

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Pike County Light	:	
And Power Company, Buyer Corning Natural	:	
Gas Holding Corporation and Seller Orange	:	A-2015-2517036
And Rockland Utilities, Inc. for a Certificate	:	A-2015-2517111
Of Public Convenience Approving the Transfer	:	G-2015-2517113
By Sale of 100% of the Stock of Pike County	:	G-2015-2517114
Light and Power Company from Seller Orange	:	S-2015-2517115
And Rockland Utilities, Inc. to Buyer Corning	:	S-2015-2517116
Natural Gas Holding Corporation	:	

RECOMMENDED DECISION

Before
Susan D. Colwell
Administrative Law Judge

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I. INTRODUCTION

This Recommended Decision recommends the approval of a settlement of all issues among all parties to litigation arising from the application of a small Pennsylvania electric and gas utility and its New York parent to sell the utility to the parent corporation of another small Pennsylvania gas utility. The Joint Petition for Settlement and the statements in support of the litigating parties provide the factors necessary to justify approval.

II. HISTORY OF THE PROCEEDINGS

On December 4, 2015, Pike County Light and Power Company (PCLP) and Orange and Rockland Utilities, Inc. (O&R), (collectively Joint Applicants) filed a Joint Application seeking approval to transfer control and ownership interests to Corning Natural Gas Holding Corporation (CNGHC). The Application asks for all necessary authority, approvals and certificates of public convenience pursuant to Sections 1102(a)(3), 2102(b) and 1901(a) and (c) of the Public Utility Code, 66 Pa.C.S. §§ 1102(a)(3), 2102(b) and 1901(a) and (c) regarding the transfer of all of O&R's ownership interests in PCLP to CNGHC, the affiliated interest agreements, and the securities transactions involving Pike.

Notice of the filings was published in the *Pennsylvania Bulletin* on December 19, 2015, 45 Pa.B. 7272, and January 4, 2016 was set as the deadline for the filing of formal protests and petitions to intervene.

On December 23, 2015, the Office of Consumer Advocate (OCA) filed its Protest and Public Statement. Also on December 23, 2015, the Office of Small Business Advocate (OSBA) filed its notice of appearance. On January 12, 2016, a notice of prehearing conference was issued, scheduling the prehearing conference for Monday, February 1, 2016.

The Joint Applicants, OCA and OSBA filed prehearing memos. The prehearing conference was held as scheduled, with the following counsel attending: on behalf of PCLP, John J. Gallagher, Esq.; on behalf of O&R, John Carley, Esq.; on behalf of CNGHC, Thomas J. Sniscak,

Esq., and William Lehman, Esq.; on behalf of OCA, Aron J. Beatty, Esq., and Brandon Pierce, Esq.; and on behalf of OSBA, Daniel Asmus, Esq.

The parties worked to establish a mutually acceptable litigation schedule, and agreed upon modifications to the Commission's discovery regulations. These were adopted in the Scheduling Order issued March 19, 2016. The parties indicated that a motion for protective order will be forthcoming and will be dealt with separately.

The Applicants served and filed direct testimony in a panel format on February 19, 2016 and subsequently withdrew it and re-served it as individual statements pursuant to my Order dated March 25, 2016. The OCA served its direct on April 1, 2016. OSBA filed a letter indicating that it would not be serving direct testimony. CNGHC served its rebuttal on April 15, 2016.

The parties requested that they be permitted to continue negotiations in lieu of the first day of the scheduled hearings, and the hearing was commenced on May 6, 2016. The parties submitted their prepared testimony, all of which was admitted to the record and includes: Pike County Light & Power Statement 1 (Direct testimony of Francis W. Peverly), Statement 2 (Direct testimony of Kenneth A. Kosior), and Statement 3 (Direct testimony of Kate Trischitta); Corning Natural Gas Holding Corporation Statements 1 and 1-R (Direct and rebuttal testimony of Michael I. German), Statements 2 and 2-R (Direct and rebuttal testimony of Russell S. Miller), Statement 3 (Direct testimony of Matthew J. Cook), Statements 4 and 4-R (Direct and Rebuttal testimony of Firouzeh Sarhangi); Statements 5 and 5-R (Direct and rebuttal testimony of L. Mario DiValentino), and Exhibits 1 through 9; OCA Statements 1, 1-R and 1-S (Direct, rebuttal and surrebuttal of Matthew I. Kahal). OSBA submitted no prepared testimony.

Following the request and grant of extension of the briefing schedule, the parties informed me that they had reached a settlement of all issues which would be filed no later than June 10, 2016. CNGHC filed its Exhibit No. 13 on June 9, 2016, which is an Extended Financing Commitment Letter, and represented that its admission was not opposed.

On June 10, 2016, a Joint Petition for Full Settlement was filed in this matter. This Recommended Decision recommends approval without modification. No party opposed either the Exhibit or the Joint Petition, and the record closed on June 29, 2016.

III. TERMS OF THE SETTLEMENT

The terms of the Settlement begin at ¶ 36 of the Joint Petition and are designated with lower case letters. For ease of reference, the designations from the Joint Petition for Settlement are the same as those which appear below.

a. PCL&P shall commence a natural gas system cast iron and bare steel (CIBS) study within six (6) months of closing, and within eighteen (18) months of closing start implementation of a replacement program.

b. Six (6) months after closing, PCL&P shall start a study of alternative supply options for its gas and electric divisions. For the electric division, the options studied shall include, but are not limited to, the inclusion of bilateral contracts as defined in 66 Pa.C.S. § 2803, which "may include the EEI Master Agreement for physical energy purchases and sales and the ISDA Master Agreement for financial energy purchases and sales." The study shall also include, but not be limited to, other flexible options such as purchases of financial (or physical) hedges in small quantities from brokers. PCL&P shall consult with OCA and OSBA before the study begins with respect to its scope and the options to be studied. PCL&P, OCA and OSBA shall meet to discuss the results of the study within twelve (12) months of closing.

c. PCL&P shall not file for a general rate increase under 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d) prior to a [sic] March 1, 2018. However, if a legislative body, the judiciary, or an administrative agency, including the Commission, enacts or orders any fundamental changes in policy or statutes that directly and substantially affect the Company's cost of service, the Settlement shall not prevent the Company from filing a tariff or tariff supplement to the extent necessitated by such action. In addition, this provision shall not preclude the Company from seeking extraordinary rate relief under Section 1308(e) of the Public Utility Code, 66 Pa.C.S. § 1308(e).

