

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

Public Meeting held September 11, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Kathryn L. Zerfuss  
John F. Coleman, Jr.  
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  
\*\*\*NON-PROPRIETARY VERSION\*\*\***

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**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: (1) grant, in part, and deny, in part, the Exceptions filed by PAWC and Appalachian; (2) modify the Initial Decision; (3) grant the Application filed by AUI, pursuant to Section 1102 of the Public Utility Code (Code), 66 Pa.C.S. § 1102, for a Certificate of Public Convenience filed at Docket No. A-2024-3046068 (Stock Sale Application); and (4) grant the Joint Application of PAWC and AUI, filed pursuant to Section 1102 of the Code, 66 Pa.C.S. § 1102, for approval of: (1) the transfer to American Water Works Company, Inc., 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 or 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 Townships of Pine Creek and Dunnstable, Clinton County, Pennsylvania; and (4) the abandonment by AUI of all water service (Joint Application), consistent with this Opinion and Order.

**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 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 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 Stock Sale 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.

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.<sup>1</sup>

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 OCA and the OSBA did 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 Protective Order*), which granted the Joint Applicants' Petition, maintaining the confidential labelling of the asset purchase agreement price "...throughout and after the conclusion of the proceeding." *June 2024 Protective Order* at 6.

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<sup>1</sup> 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.

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.

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.

On July 8, 2025, the Commission issued an Opinion and Order, relative to the above-captioned proceeding (*July 2025 Order*), holding this proceeding in abeyance, for the limited purpose of allowing PAWC and Appalachian to file comments that would

either provide more rationale for the confidential protection of the asset purchase agreement price, or to request removal of the confidential designation.<sup>2</sup>

On July 16, 2025, PAWC and Appalachian filed Joint Comments in response to the *July 2025 Order* requesting removal of the confidential designation of the merger consideration listed in the Agreement and Plan of Merger, attached as Appendix B to the Joint Application filed by PAWC and Appalachian.<sup>3</sup>

No Reply Comments were filed.

## 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

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<sup>2</sup> We note that, on June 20, 2025, PAWC and Appalachian submitted a Letter in Lieu of Comments 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.

<sup>3</sup> In the Joint Comments, PAWC and Appalachian withdrew their Letter in Lieu of Comments and their request for expedited consideration of the matter.

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.<sup>4</sup> PAWC St. 2 at 2.

The Joint Applicants seek Commission approval of the following, by which PAWC will ultimately acquire Appalachian:<sup>5</sup>

- The transfer to American Water of all of the capital stock of Appalachian and merger with AUI Acquisition Company, LLC (Merger Sub)<sup>6</sup> of all 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;

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

- 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) the statutory merger of the Merger Sub with and into Appalachian, with Appalachian as the surviving corporation (Appalachian – Merger Sub Merger); and (2) 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)).<sup>7</sup>

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

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<sup>7</sup> 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.

into PAWC; Appalachian will cease to exist; and PAWC will continue as the surviving corporation.<sup>8</sup> PAWC M.B. at 4. The Merger Agreement established a purchase price of \$3.5 million comprised solely of American Water stock consideration.<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>8</sup> PAWC indicated 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.

<sup>9</sup> The asset purchase agreement price of \$3.5 million was originally labeled as confidential; however, as discussed, *infra*, 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 objected to this request.

<sup>10</sup> 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.<sup>11</sup>

### 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).

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<sup>11</sup> 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).

### **E. General Standards**

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. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

## IV. Discussion

### A. *July 2025 Order*

In our *July 2025 Order*, we noted the confidential designation of the asset purchase agreement price of \$3.5 million, reflected in the Merger Agreement, resulting in a situation where the public would not be privy as to how much PAWC is proposing to pay for Appalachian.

Although 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, we noted that both the depreciated original cost and the asset purchase agreement could be pricing indicators utilized by PAWC in a future base rate proceeding. *July 2025 Order* at 20. We further noted 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 and the depreciated original cost, or any other proposed premium sought for rate recovery in excess of the depreciated original cost. *Id.* (citing 66 Pa.C.S. § 1327).

While not germane to ratemaking at this point, we noted it is reasonable for the asset purchase agreement price to be transparent so that the public can be aware of the potential for future ratemaking implications associated with the proposed transaction. Therefore, we held ALJ Johnson's Initial Decision and the Parties Exceptions and Replies to Exceptions thereto in abeyance and directed PAWC and Appalachian to file comments in an expedited fashion that either provided more rationale as to why the purchase price should not be public, or, alternatively, requested the removal of the confidential designation of the asset purchase agreement price. *July 2025 Order* at 22-23.

As previously noted, PAWC and Appalachian filed Joint Comments in response to the *July 2025 Order*, requesting removal of the confidential designation of the merger consideration listed in the Agreement and Plan of Merger, *i.e.*, the purchase agreement price of \$3.5 million, attached as Appendix B to the Joint Application filed by PAWC and Appalachian. Joint Comments at 1-2. No reply comments were filed. Accordingly, we shall now address the merits of the Joint Application, the Initial Decision of ALJ Johnson, and the Exceptions and Replies filed thereto.

## **B. Sections 1102 and 1103 Approvals**

### **1. Fitness**

Pursuant to 66 Pa.C.S. § 1103, PAWC must show that it possesses the technical, legal, and financial capability to own and operate the assets it seeks to acquire. *Seaboard Tank Lines*, 502 A.2d 762; *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958). As to legal fitness, PAWC must demonstrate that it has obeyed the Code and Commission Orders and Regulations. As to financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. As to technical/managerial fitness, PAWC must have sufficient staff, facilities, and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982). As a certificated public utility, PAWC benefits from a rebuttable presumption that it possesses such requisite fitness. *South Hills Movers*, 601 A.2d 1308.

#### **a. Positions of the Parties**

PAWC introduced extensive evidence to demonstrate its fitness. *See* PAWC M.B. at 10-12.

In support of its position that the Commission should approve the Joint Application, Appalachian adopted by reference PAWC's position and arguments regarding PAWC's technical, financial and legal fitness to own and operate the System. AUI M.B. at 12-13.

No Party challenged PAWC's technical, legal, or financial fitness to own and operate the System.<sup>12</sup>

**b. Initial Decision**

The ALJ did not provide an extensive discussion regarding PAWC's fitness to own and operate the System; however, ALJ Johnson did note that “[p]ursuant to Section 1103 of the Code, PAWC must show that that [sic] it is technically, legally, and financially fit to own and operate the assets of the utilities that it seeks to acquire. As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness.” I.D. at 14 (citations omitted). As noted above, no Party rebutted this presumption afforded to PAWC as a certificated public utility.

**c. PAWC Exception No. 2 and the OCA's Replies**

In its Exception No. 2, PAWC excepts to its perceived failure of the ALJ to address the issue of whether PAWC is legally, technically, and financially fit to own and operate Appalachian, reasoning that the ALJ “apparently concluded that this issue was moot because of the recommended findings that the Stock Transfer be disapproved, that the Joint Application was moot and that the Transaction failed to pass the affirmative public benefit test.” PAWC Exc. at 25.

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<sup>12</sup> The OCA noted that it does not challenge PAWC's technical, managerial, and financial fitness. OCA R.B. at 6. The OSBA did not address PAWC's technical, managerial, and financial fitness.

In its Replies, the OCA reiterates that it does not dispute PAWC's fitness. OCA R. Exc. at 14. The OCA continues, contending that PAWC fails to recognize that PAWC's fitness, as compared to Appalachian's, is not determinative of whether this Joint Application should be approved. The OCA explains that PAWC's legal, technical, and financial fitness to own Appalachian does not in itself create a substantial affirmative public benefit. Rather, the OCA asserts, PAWC is required to present evidence that any benefits which derive from its technical, managerial, or financial fitness provide a substantial benefit over the fitness of the acquired utility. *Id.*

**d. Disposition**

At the onset, we will address PAWC's claim that the ALJ failed to address the issue of whether PAWC is legally, technically, and financially fit to own and operate Appalachian. We note that the ALJ was aware of the positions and arguments expressed by PAWC and other Parties; however, it is up to the ALJ to determine whether, and to what extent, further discussion and analysis is warranted. *See* 52 Pa. Code §§ 5.403, 5.404. As previously mentioned, the ALJ noted the rebuttable presumption that PAWC possesses the requisite fitness due to its status as a certificated public utility. *See* I.D. at 14. In addition, no Party rebutted the presumption that PAWC possesses the requisite fitness afforded to it as a certified public utility. Upon review of the record, we agree that the Company has proven that it is technically, legally, and financially fit to own and operate the System.

Therefore, to the extent that PAWC claims that the ALJ overlooked the issue of whether PAWC is legally, technically, and financially fit to own and operate Appalachian, we find that this argument is without merit. Accordingly, we will deny PAWC Exception No. 2.

## **2. Substantial Affirmative Public Benefits**

### **a. Positions of the Parties**

#### **(1) PAWC**

PAWC argued that it met its burden to show that there are net affirmative public benefits that will result from the transaction. Specifically, the Company asserted that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” PAWC M.B. at 12 (citing *City of York*, 295 A.2d at 828; *Application of CMV Sewage Co., Inc.*, Docket No. A-230056F2002 (Opinion and Order entered December 23, 2008)).

According to PAWC and Appalachian, there are substantial affirmative public benefits that will accrue to all stakeholder groups impacted by the transaction: (1) Appalachian as the seller; (2) Appalachian’s existing customers; (3) PAWC as the buyer; (4) PAWC’s existing customers; and (5) the public-at-large. PAWC M.B. at 12-31 (citing *Middletown Twp. v. Pa. PUC*, 482 A.2d 683 (Pa. Cmwlth. 1984)); PAWC R.B. at 6-22.

PAWC submitted that the Joint Application will have positive net benefits because: (1) compared to Appalachian, PAWC has a superior ability to comply with safety and environmental regulations; (2) the upgrades that PAWC plans to make, pursuant to its five-year capital investment plan for the System (PAWC Exh. MJG-3), would not be made by Appalachian if the transaction is not approved;<sup>13</sup> (3) other benefits provided by PAWC arise as a result of the transaction; and (4) the only alleged detriment

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<sup>13</sup> Appalachian indicated that it lost more than \$90,000 in 2023 and, through September 17, 2024, had a net income of negative \$31,711. AUI St. 1-R at 6; AUI St. 1-RJ at 3.

of the transaction is the rate impact on customers, which PAWC contended is completely speculative at this time and should be given little weight. PAWC M.B. at 13-31. Further, according to the testimony of the Joint Applicants' witnesses, the proposed transaction is necessary for the continuity of water services to Appalachian customers, given Appalachian's current lack of employees and an owner seeking to exit the business.<sup>14</sup>

In support, PAWC argued that the transaction will result in the following public benefits:

- PAWC indicated that it has a record of acquiring and improving water and wastewater systems. The Company stated that in recent years, PAWC acquired Winola Water Company, Delaware Sewer Company, Clean Treatment Sewage Company, Nittany Water Company, Wildcat Park Corporation, and the Sewer Authority of the City of Scranton, among others, and quickly improved the reliability and safety of those systems by investing the necessary capital to move the systems toward regulatory compliance. PAWC M.B. at 11.
- PAWC contended that the transaction would benefit the public-at-large because it promotes the Commission's policy regarding the regionalization and consolidation of viable water and wastewater systems at 52 Pa. Code § 69.721. PAWC explained that the transaction promotes consolidation by merging two public utilities into one and promotes regionalization because PAWC has several nearby systems, benefiting customers because it reduces

