase agreement price agreed upon. However, the Joint Application labels the asset purchase agreement price as confidential. As such, the public is not privy as to how much PAWC is proposing to pay for Appalachian.¹⁰

We understand that the instant Joint Application was filed pursuant to Section 1102 of the Code, 66 Pa.C.S. § 1102. 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 Code, it would be required to publicly disclose that adjustment, whether it was equal to the difference between the asset purchase agreement

¹⁰ We note that, on June 20, 2025, PAWC and Appalachian submitted a letter requesting removal of the confidential designation of the asset purchase agreement price listed in the Merger Agreement, noting that neither the OCA nor the OSBA object to this request.

and the depreciated original cost, or any other proposed premium sought for rate recovery in excess of the depreciated original cost. *See* 66 Pa.C.S. § 1327.

Given this, we find it to be extraordinary for PAWC and Appalachian 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 ALJs, all agreed to label the asset purchase agreement price as confidential. As previously noted, PAWC and Appalachian filed a Petition for Protective Order on June 18, 2024. No Parties filed Answers. ALJs Johnson and Collins granted the Petition on June 26, 2024, maintaining the confidential labelling of the asset purchase agreement price “...throughout and after the conclusion of the proceeding.” *June 2024 Order* at 6.

The Commission’s Rules of Practice and Procedure permit issuance of protective orders limiting the availability of certain proprietary or confidential information. 52 Pa. Code §§ 5.362 and 5.365. 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. *See 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). If that burden is satisfied, the least restrictive means of limitation which will provide the necessary protection from disclosure will be applied. 52 Pa. Code § 5.365(a).

In considering whether to issue a protective order, the Commission, pursuant to 52 Pa. Code § 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.

Our 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. 52 Pa. Code §§ 5.365(c)-(g).

Section 5.365 of our Regulations, 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, 52 Pa. Code § 1.71, 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." 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.

VI. Conclusion

Based on the foregoing discussion, we shall hold in abeyance our consideration of the ALJ's Initial Decision and the Parties' Exceptions and Replies to Exceptions, thereto, and direct PAWC and Appalachian to file comments regarding the confidential labelling of the asset purchase agreement price; **THEREFORE,**

IT IS ORDERED:

1. That the Commission's consideration of the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on February 20, 2025, is held in abeyance, consistent with this Opinion and Order.
2. That the Commission's consideration of the Exceptions of Pennsylvania-American Water Company, and the Exceptions of Appalachian Utilities, Inc., filed on March 12, 2025, and the Replies to Exceptions filed thereto, are held in abeyance, consistent with this Opinion and Order.
3. That within ten (10) days of the entry date of this Opinion and Order, Pennsylvania-American Water Company and Appalachian Utilities, Inc. 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.

4. That 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.

5. That the Commission shall review the comments and reply comments submitted and shall prepare an Opinion and Order for a future public meeting.

BY THE COMMISSION,

A handwritten signature in cursive script, reading "Matthew L. Homsher".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: June 18, 2025

ORDER ENTERED: July 8, 2025