d. PCL&P will hold no fewer than four (4) quarterly meetings during the three (3) years following the date of closing with

local officials, economic development councils and/or agencies, to discuss any need for expansion of service or any service issues.

e. PCLP and O&R will modify the Transition Services Agreement (TSA) to allow PCLP to extend the 12 month term of the TSA, on a month to month basis, for a maximum of an additional six (6) months. During the term of the Transitional Service Agreement, PCL&P will meet or have a quarterly conference with OCA and OSBA to (a) explain in sufficient detail what services PCL&P is continuing to take under the TSA and what services it no longer requires and (b) to provide sufficient detail of what substitute services from the CNGHC or other vendors has or will occur. OCA and OSBA shall keep such information confidential during the term of the Transitional Service Agreement.

f. O&R and CNGHC agree that the TSA is intended to provide PCLP/CNGHC with the ability to procure all of the services listed in TSA Exhibit A during the full term of the agreement. O&R and CNGHC further agree that the TSA "Hours Limitation" provision will not be applicable to emergency or extraordinary circumstances (see Transcript at 44).

g. CNGHC shall provide monthly updates to OCA and OSBA of its General Manager hiring initiative until the General Manager is hired. OCA and OSBA shall keep confidential the identity of, and any information which could identify, candidates who request that their interest in the position be kept confidential.

h. CNGHC fully acknowledges its responsibility to promptly implement a staffing plan for PCL&P after closing that will provide safe, reliable, and responsive gas and electric utility service at reasonable cost to PCL&P customers. To that end, PCL&P/CNGHC's staffing plan will include approximately twelve (12) full time equivalent employees (FTSs) of PCL&P. PCL&P will hire, by no later than three (3) months after closing, as PCL&P employees the following five (5) full time positions: two (2) gas fitter/meter readers, one general manager, one (1) customer service manager/public affairs manager, and one (1) customer service representative. If additional time is required to secure qualified persons for these five (5) positions, PCL&P/CNGHC may take up to nine (9) additional months (for a total of one year from closing) to fill these positions, provided it shows cause for doing so and has exercised its best cost-effective and expeditious efforts to obtain qualified personnel. For the remaining positions in the areas of billing, IT, accounting, and HR/insurance, within 18 months of closing, these positions will be filled, or service provided, by hired PCL&P employees, CNGHC employees, contractors or a combination thereof. For the areas of electric crew persons, electric engineering

support, and supply analyst/procurement, the Company will staff these positions within 18 months with PCL&P or CNGHC employees unless the Company demonstrates that staffing some or all of these positions through contractor employees is cost-effective and fulfills PCL&P's obligation to provide service in accordance with the requirements of the Public Utility Code. If PCL&P determines to use contractors for any of the above positions, it shall provide its demonstration to the Commission for review and approval, which shall occur within 10 days of filing. This review and approval requirement shall expire 18 months after the date of closing.

i. PCL&P/CNGHC shall provide OCA, OSBA, and the Commission with sufficiently detailed quarterly status reports on the progress of retaining an electric and gas utility staff for PCL&P. Each report shall contain information regarding the number of permanent staff retained and the number of contractors still in use.

j. PCL&P will continue its Electric Division Reliability Plan.

k. Transaction costs and costs incurred as a result of this acquisition will not be claimed by PCL&P in any rate case. Such costs shall include the costs incurred to effect and gain regulatory approvals for the purchase of PCL&P, the costs of recruiting a new staff, the cost of training a new staff, the costs of bringing PCL&P into compliance with PUC regulations due to the change in ownership, except to the extent PCL&P can demonstrate that such costs result in cost savings for PCL&P customers.

l. No goodwill or acquisition premium, if any, will be claimed by PCL&P in any rate case (including goodwill-related equity in capital structure).

m. For the next general gas and electric rate cases, PCL&P shall not request inclusion of risk premium in the authorized return on equity for small size or for any other aspect of parent company (CNGHC) risk attributes. While this provision does not prohibit PCL&P from requesting such a risk premium in future rate cases beyond the first post-Closing cases, all parties retain all rights to oppose such a request for a risk premium.

n. PCL&P customers shall be held harmless from adverse rate effects associated with tax and accounting changes associated with this transaction. This would include but not be limited to the loss of the PCL&P balance of accumulated deferred taxes to the extent they are includable in rate base as a deduction. PCL&P would have the burden of demonstrating an absence of harm from the loss of

PCL&P's pre-Closing deferred tax balance at the time of its next rate case to the extent they are includable in rate base as a deduction.

o. PCL&P/CHGHC shall study the feasibility and cost implications of an interest rate swap, or similar switch to fixed rate debt, to hedge variable rate debt and shall provide its findings in one of its quarterly status reports filed within six months after closing of the transaction.

p. PCL&P shall establish a service center/office in PCL&P's service territory.

The parties include the traditional settlement terms: that the Settlement may not be used as precedent to establish positions of the individual parties; that the Settlement represents compromise and not the positions of any of the individual parties; that the Settlement is conditioned upon the Commission's approval of it without modification and that all parties are entitled to withdraw from the Settlement if the Commission alters it; that all parties will make reasonable efforts to obtain approvals; and, that exceptions are waived if the Recommended Decision recommends approval without modification.

IV. DISCUSSION

A. Legal Standards for Commission Approval of Utility Acquisitions

The Public Utility Code requires the Commission to issue a Certificate of Public Convenience as a legal prerequisite to certain property transfers by public utilities or their affiliated

interests. 66 Pa.C.S. §§ 1102(a)(3)¹; 1103(a); *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, (Pa. 2007), 2007 Pa. LEXIS 2896 (*Popowsky*); *Lloyd v. Pa. Pub. Util. Comm'n*, 17 A.3d 425 (Pa.Cmwlth. 2011), 2011 Pa. Commw. LEXIS 77 (*Lloyd*). The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa.C.S.A. § 332, and therefore, the Joint Applicants have the burden of proving entitlement to certification and must do so by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993), 2 Pa.C.S. § 704. 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. V. Pa. Publ. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

¹ § 1102. Enumeration of acts requiring certificate

(a) **General rule.**—Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

* * *

(3) For any public utility or an affiliated interest of a public utility as defined in section 2010 (relating to definition of affiliated interest), except a common carrier by railroad subject to the Interstate Commerce Act, to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa.C.S. § 1102(a)(footnote omitted).

§ 1103. Procedure to obtain certificates of public convenience

(a) **General rule.**— . . . A certificate of public convenience shall be granted by order of the commission, 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)(in pertinent part).