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<sup>14</sup> In addition to financial pressures, Appalachian has only three employees in addition to its sole shareholder, Mr. Sargent, who wishes to retire from and exit the public utility business, creating additional obstacles for Appalachian to overcome in order to keep up with increasingly complex regulatory requirements. PAWC St. 1 at 13-14. New federal and state regulations continue to be promulgated, requiring more attention and specialization. These challenges are difficult to overcome without sufficient staffing and expertise. Appalachian would have to add to its expertise and may struggle to do so due to the challenge of hiring and maintaining individuals in an area of the state with a relatively small population. PAWC contended that without a sale, Appalachian may be forced to rely on outside contractors, subject to availability and pricing, for day-to-day operations, repairs, and equipment upgrades. *Id.*

costs. PAWC M.B. at 13-14. According to PAWC, the transaction will further benefit the public-at-large through, *inter alia*, the following:

- Better management practices addressing staffing, public safety, and community engagement. PAWC M.B. at 15-17.
- The ability to achieve greater economies of scale. Appalachian acknowledged this difference in its direct testimony: “[PAWC] can centralize an inventory system and lower the per unit cost, they buy products (chemicals, etc.) in bulk that we could never imagine. The same is true for services...” PAWC M.B. at 14-15 (citing AUI St. 1 at 5).
- PAWC’s record of compliance with the Underground Utility Line Protection Law (73 P.S. §§ 176–186). PAWC M.B. at 15.
- PAWC’s sponsorship and participation in local community events and donations to organizations in the communities it serves, whereas there is no evidence of similar public benefits from Appalachian’s ownership. PAWC M.B. at 16.
- PAWC averred that the transaction will benefit the seller because the seller will receive the proceeds from the transaction and will allow Appalachian’s sole shareholder to retire, avoiding significant future expenses and other challenges. PAWC M.B. at 17-18.
- Concerning the financial benefits of the transaction, PAWC submitted that Appalachian customers will become part of a system with a large customer base, allowing them to share the costs of system improvements with many customers. PAWC argued that customers of small systems are constantly exposed to the risk of rate spikes in the event of a single expense for the system. PAWC contended that the transaction will significantly reduce this risk of rate spikes to the Appalachian customers. PAWC M.B. at 19. PAWC asserted that if the transaction is disapproved, the Appalachian customers are likely to experience greater rate increases in the near future than they would if the transaction is approved. *Id.* at 23-24.
- PAWC proffered that Appalachian has extensive deferred maintenance. Regarding purported operational benefits for Appalachian’s customers, PAWC asserted that it has prepared a capital investment plan for the System. PAWC M.B. at 19-20. Based on preliminary cost estimates, PAWC argued that it anticipates making capital investments in the System

of approximately \$6,262,500, during the first five years of ownership. See PAWC Exh. MJG-3.

- According to PAWC, the technological and operational benefits it will be able to provide, which include addressing Appalachian's Non-Revenue Water (NRW),<sup>15</sup> are benefits that are specific to the transaction and show that PAWC will provide much more than Appalachian currently provides. Through its distribution system improvement charge (DSIC), PAWC contended that it will replace mains at a faster rate than Appalachian currently replaces mains; and replacing mains more quickly will enhance the reliability of service and reduce service interruptions. PAWC argued that replacing mains more quickly will also reduce Appalachian's NRW. PAWC St. 1 at 22. PAWC's plans include ensuring uninterrupted power is available to critical infrastructure (which Appalachian does not plan to do) resulting in improved system reliability and improving the safety and security of the System. *Id.*
- PAWC noted customer service enhancements for Appalachian customers. In this regard, PAWC noted that Appalachian has limited staff, and its manpower constraints limit the timeliness of customer service responses under its current ownership. PAWC represented that it can offer customers the ability to reach their water/wastewater provider 24/7/365 in emergency situations, and 12 hours a day from Monday through Friday for routine business. In comparison, Appalachian is not staffed 24 hours a day, 7 days a week. PAWC St. 2 at 14-15. Customers can also reach PAWC via email, and have a variety of bill payment options, which provide customers with a level of convenience not offered by Appalachian. *Id.* The Company also highlighted its bill payment options offered to its customers. PAWC customers have the option to receive paper bills or to receive bills electronically through PAWC's "My H2O" online portal. PAWC's customers can pay their bill by mail, online, or over the phone with a credit or debit card. PAWC customers can also pay their bill by e-check, electronic funds transfer, or pay in-person at multiple authorized payment locations across the state. *Id.* Additionally, PAWC asserted that low-income customers will have access to PAWC's customer assistance program and payment arrangements, if qualified. PAWC M.B. at 19.
- PAWC argued that Appalachian's customers will benefit from PAWC's ability to comply with safety and environmental regulations. If the

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<sup>15</sup> PAWC noted that Appalachian's NRW is approximately 20%, which is close to the industry standard of 20% considered to be excessive. PAWC M.B. at 20 (citing PAWC St. 1 at 21-22; 52 Pa. Code § 65.20(4)).

transaction is approved, PAWC argued that it will timely perform all monitoring and reporting required by the Pennsylvania Department of Environmental Protection (DEP). PAWC noted that Appalachian has had violations related to monitoring and reporting in the past. PAWC asserted that it will greatly reduce monitoring and reporting violations, which ensures water quality and improves customer confidence. In some cases, Appalachian has been unable to proactively maintain the System to ensure reliability for customers. PAWC St. 1 at 20-21.

- PAWC proffered that Commission approval of the transaction would yield a net benefit for PAWC and its customers because PAWC would become a larger, financially stronger, and more stable public utility. PAWC contended that the impact on rates for existing PAWC customers will be decided by the Commission in future rate proceedings and will not increase immediately as a result of the transaction. PAWC M.B. at 26-30.
- PAWC asserted that its wastewater customers will benefit because the addition of the Appalachian customers will increase the water customer base to subsidize wastewater rate increases under Section 1311(c). PAWC M.B. at 30.

According to PAWC, the transaction's primary, if not the only, purported harm is the rate impact on customers. PAWC M.B. at 25. PAWC argued that at this time, it is not requesting revenue recognition designed to accommodate either the estimated revenue deficiency<sup>16</sup> resulting from the transaction or the amount to be placed into PAWC's rate base as a result of the transaction. Rather, PAWC explained, any proposed rate changes for either Appalachian customers or PAWC's existing customers will be presented in a subsequent base rate proceeding. Additionally, PAWC submitted that any revenue deficiency that may be reflected in a future base rate proceeding will be spread over PAWC's large customer base, resulting in a *de minimis* rate impact. Regarding the amount to be placed into PAWC's rate base, as a result of the transaction,

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<sup>16</sup> According to PAWC, under its ownership of the System, and including the full purchase price and year one capital investment projected by PAWC, the Appalachian System will produce an estimated annual revenue deficiency of **[BEGIN PROPRIETARY] [END PROPRIETARY]**. See OCA St. 1 at 12.

PAWC asserted that it has not requested Section 1327 treatment of the transactions in this case and argued that whether the acquisition's purchase price is reasonable is a factor that the Commission may consider in a future base rate proceeding, if PAWC requests Section 1327 treatment of the transactions.<sup>17</sup> PAWC M.B. at 22-23, 32; PAWC R.B. at 20.

PAWC explained that what *is* known for certain is that, if the transaction is approved, somewhere between \$1,396,252<sup>18</sup> and \$3,500,000 will be placed into PAWC's rate base. Consequently, PAWC explained, (1) if the Company requests and receives a Section 1327 acquisition adjustment in a future base rate proceeding, customers face the risk that \$3,500,000, rather than the depreciated original cost, could be placed into rate base, and (2) if PAWC does not request a Section 1327 acquisition adjustment, or if the Commission denies a request for a Section 1327 acquisition adjustment, PAWC faces the risk that it will pay a purchase price of \$3,500,000, but will only be permitted to place the depreciated original cost into rate base (the difference would be funded by PAWC's shareholders). PAWC M.B. at 22-23, 26, 28, 32; PAWC St. 1 at 6. Considering that the rate impact of the System's purchase price is completely speculative, PAWC argued that it should not be considered a known harm of the transaction and should not be given much weight when weighing the benefits against the detriments of the transaction. PAWC M.B. at 22-23, 29, 31, 35 (citing *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Docket No.

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<sup>17</sup> In a Section 1327 proceeding, where a public utility proposes to acquire the property of another public utility at an acquisition cost greater than the depreciated original cost of the subject property, the acquiring public utility has the burden of proving that the actual purchase price is reasonable. 66 Pa.C.S. § 1327(a)(6).

<sup>18</sup> As of December 31, 2023, the depreciated original cost, minus customer Contributions in Aid of Construction (CIAC), of Appalachian's System was \$1,396,252. OCA St. 1R at 5; OSBA St. 1 at 7, Table KCH-1.

A-2016-2537209 (Opinion and Order entered October 19, 2016) at 50 (*City of Scranton*)).<sup>19</sup>

## (2) Appalachian

In support of its position that the Commission should approve the Joint Application, Appalachian echoed PAWC’s contention that “there is ample evidence of the benefit to all constituencies and no credible argument that any group will be disadvantaged or harmed by the Transaction or by the Commission setting ‘just and reasonable’ rates in the future.” AUI M.B. at 14. Appalachian further asserted that “the harm of not approving the merger is certain, AUI will almost certainly fail, and the public will be left with one more troubled asset to potentially go through the process under Section 529 of the Public Utility Code, 66 Pa.C.S. § 529.” *Id.* Appalachian summarized its concerns, as follows:

In fact, it has been losing money for the past two years, has had several notices of violation issued by DEP between 2020 and 2024, and is in dire need of a “massive” rate increase to allow it to address existing problems and projects including compliance with new and existing regulatory mandates such as the lead and copper pipe inventory. AUI has not been able to surmount these issues on its own and there is no evidence on this record to suggest that it will be able to do so in the future without the financial, technical, and operational assets

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<sup>19</sup> In its Main Brief, the OCA contended that *City of Scranton* is not applicable because it was decided before *McCloskey*. PAWC argued that the OCA’s contention should be rejected, explaining that *City of York* requires the Commission to consider rate impact when considering an application, in at least a general fashion, and *City of Scranton* was decided well after *City of York*. OCA M.B. at 25-26.

that PAWC has and will provide to the system and its customers through the merger acquisition.

AUI R.B. at 1-2 (citations omitted). Appalachian added that: (1) it is a privately held system with one shareholder who is aging and wants to retire after 30 years; (2) Appalachian is faced with numerous technical, system, and regulatory challenges, as described by Mr. Sargent; and (3) Appalachian has very limited options to access capital to make the necessary improvements so that it can continue to legally operate. AUI St. 1 at 3. Appalachian maintained 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 at 3. Appalachian asserted that it will need a substantial rate increase, which would be spread 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 competent certificated utility with “superior financial strength” to buy Appalachian. AUI St. 1 at 4; AUI R.B. at 7. AUI offered that it has had some regulatory challenges in its recent history, 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 revenue. AUI St. 1-R at 6-7. AUI contended that a rate case is inevitable in the absence of a merger because its rates have not increased since 2015. Appalachian argued 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 at 7. AUI further argued that over the last two years, it has been operating at a deficit, which is not sustainable. Appalachian suggested that the proposed merger is the only plausible option for the continued service to AUI’s customers. AUI St. 1-RJ at 3; AUI Exh. RJ-1.

Appalachian also echoed PAWC’s contention that “[t]he merger will bring Appalachian customers into the PAWC customer base, providing greater stability and the

ability to share system costs over a greater number of customers. This increased base will stabilize per-customer costs over the long term.” AUI St. 1 at 3-4.

The Joint Applicants asserted that they cannot agree with the position of the OCA, *infra*, that the effect on both PAWC’s and Appalachian’s existing customers is known. However, Appalachian proffered that PAWC’s witness, Ms. Ashley E. Everette, has demonstrated the impact on PAWC’s existing water customers would be *de minimis*:

Even if PAWC does seek an acquisition adjustment in its next base rate case, and even if the Commission allows that recovery, the OCA claims that PAWC would receive an acquisition adjustment of **[BEGIN PROPRIETARY]**

**[END PROPRIETARY]**. The actual impact will likely be even less if the Commission allows Appalachian’s rates to move toward consolidation with PAWC’s Zone 1 rates.

PAWC St. 3-R at 6-7; AUI M.B. at 17.

