
Garrett P. Lent

glent@postschell.com
717-612-6032 Direct
717-731-1985 Direct Fax
File #: 214162

February 26, 2026

VIA ELECTRONIC FILING

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17101

Re: Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania, 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-2025-3058928, A-2025-3058929

Dear Secretary Homsher:

Enclosed for filing on behalf of Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company, LLC (collectively, the “Essential Utilities”) is the Answer to the Motion to Compel of the Office of Consumer Advocate (“OCA). The public version of the Answer is being submitted to the Pennsylvania Public Utility Commission (“Commission”) via electronic filing.

The **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY** version of Answer to the Motion to Compel of OCA contains highly sensitive, non-public information, and is only being served upon the Administrative Law Judges assigned to this matter, representatives of OCA, the Commission’s Bureau of Investigation and Enforcement (“I&E”), and the Office of Small Business Advocate (“OSBA”), collectively the “Statutory Advocates,” who have executed an appropriate Non-Disclosure Certificate pursuant to Paragraph 5 of the Protective Order issued in this proceeding. More specifically, pursuant to Paragraph 5 of the Protective Order issued in this proceeding, the document is not to be distributed to or viewed by representatives of American Water Works Company, Inc., and/or any other party except the Statutory Advocates.

Matthew L. Homsher, Secretary
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Copies will be provided in accordance with the attached Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/dmc
Enclosures

cc: The Honorable Emily I. DeVoe (*via email; w/attachments*)
The Honorable Ann Quimby (*via email; w/attachments*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA ELECTRONIC MAIL

Allison Kaster, Esquire.
Scott B. Granger, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
akaster@pa.gov
sgranger@pa.gov
Counsel for I&E

Ria M. Pereira, Esquire
Lauren N. Berman, Esquire
Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Levi A. Phillips, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Harrison W. Breitman, Esquire
Joel Cheskis, Esquire
Johnathan M. Longhurst, Esquire
Crystal Zook, Esquire
Office of Consumer Advocate
Forum Place 555 Walnut Street, 5th Floor
Harrisburg, PA 17101
PAWCAquaExternal@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov
Counsel for OSBA

Thomas Wyatt, Esquire
Matthew S. Olesh, Esquire
Matthew E. Selmasska, Esquire
James G. Pringle, Esquire
Obermayer Rebmann Maxwell &
Hippel, LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com
Matthew.selmasska@obermayer.com
James.Pringle@obermayer.com
*Counsel for York Twp., West Manchester
Twp., Spring Garden Twp., Manchester Twp.,
East Whiteland Twp., County of Delaware,
North York Borough and City of Butler*

Kevin Dooley Kent Esquire
Joseph W. Jesiolowski, Esquire
Clark Hill PLC
Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
kkent@clarkhill.com
jjesiolowski@clarkhill.com
Attorneys for Chester Water Authority

Alexander R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 W. Lancaster Ave
Bryn Mawr, PA 19010
Astahl@aquaamerica.com

Kimberly A. Joyce, Esquire
Essential Utilities Inc.
762 W. Lancaster Ave
Bryn Mawr, PA 19010
Kajoyce@essential.co

Sean Kilkenny, Esquire
Alex J. Baumler, Esquire
Kilkenny Law, LLC
519 Swede Street
Norristown, PA 19401
sean@skilkennylaw.com
alex@skilkennylaw.com

Samuel J. Pasquarelli, Esquire
Sherrard, German & Kelly, PC
535 Smithfield Street, Suite 300
Pittsburgh, PA 15222
samuel.pasquarelli@sgkpc.com
*Counsel for Utility Workers Union of
America,
AFL-CIO, Local 612*

Kenneth M. Kulak, Esquire
Mark A. Lazaroff, Esquire
Catherine G. Vasudevan, Esquire
Brooke E. McGlinn, Esquire
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
ken.kulak@morganlewis.com
mark.lazaroff@morganlewis.com
catherine.vasudevan@morganlewis.com
brooke.mcglinn@morganlewis.com