A certificate of public convenience will be issued “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. . . .” 66 Pa.C.S.A. § 1103(a). This standard 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. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The substantial public interest standard is satisfied by a simple preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky*. The substantial public benefit test does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, at 617-18, 937 A.2d at 1061. Further, the Joint Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 2013 Pa. PUC LEXIS 679 (Order entered Nov. 14, 2013).

This Transaction requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience. 66 Pa.C.S. §1102(a)(3). Even where the Commission finds sufficient public benefit that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable. 66 Pa.C.S. §1103(a). However, the Commission has refrained from exercising the power to impose conditions when the proposed Transaction provides affirmative public benefits unless the record indicates service deficiencies or infrastructure deterioration to the point of impairing the technical, managerial, or financial fitness of the merging companies. *Joint Application of SBC Communications, Inc. and AT&T Corp. Together with its Certificated Pennsylvania Subsidiaries for Approval of Merger*, Docket Nos. A-311163F0006, A-310213F0008, A-310258F0005, Opinion and Order adopted and entered October 6, 2005.

The Commission must consider whether the proposed Transaction is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail customers in this Commonwealth from obtaining the benefits of a properly

functioning and workable competitive retail market. 66 Pa.C.S. §§2811(e) (electric) and 2210(a) (gas); (*Popowsky* 937 A.2d 1056-57); (*Lloyd* 17 A.3d at 430).

The Public Utility Code and applicable case law, therefore, requires the Commission to review the proposed Transaction to determine if it is in the public interest, provides substantial, affirmative benefits, and is not likely to result in anticompetitive or discriminatory conduct or the unlawful exercise of market power.

B. The Parties to the Transaction

Seller is Orange & Rockland Utilities, Inc. (O&R), corporate parent organized and existing under the laws of the State of New York with a principal business office located at One Blue Hill Plaza, Pearl River, New York 10965. O&R, with its two wholly-owned subsidiaries, PCL&P and Rockland Electric Company (RECO), a New Jersey public utility, jointly operate a single fully integrated electric production and transmission system serving parts of Pennsylvania, New Jersey and New York and are members of the New York Independent System Operator (NYISO). O&R, providing electric and natural gas utility services in Rockland, Orange and Sullivan Counties in New York State, is the sole stockholder of both PCL&P and RECO.

Application ¶7.

O&R operates PCL&P using O&R employees. Pursuant to a FERC-approved Power Supply Agreement (PSA), Orange and Rockland sells and delivers electric supply to PCL&P. PCL&P Stmt. 2 at 4. Pursuant to a FERC-approved gas tariff, Orange and Rockland sells and delivers gas supply to PCL&P. PCL&P Stmt. 2 at 4. Pursuant to a Commission-approved Affiliate Interest Agreement (AIA), as of July 1, 2014, Orange and Rockland provides PCL&P with the facilities and workforce required to conduct the construction, maintenance and operation of PCL&P's electric distribution system, natural gas distribution system, and commercial, general and administrative operations. PCL&P has no operating employees. PCL&P Stmt. 2 at 4.

Neither CNGHC or Orange and Rockland own electric generation. PCL&P Stmt. 2 at 5-6. As of October 1, 2015, approximately 53% of PCL&P's customers take generation services from an electric generation supplier (EGS). PCL&P Stmt. 2 at 6.

PCL&P, the utility whose stock is proposed to be transferred, is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and is subject to regulation by the Commission. PCL&P furnishes: (1) electric distribution and provider of last resort services to approximately 4,500 customers in a certificated service territory which includes the Boroughs of Milford and Westfall in northeastern Pennsylvania; and (2) the distribution of natural gas to approximately 1,200 residential and commercial gas customers in Pike County, Pennsylvania. Application ¶5. PCL&P is a wholly owned subsidiary of O&R. PCL&P Stmt. 2 at 3.

Purchaser CNGHC is a New York holding company owning 100% of Corning Natural Gas Corporation (CNG), which is certificated as a natural gas distribution company in New York with approximately 15,000 residential, commercial, industrial and municipal customers in the Corning, Hammondsport and Virgil, New York areas, and to two other gas utilities which serve the Elmira and Bath, New York areas. CNGHC also owns a 50% share of Leatherstocking Gas Company, LLC (Leatherstocking). Leatherstocking is a certificated public utility providing natural gas service in Susquehanna and Bradford counties to approximately 270 customers. CNGHC owns 50% of Leatherstocking Pipeline Company, which is a non-certificated pipeline serving one customer in Pennsylvania. CNGHC Stmt. 1 at 3.

C. The Transaction

Pursuant to a Stock Purchase Agreement (SPA) between Orange and Rockland and CNGHC dated October 13, 2015, Orange and Rockland will sell and CNGHC will purchase all of the issued and outstanding shares of common stock of PCL&P for a base purchase price of \$13.117 million (Purchase Price). This Purchase Price is subject to a closing date working capital adjustment that will not increase the Purchase Price by more than \$3 million. As part of the purchase, CNGHC will assume PCL&P's outstanding \$3.2 million in bonds. Upon closing, CNGHC will directly own 100% of PCL&P. PCL&P will continue to exist as a corporation and will operate and charge duly authorized rates and terms of service approved by the Commission as a Pennsylvania electric and gas public utility subject to the jurisdiction of the Commission. PCL&P Stmt. 1 at 3.

D. CNGHC's Plans for PCL&P Post-Acquisition

1. Officers.

CNGHC has listed the proposed officers for post-acquisition PCL&P as follows:

Russell Miller is scheduled to serve on the PCL&P Board of Directors and to oversee the transition from O&R to CNGHC and to be responsible for the general manager position until one is hired. He is presently CNGHC's Vice President of Energy Supply and Business Development with over 25 years of experience in the natural gas industry. CNGHC Stmt. 2 at 1-2, CNGHC Stmt. in Support at ¶4, p. 3.

Mathew J. Cook will also serve on the PCL&P Board of Directors. He is Vice President – Operations with CNG and Leatherstocking Gas, with over 27 years of experience working with gas distribution companies and manages the engineering, construction, safety, training and compliance with state and federal safety regulations. CNGHC Stmt. 3 at 1-3; CNGHC Stmt. in Support at ¶5, pp. 3-4.

Firouzeh Sarhangi is set to be CFO of PCL&P and to serve on PCL&P's Board of Directors. Presently, she is responsible for the financial management operations of CNGHC, CNG, Leatherstocking Gas, and Leatherstocking Pipeline. She brings with her 32 years of public accounting experience. CNGHC Stmt. 4 at 1-2; CNGHC Stmt. in Support at ¶6, p. 4.