Appalachian addressed the below arguments of the OCA, centered around the purchase price premium, by countering that no Party to this proceeding has or can dispute that PAWC has not made a claim to include the AUI assets in its 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. AUI M.B. at 12. According to Appalachian, if the Commission were to accept the OCA’s demand to make ignoring Section 1327 a condition of approving an acquisition (*i.e.* to impose a condition that PAWC not be permitted to claim more than the depreciated original cost of the Appalachian System in its rate base in the first rate case after closing of the proposed transaction), this would cast doubt on the Commission’s integrity and ability to conduct a

proper ratemaking process in the future, if and when such a claim is made. Appalachian stressed that the Commission is obligated by statute to determine “just and reasonable rates” under its mandate in Section 1301 of the Code, 66 Pa.C.S. § 1301. *Id.* at 12, 18.

Appalachian concluded that present rates for its customers are lower than they must be for Appalachian to continue to serve them, and so a rate increase is inevitable, regardless of who ultimately owns and operates AUI. Appalachian suggested 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, Appalachian offered that the continuity of having Commission-made rates is a benefit. Appalachian added that the amount of any such increase is not known and argued 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 Appalachian. AUI M.B. at 16.

### **(3) OCA**

The OCA summarized its position by arguing that PAWC’s request for approval of its proposed purchase of the Appalachian System under Sections 1102 and 1103 of the Code, 66 Pa.C.S. §§ 1102 and 1103, should be denied because PAWC failed to establish that the transaction would result in substantial affirmative public benefits. The OCA argued 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 Appalachian – or they do not outweigh the substantial adverse rate impact on PAWC’s existing customers and the Appalachian customers who would be served by PAWC following the closing on the proposed transaction. The OCA asserted that both the PAWC ratepayers and Appalachian ratepayers will be harmed because of the

proposed transaction, as customers likely will have to pay for the System and the annual revenue deficiency it is estimated to produce. OCA M.B. at 6.

In support of its position, the OCA pointed to numerous reasons for the Commission to deny the Joint Application. *See* OCA M.B. at 7-33.

- The OCA alleged that the benefits that PAWC asserted will result from the transaction are almost exclusively based on the Company's fitness as a large regulated public utility, are not specific to the transaction, and are not marked improvements over the safe and reliable service already being provided by Appalachian. OCA M.B. at 8 (citing OCA St. 1 at 7-13; OCA St. 1SR at 4-6, 8). Contrary to PAWC's claims, the OCA asserted that the record does not demonstrate that Appalachian is incapable of providing adequate service or complying with environmental rules. OCA M.B. at 11-12. The OCA opined that PAWC's claimed benefits to Appalachian customers, with the exception of PAWC's ability to provide a low-income discount program, arise solely out of PAWC's fitness. OCA M.B. at 19. Therefore, according to the OCA, the general benefits claimed by PAWC would apply to *any* system acquisition by PAWC and this, standing alone, is not sufficient to meet the substantial public benefit standard. OCA M.B. at 8 (citing *Cicero*).
- Notwithstanding PAWC's fitness, the OCA contended that the acquisition of AUI at a **[BEGIN PROPRIETARY] [END PROPRIETARY]** premium over depreciated original cost is excessive, unsupported in the record, and does not produce substantial affirmative public benefits. OCA M.B. at 7-20 (citing *City of York; McCloskey*). The OCA asserted that the transaction would result in substantial rate harm to customers, noting that, PAWC is seeking approval to pay AUI **[BEGIN PROPRIETARY] [END PROPRIETARY]**. OCA R.B. at 3-4.
- The OCA also argued that the Appalachian System is not distressed or troubled and does not need an immediate influx of capital investment to provide safe and reliable service. The OCA contended that while PAWC has argued that the transaction would provide significant environmental

benefits, PAWC relies on generalizations about its ability, as PAWC, to fix and comply with the System's current constraints. OCA M.B. at 14.

- The OCA contended that the cited reason for the sale, *i.e.*, that the owner wishes to retire due to age, is not evidence that substantial public benefits would result. OCA M.B. at 9; OCA R.B. at 3.
- Focusing on PAWC's proposal to spend more than \$6.25 million on capital investments over the next five years, the OCA asserted that the Company does not tie its spending to any demonstrated environmental compliance directive, or other regulatory requirement. OCA M.B. at 14; OCA R.B. at 10.

#### (4) OSBA

The OSBA did not oppose the transaction as set forth in the Joint Application, recognizing that "Appalachian's owner plans to retire as soon as the proposed transactions are complete," and the transaction "will have no immediate effect on the rates for service to be charged to PAWC's existing customers." OSBA M.B. at 5-6. The OSBA added that Appalachian's owner, Mr. Sargent, testified that upon purchase of the System from the previous owners in 1995, Appalachian was not in compliance with the Clean Water Drinking Act and was facing daily fines from DEP. Following the purchase, according to Mr. Sargent, Appalachian undertook a major system upgrade to bring the System into compliance in 1996, after which water quality complaints ceased. OSBA M.B. at 6.

However, the OSBA shared the OCA's concern regarding the \$3.5 million purchase price of the transaction. Accordingly, as addressed *infra*, the OSBA recommended that the Commission impose one condition as a condition for approval of the Joint Application. OSBA M.B. at 6-7.

**b. Initial Decision**<sup>20</sup>

The ALJ denied the Joint Application, reasoning that the Joint Applicants did not meet their burden of proving that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. I.D. at 2, 31-32 (citing *City of York*).

In his evaluation, the ALJ recognized that “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.” The ALJ reasoned that, although the Commission is not unsympathetic to the owner’s desire to retire, this is not grounds to warrant approval of the Joint Application. I.D. at 31-32.

Further, ALJ Johnson found persuasive the OCA’s argument that the record evidence lacks proof of substantial affirmative benefits to the public, given the Joint Applicants’ failure to explain how the purchase price benefits the public. The ALJ agreed with the OCA that current PAWC and Appalachian ratepayers will be harmed by the proposed transaction, since customers will likely have to pay for the acquisition premium above depreciated original cost and the additional revenue deficiency that the transaction would produce. I.D. at 32.

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<sup>20</sup> 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. As discussed in more detail, *infra*, we find that the proposed stock transfer described in the Stock Sale Application is subject to the Commission’s jurisdiction. Therefore, we will begin by focusing on whether the Joint Application should be approved, and on other related issues. As such, the Joint Applicants’ Exceptions to the Initial Decision regarding the Stock Sale Application will be addressed last.

The ALJ found that the evidence of record indicates that Appalachian is currently providing reasonable and adequate service to its customers. Therefore, considering the harm to ratepayers, the ALJ found the arguments relied upon by the Joint Applicants to support approval of the transaction are insufficient to warrant approval of the Joint Application. Therefore, the ALJ denied the Joint Application. I.D. at 32.

**c. Exceptions and Replies**

**(1) PAWC Exception No. 1**

In its Exception No. 1, PAWC objects to the ALJ's conclusion that "the evidence is lacking proof of substantial affirmative benefits to the public," and "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." PAWC Exc. at 6 (citing I.D. at 32). Rather, PAWC maintains a weighing of all the factors, supports approval of the Joint Application because affirmative public benefits will result. PAWC Exc. at 6-25.

PAWC reiterates its prior arguments that there are numerous substantial affirmative benefits of the transaction that outweigh any possible detriments for all the stakeholder groups impacted by the transaction, *i.e.*: (1) the public-at-large; (2) Appalachian and its owner; (3) Appalachian's existing customers; (4) PAWC; and (5) PAWC's existing customers. PAWC Exc. at 6-25 (citing PAWC M.B. at 12-31; PAWC R.B. at 6-22).

Contrary to the ALJ's finding that the identified benefits are generalizations, PAWC maintains that these benefits are specific to the transaction and that the ALJ erred by overlooking the affirmative public benefits and by giving too little

weight to the benefits and too much weight to the only purported harm of the transaction, rate impact, which PAWC insists is completely speculative at this time. PAWC Exc. at 7-25. PAWC contends that the ALJ failed to discuss how the alleged “general probable rate harm” he finds will result from the transaction is reconciled with Section 1327’s requirements that, in order for the purchase price to be placed into rate base, the Commission must find, *inter alia*, that: (1) the purchase price is reasonable; and (2) the rates charged by the acquiring public utility to its preacquisition customers will not increase unreasonably because of the acquisition. *Id.* at 17.

PAWC explains that it is important to consider what will happen if the transaction is not approved versus what will happen if the *status quo* is maintained. If the transaction is not approved, PAWC maintains that the record in this case establishes that on-going operations are at risk. PAWC re-emphasizes that, for the past two years Appalachian has been operating at a deficit and continues to do so. PAWC Exc. at 15 (citing AUI M.B. at 15). PAWC further contends that the ALJ failed to acknowledge the record evidence that Appalachian’s customers face the risk of a rate increase whether the transaction is approved or disapproved, noting as follows:

If the Transaction is disapproved, Appalachian will need to seek a substantial increase to its rates in the near term because (1) rates have not been increased since Appalachian’s 2015 rate case, (2) inflation and new regulatory requirements since Appalachian’s last rate increase require a significant rate increase, (3) Appalachian needs to make expensive capital improvements to continue to provide reasonable and adequate service, (4) the rate case Appalachian will need to file will

itself be costly, and (5) Appalachian has a smaller customer base to shoulder the burden.

PAWC Exc. at 20 (citing PAWC M.B. at 23; AUI M.B. at 14). In support of the Joint Application, PAWC maintains that Appalachian's customers will enjoy enhanced service from PAWC. PAWC adds that, as noted by Appalachian:

Mr. Sargent's desire to sell was not predicated solely on his desire to retire, which will happen regardless of the outcome in this proceeding. Mr. Sargent desired to leave the customers that he served for 30 years in a better place than when he took over the company, and that benefits everyone. Mr. Sargent also discussed his desire to leave AUI in a strong position by merging with a utility with "superior financial strength." He also made sure that the goal of future rate stability for customers was attained.

PAWC Exc. at 10 (citing AUI R.B. at 7).

PAWC remains of the opinion that the transaction would allow Appalachian's customers to become part of a system with a larger customer base, allowing them to share the costs of system improvements with many customers, and reducing the risk of rate spikes that they, as customers of smaller systems, currently face. PAWC further contends that the transaction would allow Appalachian customers to benefit from several customer service enhancements, as well as formal low-income customer assistance programs (CAPs). PAWC Exc. at 15-16.

Lastly, PAWC maintains that the transaction will make PAWC a larger, financially stronger, and more stable company, and that when an acquisition makes the acquiring utility stronger, ratepayers are the ultimate beneficiary. PAWC Exc. at 22 (citing *City of York*, 295 A.2d at 829). PAWC stresses its position that increasing the number of customers who share the costs of operating the utility's system benefits

PAWC's existing customers, just as it benefits Appalachian's customers.  
PAWC Exc. at 22.

**(2) Appalachian Exception No. 3**

In its Exception No. 3, Appalachian argues, *inter alia*, that the Findings of Fact (FOF) Nos. 17-18, 27-28, and 30-36 are incorrect and require correction. The crux of Appalachian's objections on this matter appears to be based on its perceived failure of the ALJ to recognize PAWC's superior operational ability and Appalachian's inability to continue operations as the driving force of the sale. AUI Exc. at 6-13. The pertinent FOF, as highlighted by Appalachian, are set forth below:

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 is 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.

\* \* \*

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.

\* \* \*

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.

I.D. at 8-10.

Regarding FOF Nos. 17 and 18, Appalachian contends that the statements are incomplete or inaccurate. In this regard, Appalachian argues that:

[u]nless the Commission approves the proposed merger, Mr. Sargent will not be permitted to alienate his ownership in AUI and he will be forced to continue to own AUI, even if he no longer participates in operations, management, financial matters and the many hats and capacity he wears and undertakes in running this small water company.

