

COMMONWEALTH OF PENNSYLVANIA



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December 15, 2025

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania Wastewater Inc., Peoples Natural Gas Company LLC and Alpha Merger Sub, Inc., for a Certificate of Public Convenience Under Sections 1102(a)(3) and 2210(c) of the Public utility Code and All Other Necessary Approvals to Effect a Change of Control of Aqua, Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company LLC
Docket Nos. A-2025-3058927
A-2025-3059828
A-2025-3058929

Dear Secretary Homsher:

Attached for electronic filing, please find the Office of Consumer Advocate's Protest and Public Statement in this proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman

Harrison W. Breitman, Esq.

Assistant Consumer Advocate

PA Attorney I.D. # 320580

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Enclosures

cc: The Honorable Charles E. Rainey, Jr. (email only: crainey@pa.gov)
Paul Diskin, TUS (email only : pdiskin@pa.gov)
Darren Gill, TUS (email only: dgill@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Joint Application of American Water Works :
Company, Inc., Essential Utilities Inc., :
Aqua Pennsylvania Wastewater Inc., :
Peoples Natural Gas Company LLC and :
Alpha Merger Sub, Inc., for a Certificate of :
Public Convenience Under Sections : Docket Nos. A-2025-3058927
1102(a)(3) and 2210(c) of the Public Utility : A-2025-3058928
Code and All other Necessary Approvals to : A-2025-3058929
Effect a Change of Control of Aqua, :
Pennsylvania, Inc., and Peoples Natural Gas :
Company LLC :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 15th day of December 2025.

SERVICE BY E-MAIL ONLY

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Dated: December 15, 2025

Counsel for:
Darryl A. Lawrence
Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of American Water Works Company, Inc., Essential Utilities Inc., Aqua Pennsylvania Wastewater Inc., Peoples Natural Gas Company LLC and Alpha Merger Sub, Inc., for a Certificate of Public Convenience Under Sections 1102(a)(3) and 2210(c) of the Public Utility Code and All other Necessary Approvals to Effect a Change of Control of Aqua, Pennsylvania, Inc., and Peoples Natural Gas Company LLC	:	
	:	Docket Nos. A-2025-3058927
	:	A-2025-3058928
	:	A-2025-3058929

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to 52 Pa. Code Sections 5.51, *et seq.*, the Office of Consumer Advocate (OCA) files this Protest to the Joint Application of American Water Works Company, Inc. (American Water), Essential Utilities, Inc. f/k/a Aqua America, Inc. (Essential), Aqua Pennsylvania, Inc. (Aqua PA) and Aqua Pennsylvania Wastewater (Aqua PA WW), Peoples Natural Gas Company LLC (Peoples), and Alpha Merger Sub, Inc. (Merger Sub) (collectively, the Joint Applicants) filed with the Public Utility Commission (Commission) on November 26, 2025 (Joint Application). Through this filing, the Joint Applicants seek approval of the Pennsylvania Public Utility Commission (PUC or Commission) under Chapters 11, 21 and 22 of the Public Utility Code for a change of control of Aqua PA and Peoples to be affected by the merger of Essential and Merger Sub, a wholly owned subsidiary of American Water (the Merger). If approved, the Joint Application proposes that Essential would continue as the surviving corporation and would be a

wholly owned subsidiary of American Water. American Water would become the corporate parent of Essential and all its subsidiaries. The Joint Application requests consideration on an expedited basis and approval on or before December 17, 2026.

The OCA files this Protest in order to ensure that the approvals and certificates of public convenience are granted only if they are “necessary or proper for the service, accommodation, convenience or safety of the public,” pursuant to 66 Pa. C.S. Sections 1102, 1103(a), Chapter 21 and Chapter 22, and meet all legal requirements of the Public Utility Code.

Specifically, the OCA avers as follows:

1. The protestant is:

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Telephone: (717) 783-5048

Throughout this Protest, the protestant will be referred to as the Office of Consumer Advocate or OCA.

2. The OCA's attorneys are:

Joel H. Cheskis, Esquire
Senior Assistant Consumer Advocate
Harrison W. Breitman, Esquire
Assistant Consumer Advocate
Johnathan M. Longhurst, Esquire
Assistant Consumer Advocate
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3. The OCA is authorized by law to represent the interests of Pennsylvania's utility consumers in all matters before the Commission. 71 Pa. Stat. Ann. §§ 309-1 *et seq.* The

OCA files this Protest to ensure that the interests of Pennsylvania-American Water Company, Aqua PA, Aqua PA Wastewater, and Peoples' ratepayers are protected.

