

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

**Appalachian Utilities Inc.  
And Pennsylvania-American  
Water Company**

**Public Meeting September 11, 2025  
3046068-OSA  
Docket Nos. A-2024-3046068,  
A-2024-3046084, A-2024-3046092**

**JOINT STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR. AND  
COMMISSIONER RALPH V. YANORA**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Pennsylvania-American Water Company (PAWC) and Appalachian Utilities, Inc. (Appalachian), filed on March 12, 2025, in the above-captioned proceeding, and the Reply Exceptions of the Office of Consumer Advocate (OCA) filed on March 21, 2025. The Initial Decision denied a Joint Application of PAWC and Appalachian for the merger of Appalachian into PAWC and a separate Application by Appalachian requesting approval of a transfer of stock. On July 8, 2025, the Commission entered an Order holding this proceeding in abeyance and requesting comments on the confidential treatment of the price in the asset purchase agreement. In response, the Joint Applicants filed comments on July 16 requesting removal of the confidential treatment of information in the asset purchase agreement.

**The Joint Application**

PAWC and Appalachian request that the Commission approve, pursuant to Section 1102 of the Code, the transfer, by merger, of all property of Appalachian to PAWC, to authorize PAWC to provide service in Appalachian's territory, and to permit Appalachian to abandon its certificate of public convenience. They also seek approval of the merger plan as an affiliated interest agreement, which is required by Section 2102 of the Code. The presiding ALJ concluded that the Joint Application should be denied for the failure to meet their burden that approval will affirmatively promote the service, accommodation or convenience of the public. Both PAWC and Appalachian have filed Exceptions, asserting that they have met their burden of proof that there are net benefits to this transaction for the customers of both systems, both companies, and the public at large.

We find that the Joint Applicants have met their burden of proof under both Section 1102 and 2102. PAWC is legally, technically, and financially fit to operate Appalachian's system and serve its customers. Appalachian's customers will benefit

from the greater level of technical and financial resources that can be deployed to maintain and improve its system. Appalachian currently has only three employees and experienced negative net income in 2023 and 2024, and has received several notices of violations from the Department of Environmental Protection (DEP) in the last four years. While we acknowledge that there will be some rate base impact for the customers of both systems, any rate base adjustment will be addressed in future proceedings and would likely be comparable to the impacts resulting from other Section 1102 acquisitions approved by the Commission. Whether the purchase price is reasonable is a factor that the Commission may consider in a future PAWC base rate case where PAWC will bear the burden of proof. Accordingly, it is not appropriate to adopt either the OCA or Office of Small Business Advocate's recommended conditions for approval of the merger.

We also find that the acquisition will further the Commission's policy of regionalization of water and wastewater systems. The Commission should not be cavalier in discounting the fact that this system has a single owner who wishes to retire. Delay in resolving this application does not serve the public interest.

### The Stock Transfer

Appalachian has filed a separate Application requesting approval to transfer 40% of its stock from the sole owner to a long-time employee. This transaction is intended to take place before the closing of the merger. The Commission's policy statement on stock transfers establishes a 20% voting interest threshold for what it considers, as a matter of policy, to be a new controlling interest. It was therefore prudent and appropriate that Appalachian seek approval. However, the Commission's policy statement also provides that the controlling interest should only be considered jurisdictional when "the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility."<sup>1</sup> This Application was not contested by the other parties to the proceeding.

The presiding ALJ recommended denying the Application for the stock transfer, finding that the sale established a new controlling interest, but that approval of the transfer would not benefit the public in some substantial way. Both PAWC and Appalachian filed Exceptions to this finding. Both parties asserted that the ALJ failed to apply Section 69.901(b)(1) of the policy statement. As there was no actual change in control resulting from the transfer, the Commission ultimately lacks jurisdiction to approve or disapprove the transaction. Appalachian separately argued that even if an affirmative benefits standard did apply, the stock transfer application should be approved.

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<sup>1</sup> 52 Pa. Code § 69.901(b)(1).

We agree with the Exceptions that the proposed stock transfer is not jurisdictional. The Commission has, on occasion, reviewed and denied applications for lack of jurisdiction where the transaction did not result in an actual change in control.<sup>2</sup> This interpretation appears to comply with the language of Section 1102(a)(2), which situates stock transfers in context of acquisitions or transfers that result in a change of control. Statutes should be construed to give effect to all their provisions.<sup>3</sup> In this matter, the proposed 40% stock transfer from the sole owner of Appalachian to a long-time employee will not result in a different entity becoming the beneficial holder of the largest voting interest in Appalachian, nor will it result in the elimination of a controlling interest in Appalachian.<sup>4</sup> As such, the proposed stock transfer is not a change in control and is not jurisdictional pursuant to Section 69.901(b)(1) of the Commission’s Policy Statement on Stock Transfers.<sup>5</sup>

Due Process and Section 703(g) as it pertains to the Commission’s Policy Statement on Stock Transfers

Section 703(g) of the Public Utility Code requires that, prior to rescinding or amending any Order, the Commission provide notice and opportunity to be heard to the persons or corporations affected. The Commission’s Policy Statement on Utility Stock Transfers (Policy Statement) was adopted through an Order issued after a review of comments filed in response to the issuance of a proposed policy statement. Notably, in explaining the reason for its actions the Commission observed that:

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.

