

**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	:	A-2025-3058927
Natural Gas Company LLC and Alpha	:	A-2025-3058928
Merger Sub, Inc. for a Certificate of	:	A-2025-3058929
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	:	

**INTERIM ORDER
GRANTING IN PART AND HOLDING IN ABEYANCE IN PART
MOTION TO COMPEL ANSWER TO INTERROGATORY OF THE OFFICE OF
CONSUMER ADVOCATE OCA INTERROGATORIES 1-4 AND I-5**

On November 26, 2025, American Water Works Company, Inc., (American Water), Essential Utilities, Inc. f/k/a Aqua America, Inc. (Essential),¹ and Aqua Pennsylvania, Inc. (Aqua PA) and Aqua Pennsylvania Wastewater, Inc. (Aqua PA WW),² Peoples Natural Gas Company, LLC (Peoples) (collectively Essential Utilities), and Alpha Merger Sub, Inc. (Joint Applicants) filed applications (Joint Applications) to obtain the approval of the Commission under Chapters 11 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 Alpha Merger Sub, Inc., a wholly owned subsidiary of American Water (the Merger). The Joint Applicants also requested that the Commission approve, under Chapter 21 of Code, certain new affiliated interest agreements to

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

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

facilitate the sharing of resources and best practices created by the Merger between American Water and Essential Utilities.

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.

On January 12, 2026, OCA issued its Sets 1 and 2 Interrogatories to the Joint Applicants.

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 held on January 22, 2026.

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

On February 3, 2026, after OCA provided executed protective orders for the OCA's attorneys and consultants, Essential Utilities provided redacted responses labeled as highly confidential to OCA Set 1 Questions No. 4 and 5.

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 20, 2026, OCA filed a certificate of service for its Motion to Compel Answer to Interrogatory of the Office of Consumer Advocate OCA Interrogatories I-4 and I-5 (Motion),³ requesting that Essential Utilities be directed to provide full and complete unredacted information requested in Interrogatory OCA Set 1, Questions No. 4 and 5, on the grounds that the information sought in the Interrogatories is relevant and Essential Utilities has not met its burden to show that any of the information sought is privileged.

In its Motion, OCA avers that on February 4, 2026, OCA requested via email that the relevant documents be provided fully unredacted to OCA because OCA had provided executed protective orders, but on February 4, 2026, Essential Utilities informed OCA via email that the documents had been redacted to remove information that was privileged attorney work product or not relevant to the proposed merger and was therefore not discoverable information under 52 Pa. Code Section 5.321(c). OCA further averred that on February 13, 2026, Essential Utilities provided a privilege and redaction log to the OCA, claiming that the redacted information found in Essential Utilities' response to OCA Set 1 Question No. 5 was either attorney product or not reasonably calculated to lead to the discovery of admissible evidence and unrelated to the transaction. OCA explained that Essential's privilege log did not provide further reasons regarding the redacted information found in Essential's response to OCA Set 1 Question No. 4.

On February 26, 2026, Essential Utilities filed an Answer to the Motion, arguing that its responses to OCA Set 1, Questions 4 and 5 were properly redacted to exclude privileged attorney work product and irrelevant information. Essential Utilities attached a copy of its privilege log to its Answer.

On March 3, 2026, the Office of Administrative Law Judge issued a Further Telephonic Prehearing Conference Notice to the parties, setting a telephonic prehearing conference for Friday, March 6, 2026 to address OCA's pending Motion to Compel.

³ OCA inadvertently failed to file its Motion to Compel the Joint Applicants to Answer OCA set 1, questions 4 and 5 with the Commission's Secretary's Bureau. The Motion was subsequently filed with the Secretary's Bureau on March 2, 2026.

On March 6, 2026, the undersigned ALJs convened the conference as scheduled. Counsel for all active parties, except East Norriton Township and Upland Borough, were present. During the conference, the ALJs made an oral ruling on the record, granting OCA's Motion in part. The Motion was granted such that Essential Utilities was directed to remove redactions made to answers to OCA Set 1, Questions 4 and 5 due to "not reasonably calculated to lead to the discovery of admissible evidence and unrelated to the transaction" and provide updated answers to OCA.

This Interim Order memorializes the ALJs' ruling and provides a legal analysis supporting the same.

Applicable Rules

52 Pa. Code § 5.321. Scope

- (c) *Scope.* Subject 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, whether it relates to the 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. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.361. Limitation of scope of discovery and deposition.

- (a) Discovery or deposition is not permitted which:
- (1) Is sought in bad faith.
 - (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
 - (3) Relates to a matter which is privileged.
 - (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make an act at issue more or less probable.

Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975), the Court held that “[i]t must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Id.* at 284.

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).

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).

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.

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.”

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).

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).