L. Mario DiValentino, former O&R employee holding various positions, including Vice President of Accounting, Finance and Controller, has been the regulatory and rate consultant for the CNGHC family of utilities, and he is slated to provide the same service for PCL&P. CNGHC Stmt. 5 at 1-2; CNGHC Stmt. in Support at ¶7.

Michael German will become the CEO of PCL&P and will serve on its Board of Directors. He was formerly President of NYSEG, a large combination gas and electric utility company, and was formerly a senior vice president of Southern Union responsible for the

Pennsylvania utility PG Energy. He has experience with regulatory compliance from his involvement with Leatherstocking Gas and PG Energy. CNGHC Stmt. 1 at 1; CNGHC Stmt. in Support at ¶3 p. 3.

2. Agreements

After closing, three transitional agreements will be in place between PCL&P and O&R for the supply of electric supply and service, gas supply and services, and other transitional services as modified by the Settlement. CNGHC Stmt. 2 at 2-3; Joint Petition at 10-11; CNGHC Stmt. in Support ¶36 at 14.

Under the Gas Supply & Gas Transportation Agreement, O&R will provide gas supply and transportation to PCL&P for a 36-month period, which may be extended for three 12-month periods. O&R currently provides gas supply and transportation to PCL&P, so there will be no break in service.

Under the Electric Supply Agreement (ESA) with O&R, PCL&P will obtain electric supply and transportation for a 36-month period which may be extended for three 12-month periods. O&R currently provides electric supply to PCL&P and will continue to do so in the same manner under the ESA. ESA; CNGHC Stmt. in Support ¶39 at p. 15.

The TSA provides PCL&P and CNGHC with the ability to procure all of the services listed in TSA Exhibit A during the full term of the agreement and any extension of the agreements. In addition, the TSA "Hours Limitation" provision will not be applicable to emergency or extraordinary circumstances. Joint Petition for Settlement at 11; CNGHC Stmt. in Support ¶ 42 at p. 16.

3. Responsibilities under the Settlement

The Joint Petition for Settlement provides for PCL&P to start a study of alternative supply options for gas and for alternative supply options for electricity six months after closing. Joint Petition at 10; CNGHC Stmt. in Support ¶¶38, 40 at p. 15. In addition, the Joint Petition for Settlement provides that PCL&P will have a quarterly conference with OCA and OSBA to explain services taken under the TSA and what substitute services will occur.

Concerns expressed by the OCA included the risk of hiring appropriate personnel to run the electric utility, as they will completely replace those who are running it now.

CNGHC states:

The General Manager CNGHC has committed to hire will work out of the operations center in Westfall, Pennsylvania, which is centrally located in PCL&P's service territory. (CNGHC St. 3 at 6). The General Manager will have the day to day responsibility of running the electric and gas operations and maintenance of PCL&P as well oversee [sic] the operations and management portions of the Transitional Services Agreement. The General Manager will report directly to Michael German and his management team and will be subject to his input and supervision. CHGNC anticipates that all gas and electric outage or emergency calls will be handled by the local Westfall office during normal working hours and that those type calls will be handled by the third-party customer service center during non-business hours. In both cases, the incoming service or emergency call will be dispatched directly to the on-call crew with notification made to the General Manager, Matt Cook, or other management personnel as need [sic]. This local presence will assure the customers of PCL&P will enjoy safe and reliable service around the clock. CNGHC will also be hiring or contracting experienced line and underground construction and maintenance crews to provide daily maintenance to the electric and gas facilities, as well as any planned facilities maintenance. These crews will report directly to the General manager. The line and/or underground crews will respond from the Westfall office and will be responsible for all field work operations such as out of service/emergency situations, gas system leak repair or electric pole replacement. This local staffing will be a benefit to the customers of PCL&P as it will ensure a timely response to all out of service or emergency situations. (CNGHC St. 23 at 6-7). CNGHC Stmt. in Support ¶48 at pp. 18-19.

CNGHC committed to maintaining PCL&P's electric reliability program, which includes vegetation management; inspection/replacement of poles, distribution lines, transformers, reclosures, and substations; voltage regulation and continuation of ongoing projects. CNGHC St. 3 at 7-11, Tr. 82; CNGHC Stmt. in Support ¶49 at p. 19.

Post-closing, PCL&P will continue to rely on O&R through third-party contracts for critical services, including technical support, power supply, and gas supply. There was no indication in the Application of what will happen when the existing agreements expire. OCA Stmt. 1 at 13. OCA went so far as to state that the CNGHC's present lack of electric utility expertise and resources is a legitimate reason for the Commission to reject this Application. OCA Stmt. 1 at 17.

Settlement negotiations allayed these fears, and CNGHC explained at the hearing that CNGHC had spoken with O&R about the workforce needed for PCL&P, including labor hours for particular lines, substations, and other skilled electrical work. Tr. 75. CNGHC testified that it performed its own study to determine the workforce that it will need to operate PCL&P, also considering the fulltime equivalents required to operate PCL&P and including the option of contracting out all of the line work. As CNGHC explains,

Going forward, CNGHC intend [sic] to operate PCL&P in a cost-efficient manner using its deliberate approach. (Tr. at 76:22-77:3). CNGHC also reviewed the average yearly costs for skilled works such as linemen, substation tech, electricians, and troublemen, vehicles and overhead such as fuel and overtime that PCL&P incurrent [sic] and compared that to options such as (1) PCL&P hiring its own workforce and owning vehicles; or (2) procuring these services through third party contract; or (3) procuring these services through an affiliated interest agreement, taking into account cost efficiency and adequacy of service provided. (Tr. at 77:9-78:6).

CNGHC Stmt. in Support ¶44 at p. 17.

CNGHC goes on to explain that it will execute mutual aid and line service contractor agreements after it has the authority to do so and will ensure that these are in place at the time of closing. CNGHC Stmt. in Support ¶45 at pp. 17-18.

Equipment already owned by PCL&P, such as transformers and conductors, will be transferred in the purchase, but no vehicles are owned by PCL&P. CNGHC will purchase those vehicles necessary to fulfill requirements and maintenance and avers that it has the ability to make these purchases. In the alternative, if a determination is made that these services should be contracted out, the vehicles and maintenance equipment may be owned by the contractor. Tr. 81-82; CNGHC Stmt. in Support ¶46 at p. 18.