Meagan Moore, Esquire
PNG Companies LLC
375 North Shore Drive, Suite
600 Pittsburgh, PA 15212
meagan.moore@peoples-gas.com
*Counsel for Essential Utilities Inc., Aqua
Pennsylvania, Inc., Aqua Pennsylvania
Wastewater, Inc., and Peoples Natural Gas
Company LLC*

Date: February 26, 2026

Aaron D. Nelson, Esquire
Maureen B. Carlton, Esquire
Andrew P. Griffin, Esquire
CURTIN & HEEFNER LLP
1040 Stony Hill Road, Suite 150
Yardley, PA 19067
mbc@curtinheefner.com
apg@curtinheefner.com
adn@curtinheefner.com
Counsel for Township of Lower Makefield

Domenic A. Bellisario, Esquire
310 Grant Street, Suite 1302
Pittsburgh, PA 15219
domenic@bellisario.com
*Council for Pennsylvania Laborers District
Council*

Joel P. Trigiani, Esquire
P.O. Box 126
Villanova, PA 19085
joel@trigianilaw.com
*Counsel for the Metropolitan Area of
Philadelphia, Baltimore, Washington
Laborers' District Council*


Garrett P. Lent

PUBLIC VERSION – HIGHLY CONFIDENTIAL MATERIALS REDACTED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of American Water Works :
Company, Inc., Essential Utilities, Inc., Aqua :
Pennsylvania, Inc., Aqua Pennsylvania : Docket Nos. A-2025-3058927
Wastewater, Inc., Peoples Natural Gas : A-2025-3058928
Company LLC, and Alpha Merger Sub, Inc. : A-2025-3058929
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 :

**ANSWER OF ESSENTIAL UTILITIES, INC., AQUA PENNSYLVANIA, INC., AQUA
PENNSYLVANIA WASTEWATER, INC., AND PEOPLES NATURAL GAS COMPANY
LLC TO THE MOTION TO COMPEL OF THE OFFICE OF CONSUMER ADVOCATE**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGES EMILY I. DEVOE, AND
ANN QUIMBY:**

Essential Utilities, Inc. f/k/a Aqua America, Inc. (“Essential”),¹ Aqua Pennsylvania, Inc. (“Aqua PA”) and Aqua Pennsylvania Wastewater, Inc. (“Aqua PA WW”),² Peoples Natural Gas Company LLC (“Peoples”), collectively the “Essential Utilities,” hereby file this Answer, pursuant to Section 5.342 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342, and the Prehearing Order dated January 26, 2026, to the Motion to Compel Production (“Motion”) of the Office of Consumer Advocate (“OCA”) of certain documents produced by the Essential Utilities in response to the OCA’s, Set I Interrogatories and Requests

¹ Aqua America, Inc. changed its name to Essential Utilities, Inc. on February 3, 2020, following its acquisition of Peoples.

² Unless otherwise specified herein, references to Aqua PA also include Aqua PA WW, which is a wholly-owned subsidiary of Aqua PA.

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for Production of Documents, Numbers 4 and 5 (“OCA-JA Set I, Nos. 4 and 5”) on February 3, 2026. As explained below, the Motion should be denied because the documents produced by the Essential Utilities in response to OCA-JA Set I, Nos. 4 and 5, were properly limited in their distribution to the OCA and other statutory advocates pursuant to Paragraph 5 of the Protective Order issued in this matter.

In support thereof, the Essential Utilities state as follows:

I. BACKGROUND

1. On November 26, 2025, American Water Works Company, Inc. (“American Water”), Alpha Merger Sub, Inc. (“Merger Sub”), and the Essential Utilities (collectively the “Joint Applicants”) filed a Joint Application for approval under Chapters 11 and 22 of the Public Utility Code for a change in control of Aqua PA and Peoples to be effected by the proposed merger of Essential and Merger Sub, a wholly owned subsidiary of American Water (the “Merger Application”).

2. On December 15, 2025, the OCA filed a Protest in this matter.

3. On January 12, 2026, the OCA propounded certain discovery, including specifically OCA-JA Set I, Nos. 4 and 5. These discovery requests sought the following information:

OCA-JA-I-4 Due diligence documentation and reports.