52 Pa. Code §69.901(a)(1). The policy statement has not been amended since its adoption.

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<sup>2</sup> See *Application of Sigma Networks*, A-310973 F0002, Order entered December 19, 2001. There the Commission dismissed an application to transfer a minority interest of a certificated entity for lack of jurisdiction.

<sup>3</sup> 1 Pa.C.S. §1921.

<sup>4</sup> In its most recent review of the Commission’s Policy Statement and Section 1102(a)(3), the Commonwealth Court opined that Commission jurisdiction attached when a transaction resulted in a change of control “in terms of policy, management, and operations as they pertain to providing electric service to the public” and a new entity having “direct control” over the utility. *PPL Electric Utilities, Inc. v. Pennsylvania Public Utility Commission*, 241 A.3d 121 (Pa. Cmwlth. 2020).

<sup>5</sup> 52 Pa. Code §69.901(b)(1).

The lawfulness of the Policy Statement was not an issue raised by the parties or presiding ALJ in this case. Nor was the scope of the Commission’s jurisdiction under Section 1102(a)(3) regarding stock transfers litigated in the proceedings below. Accordingly, the parties to this proceeding were not given notice and opportunity to be heard on the Motion’s *de facto* rescission of the policy statement by finding that one of its subsections is contrary to law. The Motion also seemingly disregards the Commission’s prior finding that the language of 1102(a)(3) was ambiguous and concludes that there are “no exemptions” to the Commission’s authority to review and approve all stock transfers. Specifically, the Motion nullifies the exemption contained in Section 69.901(b)(1) of the Policy Statement. This represents significant expansion in the scope of the Commission’s jurisdiction without notice and opportunity to be heard.

The Commission recently emphasized that notice and opportunity to be heard should be afforded to all interested parties before amending Commission Orders. On December 12, 2024, the Commission voted to adopt a Statement of Policy to address the implications of the sunset of Chapter 14 of the Public Utility Code.<sup>6</sup> The Commission stated:

Based upon our analysis of the Code, the Commission has both the duty and obligation under the Code to enforce the Commission Orders issued pursuant to Chapter 14 of the Code. 66 Pa.C.S. §§ 501, 502, 503, 3301. Moreover, Sections 703(e) and (g) of the Code provide that final orders are presumed to remain in effect unless reversed on appeal or amended after notice and opportunity to be heard. Thus, it is the Commission’s present view and statement of policy herein that all final orders issued pursuant to Chapter 14 of the Code remain in effect and are enforceable by the Commission unless reversed on appeal or amended by the Commission after notice and opportunity to be heard. 66 Pa.C.S. § 703(e), (g).

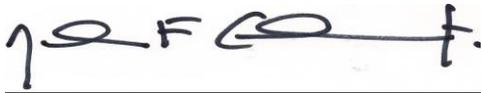
The Commission provided appropriate regulatory certainty to interested parties that it would not amend its various Chapter 14 implementation orders, guidelines and regulations without notice and opportunity to be heard.<sup>7</sup> The Commission routinely solicits comments before amending policy statements orders, including but not limited to its policy statement on diversity in 2020 and again in 2023.

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<sup>6</sup> *Sunset of Chapter 14, Title 66 of the Docket No. M-2024-3052328 Pennsylvania Public Utility Code, Docket No. M-2024-3052328* (Order entered December 24, 2024).

<sup>7</sup> For example, the Commission issued an Order establishing guidelines pertaining to medical certificates, protection from abuse orders, and customer privacy. *Working Group on Medical Certificates, Other Court Orders, and Privacy Guidelines Relating to the Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa.C.S. Chapter 14, Docket L-2015-2508421* (Order entered January 5, 2022). These guidelines addressing important consumer protections were never codified via a rulemaking.

Given the Commission’s prior finding that Section 1102(a)(3) is ambiguous, it is entirely reasonable and appropriate for the Commission to afford regulated utilities notice and opportunity to be heard on the proposed expansion in the scope of Commission jurisdiction over stock transfers.<sup>8</sup> And that this change be addressed at the policy statement docket.<sup>9</sup> The Commonwealth of Pennsylvania recognizes that Policy Statements establish “substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or a part thereof.”<sup>10</sup> By way of contrast, the Commission has gone to great lengths to remand individual complaints regarding the installation of smart meters over perceived deficiencies in the degree of notice and opportunity to be heard, despite the underlying legal and policy issues having been litigated exhaustively in numerous cases over the past ten or more years. It is therefore necessary and appropriate that the Commission seek input before rendering a decision of this magnitude that potentially affects all public utilities.



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**JOHN F. COLEMAN, JR.**  
**COMMISSIONER**



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**RALPH V. YANORA**  
**COMMISSIONER**

**DATE: September 11, 2025**

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<sup>8</sup> In particular, the rules of statutory construction various factors and presumptions to be used when statutory language is not explicit. 1 Pa. C.S. §§ 1921(c), 1923.

<sup>9</sup> The pending proceeding is too remote in time and context to the 1994 policy statement order. While the Public Utility Commission can amend a prior order when appropriate, it must do so in a proceeding that relates back to the proceeding in which the original order was issued.

*Armstrong Telecommunications v. Pennsylvania Public Utility Commission*, 835 A.2d 409 (Pa. Cmwlth. 2003).

<sup>10</sup> 1 Pa. Code § 1.4