

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

**Application of Appalachian Utilities, Inc. Public Meeting held September 11, 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.**

MOTION OF CHAIRMAN STEPHEN M. DeFRANK

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).

I do not support the Initial Decision's denial of the Utility Sale Application. Rather, for the many reasons outlined in both Appalachian's and PAWC's Exceptions, I support approval of the Utility Sale Application.

However, I wish to take this opportunity to address the Commission's jurisdiction over the 40% stock sale proposed in the Stock Sale Application. In the Initial Decision, Administrative Law Judge Conrad A. Johnson states that the Commission has jurisdiction to consider Appalachian's Stock Sale Application. I concur. The Public Utility Code clearly articulates that a certificate of public convenience (CPC) must be obtained "[f]or any public utility...to acquire from, or transfer to, any person... by any method or device whatsoever, **including the sale or transfer of stock....**"¹ The fact that Appalachian filed the Stock Sale Application is evidence of its understanding of this requirement.

Pursuant to the Commission's endeavor to reduce any ambiguity in our jurisdiction over stock transfers and sales, the Commission established a Policy Statement on October 22, 1994 at 52 Pa. Code § 69.901 (Stock Transfer Policy). In summary, the Stock Transfer Policy establishes two tests that both must be satisfied to require a CPC. First, the transfer or sale must involve a controlling interest, defined as exceeding 20%.² Second, the transaction must result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent.³

In reviewing this Stock Sale Application, it becomes clearly challenging to determine how the Commission's two-tiered Stock Transfer Policy comports with our statutory obligations under Section 1102 of the Public Utility Code. It is well established that Commission regulations and orders cannot exceed the bounds of an enumerating statute.⁴ The Commission must act within, and cannot exceed, its jurisdiction.⁵

¹ 66 Pa.C.S. § 1102.

² 52 Pa. Code § 69.901(2).

³ 52 Pa. Code § 69.901(1).

⁴ It is axiomatic that the Commission is a creature of statute and as such has only those powers that are expressly or by necessary implication conferred upon it by the Legislature. *Behrend v. Bell Tele. Co. of Pa.*, 390 A.2d 233, 236 (Pa. Super. 1978), citing *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1978) (*Feingold*); *Allegheny County Port Authority v. Pa. PUC*, 237 A.2d 602 (Pa. 1967).

⁵ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

I recognize the Stock Transfer Policy was promulgated to reduce ambiguity as to when an application for a CPC is required. It would not be prudent to require utilities to file applications for *de minimis* stock sales. I note the statute does provide exemptions for transactions involving utility property and physical assets. However, lacking any exemptions for stock transactions, the Commission established the two-tiered Stock Transfer Policy discussed herein.

In summary, I find that the Stock Transfer Policy establishes exemptions that far exceed what I perceive as practical regulatory requirements consistent with the statute. Specifically, I find the provision in the Stock Transfer Policy requiring a CPC only when a transaction results in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent to be incompatible with Section 1102(a)(3) of the Public Utility Code.

Conversely, I do find the provision establishing a 20% bright line test for a CPC to be reasonable. Such a determination is consistent with the Commission's recent ruling in the Joint Application of American Transmission Systems, Incorporated, *et al.*⁶ There the Commission provided a CPC even though the transaction did not involve a different entity becoming the beneficial holder of the largest voting interest but did involve the transaction of over 20% of membership shares. In summary, I believe Commission jurisdiction should be applied when a transaction involves more than 20% of shares, **or**, if it involves a different entity becoming the majority shareholder.

To that end, I find a reasonable reading of the statute clearly indicates that the Stock Transfer Application is jurisdictional. As such, I would approve the stock transfer application as it is in the public interest and directly necessary to manifest the purported benefits of the Utility Sale Application. Further, I would approve the Utility Sale Application, based on the positions outlined in the Exceptions of Appalachian and PAWC detailing the various public benefits.

THEREFORE, I MOVE THAT:

1. The Exceptions of Appalachian Utilities, Inc. and Pennsylvania American Water Company are granted in part and denied in part.
2. The Application of Appalachian Utilities, Inc. as well as the Joint Application of Appalachian Utilities, Inc. and Pennsylvania American Water Company are approved, consistent with this Motion.
3. The Initial Decision of Administrative Law Judge Conrad A Johnson, issued on February 20, 2025, is modified, consistent with this Motion.
4. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

September 11, 2025

Date



Stephen M. DeFrank
Chairman

⁶ *Joint Application of American Transmission Systems, et al.*, Docket No A-2023-3040481 *et al.* (Order entered March 14, 2024).