CNGHC explains that it plans for PCL&P to hire a Customer Service Manager who will work out of the operations center in Westfall. The Westfall center will be staffed with local personnel who have the ability to respond to issues quickly. Again, Mr. Miller will be there to handle the transition period for the new employees. CNGHC Stmt. in Support ¶52 at pp 19-20.

The Joint Petition for Settlement requires CNGHC to provide monthly updates to OCA and OSBA of its hiring of a General Manager and its commitment to hire appropriate staff within specific time periods. Joint Petition for Settlement ¶36(h). As there will be Commission Staff monitoring this Transaction, CNGHC will be directed to include Staff in its monthly updates.

E. Technical fitness

CNGHC promotes its technical fitness to operate PCL&P by pointing out a number of factors, including that its record regarding its own subsidiary shows that it has an aggressive pipe replacement program. In 2015, CNGHC invested approximately \$5.8 million in system improvement and projects, repairing 292 leaks and replacing 492 services and 6.9 miles of main. In 2014, it invested \$8.4 million in system improvement and projects, repairing 301 leaks and replacing 411 services and 8.2 miles of main. The financial condition of the purchasing company before and after the acquisition is explained in Exhibits No. 6, 7, 8 and 9, the actual and pro forma balance sheets. CNGHC Stmt. 5 at 6; CNGHC Stmt. in Support ¶9 at pp. 4-5.

CNGHC has determined that ultimately, responsibility for working with O&R regarding gas and electric supply will be that of the General Manager, but that the immediate responsibility will fall to Matt Miller. CNGHC Stmt. in Support ¶50 at pp. 19-20.

CNGHC explains:

Regarding emergency situations during the transition, any emergency situation will be handled with due care and dispatch by Mr. Miller and Mr. Cook and when hired, the General Manager, working with O&R as necessary. Many emergencies that affect gas and electric distribution systems' physical plant also impact the utilities' ability to receive and distribute energy supplies. Handling both aspects of these emergencies is an important task. Mr. Miller and Mr. Cook have a long history of working together very effectively and rely on one another's expertise to handle each area of responsibility with just the right amount of technical overlap to complement each other's activities. This process will continue at PCL&P. Mr. Cook understands when and how a facilities emergency will impact both upstream and downstream energy supply functions and Mr. Miller possesses a similar understanding of what will impact physical plant operation. Mr. Miller and Mr. Cook will also ensure that the General Manager and the Customer Service Manager are trained to deal with emergency situations and know to notify PCL&P officers if certain situations would benefit their involvement. The entire management team will be mindful of and attentive to the obligations in the Commission's electric and gas regulations. (CNGHC St. 2 at 12).

CNGHC Stmt. in Support ¶53 at pp. 20-21.

CNGHC has also committed to fulfilling all obligations regarding emergency preparedness plans as required by 52 Pa.Code § 101 and 57.52. CNGHC will maintain those plans already in place and evaluate them to determine if there can be improvements made. CNGHC Stmt. in Support ¶54 at p. 21. The same commitment is made for inspection and maintenance responsibilities. CNGHC Stmt. in Support ¶55 at p. 21.

There are regulatory reporting requirements that CNGHC has committed to satisfying, stating that both CNGHC and Mr. Miller are familiar with the reports required and has experience with compiling and providing these reports. In addition, O&R will assist in their preparation during the transition period. CNGHC Stmt. in Support ¶57 at p. 21.

F. Financial fitness

CNGHC's current capital structure is 34% long-term debt and 66% equity. After the Transaction, CNGHC's capital structure is expected to be 42% long-term debt and 58% equity. CNGHC Stmt. 5 at 6; CNGHC Stmt. in Support ¶9 at p. 5.

CNGHC will finance the acquisition of PCL&P with cash, debt or other appropriate securities with a targeted capital structure for PCL&P appropriate for a regulated entity. Approximately 40% of the base purchase price for the acquisition will be provided by contributed equity, and the remaining amount will be funded by long-term debt to be issued by Manufacturers and Traders Trust Company ("M&T Bank"). CNGHC Stmt. 1 at 5, CNGHC Stmt. 4 at 5; CNGHC Exhibit No. 13.

PCL&P's current capital structure is 38% long-term debt and 62% equity. After the Transaction, PCL&P's capital structure is expected to be 55% long-term debt and 45% equity. CNGHC points out that the hypothetical capital structure used in the last rate case was 48% debt, 52% equity, and that this is very close to the expected ratio following closing. CNGHC Stmt. 5 at 6; CNGHC Stmt. in Support ¶17 at pp. 7-8). CNGHC states:

The current PCL&P capital structure includes \$10.5 million in "non-current liabilities to affiliates" (CNGHC Exhibit No. 10) that are not counted as long-term debt in PCL&P's balance sheet or in the above calculation. If this was counted as long-term debt, the current ratio would be 70% debt and 30% equity. Interest on this debt to affiliates is approximately \$400,000 a year in addition to interest recognized as long-term debt interest. (See "Other Interest" entry in CNGHC Exhibit NO. 11). As shown by the pro forma income statement (CNGHC Exhibit No. 11), the transaction will produce a net reduction in annual interest expense of \$102,000. The pro forma also shows that PCL&P will have net income of \$776,000, which is an increase of \$216,000 over actual 2015 income. (CNGHC Exhibit No. 11.). PCL&P is not taking on \$12 million more debt to finance this acquisition. Rather, the transaction *replaces* PCL&P's existing \$13.2 million of debt (owed to Banker's Trust and to L&R) with the new \$12 million loan from M&T Bank, which results in a net *reduction* of PCL&P's debt. (CNGHC Stmt. 5-R at 3 (DiValentino Rebuttal)). The \$9.9 million owed to ORU carries an interest rate that is currently at market and the \$3.2 million debt owed to Bankers Trust is very

short term and has an 7% interest rate compared with PCL&P's existing \$13.2 million debt, the \$12 million M&T debt at a 4% interest rate is more favorable to PCL&P. (CNGHC St. 5-R at 4-5). Thus, the acquisition is expected to keep PCL&P even more firmly operating in the black. (CNGHC St. 5 at 6-7; CNGHC St. 5-R at 5).

Post-closing PCL&P's debt to total capital ratio is expected to be 55%. CNGHC will strive to maintain a capital structure that is within 10% of a 50/50 capital structure. (CNGHC St. 4 at 9). CNGHC Stmt. in Support at ¶18, pp. 8-9.