4. Section 1102(a)(3) of the Public Utility Code requires a public utility to obtain a certificate of public convenience prior to acquiring or transferring any tangible or intangible property used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

5. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a); *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlth. Ct. 1972) (*City of York*); *see also Popowsky v. Pa. PUC*, 937 A.2d 1040, 1054-57 (Pa. 2007).

6. Section 1103(a), as interpreted by *City of York*, requires that the proposed transaction “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” 295 A.2d at 828.

7. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a certificate of public convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The Commission should consider the imposition of conditions for this proposed Merger.

8. Section 2102 requires the Commission to approve, in writing, any contract or arrangement between a public utility and an affiliated interest. 66 Pa. C.S. § 2102(a). The Commission should carefully consider all of the proposed affiliated interest agreements involved in this proposed Merger.

9. Section 2210(a) of the Code requires that the Commission consider the potential anti-competitive effects and the impact on employees of a merger or combination “in the exercise of authority the commission may otherwise have to approve mergers and consolidations” involving natural gas distribution companies. 66 Pa. C.S. § 2210(a)(1). As the proposed Merger includes Peoples, a natural gas distribution company as defined by the Code, Section 2210(a) is implicated.

10. The Joint Application raises a number of important issues that must be resolved by the Commission before granting approval of this proposed Merger. Based upon the OCA’s preliminary review of the Joint Application, the Joint Application and proposals of the Joint Applicants as filed do not support a conclusion that the proposed Merger is “necessary or proper for the service, accommodation, convenience or safety of the public,” 66 Pa. C.S. § 1103(a), or that it “affirmatively promote[s] the service, accommodation, convenience or safety of the public in some substantial way.” *City of York* at 828. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this Application:

a. Legal Standard

- i. The Joint Application does not provide sufficient detail to determine whether the proposed Merger provides affirmative public benefits and is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). The Joint Application states that the proposed Merger “will create the nation’s largest regulated water and wastewater utility ... that is well positioned to renew crucial water infrastructure, improve affordability, drive sustainable service enhancements for customers, and support innovative technology.” Joint Application at ¶ 34. The Joint Application states that the proposed Merger will do the same for Peoples. Joint Application at ¶ 34. The Joint Application asserts that the proposed Merger will “produce substantial public benefits” by creating a company with “financial strength and operational

flexibility,” “enhanced expertise in infrastructure improvement, innovation, and environmental stewardship,” “commitment to employees,” and continued “community presence.” Joint Application at ¶¶ 34(a) – (d). The Joint Application does not provide sufficient detail regarding how the proposed Merger will effectuate these objectives, and how all of these objectives are in the public interest or provide affirmative public benefit. The proposed Joint Application should be reviewed to ensure that it is in the public interest and is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a).

- b. Operational and Financial Impacts – The Joint Application and the Joint Applicants identify a number of operational and financial impacts that they believe will “produce substantial public benefits.” Joint Application at ¶ 34. These claims should be explored, and any issues should be resolved prior to any approval of the proposed Merger. Preliminary potential impacts the OCA asserts must be explored are as follows:
 - i. The Joint Applicants assert that the proposed Merger will not result in increased rates to the customers of Aqua PA, Aqua PA WW, and Peoples because the Commission-approved rates in effect when the proposed Merger occurs would not change as a result of the proposed Merger, “Aqua PA and Peoples will not seek rate recovery of any acquisition adjustment or ‘goodwill’ associated with the proposed Merger or of transaction costs incurred by the Joint Applicants or their affiliates.” Joint Application at ¶ 32; Joint Application St. 2 at 5-6, St. 5 at 10. The Joint Applicants’ claims should be further examined to determine whether the proposed Merger will result in increased rates in any future next rate case.
 - ii. The Joint Applicants aver that “the Merger will generate synergies” which will “result in overall aggregate cost avoidance or cost saving opportunities,” “improve efficiency,” and “lead to cost efficiencies in various functional areas.” Joint Application at ¶¶ 32, 34a, Joint Application St. 1 at 15-16, St. 3 at 8-9. The Joint Applicants note “there will be some costs to achieve Merger-related synergies” but that customers will realize future benefits because rates will be lower than they would be if the proposed Merger does not occur. Joint Application St. 1 at 16. The Application does not provide details as to what these “synergies” would be, and how they would accomplish the Joint Applicants’ claims. The Joint Application also does not provide specificity as to what costs the Joint Applicants expects to be incurred in achieving these “synergies” and if those related costs

have the ability to translate to lower costs in future rate cases as claimed. The proposed “synergies,” related costs, and proposed benefits to ratepayers should, at the very least, be identified. The Joint Applicants should also explain specifically how the benefits they foresee for ratepayers will be achieved and passed through to the customers as claimed.