- a. Provide copies of all due diligence and consultant reports prepared by or for each of the Joint Applicants, either individually or collectively, in connection with the proposed transaction. This request includes all due diligence analysis, including materials that are considered by either of the Joint Applicants to be confidential.
- b. Please provide the requested documents in electronic form with all spreadsheet links and formulas intact, source data used, and explain all assumptions and calculations used. To the extent the

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data requested is not available in the form requested, provide the information in the form that most closely matches what has been requested.

OCA-JA-I-5 Presentations to shareholders, board and senior management.

- a. Provide all reports, presentations, and analyses regarding the proposed transaction which have been given to shareholders, Board of Directors, and senior management of each of the Joint Applicants, individually and collectively.
- b. Please provide the requested documents in electronic form with all spreadsheet links and formulas intact, source data used, and explain all assumptions and calculations used. To the extent the data requested is not available in the form requested, provide the information in the form that most closely matches what has been requested.

4. On January 20, 2026, Joint Applicants filed a Petition for Protective Order. Prior to the submission of the Petition for Protective Order, the Joint Applicants conferred with the parties (including the OCA) to this proceeding regarding the form of the proposed Protective Order.

5. After verbally granting the Petition for Protective Order at the Prehearing Conference held on January 22, 2026, Administrative Law Judge Mary D. Long issued a Protective Order on January 26, 2026, that conformed to the form of Protective Order sought by the Petition.

6. On February 3, 2026, the Essential Utilities produced several documents in response to OCA-JA Set I, Nos. 4 and 5.

7. As set forth in this letter, the following four password-protected documents contained highly-sensitive, non-public information, and were marked and identified as “**HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY**,” and distributed only to the statutory advocates pursuant to Paragraph 5 of the Protective Order (1) **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY** OCA-JA-I-4_ Attachment_1_EU; (2) **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY** OCA-JA-I-5_ Attachment_1_EU; (3) **HIGHLY**

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CONFIDENTIAL – ESSENTIAL EYES ONLY OCA-JA-I-5_ Attachment_2_EU; and (4) **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY** OCA-JA-I-5_ Attachment_3_EU.³

Indeed, due to the sensitive nature of the information contained in these documents, they were not even produced to American Water. The Essential Utilities further note that these documents were redacted to remove privileged information and information not relevant to this matter, and, therefore, not subject to discovery under 52 Pa. Code § 5.321(c).⁴

8. On February 4, 2026, the OCA requested via email that the relevant documents be provided fully unredacted to the OCA because the OCA had provided executed protective orders.

9. On February 5, 2026, counsel for OCA and Essential conferred regarding the redacted documents. Counsel for Essential noted that certain redactions were applied to privileged information, while other redactions were applied to matters completely unrelated, and therefore not relevant, to the instant transaction. Counsel for Essential offered to provide a privilege log and/or allow OCA’s counsel and experts to review versions of the Essential Eyes Only Documents that removed redactions applicable to the non-privileged, irrelevant material included in the documents.

10. On February 5, 2026, the OCA requested that Essential provide a privilege log explaining why responses covered by a highly confidential designation included redactions.

11. On February 13, 2026, Essential provided a privilege and redaction log to the OCA, consistent with its request. The redaction log identified the subject documents, the pages with

³ Collectively, the “Essential Eyes Only Documents.”

⁴ The Essential Utilities note that, to the extent that OCA is attempting to argue production of these documents should be compelled because the Essential Utilities have sought additional protections to be applied to these documents, the Essential Utilities reference and incorporates its arguments on this issue included in its February 20, 2026, Answer to the Motion Compel of the “Moving Intervenors” as if those arguments were fully stated herein.

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redactions applied, the reasons for redaction, and the legal basis for the same. A copy of the log is provided hereto as **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY Appendix A**.

12. On February 23, 2026, counsel for OCA notified counsel for Essential of its intent to file a motion to compel with respect to the Essential Eyes Only Documents. After it was provided with the privilege log, and before it filed the instant Motion, counsel for OCA did not contact counsel from Essential with any further questions or concerns regarding the privilege log.