G. Affiliated Interest Agreement and Securities Certificate

PCL&P has no operating employees and its service is provided by O&R employees under a Commission-approved Affiliated Interest Agreement (AFA) dated July 1, 2014, which will terminate upon closing of the stock purchase agreement. Stock Purchase Agreement §6.11. The replacement is a proposed AFA between PCL&P and CNG for services to be provided by CNG to PCL&P, which must commence upon the termination of the existing AFA. This agreement will enable PCL&P to purchase administrative, management, construction, operation, maintenance and other goods and services. AIA, Exhibit B; CNGHC Stmt. in Support ¶22 at p. 10. The AFA provides for assigning and allocating costs and for billing for these services.

PCL&P currently has requested registration of a Securities Certificate in the form of a Term Loan in the amount of \$12,000,000 from M&T Bank. PCL&P will partially finance the \$19,317,000 acquisition with new debt, in the form of a loan from M&T Bank in the amount of \$12,000,000. The terms state that the term is for five years from the date of closing, that there is a \$60,000 commitment fee, that the rate is a variable interest rate based on 1 month LIBOR plus 300 basis points, repayment of billed interest only for 6 months, then monthly payments of principal and interest based on an amortization not to exceed 10 years. It is a perfected first lien on all assets of Borrower and assets being acquired by Borrower. CNGHC Stmt. 4 at 7-8; CNGHC Stmt. in Support at ¶ 30, p. 13.

The result is that the securities certificate will allow the refinancing of PCL&P's existing \$13.2 million of debt and a net reduction of PCL&P's debt and a lower interest rate more favorable to PCL&P. CNGHC Stmt. 5-R at 3-5; CNGHC Stmt. in Support ¶ 34 at p. 14.

H. Public Interest

The Joint Petitioners submit the following reasons to find that the Joint Petition for Settlement is in the public interest:

a. The Settlement amicably and expeditiously resolves a number of important and potentially contentious issues. The administrative burden and costs to litigate these matters to conclusion, including possible appeal of any Final order, would be significant. Rate case costs permitted by the Commission are borne by ratepayers of the Company. Thus, the Settlement will not only conserve the time, effort and expense of all parties as well as those of the Commission and the Presiding Officer, it serves to lower allowable rate case costs and therefore rates.

b. The Joint Petitioners arrived at the Settlement terms after review of the Joint Applicants' responses to discovery by the statutory advocates, review and analysis of the Parties' prepared direct, rebuttal and surrebuttal testimony, the cross examination of witnesses, and in-depth discussions. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues raised by the Joint Application. Thus, the Settlement is consistent with the Commission's rules, practices and procedures promoting and encouraging negotiated settlements. *See* 52 Pa.Code §§ 5.231, 69.391, 69.401.

Joint Petition ¶44 (restated by PCL&P in its Statement in Support ¶47 at p.16).

CNGHC promotes the following as affirmative benefits:

Compatibility and Local Service. The compatibility is that PCL&P is a "good fit in the CNGHC family" and will allow CNGHC to focus on serving small towns and villages while O&R focuses on service in New York and New Jersey.

Nimble Decision-Making. CNGHC is smaller and more de-centralized than O&R, which will allow prompt decision-making and reaction time.

History of and Commitment to Innovation. CNGHC points to its program at Leatherstocking Gas to serve areas of Pennsylvania with gas where no service had existed.

Focus on Core Business. CNGHC seeks to manage and operate small and mid-sized utilities serving primarily rural areas and small towns and villages. O&R serves its New York/New Jersey customers (304,947 electric and 133,272 gas).

Increased Scale and Scope. PCL&P will make CNGHC stronger through scale and scope, ultimately improving its ability to attract capital at better rates to the benefit of both company and customers.

No changes for Customers during the Transition. The operations of PCL&P will not change because of the agreements in place.

Employing Pennsylvanians. CNGHC intends to employ locals to staff its operations center in Westfall, and when appropriate, vendors and contractors in both the electric and gas industries.

Deliberative Approach to Best Practices. CNGHC intends to see how PCL&P currently runs and will continue to run in order to determine what changes will improve its operations in the future. CNGHC and PCL&P will explore whether to adopt the best practices of each company, and ultimately, the PCL&P customers will benefit from this approach.

History of and Commitment to Customer Satisfaction and Service. CNGHC points to Leatherstocking's award as Business of the Year in 2014 by the Susquehanna County Economic Development Board and Progress Authority and the fact that Leatherstocking has had no formal complaints filed against it by its customers.

Utilization of Local Natural Gas. CNGHC will seek savings through using local gas from the Marcellus region where possible and efficient.

Potential for Competitive Fuel Options. While PCL&P is not required to implement retail gas choice in its service territory, CNGHC will consider provisions for its tariff similar to those in Leatherstocking's.

History of Community Presence and Service. CNGHC encourages employees to be active in their communities and has a program that matches a portion of employee gifts to approved charitable groups. CNGHC supports many civic organizations across its service territory.

Commitment to Continue PCL&P Charitable Contributions. CNGHC will maintain historic levels of charitable contributions for at least three years and will determine whether these levels are sufficient or need adjusting.

Local Support for Acquisition. CNGHC Exhibit 5 contains support letters from local leaders.

CNGHC avers that additional affirmative benefits to customers which appear in the Joint Petition for Settlement include the Settlement terms appearing in Paragraph 36 and lists all of them in its Statement in Support as providing affirmative benefits above and beyond that which the public benefits standard requires. As they appear earlier in this Recommended Decision, they are not reprinted here. However, the public advocates agree that the following terms do provide a public benefit:

Stay-out provision. PCL&P shall not, in the absence of an exception spelled out, file for a general rate increase under Section 1308(d). Joint Petition for Settlement § 36(c).

This provision allays OCA's concerns that PCL&P would be free to file a base rate case if PCL&P's costs rose because of its affiliation with CNGHC instead of the larger O&R. "The stay-out will provide Pike customers with a measure of rate stability and assurance that a rate increase will not be requested prior to March 1, 2018, thus mitigating the risk for Pike's ratepayers." OCA Stmt. in Support at 6.

No rate recovery of transaction costs or acquisition premium. These subsections provide assurance that Pike will not claim transaction costs incurred as a result of this acquisition,

or goodwill costs in any rate case, which will alleviate the risk that Pike's ratepayers will be required to assume these costs. OCA Stmt. in Support at 7.