AUI Exc. at 7. Appalachian contends that the ALJ further failed to acknowledge that “[a]bsent the proposed merger, without a ‘massive’ rate increase to address its substantial and increasing need for capital to maintain itself as a viable business, AUI could easily become a troubled system that would need to be addressed under Section 529.”

*Id.* at 6-7.

Similarly, regarding FOF Nos. 27 and 28, Appalachian contends that the ALJ ignored contradictory evidence, such as the fact that there would naturally be a gap between Appalachian’s present rates and PAWC’s current rates, since Appalachian has declined to seek a rate increase since 2015 in order to provide rate breaks for its customers, including imposing no increases during the COVID-19 pandemic. Additionally, Appalachian argues that after the proposed merger, while Appalachian customers’ rates are being phased in, any subsidy that Appalachian customers would be receiving from existing PAWC customers would be measured in cents, and not dollars, per customer, per year. AUI Exc. at 7-8.

Regarding FOF No. 30, Appalachian notes that, since the close of the record, it has received from the Commission a Notice of Non-Compliance with the Lead Line Replacement Program. Appalachian suggests that its inability to comply with such requirements is one more reason the merger should be approved. AUI Exc. at 8.

Lastly, Appalachian argues that the ALJ committed error in stating that PENNVEST loans and/or grants could be used to fund needed projects for Appalachian, when there is overwhelming and clear evidence on the record from PENNVEST's own application requirements and public annual reports, that substantiate Appalachian's position that PENNVEST loans are not practical and grants are simply not possible, and that the application and grant process would require huge amounts of money in engineering and design that Appalachian does not have, or cannot raise. AUI Exc. at 10.

### **(3) Appalachian Exception No. 4**

In its Exception No. 4, Appalachian contends that the ALJ failed to apply the appropriate legal standard in his analysis. AUI Exc. at 14-16. In its Main Briefs, PAWC submitted that this case is distinguishable from *Cicero*. See PAWC M.B. at 24. In its Exception No. 4, Appalachian echoes PAWC's argument. AUI Exc. at 14-16. (citing *Id.*).

More specifically, Appalachian explains that in Section 1329 proceedings, the acquiring public utility seeks to gain, in its acquisition request, an acquisition premium to be used in future base rate cases using a defined process to determine the price to be paid for the municipal system's assets. In contrast, AUI argues that Section 1327 allows for a rate base claim to be determined for small water or wastewater utilities in a future rate case, when and if claimed, and that in the instant Joint Application, there is no claim to set a value for Appalachian's System. AUI Exc. at 14.

Appalachian explains that, in the proposed Joint Application:

(1) Section 1329 does not apply since Appalachian is not a municipal water operation; and (2) PAWC has made no claim under Section 1327 to be decided, and any future claim under Section 1327 will be decided when and if a claim for something in excess of "original cost minus depreciation" is claimed by PAWC in a future rate case.

Accordingly, Appalachian contends that the ALJ's adopted conclusion of a "rate harm" or detriment because a Section 1327 claim might be made in the future lacks both legal ripeness and is speculative. AUI Exc. at 15.

Lastly, Appalachian argues that, even if *Cicero* applied to the Joint Application, in contrast to the acquisition at issue in *Cicero*, Appalachian and PAWC have demonstrated in the instant proceeding that "a number of the benefits of the merger will solve distinct major problems – lack of access to capital, the need to hire more technically experienced employees, the lack of available contractors in the area (PAWC has staff in the region which can provide these services) lingering compliance issues and more." AUI Exc. at 16.

#### **(4) Appalachian Exception No. 5**

In its Exception No. 5, Appalachian submits that the ALJ committed reversible error in relying on speculation about future "rate harm" as a basis for ignoring the vast array of evidence on the benefits of the proposed merger. AUI Exc. at 17-18 (citing I.D. at 21-32). Considering that the rate impact of the acquisition is completely speculative at this time, Appalachian echoes PAWC's argument that it should not be considered a harm of the transaction and should not be given much weight when measured against the vast evidence placed into the record as to the benefits of the merger. Appalachian argues that the ALJ glossed over the many benefits of the merger, including that: (1) it will result in a rapid infusion of cash to address Appalachian's immediate capital needs, (2) it will satisfy the need for expertise to avoid receiving, future notices of violation from the DEP, and (3) it will provide the ability to leverage the nearby PAWC's assets, both human and material, to reinforce Appalachian's undersized work force and inadequate rates. AUI Exc. at 17-18.

**(5) OCA Reply Exceptions**

In its Replies, the OCA maintains that the record is replete with harm and devoid of benefit. Therefore, the OCA contends that, consistent with the ALJ's determination, PAWC has not demonstrated that the proposed transaction will meet the substantial public benefits standard under Sections 1102 and 1103 of the Code, and accordingly, the Joint Application must be denied. OCA R. Exc. at 3-14 (citing 66 Pa.C.S. §§ 1102, 1103; *City of York*).

The OCA counters that PAWC's presentation of the separate categories of potential benefits does not mean that the ALJ erred in his legal analysis or applied the incorrect legal standard in concluding that the proposed transaction does not create a substantial affirmative public benefit. OCA R. Exc. at 3-4.

The OCA maintains that the general benefits alleged by PAWC and Appalachian, with the exception of PAWC's ability to provide low-income discount programs, result entirely from PAWC's fitness, are not specific to this transaction, and do not differ substantially from the service currently provided by Appalachian. Therefore, according to the OCA, these general benefits are not sufficient to meet the "substantial public benefits" standard. OCA R. Exc. at 13. The OCA further submits that PAWC's and Appalachian's alleged benefits regarding customer service, such as the extended customer service hours and the ability to pay by phone or e-check, do not outweigh the harm of the rate impact that will result from the transaction. *Id.* at 8.

The OCA maintains that not only does PAWC's access to capital or record of environmental compliance not contribute to satisfying the substantial affirmative benefits standard required for Commission approval under *City of York*, but there is a serious risk that current PAWC customers will end up subsidizing the cost to provide

service to Appalachian that is not recovered from Appalachian customers. OCA R. Exc. at 7, 11.

Next, the OCA rebuts Appalachian's contention that, in light of its limited workforce and an owner desiring to exit the business and retire, as well as its purported financial challenges, the only viable succession plan is the sale of Appalachian to a more capable utility, such as PAWC with its superior operational ability. In this regard, the OCA reiterates its arguments that Appalachian's System is not distressed or troubled and does not require an immediate influx of capital investment to provide safe and reliable service. Therefore, the OCA contends that the ALJ correctly found that an acquisition by PAWC at an excessive purchase price is not necessary in order to maintain public utility service. OCA R. Exc. at 6-7, 13.

#### **d. Disposition**

Upon review of the evidentiary record, and after the application of the balancing test required under Section 1102 of the Code, we find that the Joint Applicants have demonstrated that the acquisition has substantial affirmative benefits that outweigh the purported harms asserted by the opposing Parties.

With respect to evaluating whether the acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition, as set forth in the Commonwealth Court's decision in *McCloskey*, our obligation in performing "the balancing test under Section 1102 of the Code [is] 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*, 195 A.3d at 1066 (applying *City of York*). We are further "charged with deciding whether the impact of rates ... is outweighed by ... other positive factors that ... served [as] a substantial public benefit." *Id.* at 1067. Moreover, the Pennsylvania Supreme Court has explained that "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.” *Popowsky*, 937 A.2d at 1061, n.21. The Commission has consistently applied this balancing test for evaluating whether to issue Certificates in Section 1329 proceedings. *See e.g.*, *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491 (Opinion and Order entered November 5, 2019); *Application of Pennsylvania-American Water Company – Valley Township*, Docket Nos. A-2020-3019859 and A-2020-3020178 (Opinion and Order entered October 28, 2021); and *Application of Pennsylvania-American Water Company, pursuant to Section 1329 for the acquisition of the wastewater collection and conveyance system owned by the Borough of Brentwood*, Docket No. A-2021-3024058 (Opinion and Order entered February 22, 2024).

In the seminal Section 1329 case in *McCloskey*, the Commonwealth Court considered the Commission’s findings that the applicant in that proceeding, as an owner of numerous water and wastewater systems, had sufficient expertise and ability to raise capital to support system operations. The Court also acknowledged the finding that the Commission has a policy in support of consolidation and regionalization of wastewater system assets that allows for increased maintenance, upgrade, and expansion of public sewer and water facilities. In its rationale, the Court stated that these Commission findings were of the type that the Pennsylvania Supreme Court in *Popowsky* held were sufficient to meet the Section 1103 public benefit standard. “As per [*Popowsky*], these *aspirational statements are substantial evidence* to support the notion that there is a public benefit for the merger.” *McCloskey*, 195 A.3d at 1065 (emphasis added).

Recently, as discussed, *supra*, the Commonwealth Court in *Cicero* reversed a Commission Order that had approved the acquisition of a municipality’s wastewater assets by a large public utility under 66 Pa.C.S. § 1329, finding that the benefits did not outweigh the acknowledged harms of the acquisition. The Court in *Cicero* held that the substantial affirmative benefits of a proposed acquisition must outweigh the

acknowledged harms resulting from the acquisition. The Court further explained that where harms result from the transaction, the acquisition must also provide benefits that differ substantially from those already being provided by the existing system operator, and that providing the same services that 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*. Also, the Court stated that public benefits arising from aspirational statements or those 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. *See Cicero* at 1119-20.

As an initial matter, we shall deny PAWC's Exceptions to the extent that they argue that the ALJ applied the incorrect legal standard pertaining to the affirmative public benefits test when assessing an application brought under Section 1102(a) of the Code, 66 Pa.C.S. § 1102(a). We find no basis to conclude that the ALJ applied the incorrect legal standards as set forth in the appellate decisions developed and mandated in *City of York*, *Popowsky*, *McCloskey*, or *Cicero*. Thus, because it is unquestioned that Commission decisions must be in accordance with the law, *Barasch v. Pa. PUC*, 576 A.2d 79, 82 (Pa. Cmwlth. 1990), *aff'd* 605 A.2d 1198 (Pa. 1992), we determine that the Joint Applicants' Exceptions, pertaining to the threshold application of the legal standards for evaluating application proceedings pursuant to Sections 1102 and 1103 of the Code, lack merit. However, we agree with the Joint Applicants that the purchase price and the possible rate base or rate impacts in a future case were relied too heavily on by the ALJ in weighing the benefits against the possibility of modest detriment.

PAWC's witness, Mr. Marcus Kohl, testified that based upon a per-customer count, Appalachian's purchase price is very reasonable compared to what PAWC was paying for acquisitions pursuant to Section 1102 acquisitions and what the Commission has approved. *See* PAWC St. 1 at 24-25. In support of his argument, Mr. Kohl provided the following table in his testimony.

**PAWC § 1102 TRANSACTIONS SINCE 2018**

<b>Date of Closing</b>	<b>System</b>	<b>Purchase Price</b>	<b>Customers</b>	<b>PP/C</b>
7/24/2019	Turbotville Water	\$635,000	330	\$1,900
7/24/2019	Turbotville Wastewater	\$365,000	318	\$1,100
10/27/2022	Foster Township Wastewater	\$3,750,000	456	\$8,200
6/21/2023	Creekside Water	\$171,580	78	\$2,200
Average				\$3,350

*See Id.* at 25. A comparison of Appalachian’s purchase price per customer at a purchase price of \$3.5 million yields a favorable comparison to the average purchase price per customer of PAWC’s other recently Section 1102 approved acquisitions, as set forth in the above table. More specifically, the Appalachian purchase price per customer of \$2,403 ( $\$3,500,000 \div 1,456 \text{ customers} = \$2,403$ ) is approximately 28% less than the average per-customer cost of PAWC’s other recently approved acquisitions.