DISCUSSION

The discovery at issue in this Motion relates to two interrogatories propounded by OCA upon Essential Utilities:

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

- a. Provide copies of all due diligence and consultant reports prepared by or on behalf of 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 spreadsheets 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.

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 spreadsheets 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.

Essential Utilities redacted portions of its responses to Questions 4 and 5 due to: (1) attorney work product, and (2) not reasonably related to lead to the discovery of admissible evidence and unrelated to the transaction (relevance).

With respect to redactions made due to relevance, we note that the legal standards at issue in this proceeding are whether the proposed transaction is “necessary or proper for the service, accommodation, convenience or safety of the public” and “affirmatively promotes the service, accommodation, convenience or safety of the public in some substantial way.”

The proposed transaction, if authorized, will merge two of the largest utility companies in Pennsylvania. The Commission has a responsibility to thoroughly and diligently assess the proposed transaction, especially in light of the large number of customers who may be impacted by the proposed transaction. OCA plays an important role in ensuring the Commission has sufficient information in the evidentiary record to render a legally sound decision.

Questions 4 and 5, on their face, solicit (1) due diligence and consultant reports related to the proposed transaction, and (2) all reports, presentations, and analyses regarding the proposed transaction which have been given to shareholders, Board of Directors, and senior management. These interrogatories are relevant to the determination of whether the proposed transaction is in the public interest. Due diligence is an important step in potential mergers; Essential Utilities’ answers have the potential to reveal whether Essential Utilities’ due diligence process revealed potential impacts (both negative and positive) to the public interest. Essential Utilities’ internal presentations to shareholders, Board of Directors, and senior management have the potential to show what Essential Utilities is communicating and presenting to these groups regarding what Essential Utilities believes are the potential positive impacts of the proposed transaction.

At this preliminary juncture, the parties are continuing to engage in discovery and formulate their positions on the proposed merger. Unredacted answers as to relevance to Questions 4 and 5 will help OCA develop its position on whether the proposed merger meets the legal requirements for Commission approval. Therefore, OCA’s Motion is granted with regard to the redactions made due to relevance. Essential Utilities is directed to remove all redactions made due to “not reasonably calculated to lead to the discovery of admissible evidence” or “unrelated to the transaction,” and resubmit its answers to OCA.

The resubmitted answers shall be properly marked with regard to “confidential” or “highly confidential” information. OCA shall comply with the terms of the Protective Order issued in this matter.

With regard to redactions made due to privileged attorney work product, those redactions are to remain in Essential Utilities’ answers to OCA. OCA’s Motion with regard to these redactions is held in abeyance pending OCA’s review of Essential Utilities’ resubmitted discovery responses.

Finally, we note that in its Answer to the Motion, Essential Utilities offered to permit OCA counsel an opportunity to view Essential Utilities’ answers to Questions 4 and 5 with the redactions made for relevance removed. Since Essential Utilities had no objection to OCA counsel viewing the answers to Questions 4 and 5 with the relevance redactions removed, we believe that it will not prejudice Essential Utilities to comply with this Order.

THEREFORE,

IT IS ORDERED;

1. That the Motion to Compel Answer to Interrogatory of the Office of Consumer Advocate OCA Interrogatories I-4 and I-5 is granted in part and held in abeyance in part.

2. That the Motion to Compel Answer to Interrogatory of the Office of Consumer Advocate OCA Interrogatories I-4 and I-5 is granted in that Essential Utilities is directed to remove all redactions made to its answers to OCA Interrogatories I-4 and I-5 on the basis of “not reasonably calculated to lead to the discovery of admissible evidence” and “unrelated to the transaction” and resubmit those answers to the Office of Consumer Advocate.

3. That the answers resubmitted to the Office of Consumer Advocate pursuant to Ordering Paragraph 2 shall maintain all redactions made on the basis of “attorney work product.”

4. That the answers resubmitted to the Office of Consumer Advocate pursuant to Ordering Paragraph 2 shall be properly marked with regard to “confidential” or “highly confidential” information.

5. That the Office of Consumer Advocate shall comply with the terms of the Protective Order issued in this matter.

6. That the answers resubmitted to the Office of Consumer Advocate pursuant to Ordering paragraph 2 shall be resubmitted to the Office of Consumer Advocate by **4:00 pm on Friday, March 13, 2026.**

7. The Motion to Compel Answer to Interrogatory of the Office of Consumer Advocate OCA Interrogatories I-4 and I-5 is held in abeyance in all other respects.

8. That, **by April 10, 2026**, the Office of Consumer Advocate and Essential Utilities shall submit a status report on the parties’ compliance with this Order, as well as whether there remain any outstanding discovery disputes with regard to OCA Interrogatories I-4 and I-5.

Date: March 10, 2026

/s/
Emily I. DeVoe
Ann Quimby
Administrative Law Judges

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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