- iii. The Joint Applicants aver that American Water will maintain charitable contributions consistent with the historical contributions provided by Aqua PA and Peoples for two years after the proposed Merger is completed, where upon it will then make charitable contributions consistent with American Water’s contributions in the areas it serves. Joint Application at ¶ 34d, St. 1 at 16, St. 4 at 10-11. The difference between the Aqua PA and Peoples’ current contributions and those provided by American Water in the areas it serves should be examined, as well as any potential resulting impact to those communities after the initial two years.
 - iv. The Joint Applicants assert that the commitment of Aqua PA and Peoples to low-income customers through their Customer Assistance Programs and Peoples’ Emergency Repair Program will not change as a result of the proposed Merger. Joint Application St. 3 at 7-8, St. 4 at 7-9. The Joint Applicants’ claims must be explored and any issues resolved before any approval of the proposed Merger to ensure low-income consumers will not be adversely impacted by the proposed Merger.
- c. Costs and Benefits of Transaction – The Joint Application explains what it sees as the various costs and benefits of the proposed Merger. In addition to additional issues that may arise and require review, the OCA has identified the following claims as ones to be explored, and any issues resolved prior to any approval of the proposed Merger.
- i. The Joint Applicants assert that Essential Utilities will have access to American Water’s (1) Central Laboratory, (2) research and development program, (3) environmental compliance model, (4) operational training program, (5) geographic information system, (6) engineering department, and other centralized resources that can be leveraged to “enhance” Essential’s capabilities and services to its customers. Joint Application St. 1 at 9-14, St. 3 at 9-11, St. 4 at 10-11. The Joint Applicants’ claims must be closely examined, particularly because the Joint Application did not provide any details on how access to American Water’s centralized resources will be shared,

and how specifically access to those resources would enhance Essential's current capabilities and services. The Joint Applicants should provide additional detail on how the resources would be shared, particularly given that they highlight these shared resources as one of the substantial public benefits the proposed Merger would produce. The Joint Applicants should also provide more detail as to how any benefit from these shared resources will flow through to the ratepayers.

- ii. The Joint Applicants assert that ratepayers will benefit from the “stronger balance sheet for the combined company,” “more stable operating cash flows,” and “enhanced access to capital at competitive rates” that occur as a result of the proposed Merger because they will be shielded from higher costs associated with capital market volatility. Joint Application St. 2 at 7-10, St. 5 at 7-8. The Joint Applicants should provide more information as to how a stronger balance sheet, more stable cash flow and enhanced access to capital would benefit ratepayers and how any benefit would be translated to ratepayers.
 - iii. The Joint Applicants assert that the proposed Merger will not negatively impact current Essential employees and will offer expanded opportunities for career advancement and professional development. Joint Application St. 1 at 17, St. 3 at 10, St. 5 at 7. These claims must be examined, and the Joint Applicants should offer additional details as to the expanded opportunities they claim the proposed Merger would provide.
- d. Impacts on Competition – The Joint Applicants suggest that the proposed merger will not result in anti-competitive or discriminatory conduct in the retail market for natural gas in Pennsylvania because “American Water does not own or operate any companies that directly or indirectly compete with Peoples” and because “[t]he Merger would also not result in any change in rates or changes to the gas operations or customer choice programs of Peoples.” Joint Application at ¶ 35; Joint Application St. 1. at 18, St. 4 at 12. These claims should be examined to ensure there would be no anti-competitive or discriminatory conduct as a result of the proposed merger.
- e. Corporate Structure – The Joint Application states that, after completion of the proposed Merger, American Water would increase the size of its board of directors from ten to fifteen members. Joint Application at ¶ 17. This would result in ten members from the current American Water's board of directors and an additional five members designated by Essentials. Joint Application at ¶ 17. The Joint Application also states that the proposed Merger “will not adversely impact any of the day-to-day operations” of Aqua PA and Peoples because those utilities will continue to operate as

Pennsylvania public utilities subject to the Commission’s continuing jurisdiction. Joint Application at ¶ 20. The proposed corporate structure should be reviewed to ensure that it is in the public interest and is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa C.S. § 1103(a).