Moreover, in comparison to the \$2,403 per-customer purchase price of the Appalachian System, PAWC’s witness, Ms. Everette, indicated that PAWC’s current net utility plant in service per customer is **[BEGIN PROPRIETARY] [END PROPRIETARY]** for water customers.<sup>21</sup> PAWC St. 3-RJ at 4. As such, the transaction would allow PAWC to immediately gain approximately 1,456 additional water customers at a purchase price per customer that is lower than PAWC’s average plant in service for existing PAWC customers. Therefore, it will benefit all PAWC ratepayers to add approximately 1,456 water customers with a minimal increase in PAWC’s rate base.

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<sup>21</sup> **[BEGIN PROPRIETARY] [END PROPRIETARY]**  
PAWC Exh. AEE-1RJ (Confidential).

Nevertheless, we find that the uncertainty of the rate impact of the transaction on Appalachian customers, as well as PAWC's existing customers, diminishes the weight it should be given when weighing the benefits against the detriments of the transaction. We are of the opinion that PAWC should not be sanctioned in this proceeding by assuming that PAWC will request, and if requested, to what extent this Commission will grant Section 1327 treatment of Appalachian's System in a future base rate case. Unlike a Section 1329 acquisition, a Section 1102 acquisition proceeding does not establish the amount that a company will place into its rate base as a result of the acquisition. As previously noted, PAWC has not requested Section 1327 treatment of the transaction in this proceeding. As PAWC pointed out, the Commission has previously held that ratemaking issues should be decided in base rate proceedings, not acquisition proceedings:

As to the concerns raised by I&E 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.

PAWC M.B. at 35 (citing *Joint Application of PAWC and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209 (Opinion and Order entered October 19, 2016) at 50). Therefore, whether the purchase price is reasonable is a factor that the Commission may consider in a future PAWC base rate proceeding, if PAWC requests

Section 1327 treatment of the transaction. 66 Pa.C.S. § 1327(a)(6). At this time, however, it is unknown when PAWC will file its next base rate case.<sup>22</sup>

PAWC, in part, argues that the transaction benefits the public-at-large by promoting the Commission's policy favoring regionalization and consolidation of water and wastewater systems and the public policy goals in 52 Pa. Code § 69.721. Indeed, the Commission supports the consolidation and regionalization of water and wastewater system assets. To that end, the Commission stated:

[A]cquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development and provide environmental enhancements. We strongly believe that these types of acquisitions generally serve public policy goals....

*Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 (Order entered August 17, 2006) (*2006 Final Policy Statement*) at 18.

The proposed transaction is no exception to these principles. Furthermore, the analysis set forth in *City of York, McCloskey, Popowsky, and Cicero* is equally applicable in this proceeding. Therefore, we are required to evaluate whether PAWC has established that the substantial affirmative benefits of the proposed transaction outweigh the acknowledged harm resulting from it. Our evaluation herein considers whether PAWC has satisfied the preponderance of the evidence standard with the understanding

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<sup>22</sup> We note the Commission has recently experienced an increase in the number of base rate case filings across the utility industries and as a result, has rapidly noted that the utility companies should be mindful of the impact on ratepayers in the Commonwealth. Consequently, we wish to reinforce that utility companies should be strategic and judicious about when to file future rate filings.

that it is not required to secure legally binding commitments, nor quantify benefits, if impracticable, burdensome, or impossible. *See Popowsky* at 1057; *Cicero* at 1119-20. Additionally, an integral part of our review includes full consideration of the harms of the acquisition on the existing customers of PAWC and Appalachian, and the public-at-large.

As summarized, *supra*, PAWC described the benefits of the proposed transaction for Appalachian's customers, PAWC's customers, and the public as substantially outweighing the only purported harm of the transaction, *i.e.* the rate impact, which PAWC argued is completely speculative at this time. *See* PAWC M.B. at 12-31; PAWC R.B. at 6-22. PAWC submitted that any hypothetical future increase in rates is outweighed by the recognized benefit of PAWC's ownership, including: (1) the expertise and ability to raise and deploy capital for needed improvements and upgrades;<sup>23</sup> (2) the furtherance of consolidation and regionalization of water and wastewater services; and (3) spreading the costs over a larger customer base.

As testified by Appalachian's witness, Mr. Sargent, the sale of the System is necessary for the continuation of water service to Appalachian's customers. *See* AUI St. 1 at 3-4; AUI St. 1-R at 6-8; AUI St. 1-RJ at 3, 8. In addition to its poor financial condition, as evidenced by AUI having a negative net income of \$90,185 in 2023 and \$31,711 in 2024, Appalachian has only three employees, in addition to its sole shareholder, Mr. Sargent, who wishes to retire from and exit the public utility business. As such, this creates additional obstacles for Appalachian to overcome in order to keep up with necessary system work and the increasingly complex regulatory requirements. These challenges are difficult to overcome and require that a succession plan be put in place that will not only ensure the continuation of service to AUI's customers but also will provide the customers with better customer service, proactive

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<sup>23</sup> Based on preliminary cost estimates, PAWC anticipates making capital investments in Appalachian's System of approximately \$6,262,500, during the first five years of ownership. PAWC M.B. at 19 (citing PAWC St. 2 at 5; PAWC Exh. MJG-3).

maintenance, and environmental compliance. As such, the only viable succession plan in these unique circumstances is to sell Appalachian and the related assets that are used and useful in providing utility service. Mr. Sargent highlighted the hardship of obtaining a substantial rate increase over its small number of customers in the event the merger is not consummated.

[The OCA's] observation continues to ignore the fact that AUI has been in the red in 2023 and 2024 to date. But [the OCA] also fails to recognize the extreme expense of filing for a rate increase in today's world. AUI would have to hire a rate consultant firm, rate attorneys, engage its accountants, hire an engineer to address rate base including necessary future test year planned additions to rate base, design such, prove permits and the project are sufficiently developed within the Future Test Year, and to answer the many data and discovery requests from parties such as OCA, the cost of which is likely much more than \$100,000 and for a process that takes at least 3 months of planning and 9 months, including expensive hearings, under the PUC's process for the case to be decided. Let's be clear, AUI has no money to do that nor is there a point when (1) a merger and sale is pending, and (2) AUI has major doubt at its small size there is a likely future sustainability if it does not sell.

AUI St. 1-RJ at 7-8.

Recently, in the proceeding in *Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 1102 and 1329 for the acquisition of the wastewater system assets of the Greenville Sanitary Authority*, Docket No. A-2023-3041695 (Opinion and Order entered December 20, 2024) (*Greenville*), the Commission highlighted the importance of available qualified management and operators, which Appalachian is deficient in, and that the resolution of the lack of such trained staff is a public benefit. *Greenville* at 62-63. With the upcoming retirement of Appalachian's owner, Mr. Sargent, the need for greater expertise in Appalachian's undersized workforce, and the lack of available contractors in the area, we find that the

sale can provide the experienced operators that are necessary to ensure safe and effective operations in the absence of any continuity plan.

PAWC is better able to address the operational issues of Appalachian which have resulted in several notices of violation issued by DEP over the last four years.<sup>24</sup> *See* AUI St. 1-R at 6. In turn, this will benefit the public-at-large, as well as Appalachian's customers. Additionally, as PAWC's witness, Mr. Kohl, testified, there are benefits to the public-at-large related to the environmental benefits that PAWC will address in Appalachian's System, both currently and, more importantly, in the future, as new and more stringent regulations are issued by DEP and the United States Environmental Protection Agency. Moreover, the record demonstrates that PAWC is able to spread the costs and reduce the risk of a rate spike to Appalachian customers. PAWC St. 1 at 19-20.

We recognize that this acquisition may result in future rate increases for Appalachian customers, and potentially PAWC's customers as well.<sup>25</sup> However, in our view, the instant Joint Application represents a prudent option for the System to achieve its much-needed improvements, while moving rates toward more reasonable cost of service.

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<sup>24</sup> It should be noted that, most recently, Appalachian received from the Commission a Notice of Non-Compliance with the Lead Service Line Replacement Program, at Docket No. L-2020-3019521, dated January 23, 2025. *See* AUI Exc., Attachment 2.

<sup>25</sup> The last rate increase for Appalachian customers was in 2016 at *Pa. PUC, et al. v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098, *et al.* (Final Order entered March 10, 2016). PAWC's witness, Mr. Kohl, testified that, regardless of whether the transaction is approved, Appalachian customers will experience an increase in rates. Given the smaller number of customers that would share the burden of capital improvements driven by increasingly stringent regulations and aging infrastructure necessitating investment in the System, it is possible that those rates would be higher in the scenario where a sale does not occur. PAWC St. 1 at 19.

When weighing all these factors, we find that the acquisition has substantial affirmative public benefits which outweigh any potential detriment. Therefore, we will reverse the ALJ's decision on this issue, and grant PAWC's Exception No. 1 and Appalachian's Exception No. 5; grant, in part, and deny, in part, Appalachian's Exception Nos. 3 and 4; and grant the Joint Application.

## **C. Section 2102 Approval**

### **1. Positions of the Parties**

PAWC explained that the Plan of Merger requires Commission approval under Section 2102 of the Code, 66 Pa.C.S. § 2102, because, following closing of the Appalachian – Merger Sub Merger, PAWC and Appalachian will briefly be affiliated entities (both entities will be wholly-owned subsidiaries of American Water). PAWC M.B. at 44; Joint Application at ¶ 1. Pursuant to the Merger Agreement, Appalachian will then be merged with and into PAWC, and PAWC will continue as the surviving corporation. *See* PAWC Exh. MK-1 (Confidential). PAWC asserted that the Merger Agreement is reasonable, is consistent with the public interest, and should be approved by the Commission pursuant to 66 Pa.C.S. § 2102(b).

Neither the OCA nor the OSBA specifically addressed whether the Merger Agreement should be approved as an affiliated interest agreement.

### **2. Initial Decision**

The ALJ did not provide an extensive discussion regarding the Merger Agreement, given that the ALJ determined that the Joint Application should be denied in its entirety. *See* I.D. at 2, 31-32.

### **3. PAWC Exception No. 3 and Replies**

In its Exception No. 3, PAWC excepts to its perceived failure of ALJ Johnson to analyze whether the Merger Agreement should be approved, reasoning that “[t]he ALJ apparently concluded that this issue was moot because of the recommended finding that the Transaction failed to pass the affirmative public benefit test.” PAWC Exc. at 26. PAWC reiterates its assertion that the Merger Agreement is reasonable and in the public interest and should be approved by the Commission, pursuant to 66 Pa.C.S. § 2101(b). PAWC Exc. at 27.

In its Replies, the OCA indicates that it takes no position on this issue. OCA R. Exc. at 14.

### **4. Disposition**

We note that the ALJ was aware of the positions and arguments put forth by PAWC and other Parties; however, as previously noted, it is at the discretion of the ALJ to determine whether, and to what extent, further discussion and analysis is warranted. *See* 52 Pa. Code §§ 5.403, 5.404. Here, it appears that the ALJ did not believe that further discussion of the Merger Agreement was necessary. Based on the ALJ’s finding that there was insufficient proof of a public benefit, as discussed, *supra*, it appears that the ALJ concluded that the issue of whether the Merger Agreement should be approved became moot.

However, in light of our determination that PAWC has satisfied its burden of establishing proof of public benefits, we shall address PAWC’s request to approve its Merger Agreement as an affiliated interest agreement. The Merger Agreement requires Commission approval under Section 2102 of the Code, 66 Pa.C.S. § 2102, because two Parties to the Merger Agreement (PAWC and Appalachian) will become affiliated with

each other upon closing of the Appalachian – Merger Sub Merger. PAWC correctly noted the Commission should approve an affiliated interest contract if an applicant proves the public interest is evident and an investigation establishes that the Merger Agreement is reasonable and consistent with the public interest. As noted above, we have determined that the transaction should be approved for the benefit of PAWC’s customers, Appalachian’s customers, and the public interest. To accomplish the transaction, the Merger Agreement must be approved, pursuant to 66 Pa.C.S. § 2102(a). Accordingly, we will grant, in part, PAWC Exception No. 3.

