

As directed by the Commission's Secretary, notice of the Joint Applications was published in the Pennsylvania Bulletin¹ and newspapers of general circulation.²

The Bureau of Investigation & Enforcement (I&E) and the Office of Small Business Advocate (OSBA) filed notices of appearance. The Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Chester Water Authority (CWA), and Upland Borough, Delaware County, filed protests. The County of Delaware; East Whiteland Township, Chester County; Manchester Township, York County; Spring Garden Township, York County; West Manchester Township, York County; York Township, York County; City of Butler, Butler County; East Norriton Township; the Township of Lower Makefield, Bucks County; and North York Borough, York County; and the Utility Workers Union of America, AFL-CIO, Local 612 (UWUA) filed petitions to intervene.

The Joint Applications were assigned to Administrative Law Judge (ALJ) Mary D. Long and scheduled for a Prehearing Conference on January 22, 2026. By Prehearing Conference Order dated January 7, 2026, the Parties were directed to file prehearing memoranda.

On January 20, 2026, the Parties filed their prehearing memoranda as directed. The Joint Applicants also filed Answers opposing the Petitions to Intervene of Township of Lower Makefield, the City of Butler, Manchester Township, North York Borough, Spring Garden Township, West Manchester Township, and York Township. The Joint Applicants also filed preliminary objections to the protests of Upland Borough and the CWA and filed a Petition for Protective Order.

The Prehearing Conference was held as scheduled by ALJ Long. Upland Borough did not attend. No party objected to the petitions to intervene of the County of

¹ 54 Pa.B. 8454 (December 13, 2025).

² See Proofs of Publication filed December 29, 2025; January 6, 2026; January 13, 2026; and January 22, 2026.

Delaware, East Whiteland Township, East Norriton Township or UWUA. These petitions to intervene were granted.

The Joint Applicants objected to the petitions to intervene of Township of Lower Makefield, the City of Butler, Manchester Township, North York Borough, Spring Garden Township, West Manchester Township, and York Township. OSBA and OCA supported the intervention of the Municipalities. These petitions to intervene were granted.

On January 26, 2026, ALJ Long issued a Prehearing Order that memorialized the matters decided and agreed upon by the Parties attending the Prehearing conference. Counsel for the CWA and Upland Borough were directed to file responses to the Joint Applicants' preliminary objections on or before February 9, 2026.

On January 26, 2026, ALJ Long granted the Joint Applicants' Petition for Protective Order.

On February 5, 2026, a Judge Change – Assignment Notice was issued, indicating the Presiding ALJ had been changed from ALJ Mary D. Long to ALJs Emily I. DeVoe and Ann Quimby.

On February 5, 2026, the Pennsylvania Laborers' District Council and the Metropolitan Area of Philadelphia, Baltimore, Washington Laborers' District Council filed a Joint Petition to Intervene Out of Time.

On February 9, 2026, the CWA and CAUSE-PA both filed Answers to the Preliminary Objections of the Joint Applicants. Upland Borough did not file an Answer.

On February 13, 2026, the Pennsylvania Laborers' District Council and the Metropolitan Area of Philadelphia, Baltimore, Washington Laborers' District Council filed a Petition for Leave to Withdraw their Joint Petition to Intervene Out of Time. No notice to plead was included in the Petition for Leave.

On February 17, 2026, a Motion to Compel Production from Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company, LLC was filed by the County of Delaware, City of Butler, East Whiteland Township, North York Borough, York Township, Spring Garden Township, West Manchester Township, and Manchester Township.

On February 18, 2026, the County of Montgomery filed a Petition to Intervene.

On February 20, 2026, Joint Applicants filed an Answer to the Motion to Compel Production filed by the County of Delaware, City of Butler, East Whiteland Township, North York Borough, York Township, Spring Garden Township, West Manchester Township, and Manchester Township.

On February 25, 2026, the ALJs issued a Further Telephonic Prehearing Conference Notice, setting a telephonic conference for Thursday, February 26, 2026 at 3:00 p.m.

On February 26, 2026, the Further Telephonic Prehearing Conference was held by the Presiding ALJs. Representatives of all parties of record were present except Upland Borough and East Norriton Township.

It is now appropriate to rule on Joint Applicants' Preliminary Objections to the protests of Upland Borough and the CWA. The undersigned ALJs will address both Preliminary Objections in the instant Interim Order.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide as follows:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa.Code § 5.101.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the non-moving parties, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105, 1108 (Pa.Cmwlt. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705, 707 (Pa.Cmwlt. 2002). All of the non-moving party's averments must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312, 1314 (Pa.Cmwlt. 1997).

CWA avers in its Protest that the Application should not be approved because it is not in the public interest, provides no substantial affirmative benefits to the public, has an anti-competitive or discriminatory impact, and is not in accord with the applicable law. CWA Protest p. 2. Regarding standing, CWA indicates in its Protest that it has pending litigation against Aqua PA that could be jeopardized if the proposed merger of the Joint Applicants is approved. CWA Protest p. 3. CWA further avers in its Protest that it is a ratepayer of the Delaware County Regional Water Quality Control Authority (DELCORA) which is the subject of an acquisition attempt by Aqua PA Wastewater. *Id.* CWA further asserts in its Protest that CWA's current rates with DELCORA will increase if the proposed merger is approved, and notes that many of CWA's ratepayers receive wastewater service from DELCORA or Aqua PA Wastewater. *Id.*