- f. Affiliated Interest Agreements – the Joint Applicants proposed a number of affiliated interest agreements as part of the transaction that could impact the above proposed corporate structure and ratepayers. Joint Application at ¶¶ 27-30, Joint Application St. 2 at 10-13. Each of these Affiliated Interest Agreements should be examined by the Commission to ensure that no cross-subsidization results and that the Agreements are in the public interest. Additionally, the Commission should consider how the proposed Merger may raise issues related to the interaction of affiliated interest agreements, siting of facilities, and rates. These issues should be resolved before any approval of the proposed Merger.
- g. Continuity of Service – The Commission should ensure that the transaction includes all necessary commitments to ensure continuity of safe and reliable service. The Joint Applicants should provide more details on their claims that the proposed Merger would build on the companies’ records of providing safe and reliable service through continued infrastructure investment, improving affordability, making sustainable service enhancements, and supporting innovative technology. Joint Application at ¶¶ 34, 34b, St. 1 at 5-6, St 2. at 4, St. 5 at 6-7.
- h. Penn Estates Criteria – The Commission should examine the Joint Applicants’ claim that the Penn Estates criteria has been satisfied. The Penn Estates Criteria requires the examination of (1) Capital Allocation to Operating and Maintenance Expenses; (2) Corporate Governance/Sarbanes-Oxley Compliance; (3) Expected Term of Ownership; (4) Experience as an Owner and Operator of Utilities; (5) Community Presence; (6) Nature and Objectives for the Various Affiliated Relationships; (7) Fees Paid to and Services Performed By Affiliates; (8) Limits on Usage of Leverage and Other Capital Structure Protections; (9) Transparency on Corporate Structure Issues; and (10) Creditworthiness. *Application of Penn Estates Utilities, Inc., Utilities, Inc., Utilities, Ind. Of Pennsylvania and Utilities, Inc. – Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc., A-210072F0003 (October 2, 2006), Order at 3-10.*

11. As the proposed transaction is further analyzed, additional issues may arise

that warrant review.

12. Although the Joint Application requests that the Commission consider the Joint Application on an expedited basis and enter its final Order on or before the Commission's December 17, 2026 public meeting date to allow the proposed Merger to close by the end of the first quarter of 2027, a full and thorough analysis of the transaction must be undertaken by the Commission prior to any determination. *See* Joint Application at ¶ 42. Such a time constraint is inappropriate given the size and complexities associated with the proposed Merger and will not allow for the development of an adequate record upon which the Commission could base its decision. The Commission must base its decision on substantial evidence of record and such a time constraint will likely impair the development of a complete record for Commission review. 66 Pa. C.S. §703(e). The Joint Applicants have otherwise not demonstrated why such expedited treatment of the Joint Application is in the public interest. Therefore, an expedited litigation schedule is not appropriate.

13. The OCA respectfully requests that the Commission ensure that all other sections of the Public Utility Code and the Commission's regulations are observed throughout this proceeding and that the results of this proposed Merger proceeding are reasonable and consistent with the applicable law and Commission regulations.

WHEREFORE, the Office of Consumer Advocate requests that the Pennsylvania Public Utility Commission investigate and decide the Joint Application, hold evidentiary hearings, impose conditions if supported by the evidentiary record, and take such other actions as are found to be appropriate under the circumstances.

Respectfully submitted,

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Dated: December 15, 2025

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed Joint Application of American Water Works Company, Inc. (“American Water”), Essential Utilities, Inc. f/k/a Aqua America, Inc. (“Essential”), Aqua Pennsylvania, Inc. (“Aqua PA”) and Aqua Pennsylvania Wastewater (“Aqua PA WW”), Peoples Natural Gas Company LLC (“Peoples”), and Alpha Merger Sub, Inc. (“Merger Sub”) (collectively, the Joint Applicants).

On November 26, 2025, the Joint Applicants filed a Joint Application requesting all of the necessary authority, approvals, and certificates of public convenience for a change of control of Aqua PA and Peoples to be affected by the merger of Essential and Merger Sub, a wholly owned subsidiary of American Water.

The OCA has determined to participate in these proceedings to protect the interests of Pennsylvania American Water Company, Aqua PA, Aqua PA WW and Peoples customers. Through its participation in this proceeding the OCA seeks to ensure that the contribution of assets, approvals, granting of certificates, and other transactions occur only if it is “necessary or proper for the service, accommodation, convenience, or safety of the public” and that Pennsylvania American Water Company, Aqua PA, Aqua PA WW and Peoples customers are afforded the protections to which they are entitled under the Public Utility Code and the Commission’s regulations.