#### **D. Recommended Conditions for Approval**

Although the OCA and the OSBA differed in their opposition to the relief requested in the Joint Application, discussed *supra*, should the Commission grant approval, the OCA and the OSBA each contended that the Commission should exercise its authority under Section 1103(a) of the Code, 66 Pa.C.S. § 1103(a), by imposing certain conditions that it deems just and reasonable, as discussed below.<sup>26</sup>

##### **1. Positions of the Parties**

###### **a. PAWC**

In its Main Brief, PAWC set forth a series of arguments as to why the conditions proposed by the OCA and the OSBA, *infra*, should not be required to approve the proposed transaction. PAWC M.B. at 34-44.

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<sup>26</sup> In this proceeding, the OCA proposed two conditions and the OSBA proposed one condition. *See* OCA M.B. at 28-32; OSBA M.B. at 6-7.

PAWC submitted that the conditions proposed by the OCA and the OSBA that would limit what PAWC can seek to recover through rate base in a future base rate proceeding, pursuant to Section 1327, should be rejected because the Commission lacks statutory authority to grant the requested relief.

First, PAWC argued that imposing conditions such as those proposed by the OCA and the OSBA is premature because it is unknown at this time whether PAWC will request an acquisition adjustment in the first base rate case in which the System is included. PAWC contended that these conditions are inconsistent with Section 1327, 66 Pa.C.S. § 1327, arguing that “[t]he Commission should not issue a decision in this case that ties its hands in a future case, when the issue is actually presented.”<sup>27</sup> PAWC M.B. at 35.

In addition, PAWC argued that the conditions proposed by the OCA and the OSBA are premature in the sense that they ask the Commission to make rate-making decisions in an acquisition proceeding. PAWC M.B. at 35 (citing *City of Scranton* at 50).

Next, PAWC contended that these conditions are inconsistent with Section 1327 of the Code, 66 Pa.C.S. § 1327, arguing that such conditions “would not give effect to Section 1327.” PAWC M.B. at 38. According to PAWC, these conditions

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<sup>27</sup> Because PAWC has not yet decided whether it will seek a Section 1327 adjustment in a future base rate case, PAWC contended that this issue is not ripe for adjudication at this time. PAWC M.B. at 34; PAWC R.B. at 24 (citing *Application of Exelon Corporate et al. for Certificates of Public Convenience*, Docket Nos. A-2009-2093057 *et al.* (Opinion and Order entered June 25, 2009) (time should not be spent litigating hypothetical scenarios that are not yet ripe for review). *Joint Petition of Metropolitan Edison Company et al. for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order on Reconsideration entered August 3, 2010) (“We are persuaded that the *June 2010 Order* should not include an advisory opinion on an [electric distribution company’s] ability to roll smart meter costs into base rates in a future base rate proceeding. That issue should be left for consideration in an appropriate future case.”).

would prevent the Company from exercising its statutory right to request a Section 1327 acquisition adjustment for the full amount of the purchase price of the System. PAWC explained that interpreting Section 1103(a) of the Code, 66 Pa.C.S. § 1103(a), as empowering the Commission to impose a condition that deprives the Company of its rights under Section 1327 of the Code would violate the rules of statutory construction because that interpretation of Section 1103(a) would not give effect to another provision of the same statute. PAWC M.B. at 37-38 (citing 1 Pa.C.S. §§ 1921(a) and 1922(2)).<sup>28</sup>

PAWC further argued that the conditions proposed by the OCA and the OSBA would also violate the rules of statutory construction by interpreting Section 1103(a) in a way that is unconstitutional. PAWC explained that Article II, Section 1 of the Pennsylvania Constitution states that the legislative power of the Commonwealth is vested in the General Assembly. PAWC M.B. at 37. PAWC contended that the OCA and the OSBA essentially contend that Section 1103(a) gives the Commission authority to repeal a state statute by imposing a condition that removes PAWC's right to request a Section 1327 acquisition adjustment. According to PAWC, such an interpretation of Section 1103(a) would violate the non-delegation doctrine by construing Section 1103(a) as delegating to the Commission the General Assembly's power to make and repeal laws. PAWC asserted that the General Assembly cannot delegate its power to make or repeal laws to any other branch of government. *Id.* (citing *West Phil. Achievement Charter Elem. Sch. v. Sch. Dist. of Phil.*, 132 A.3d 957 (Pa. 2016); *Protz v. Worker's Comp. App. Bd.*, 161 A.3d 827 (Pa. 2017); Pennsylvania Supreme Court Justice David N. Wecht and Lawrence McIntyre, *Nondelegation in Pennsylvania*, 46 *Harv. J. of Law & Pub. Policy* 377 (2023)). PAWC argued that since the Commission is an independent administrative commission of the Commonwealth, and

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<sup>28</sup> Section 1327 gives the acquiring utility the option of electing that the Commission consider its request in an application proceeding or a base rate proceeding. 66 Pa.C.S. § 1327(b).

is not part of the Legislative Branch, Section 1103(a) should not be read in a way that would violate the nondelegation doctrine. PAWC M.B. at 37-38.

Next, PAWC asserted that, considering all the protections that already exist under Section 1327, the proposed conditions are neither just nor reasonable because they are unnecessary to protect consumers. According to PAWC, there are many safeguards already in place to mitigate rate impacts on customers. Namely, PAWC argued:

To obtain an acquisition adjustment, PAWC would have to request it in the first base rate case in which the System is included. In that case, PAWC would bear the burden of proving that it meets the detailed statutory requirements for an acquisition adjustment, and customers and other stakeholders could introduce evidence contesting PAWC's claim. In that case (unlike this case), the Commission would have all the relevant evidence before it to determine whether an acquisition adjustment is justified. PAWC will not receive any acquisition adjustment unless the Commission finds that PAWC has satisfied all nine criteria in Section 1327.

PAWC M.B. at 40.

Lastly, PAWC contended that imposing the proposed conditions would be bad public policy by undermining the legislative intent of Section 1327. According to PAWC, given that Section 1327 was intended to give capable public utilities an incentive to buy a challenged public utility, if the Commission can take away their right to even request an acquisition adjustment, capable public utilities may be reluctant to purchase a challenged public utility. PAWC M.B. at 41-42.

Regarding the OCA's below proposal to require PAWC to submit a separate cost of service study related to the operation of the Appalachian System in its next base rate case, PAWC asserted that this condition is not warranted under the circumstances and should be rejected. PAWC M.B. at 43-44; PAWC R.B. at 29.

PAWC stressed its position that due to the relatively small size of the System, compared to PAWC's water operations, regardless of whether PAWC seeks an acquisition adjustment, the rate impact of the transaction on the rates of PAWC's existing customers, if any, will be *de minimis*. PAWC M.B. at 43. Further, PAWC explained that, given its intent to gradually move Appalachian customers' rates toward PAWC's Rate Zone 1 rate, which the OCA did not oppose, the cost of requiring PAWC to complete an additional study is not warranted. PAWC M.B. at 44 (citing OCA St. 1SR at 9).

**b. Appalachian**

Appalachian asserted that the OCA's proposed condition, limiting what PAWC can seek to recover through its rate base in a future base rate proceeding, pursuant to Section 1327, "is an attempt to write Section 1327 out of the Public Utility Code" and "is untenable, contrary to sound policy, and must be rejected because it defies practical reality." AUI M.B. at 19. Essentially, Appalachian echoed the arguments put forth by PAWC in support of its position regarding the suggested conditions proposed by the OCA and the OSBA. AUI M.B. at 10-12, 18-19. According to Appalachian, the OCA's conjecture of rate harm, upon which the need is based for its proposed condition, is "expressly authorized by a statute, 66 Pa.C.S. § 1327, and simply cannot be viewed, for our purposes here, as a detriment." AUI M.B. at 19.

**c. OCA**

As discussed, *supra*, the OCA contended that the transaction, as proposed, does not provide substantial affirmative benefits, and thus argued that the Joint Application should be denied. Alternatively, should the Commission grant approval, in

order so that the transactions could provide some quantifiable benefit to ratepayers, the OCA argued that certain conditions must be applied, as follows:

- 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 base rate case.
- At the time of filing its next base rate case, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the Appalachian System and will also provide a separate cost of service study for the Appalachian System.

OCA M.B. at 28-32 (citing OCA St. 1 at 17-18).

**d. OSBA**

As previously noted, the OSBA did not oppose the merger between PAWC and Appalachian. However, the OSBA proffered that the Commission should impose one condition. In this regard, the OSBA argued that approval of the transaction should be conditioned on excluding from rate base any acquisition cost in excess of a specified amount above depreciated original cost (*i.e.*, a premium of 34% above depreciated

original cost).<sup>29, 30</sup> OSBA M.B. at 6-7. In other words, if the Commission approves the merger, and if PAWC seeks to include an acquisition premium associated with Appalachian in a subsequent base rate proceeding, then, in that subsequent base rate case, the OSBA posited that PAWC would not be able to receive an acquisition adjustment of more than 34% above the depreciated original cost of the System. OSBA St. 1 at 3, 9-10.

In the alternative, the OSBA indicated that it did not oppose the OCA's proposed condition. OSBA St. 1-S at 4.

## 2. Initial Decision

The ALJ did not provide an extensive discussion regarding the conditions proposed by the OCA and the OSBA; however, the Initial Decision does contain both the OCA's and the OSBA's positions. *See* I.D. at 30-31.

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<sup>29</sup> As a basis for its acquisition premium limit, the OSBA cited to the Commission's *Tentative Supplemental Implementation Order in Valuation of Acquired Municipal Water & Wastewater Systems – Act 12 of 2016 Implementation*, at Docket No. M-2016-2543193 (Order entered February 7, 2024) (*February 2024 TSIO*), establishing a Reasonableness Review Ratio (RRR) of 1.68, which serves as a reference in Section 1329 proceedings by determining an approximate ratio of a proxy fair market value to the depreciated original cost of a barometer group of similarly situated investor-owned water utilities. OSBA M.B. at 6-7. The OSBA proposed that the Appalachian acquisition premium eligible to be included in rate base be limited to 50% of the RRR in excess of 1.0, with any premium above that borne by shareholders. The OSBA's proposed 34% premium limitation is derived as follows:  $(1.68 - 1.0) \times 50\% = 0.34$ . OSBA St. 1 at 9-10.

<sup>30</sup> The OCA opposed the OSBA's position on this issue, arguing that the use of the RRR is inappropriate for the instant transaction, given that this is not a Section 1329 acquisition and a fair market value was never established. OCA M.B. at 27-28.

### 3. PAWC Exception No. 4 and Replies

In its Exception No. 4, PAWC excepts to its perceived failure of ALJ Johnson to discuss the appropriateness of imposing the conditions requested by the OCA and the OSBA, reasoning that the ALJ “apparently concluded that this issue was moot because of the recommended findings that the Stock Transfer be disapproved, that the Joint Application was moot and that the Transaction failed to pass the affirmative public benefit test.” PAWC Exc. at 27.

PAWC reiterates its arguments as to why the conditions proposed by the OCA and the OSBA should not be required for the proposed transaction to be approved. Specifically, PAWC objects to the OCA’s contention that approval of the transaction be conditioned upon: (1) PAWC not being permitted to claim more than depreciated original cost in rate base for the acquisition of the systems in the first base rate case where the Commission allows the System to be included; and (2) the requirement that PAWC must produce a separate cost of service study for the Appalachian System. PAWC also objects to the OSBA’s proposal that approval of the transaction be conditioned on excluding from rate base any acquisition cost in excess of a specified amount above depreciated original cost (*i.e.*, capping any acquisition premium at 34% above depreciated original cost). In the Company’s view, the OSBA’s proposed condition would establish a cap on the amount that PAWC would be able to recover in rates, if the Commission finds that PAWC satisfies the criteria for an acquisition adjustment, pursuant to Section 1327. PAWC Exc. at 27-33.