No inclusion of risk premium in next general rate case, customers held harmless from certain rate effects of transaction, and interest swap study. OCA's expressed concern in this litigation was that Pike's customers should be held harmless for the loss of deferred taxes on the Company's balance sheet and that the Company should explore the possibility of switching to a fixed rate debt. Tr. 134-135. These concerns are adequately addressed in the Joint Petition for Settlement. In addition, customers are held harmless from adverse rate effects associated with tax and accounting charges related to this Transaction. PCL&P/CNGHC has agreed to study the feasibility and cost implications of an interest rate swap, or similar switch to fixed rate debt, to hedge variable rate debt and shall provide its findings in one of its quarterly status reports filed within six months of closing. These provisions aid in protecting ratepayers from exposure to substantial rate increases as a result of this transaction. OCA Stmt. in Support at 7.

CIBS study and replacement program. PCL&P will commence a natural gas system cast iron and bare steel (CIBS) study within six months of closing, and to begin replacement within 18 months. Joint Petition for Settlement ¶36(a).

Alternative Supply Option Study. PCL&P will explore alternative supply options for its gas and electric divisions. Joint Petition for Settlement ¶36(b).

OCA avers that these provisions address its stated concerns relating to CNGHC's fitness to operate PCL&P as "they require Pike/Corning to consider operational improvements that have the potential to bring major benefits to Pike customers. Such requirements will help to ensure that Corning has the technical and financial fitness to operate Pike. As such, these provisions are beneficial to the public." OCA Stmt. in Support at 10.

Quarterly meetings on expansion of service. PCL&P agrees to hold no fewer than four quarterly meetings during the three years following the date of closing with local officials, economic development councils and/or agencies, to discuss any need for expansion of service or any service issues. Joint Petition for Settlement §36(d). OCA favors this provision because it ensures that

PCL&P will maintain a relationship with the community to meet its needs. OCA Stmt. in Support at 10.

Option for extension of TSA. PCL&P and O&R agree to modify the TSA to allow PCL&P to extend the 12-month term on a month-to-month basis for a maximum of six months longer than originally proposed. While the TSA is in effect, PCL&P will confer quarterly with OCA and OSBA to discuss services taken under the TSA or no longer necessary. Joint Petition for Settlement ¶36(e). OSBA promotes this provision as a sign of additional assurance of stability. OSBA Stmt. in Support at 3.

Confirmation of TSA terms. This section merely confirms that the TSA provides PCL&P/CNGHC with the ability to procure all service listed in TSA Exhibit A during the full term of the agreement, and that the "Hours Limitation" provision will not be applicable to emergency or extraordinary circumstances. Joint Petition for Settlement ¶36(f).

OCA submits that (e) and (f) together clarify any confusion regarding the intent of the TSA and addresses concerns expressed by the OCA regarding CNGHC's lack of experience in running an electric utility. The 6-month extension of the TSA, the required quarterly meetings in the Settlement, and the modifications/clarifications of limitations to the TSA will help to ensure a smooth transition. OCA avers that these are in the public interest. OCA Stmt. in Support at 8.

Monthly Updates on General Manager position and detailed Staffing Plan and Timeline. CNGHC's timeline for hiring its General Manager and necessary staff for PCL&P is spelled out in these paragraphs. OCA and OSBA are to be kept informed of hiring actions, PCL&P must receive Commission approval for hiring contractors for the positions identified, and OCA, OSBA and the Commission will receive quarterly status reports. Joint Petition for Settlement ¶36(g), (h), and (i).

OCA states that these provisions address its concerns relating to the staffing plan outlined in the Joint Application. PCL&P presently has no dedicated employees, as O&R uses its own employees who split their time between the utilities under an Affiliated Interest Agreement approved by the Commission. The Joint Application acknowledged that employees would be necessary but did not detail their hiring or the overall staffing plan. The Joint Petition for

Settlement established a more detailed plan and this addressed the OCA concerns. OCA states that the PCL&P agreement to hire employees headquartered in Pennsylvania is a key benefit to this Settlement, establishing that the Settlement is in the public interest and in the interest of PCL&P's ratepayers. OCA Stmt. in Support at 9.

OSBA states that this staffing plan has alleviated much of its concern about CNGHC's ability and expertise in managing an electric distribution company. OSBA Stmt. in Support at 4.

I. No adverse effects on retail competition.

The size of PCL&P in relation to the Pennsylvania retail market means that this Transaction will have no adverse impact on retail competition as a whole. PCL&P serves approximately 5,700 retail electric and gas customers total. There is no unlawful exercise of market power and no prevention for retail electric customers to seek alternative electric supply. As of October 1, 2015, approximately 53% of PCL&P's customers are served by EGSs, and the program will continue. In addition, PCL&P plans to implement retail gas choice in its service territory where it is not required now, thus countering any possible claim of anticompetitive effect on the market.

J. Disposition.

The parties agree and the record supports a finding that the proposed Transaction is in the public interest as it serves the needs of the current and future customers of PCL&P. The Transaction transfers a small electric and gas utility from its New York parent company, which no longer wishes to operate the Pennsylvania utility, to a company which has already proven its desire and ability to set up and operate a small Pennsylvania gas utility (Leatherstocking). The Transaction will result in local control of PCL&P, a local operations and call center for quick response for customers, and employment at that operations and call center for a number of local Pennsylvania citizens. PCL&P will need to acquire equipment as well, and its efforts to hire a workforce and equipment will be shared with both OCA and OSBA through monthly updates for hiring a general manager and quarterly meetings. This ensures that PCL&P will continue to serve

the needs of the ratepayers in a responsible manner, or the public advocates have the ability to bring issues to the attention of the Commission.

The continued operations of PCL&P is ensured by the numerous agreements that CNGHC has in place. The transitional agreements will provide for a continuation of electric and gas supply and services, with the ability to extend the agreements. The financial needs of the utility are adequately covered.

The Transaction will have no immediate effect on the ratepayers. Operations will not change because of the agreements in place, and the Settlement provides that PCL&P will not seek a base rate increase before March 1, 2018. This and the Settlement's barring PCL&P's ability to recover transaction, acquisition premium, and risk premium costs in a base rate case serves the public interest.

The Settlement requires PCL&P to explore alternative options for electric and gas supply, which will give PCL&P the knowledge necessary to eventually acquire energy through means other than from O&R.

The public advocates represent both residential ratepayers and small businesses, and both the OCA and OSBA have negotiated terms with the Applicants which results in a Joint Petition for Settlement that serves the public interest.