13. On February 20, 2026, the instant Motion was served at approximately 3:32 p.m.⁵

14. On February 26, 2026, counsel for the Essential Utilities attempted to confer with counsel for the OCA via email to try to resolve the Motion. However, the parties were unable to resolve their dispute.

15. The Essential Utilities hereby file this Answer to the Motion.

II. ANSWER TO THE MOTION TO COMPEL

16. Contrary to the OCA’s Motion, OCA is not entitled to review the redacted information contained in the Essential Eyes Only Documents because it is either (a) privileged and therefore not discoverable under the Commission’s regulations, and/or (b) irrelevant and not related to the specific subject matter of this proceeding.

A. THE PRIVILEGED INFORMATION CONTAINED IN THE ESSENTIAL EYES ONLY DOCUMENTS IS NOT DISCOVERABLE AND THE ESSENTIAL UTILITIES SHOULD NOT BE COMPELLED TO PRODUCE THIS INFORMATION

17. With respect to privilege, the Public Utility Code and the Commission’s regulations are clear; privileged information is not discoverable, and discovery seeking privileged information is not permitted.

⁵ Under the discovery modifications adopted in this case, the Motion is deemed to be served and filed on Monday, February 23, 2026, for purposes of determining deadlines for any answer to the same.

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18. OCA concedes in its Motion that Section 333(d) of the Public Utility Code only permits the discovery of non-privileged information. Motion ¶ 11 (66 Pa.C.S. § 333(d)).

19. Section 5.321(c) of the Commission’s regulations further states that “[s]ubject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . .” 52 Pa. Code § 5.321(c) (emphasis added). Section 5.361(a)(3) further states that “[d]iscovery . . . is not permitted which: . . . [r]elates to matter which is privileged.” *Id.* § 5.361(a)(3).

20. Moreover, and specific to claims of privilege under the work product doctrine, Section 5.323(a) of the Commission’s regulations states:

Subject to this subchapter and consistent with Pa. R.C.P. 4003.3 (relating to scope of discovery trial preparation material generally), a party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another party or by or for that other party’s representative, including his attorney, consultant, surety, indemnitor, insurer or agent. The discovery may not include disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representative of a party other than the party’s attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

52 Pa. Code § 5.323(a) (emphasis added).

21. OCA’s first claim that the Essential Utilities should have submitted objections on the basis of privilege simply ignores the Commission’s regulations. Motion ¶¶ 19-20, 28. The regulations state that discovery of privileged matter is not permitted, and nothing in the regulations requires a party to object to discovery on the basis of privilege.

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22. While OCA points to no case law in support of its position that objections must be lodged with respect to privilege, administrative law judges before the Commission have previously provided guidance on this very point. In *Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket Nos. R-2011-2232243, et al., 2011 Pa. PUC LEXIS 1523 (Order on Motion to Compel dated July 21, 2011), Administrative Law Judges Jones and Vero disposed of a dispute involving instructions to discovery requests issued by OCA, which sought disclosure of “the kinds of things that Section 5.323 of the Commission’s regulations protects from disclosure,” such as privileged work product. *Id.*, at *15-16. The Administrative Law Judges explained that “[i]f indeed General Objection No. 8 only opposes producing the kinds of things that Section 5.323 of the Commission’s regulations protects from disclosure, then it is redundant.” *Id.*, at *16 (emphasis added). The reasoning of these administrative law judges is clear: the Commission’s regulations preclude discovery of certain materials, such as [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL], and any objection to discovery requests on this basis would be redundant. Because certain information was redacted from the Essential Eyes Only documents on the basis of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL], its discovery is not permitted, and the Essential Utilities were not required to lodge an objection on the basis of privilege in order redact this information.

23. Moreover, it is important to note that consistent with Section 5.323(a) of the Commission’s regulations, and Pennsylvania Rule of Civil Procedure 4003.3, Pennsylvania appellate courts have confirmed that, under Pennsylvania law, the work product doctrine protects the mental impressions, conclusions and opinions of both a party’s attorney and a party’s non-attorney representative respecting the value or merit of a claim or defense or respecting strategy

or tactics, regardless of whether or not it was prepared in anticipation of litigation. *See Clemens v. NCAA (In re Estate of Paterno)*, 168 A.3d 187, 199-200 (Pa. Super. 2017); *Bagwell v. Pa. Dep’t of Educ.*, 103 A.3d 409, 416-417 (Pa. Cmwlth. 2014) (holding that application of the work-product privilege is not limited to the litigation context).