Upland avers in its Protest that its residents are currently serviced by CWA and DELCORA, and these entities are acquisition targets of Aqua PA and Aqua PA Wastewater, respectively. Upland Protest p. 2. Upland filed its Protest to "ensure" the Application is approved only if it is in the public interest, provides substantial affirmative benefits to the public, does not have an anti-competitive or discriminatory impact, the acquiring entities honor all terms and conditions of Aqua PA Wastewater's agreement to acquire DELCORA's assets, and it is in accordance with applicable law. Upland Protest p. 3. Regarding standing, Upland's Protest asserts that if the acquisition of CWA and/or DELCORA occurs, the merger has a significant likelihood of affecting service, including future rates charged to Upland Borough residents. Upland Protest p. 4. Upland further asserts that no other participants in the instant proceeding adequately represent its interests, and its residents are likely to suffer a direct, immediate, and substantial injury to an interest because of the instant proceeding, noting it anticipates receipt of a payment of \$700,000.00 upon the closing of Aqua PA Wastewater's acquisition of DELCORA. Upland Protest p. 4.

The Joint Applicants filed Preliminary Objections, averring CWA and Upland both lack standing to file a protest to the Application. Joint Applicants assert CWA and Upland are not customers of the Joint Applicants and do not receive service from the Joint Applicants, and the only alleged interest is based on actions that may occur in the future. Joint Applicants

requested the Protests filed by the Chester Water Authority (CWA) and Upland Borough, Delaware County (Upland), be dismissed in their entirety and with prejudice.

CWA filed an Answer to the Preliminary Objections, admitting it is not a customer, but asserting that it nonetheless has standing for three reasons. First, CWA argues that its pending litigation against Aqua could be jeopardized if the merger is approved. Second, CWA asserts it is a present wastewater ratepayer of DELCORA, which Aqua is attempting to acquire, and if Aqua succeeds in acquiring DELCORA and the merger succeeds, CWA's wastewater rates will increase considerably. Finally, CWA avers it has representative standing on behalf of its customers who are current wastewater customers of Aqua PA.

Upland did not file an Answer to the Preliminary Objections.

CAUSE-PA filed an Answer to the Preliminary Objections, noting that while the Preliminary Objections were not directed at CAUSE-PA's protest, CAUSE-PA is concerned about the Joint Applicants' efforts to limit participation in the proceeding, and requested that the Commission deny the Joint Applicants' Preliminary Objections and grant standing to CWA and Upland as parties to the instant litigation.

The Commission's Rules of Practice and Procedure permit protests under 52. Pa. Code §5.51. Under this section, a person objecting to the approval of an application filed with the Commission may file a protest to the application.

There are three requirements for a party to have standing: the party must have a substantial interest in the subject matter of the litigation; the interest must be direct; and the interest must be immediate and not a remote consequence. *George v. Pennsylvania Public Utility Com'n*, 735 A.2d 1282 (Pa. Cmwlth. 1999) (citing *Ken R. ex rel. C.R. v. Arthur Z.*, 546 Pa. 49 (1996)).

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct'

interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

Id. quoting *South Whitehall Township Police Service v. South Whitehall Township*, 521 Pa. 82, 86–87 (1989).

“An association may have standing as a representative of its members . . . as long as an organization ‘has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action [, i.e., is aggrieved, the organization] has standing.’” *Energy Cons. Council of Pa. v. Pa. Pub. Util. Comm’n*, 995 A.2d 465, 476 (Pa. Cmwlth. 2010) (alteration in original) (citing *Tripps Park v. Pa. Pub. Util. Comm’n*, 415 A.2d 967 (Pa. Cmwlth. 1980); *Parents United for Better Schs. v. Sch. Dist. of Phila.*, 646 A.2d 689 (Pa. Cmwlth. 1994)).

CWA and Upland have similar interests in the instant litigation. CWA is a customer of DELCORA. Upland is serviced by CWA and DELCORA. CWA and DELCORA are acquisition targets of Joint Applicants Aqua PA and Aqua PA Wastewater, respectively. CWA and Upland both report concerns regarding the effect of the instant litigation on the acquisition attempts and terms already agreed upon in those proceedings. If the pending acquisitions are completed, CWA and Upland will be customers of the Joint Applicants, and they raise concerns regarding potential changes in rates and/or service.

The interests described above are substantial, as they are more than the common interest of all citizens in procuring obedience to the law. Both CWA and Upland have interests in related litigation, and these interests are greater than a common interest such that they meet this part of the standard. Similarly, their interests are direct. While Joint Applicants describe the interest as “attenuated,” the interests still exist and the result of the instant litigation has the potential to cause harm to those interests.

Regarding whether CWA and Upland have immediate interests, CWA avers Aqua PA is actively attempting to acquire DELCORA and has spent considerable resources to do so, and there is a real possibility of the acquisition occurring. Upland avers if the acquisition occurs, the instant proceeding is significantly likely to affect quality of service and rates. Accepting the averments as true for purposes of the Preliminary Objection, CWA and Upland have an immediate interest in the outcome of the instant litigation. The interests they seek to protect, the rates and service they are furnished, is within the interests that are considered in the instant proceedings.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by the Joint Applicants to the Formal Protests of the Chester Water Authority and Upland Borough Delaware County are dismissed.

2. That the Chester Water Authority and Upland Borough Delaware County shall be added to the Commission's records as active parties to this litigation and shall be treated as such by the other active parties in this matter.

Date: March 3, 2026

_____/s/
Emily I. DeVoe
Administrative Law Judge

Date: March 3, 2026

_____/s/
Ann Quimby
Administrative Law Judge

A-2025-3058927, A-2025-3058928, & A-2025-3058929 - 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

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