In response to PAWC’s contention that the Commission should not accept any of the OCA’s or the OSBA’s conditions, the OCA indicates that PAWC’s arguments were fully addressed in the OCA’s Main and Reply Briefs. OCA R. Exc. at 14-15. Nevertheless, emphasizing that its alternative positions in this matter only become relevant to the extent that the Commission considers approving the Joint Application, the

OCA reiterates its arguments on pages 15 through 23 of its Replies. OCA R. Exc. at 15-23 (citing OCA M.B. at 28-33; OCA R.B. at 21-27).

The OCA maintains its contention that Section 1103(a) of the Code, 66 Pa.C.S. § 1103(a), gives the Commission broad authority and discretion to impose “just and reasonable” conditions on acquisitions. OCA R. Exc. at 19; OCA M.B. at 24-25, 29. Therefore, the OCA remains of the opinion that its proposed condition to limit the amount that PAWC would be able to recover in rates, if the Commission finds that PAWC satisfies the criteria for an acquisition adjustment pursuant to Section 1327, should be granted in order “to protect the public interest.” OCA R. Exc. at 19. As stated in the OCA’s Main Brief, “[t]o protect consumer interests, any purchase price premium that exceeds depreciated original cost for the sole benefit of the AUI shareholder should be paid for by PAWC’s shareholders and not ratepayers.” OCA M.B. at 30.

As argued in its Main Brief, the OCA maintains the following:

[T]he idea that PAWC’s management is not certain now whether it will or will not make a ratemaking claim in its next rate case for the purchase price premium is not credible. More importantly, to the extent PAWC’s argument is that the OCA could oppose such a claim and the Commission could deny such a claim, PAWC has made no showing in this record that nonrecovery of the purchase price premium is a highly likely risk facing its shareholders because it has failed to show the frequency and magnitude of the Commission denying utility claims to recover purchase price premiums in rate cases following Section 1102 approval (as opposed to the Company’s management deciding within its control as part of resolution of a case to not make claim or to reduce its claim). Thus, both AUI and PAWC customers will likely be required to bear the burden of this transaction instead of PAWC’s shareholders.

OCA R. Exc. at 21-22 (citing OCA M.B. at 23-24).

In its Replies, the OCA reiterates its argument that the Commission should order PAWC to produce a cost of service study for the Appalachian System, based on its contention that such a study will determine the appropriate cost allocation of the System's revenue requirement for residential, commercial, and industrial customers in accordance with cost causation principles. OCA R. Exc. at 23 (citing OCA R.B. at 27-28).

#### **4. Disposition**

Based on the ALJ's finding that there was insufficient proof of a public benefit, as discussed, *supra*, it appears that the ALJ concluded that the issue of what conditions to impose on PAWC upon the approval of the Joint Application became moot. Although the ALJ considered both the OSBA's and the OCA's alternative positions when making his decision, ALJ Johnson was under no obligation to discuss either the OCA's or OSBA's alternative positions once the decision was made to reject the Joint Application. However, in light of our determination that PAWC has satisfied its burden of establishing proof of public benefits, we shall address the request to impose the recommended conditions.

Both the OCA's witness, Ms. Morgan N. DeAngelo, and the OSBA's witness, Ms. Courtney M. Higgins, proposed that the Commission limit, in this proceeding, the rate base PAWC may claim for the Appalachian System in future base rate cases. OCA St. 1 at 16-17; OSBA St. 1 at 8-11. As indicated, *supra*, the OSBA, through the testimony of Ms. Higgins, recommends that the Company's rate base be

limited to 1.34 times the depreciated original cost,<sup>31</sup> while the OCA’s witness, Ms. DeAngelo, recommends that the Commission permit only the depreciated original cost to be included in rate base. Both Parties recommend these limitations as a condition of approval of the transaction.

As previously indicated, consistent with prior non-fair market value acquisitions approved by the Commission, PAWC is not requesting a rate base valuation for the Appalachian System in this proceeding, and thus no rate base determination is needed at this time.<sup>32</sup> The limitations proposed by the OCA and the OSBA on what PAWC can seek to recover in rate base in a future proceeding would prevent PAWC from exercising its statutory right to request a Section 1327 acquisition adjustment for the full amount of the purchase price of the System. To that end, the risk is upon the shareholders of the acquiring utility that the Commission will not allow full recovery of the acquisition premium in the context of a future base rate proceeding. Regarding the limitation as proposed by the OSBA, the potential future recovery of an acquisition that may qualify under Section 1327 should not be limited to a reference, such as the RRR, developed for Section 1329 proceedings.

Furthermore, contrary to accusations that PAWC has ignored the rate impact, PAWC has included in its testimony and Main Brief discussions regarding the rate impact of the transaction. *See* PAWC M.B. at 21-24, 27-30. As PAWC acknowledged in its Reply Brief, “in evaluating an acquisition, the Commission must

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<sup>31</sup> Ms. Higgins’ proposal to limit the rate base PAWC can request to 1.34 times the depreciated original cost is based on the Commission’s RRR as considered in the context of Section 1329 proceedings, as proposed to be modified by the OSBA. *See February 2024 TSIO; see also Final Supplemental Implementation Order at Docket No. M-2016-2543193 (Order entered July 2, 2024) (July 2024 FSIO).*

<sup>32</sup> In a Section 1329 acquisition, the “ratemaking rate base” is determined within the application proceeding and the rate base does not need to be proposed for consideration in the context of a base rate case.

consider, at least in a general fashion, the rate impacts of an acquisition.” PAWC R.B. at 13 (citing *City of York*, 295 A.2d at 825, 829). However, as previously discussed, based on the record in this proceeding, the rate impact of the transaction is unknown and should be given little weight. In this case, rates for Appalachian’s customers will need to increase, regardless of whether the transaction is approved or disapproved. AUI M.B. at 20-21; PAWC M.B. at 22-23. Because the rate impact of the transaction is uncertain, it is unclear at this time whether the rate increase resulting from maintaining the *status quo* will be more or less than the rate increase resulting from the transaction.

Regarding any revenue deficiency that may result from the transaction, which current PAWC customers face the risk of absorbing, PAWC contends that due to its large customer base, any resulting rate impact will be *de minimis*. Customers of small systems are constantly exposed to the risk of rate spikes in the event of a single expense for the system; and acquisitions such as this one are in the public interest, in part, because the costs of addressing those challenges can be spread across a larger customer base. It is in the public interest to address those challenges by socializing the costs (*i.e.* by imposing a small rate increase on the large utility’s existing customers, rather than requiring the few customers of the small system to shoulder a huge financial burden alone). We find that the future possibility of a small increase in rates for PAWC’s existing customers, due to the transaction, should be considered to be in the public interest. Therefore, we agree with PAWC that the OCA’s and the OSBA’s proposals limiting, in this proceeding, the rate base PAWC may claim for the Appalachian System in future base rate cases, is neither appropriate nor necessary.

We note that what is before us in this proceeding is an acquisition application pursuant to Sections 1102 and 1103 of the Code, 66 Pa.C.S. §§ 1102 and 1103. While we are cognizant of the rate recovery issues associated with utility acquisitions or mergers, including the cost allocation request presented by the OCA, the record in this proceeding does not contain sufficient evidence to enable us to evaluate the

specific effects of the acquisition on PAWC's revenue requirement and to decide cost allocation and/or rate design matters.

The OCA is concerned with the potential future cross-subsidization of Appalachian customers by current PAWC customers as a result of the transaction. The record is not at all developed on this issue, nor is it required to be as to rates. However, the record does show that PAWC's average net plant of **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per water customer is over three times higher than the Appalachian purchase price per customer of **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**. See PAWC St. 3-RJ at 4. This suggests that the potential rate base per Appalachian customer, in the event that PAWC requests and is granted a Section 1327 acquisition adjustment for the full amount of the purchase price of the System, would be significantly lower than PAWC's overall water plant in service per customer; and therefore, the revenue deficiency associated with the Appalachian System would be fairly minimal. Accordingly, we agree with PAWC that it will benefit all PAWC ratepayers to add approximately 1,456 water customers, with a minimal increase in PAWC's rate base. Moreover, our reluctance to address, in this proceeding, the issue put forth by the OCA does not preclude the Parties from raising it in a future base rate proceeding, which we believe is the appropriate forum to adjudicate such matters.

Furthermore, in PAWC's recent base rate proceeding, the Commission stated that in certain circumstances, a separate cost of service study is required for certain Section 1329 acquisitions "given the amount of revenue requirement at issue." *Pa. PUC, et. al. v. Pennsylvania-American Water Company*, Docket No. R-2023-3043189, *et al.* (Opinion and Order entered July 22, 2024) (*PAWC 2024*) at 217. Although this was considered in the context of Section 1329 proceedings, which this is not, we note that the only previous non-Section 1329 acquisition that required a separate revenue requirement study was PAWC's acquisition of the Sewer Authority of the

City of Scranton,<sup>33</sup> which was a sizeable acquisition with a purchase price that nearly doubled PAWC's wastewater rate base.<sup>34</sup> In contrast, there is not a significant amount of revenue requirement at issue here. As PAWC's witness, Ms. Everett, noted in her rebuttal testimony, **[BEGIN PROPRIETARY] [END PROPRIETARY]**. See PAWC St. 3-R at 10. Accordingly, regardless of whether PAWC requests recovery of the premium over the depreciated original cost, as discussed above, the rate impact of the acquisition on the rates of other PAWC customers, if any, will be *de minimus*.

Therefore, consistent with the foregoing discussion, we shall grant, in part, and deny, in part, PAWC's Exception No. 4.

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<sup>33</sup> *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton for Approval of (1) the transfer, by sale, of substantially all of the Sewer Authority of the City of Scranton's Sewer System and Sewage Treatment Works assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Scranton and the Borough of Dunmore, Lackawanna County, Pennsylvania*, Docket No. A-2016-2537209 (Opinion and Order entered October 19, 2016).

<sup>34</sup> PAWC proposed a rate base for the acquisition of the Sewer Authority of the City of Scranton of \$152 million and a rate base related to all other wastewater systems of \$170 million. *Pa. PUC, et al. v. Pennsylvania-American Water Company*, Docket No. R-2017-2595853, *et al.* (Order entered December 7, 2017).

## **E. Stock Sale Application**

### **1. Positions of the Parties**

#### **a. PAWC**

PAWC summarized Appalachian's Stock Sale Application, 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 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. 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.

PAWC M.B. at 3 (citations omitted).

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 M.B. at 17 (citations omitted).

**b. Appalachian**

In support of its position in requesting Commission approval of the Stock Sale Application, Appalachian submitted that the goal of its president, Mr. Sargent, is to reward the loyalty and dedication of Appalachian'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 Appalachian to PAWC. AUI St. 1 at 2.

**c. OCA**

The OCA did not specifically address Appalachian's Stock Sale Application.

**d. OSBA**

The OSBA did not specifically address Appalachian's Stock Sale Application.

**2. Initial Decision**

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

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.<sup>35</sup>

### **3. Exceptions and Replies**

#### **a. PAWC Exception No. 5**

In its Exception No. 5, PAWC argues that the ALJ improperly denied the Stock Sale Application because the Commission lacks jurisdiction over the stock transfer. PAWC Exc. at 33-35.

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<sup>35</sup> We note that Paragraph 2.2 (Closing) of the Merger Agreement states:

**[BEGIN PROPRIETARY] [END PROPRIETARY]**

Merger Agreement at 2. We further note that Paragraph 5.1(g) (Governmental Regulatory and Third-Party Approvals) of the Merger Agreement states:

**[BEGIN PROPRIETARY] [END PROPRIETARY]**

Merger Agreement at 20.

In support, PAWC points to the Commission’s Statement of Policy regarding utility stock transfer under 66 Pa.C.S. § 1102(a)(3). According to that Statement of Policy, PAWC contends that a “controlling interest” in a utility is an interest that enables the beneficial holder(s) to control at least 20% of the voting interest in the utility. According to PAWC, two transfers of a “controlling interest” are jurisdictional:

- A transaction resulting in the *creation of a new controlling interest* is jurisdictional “when the transaction ... result[s] in a different entity becoming the beneficial holder of the largest voting interest in the utility.”
- A transfer “resulting in the *elimination of a controlling interest*” is jurisdictional “when the transaction ... result[s] in the dissipation of the largest voting interest in the utility or parent.”