24. While OCA submits that the Essential Utilities have not shown that the information redacted from the Essential Eyes Only Documents is considered **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** (Motion ¶¶ 28-29, 36-37), OCA simply ignores the privilege log, which provided the basis for the subject redactions. To the extent that OCA desired specific content to be contained in the privilege log, it could have provided instructions either in the instructions to its discovery requests regarding the preparation and content of a privilege log, or it could have provided such instructions in its February 5, 2026 email requesting that the same be provided. Moreover, if OCA believed that additional information needed to be supplied in this log, it could have requested this information prior to filing the instant Motion. OCA did none of these things prior to filing the Motion.

25. OCA’s Motion also ignores that the privilege log provides a sufficient basis for the invocation of **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[END HIGHLY CONFIDENTIAL]**

[REDACTED] [END
HIGHLY CONFIDENTIAL]

29. Specific to the redactions applied to **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY** OCA-JA-I-5_ Attachment_3_EU on the basis of privilege, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

30. For all of these reasons, OCA’s Motion to Compel production of information protected from disclosure on the basis of privilege should be denied.

B. THE IRRELEVANT INFORMATION REDACTED FROM THE ESSENTIAL EYES ONLY DOCUMENTS IS UNRELATED TO THE TRANSACTION AT ISSUE, AND NOT LIKELY TO LEAD TO THE DISCOVERY OF INFORMATION ADMISSIBLE TO THE TRANSACTION AT ISSUE

31. The Commission’s regulations and precedent limit discovery to information that is relevant to the subject matter involved in the pending proceeding. Section 5.321(c) of the Commission’s regulations states that:

A party may obtain discovery regarding any matter, not privileged, **which is relevant to the subject matter involved in the pending action**, whether it relates to a claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter.

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52 Pa. Code § 5.321(c) (emphasis added). In addition, the information sought by discovery must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

32. Discovery seeking information outside the scope of a pending proceeding is impermissible. *See, e.g., Petition of the Borough of Cornwall for a Declaratory Order*, 2015 Pa. PUC LEXIS 433, at *19-21 (Order Denying Motion to Compel, Sept. 11, 2015) (“*Cornwall*”); *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, 2000 Pa. PUC LEXIS 49, at *18-19 (July 20, 2000) (holding a presiding officer correctly determined discovery related to the *need* for structural separation was outside the scope of a proceeding regarding the *form, nature and details* of the separation). Indeed, the question is not whether the information sought by OCA is relevant to an issue raised by them; rather, the question is whether this issue is relevant to the subject matter of this proceeding. *See Cornwall*, 2015 Pa. PUC LEXIS, at * 20-21.

33. Information about the business of the Essential Utilities unrelated to the transaction at issue is not relevant to the subject matter of this proceeding. The subject matter of this proceeding is the proposed change in control of Aqua PA and Peoples to be effected by the proposed merger of Essential and Merger Sub, as set forth in the Merger Application. Thus, in order for discovery to seek relevant information, it must relate to the proposed change in control contemplated by the Merger Application.⁶

34. With respect to the redactions applied to **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY OCA-JA-I-4_Attachment_1_EU**, the OCA claims that the requested information in Interrogatory OCA-1-4 is relevant because “everything in a due diligence document that was prepared relating to the proposed merger is relevant to evaluating the proposed merger.”

⁶ *See* OCA Motion to Compel ¶ 23, defining the specific transaction that is the subject of this proceeding.

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Motion ¶ 26. While this information may be relevant, it is privileged and, therefore, it is not discoverable under the Commission’s regulations for the reasons explained above.

35. With respect to the redactions applied to **HIGHLY CONFIDENTIAL – ESSENTIAL EYES ONLY OCA-JA-I-5_ Attachment_1_EU** on the basis of relevance and scope, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL]**

36. The decision in *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, 2000 Pa. PUC LEXIS 49 (July 20, 2000) is instructive. In particular, that proceeding involved a structural separation of a telephone company, where the subject matter of the proceeding before the Commission was the form, nature, and details of the separation. *Id.*, at *4. Certain discovery sought information generally related to the producing party’s business activities in Pennsylvania (*see id.*, at *5), and specifically related to the “need” for the subject separation (*see id.*, at *18-19). The administrative law judges held, and the Commission affirmed on interlocutory review, that the “need” information sought was irrelevant and beyond the scope of the proceeding regarding the form, nature, and details of the separation. *Id.* at *19. If it is the case that information related to a singular transaction before the Commission can be outside the scope of a proceeding limited specific aspects of that transaction, **[BEGIN HIGHLY**

PUBLIC VERSION – HIGHLY CONFIDENTIAL MATERIALS REDACTED

time and resources. This information could be used by others (including competitors of Essential Utilities) to obtain specific insight into Essential Utilities' operations, thereby causing an economic and/or competitive disadvantage to Essential Utilities. Moreover, this information is not generally known by others outside of the highly-limited production of this information, and would not be known by others but for the discovery issued in this proceeding. Thus, any interest asserted by the OCA in viewing the redacted, irrelevant information is substantially outweighed by the harm that the potential disclosure of this information could cause to the Essential Utilities.

39. For all of these reasons, the information that was redacted from the Essential Eyes Only Documents on the basis of relevance and scope is not discoverable, and OCA's Motion should be denied.

40. In the alternative, and in order to resolve this dispute, the Essential Utilities would propose the adoption of the following measure instead of the OCA's requested wholesale removal of the redactions applied to the Essential Eyes Only Documents. The Essential Utilities would be willing to permit counsel for the OCA to review versions of the requested documents that remove the redactions made for the purpose of removing irrelevant information, but retain redactions made for the purpose of removing privileged information at the offices of the Essential Utilities' counsel, Post & Schell, P.C., in Harrisburg. The Essential Utilities submit that such review will afford the OCA the ability to determine whether any of the redacted, irrelevant and non-privileged Essential Eyes Only information is necessary for the preparation of their case and, if so, seek the production of such specific information with appropriate protections afforded to the same.

III. CONCLUSION

WHEREFORE, Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company LLC, respectfully request that Administrative Law Judges Emily I. Devoe and Ann Quimby deny the Motion to Compel of the OCA.

Respectfully submitted,



Garrett P. Lent (Pa. No. 321566)
Anthony D. Kanagy (Pa. No. 85522)
Hayley E. Wilburn (Pa. No. 336055)
Emily S. Grecu (Pa. No. 337777)
Post & Schell P.C.
17 North Second Street, Floor 12
Harrisburg, PA 17101
Phone: (717) 731-1970
Email: glent@postschell.com
Email: akanagy@postschell.com
Email: hwilburn@postschell.com
Email: egrecu@postschell.com

Date: February 26, 2026

*Counsel for Essential Utilities, Inc., Aqua
Pennsylvania, Inc., Aqua Pennsylvania
Wastewater, Inc., Peoples Natural Gas
Company LLC*

Appendix A
(No Public Version Available)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF AMERICAN
WATER WORKS COMPANY, INC.,
ESSENTIAL UTILITIES, INC., AQUA
PENNSYLVANIA, 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.,
LLC, AND PEOPLES NATURAL GAS
COMPANY LLC**

**DOCKET NO. A-2025-3058927
DOCKET NO. A-2025-3058928
DOCKET NO. A-2025-3058929**

VERIFICATION

I, Daniel Schuller, hereby declare that I am the Executive Vice President and Chief Financial Officer at Essential Utilities, Inc., that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief; and that I make this verification subject to the penalties of 18 Pa. C.S.A. § 4904 pertaining to false statements to authorities.

DATE: February 26, 2026



Daniel Schuller
Executive Vice President
Chief Financial Officer
Essential Utilities, Inc.