PAWC Exc. at 34 (citing 52 Pa. Code § 69.901(b)(1) (emphasis added)).

Therefore, although the stock transfer would result in the creation of a new “controlling interest,” PAWC posits that the Commission lacks jurisdiction over the stock transfer because the stock transfer would not result in a different entity becoming the beneficial holder of the largest voting interest in Appalachian, nor would it result in the elimination of a “controlling interest” in Appalachian. PAWC Exc. at 34.

**b. Appalachian Exception No. 1**

In its Exception No. 1, Appalachian argues that the ALJ erroneously concluded that the Stock Sale Application should be denied and that it caused the Joint Application to “collapse” and become “moot.” AUI Exc. at 1-3 (citing I.D. at 21).

Appalachian contends that the ALJ erred by referencing the Commission’s Policy Statement at 52 Pa. Code § 69.901 in support of his decision. Appalachian argues

that, in this instance, the present sole owner of 100% of the stock will retain 60% of the stock after giving 40% to a long-term dedicated employee, such that there is, in reality, no change of “control,” as the present owner still has majority power and control.

AUI Exc. at 2, n.7.

Additionally, Appalachian argues that the ALJ misinterpreted approval of the Joint Application as being contingent upon approval of the Stock Sale Application. Appalachian explains that nowhere in its briefs or testimony, or in the Stock Purchase Agreement, was it suggested that the stock transfer must occur, and if not, the merger could not be approved. Rather, according to Appalachian, the stock transfer was always presented as being contingent on approval of the Joint Application. AUI Exc. at 2-3. Appalachian states:

This fundamentally deficient conclusion demonstrates the pervasive failure of the [ALJ] to consider or even acknowledge key terms of (a) the 60/40% Application, (b) the sworn testimony of AUI’s sole witness which states plainly that the stock transfer is contingent upon the approval of the Joint Application for merger, and (c) the express language of the 60/40% Application that made the approval of the Joint Application for Merger by the Commission a condition precedent to the 60/40% stock transfer occurring.

AUI Exc. at 1-2 (citations omitted).

**c. Appalachian Exception No. 2**

In its Exception No. 2, Appalachian argues that the ALJ’s conclusions that the stock transfer should not be approved by application of the Commission’s Policy Statement at 52 Pa. Code § 69.901 or for lack of showing of positive benefit is based on an incorrect recitation of the law and a blatant disregard for key facts, including but not

limited to the \$6 million PAWC has committed to invest to provide water system upgrades, and must be corrected. AUI Exc. at 3-5 (citing I.D. at 17-19).

Appalachian asserts that the affirmative public benefits test is not necessary in a situation where the transfer of stock will not change control and will simultaneously be converted to the stock of the acquiring entity. AUI Exc. at 4-5 (citing *PPL Electric Utilities Corporation v. Pa. PUC*, 241 A.3d 121 (Pa. Cmwlth 2020), where the court found that while a corporate restructuring required a CPC, in the transfer of stock as part of a corporate restructuring, the Commission need find only that the transfer is “proper,” that is, that the Commission need not apply the merger standard of “affirmative public benefit”). According to Appalachian, it is clear from the record that the transfer of stock would not and could not in reality affect a change in control of Appalachian. AUI stressed that Mr. Sargent would continue to own a controlling 60% of AUI’s stock and Mr. Gallagher would have a 40% interest. Under any math, Appalachian reasoned, Mr. Sargent retaining 60% of the stock equals the “controlling interest.” AUI Exc. at 4.

However, Appalachian contends that, if the affirmative benefits standard did apply, the ALJ erred in concluding that there are no affirmative benefits. Namely, Appalachian argues that its President’s decision to reward loyalty and promote continuity by incentivizing the AUI water System’s Co-Manager to stay with the System and to become a PAWC employee is clearly an affirmative benefit to customers and to the new owner, PAWC. AUI noted that this will result in PAWC gaining an employee who has years of experience and “intimate knowledge of the system.” AUI Exc. at 5 (citing AUI St. 1 at 3).

**d. OCA Reply Exceptions**

In its Replies, the OCA indicates that it takes no position on this issue. OCA R. Exc. at 14.

#### 4. Disposition

As discussed, *supra*, ALJ Johnson began his analysis by addressing Appalachian's Stock Sale Application. According to the ALJ, his decision to deny the Stock Sale Application 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 were denied. *See I.D.* at 19.

PAWC posits that the Commission lacks jurisdiction over Appalachian's proposed stock transfer; therefore, the threshold issue to be decided is whether, pursuant to Section 1102(a)(3) of the Code, Appalachian is required to obtain a CPC for approval of the Stock Sale Application. The Code clearly articulates that a 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...*" 66 Pa.C.S. § 1102 (emphasis added). 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, our Statement of Policy at 52 Pa. Code § 69.901 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 percent. 52 Pa. Code § 69.901(b)(2). Second, the transaction must result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent. 52 Pa. Code § 69.901(b)(1).

Here, Appalachian, through its Stock Sale Application, seeks to transfer 40% of its stock from Mr. Sargent to Mr. Gallagher. *See Stock Sale Application ¶¶ 6-7.* However, as noted in the Stock Sale Application, "[u]nder the terms of the Agreement, Seller [Mr. Sargent] will remain the beneficial holder of 60% of the outstanding shares,

the largest voting interest, in Appalachian Utilities.” Stock Sale Application at ¶ 6. Therefore, while Mr. Gallagher’s 40% share may meet the bright-line test for a controlling interest, Mr. Gallagher’s share will *not* be the largest voting interest, as that will be retained by Mr. Sargent. In other words, and as argued by PAWC, while the stock sale will result in the creation of a new controlling interest, the new controlling interest is not jurisdictional, according to our Policy Statement, because the stock sale will not result in a different entity becoming the beneficial holder of the largest voting interest in AUI, nor will it result in the elimination of a controlling interest in AUI under 52 Pa. Code § 69.901(b)(1). *See* PAWC Exc. at 34.

Upon review, it becomes clearly challenging to determine how the Commission’s two-tiered Policy Statement comports with our statutory obligations under Section 1102 of the Code, 66 Pa.C.S. § 1102. It is well established that Commission Regulations and Orders cannot exceed the bounds of an enumerating statute.<sup>36</sup> The Commission must act within, and cannot exceed, its jurisdiction.<sup>37</sup>

We recognize the Policy Statement 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. We further 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 Policy Statement discussed herein.

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<sup>36</sup> 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).

<sup>37</sup> *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

Therefore, we find that our Policy Statement on this issue establishes exemptions that far exceed what we perceive as practical regulatory requirements consistent with the statute. Specifically, we find the provision of our Policy Statement 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 Code.

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

Therefore, a reasonable reading of the statute clearly indicates that the proposed stock transfer described in the Stock Sale Application is jurisdictional and, therefore, is subject to our review and approval pursuant to Section 1102(a)(3) of the Code. As such, we approve the Stock Sale Application, as it is in the public interest and directly necessary to manifest the purported benefits of the Joint Application.

Accordingly, consistent with the foregoing discussion, we shall grant, in part, and deny, in part, PAWC's Exception No. 5 and Appalachian's Exception Nos. 1 and 2.

## V. Conclusion

Based on the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions filed by PAWC and Appalachian; (2) modify the Initial Decision; and (3) grant the Stock Sale Application of Appalachian, as well as the Joint Application of PAWC and Appalachian, consistent with this Opinion and Order; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Exceptions of Pennsylvania-American Water Company, filed on March 12, 2025, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions of Appalachian Utilities, Inc., filed on March 12, 2025, are granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on February 20, 2025, is modified, consistent with this Opinion and Order.

4. That the Joint Application filed by Pennsylvania-American Water Company and Appalachian Utilities, Inc., pursuant to Sections 1102, 1103, and 2102 of the Public Utility Code, 66 Pa.C.S. §§ 1102, 1103, and 2102, for all the necessary authority, approvals, and certificates of public convenience filed at Docket Nos. A-2024-3046084 and A-2024-3046092, is approved, consistent with this Opinion and Order.

5. That the Commission's Secretary shall issue Certificates of Public Convenience pursuant to Section 1102(a) of the Public Utility Code, 66 Pa.C.S.

§ 1102(a), evidencing approval of:

- a. the transfer to American Water Works Company, Inc., by sale and merger, all property and rights of Appalachian Utilities, Inc. used and useful in public service in accordance with the Agreement and Plan of Merger dated September 22, 2023 between American Water Works Company, AUI Acquisition Company, Appalachian Utilities, Inc., and Frank R. Sargent, Jr.; and
- b. the transfer to Pennsylvania-American Water Company, by sale and merger, all property and rights of Appalachian Utilities, Inc. used and useful in public service, in accordance with the Agreement and Plan of Merger.

6. That within ten (10) days after closing of the acquisition, Pennsylvania-American Company shall file notice of closing of the transaction with the Commission at these dockets.

7. That upon receipt of notice of closing of the acquisition, the Commission's Secretary shall issue Certificates of Public Convenience pursuant to Section 1102(a) of the Public Utility Code, 66 Pa.C.S. § 1102(a), evidencing the right of Pennsylvania-American Water Company to begin to offer, render, furnish, or supply water service to the public in portions of Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County, Pennsylvania, currently served by Appalachian Utilities, Inc.

8. That upon receipt of notice of closing of the acquisition, the Commission's Secretary shall issue certificates of abandonment pursuant to Section 1102(a) of the Public Utility Code, 66 Pa.C.S. § 1102(a), evidencing the right of Appalachian Utilities, Inc. to abandon all water service to the public in portions of Avis Borough, Pine Creek Township, and Dunnstable Township, Clinton County, Pennsylvania.

9. That, within ten (10) days after closing of the acquisition, Pennsylvania-American Water Company shall file with the Commission at these dockets compliance tariff supplements, consistent with the pro forma tariff supplements attached to the Joint Application, filed on February 2, 2024, as Appendix N, including all rates, rules and regulations regarding conditions of water and wastewater service to be provided by Pennsylvania-American Water Company to become effective on one day's notice upon closing of the transaction.

10. That the Commission approve the Agreement and Plan of Merger dated September 22, 2023, between American Water Works Company, AUI Acquisition Company, Appalachian Utilities, Inc., and Frank R. Sargent, Jr., as an affiliate interest agreement, pursuant to 66 Pa.C.S § 2102.

11. That, within thirty (30) days following closing of the transaction, and again with the first bill, Pennsylvania-American Water Company will send a welcome letter to the Appalachian Utilities, Inc. customers with color flyers containing information regarding income assistance programs and Pennsylvania-American Water Company's assistance program, in particular.

12. That the Application filed by Appalachian Utilities, Inc., pursuant to Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, for a Certificate of Public

Convenience filed at Docket No. A-2024-3046068, is approved, consistent with this Opinion and Order.

- a. It is further directed that the Commission's Secretary shall issue a Certificate of Public Convenience pursuant to Section 1102(a) of the Public Utility Code, 66 Pa.C.S. § 1102(a), evidencing approval of the Application filed by Appalachian Utilities, Inc. at Docket No. A-2024-3046068.

13. That Pennsylvania-American Water Company and Appalachian Utilities, Inc., shall comply with all directives and conclusions contained in this Opinion and Order that are not the subject of individual ordering paragraphs as if they were the subject of specific ordering paragraphs.

14. That upon receipt of notice of closing of the acquisition, the Commission's Secretary shall mark the proceeding, at Docket Nos. A-2024-3046084, A-2024-3046092, and A-2024-3046068, as closed.

**BY THE COMMISSION,**



Matthew L. Homsher  
Secretary

(SEAL)

ORDER ADOPTED: September 11, 2025

ORDER ENTERED: November 10, 2025