Therefore, this Transaction is consistent with and fulfills the requirement that the Commission find that the grant of a certificate of public convenience for the Transaction is necessary or proper for the service, accommodation, convenience or safety of the public within the meaning of 66 Pa.C.S.A. § 1103(a) because it will affirmatively promote the service, accommodation, convenience or safety of the public in the ways listed above. *City of York, supra*. The transaction does not result in anticompetitive or discriminatory conduct, does not involve the unlawful exercise of market power and in no way prevents the retail customers of this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail market. 66 Pa.C.S. §§ 2811(e)(electric), 2210(a)(gas); *Popowsky, supra*, and *Lloyd, supra*.

Accordingly, I recommend approval of the Joint Petition for Settlement. The addition of reporting requirements will not change the underlying Transaction, and therefore, the recommendation for approval is without modification of the Joint Petition for Settlement.

IV. CONCLUSIONS OF LAW

1. The Public Utility Code requires the Commission to issue a Certificate of Public Convenience as a legal prerequisite to certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. §§ 1102(a)(3); 1103(a); *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, (Pa. 2007), 2007 Pa. LEXIS 2896 (*Popowsky*); *Lloyd v. Pa. Pub. Util. Comm'n*, 17 A.3d 425 (Pa.Cmwlth. 2011), 2011 Pa. Commw. LEXIS 77 (*Lloyd*).

2. The Joint Applicants bear the burden of proving entitlement to certification by a preponderance of the evidence. The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa.C.S.A. § 332, and therefore, the Joint Applicants have the burden of proving entitlement to certification and must do so by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993), 2 Pa.C.S. § 704. 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. V. Pa. Publ. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

4. A certificate of public convenience will be issued “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. . . .” 66 Pa.C.S.A. § 1103(a).

5. The grant of a certificate of public convenience is necessary or proper for the service, accommodation, convenience or safety of the public.

6. The Commission must 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. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

7. The proposed transaction will affirmatively promote the service, accommodation, convenience, or safety of the public by transferring control and ownership of a small Pennsylvania gas and electric utility from a large New York utility which no longer wishes to operate the small utility to a proven owner which will keep the operations and service facility local, which will not affect base rates with transaction fees, and will make the transfer seamless to the customers.

8. The substantial public interest standard is satisfied by a simple preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm’n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007). The substantial public benefit test does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, at 617-18, 937 A.2d at 1061.

9. The Joint Applicants have carried their burden of proving a substantial public interest by a preponderance of the evidence.

10. Further, the Joint Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas*

Company, LLC, Docket No. A-2013-2353647, 2013 Pa. PUC LEXIS 679 (Order entered Nov. 14, 2013).

11. Corning Natural Gas Holding Corporation is technically, legally, and financially fit to purchase the Pike County Power & Light Company.

12. Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable. 66 Pa.C.S. §1103(a).

13. The Commission must consider whether the proposed transaction is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail market. 66 Pa.C.S. §§2811(e) (electric) and 2210(a) (gas); (*Popowsky* 937 A.2d 1056-57); (*Lloyd* 17 A.3d at 430).

14. Corning Natural Gas Holding Corporation's acquisition of PCL&P will not result in the unlawful exercise of market power or otherwise prevent retail electricity customer in the PCL&P service territory from obtaining the benefits of a properly functioning competitive retail electricity market. See PCL&P Stmt. 2 at 5.

15. Corning Natural Gas Holding Corporation's acquisition of PCL&P will not affect employees of PCL&P because PCL&P does not have any operating employees. See PCL&P Stmt. 2 at 6.

16. The Transaction will not adversely affect rates, service or the day-to-day operations of PCL&P. See PCL&P Stmt. 1 at 4.

VI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Exhibit submitted by Corning Natural Gas Holding Corporation on June 9, 2016, marked CNGHC Exhibit No. 13, is admitted to the record.
2. That the Joint Petition for Settlement filed by Corning Natural Gas Holding Corporation, Pike County Light & Power Company, Orange & Rockland Utilities, Inc., the Office of Consumer Advocate and the Office of Small Business Advocate is approved without modification.
3. That the Joint Application of Pike County Light and Power Company, Corning Natural Gas Holding Corporation and Orange and Rockland Utilities, Inc. for a Certificate or Certificates of Public Convenience Evidencing the Pennsylvania Public Utility Commission's Approval of: the Transfer by Sale of 100% of the Issued and Outstanding Stock of Pike County Light & Power Company, a Public Utility Providing Natural Gas and Electric Distribution Service in Pennsylvania, from Seller Orange and Rockland Utilities, Inc. to Buyer Corning natural Gas Holding Corporation; Approval of Certain Affiliated Interest Filings and Securities Certificates; and, All other Approvals or Certificates Appropriate, Customary or Necessary Under the Public Utility Code to Carry Out the Transactions Described in the Application, at Docket Nos. A-2015-2517036, A-2015-2517111, G-2015-2517113, G-2015-2517114, S-2015-2517115, and S-2015-2517116, is approved as modified by the Joint Petition for Settlement.
4. That the Stock Purchase Agreement dated October 13, 2015, and attached to the Joint Application as Attachment 1, is approved.
5. That the Electric Supply Agreement attached to the Joint Application as Attachment 9, is approved.

6. That the Gas Supply Agreement attached to the Joint Application as Attachment 10, is approved.

7. That the Transitional Services Agreement attached to the Joint Application as Attachment 11, is approved.

8. That the Affiliated Interest Agreement attached to the Joint Application as Attachment 12, is approved.

9. That the Securities Certificate of Pike County Light and Power Company with respect to a term loan not to exceed \$12 million under Chapter 19 of Title 66 of the Public Utility Code and detailed under Attachment 13 to the Joint Application, is hereby registered.

10. That within 60 days of finalizing the term loan pursuant to the securities registration, Pike County Light and Power Company shall file notice with the Commission Secretary and shall serve notice upon the Finance Section of the Commission's Bureau of Technical Utility Services, together with a summary of terms of the loan.

11. That Joint Applicants shall file notice with the Commission Secretary and shall serve notice upon the Commission's Bureau of Technical Utility Services upon completion of the Transaction approved herein. If Joint Applicants determine that the Transaction will not take place, Joint Applicants shall promptly notify the Finance Section of the Commission's Bureau of Technical Services.

12. That the results of the study of alternative supply options for Pike County Light & Power Company's alternative supply options to be performed according to Paragraph 36(b) of the Joint Petition for Settlement be filed with the Commission's Bureaus of Audits, Consumer Services, and Technical Utility Services.

13. That the Joint Applicants shall notify the Supervisor of the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services of scheduled meetings with OCA and OSBA to be held according to the Settlement ¶36(e). Staff shall

have the option of either attending the meetings or receiving a report of the meeting within 30 days of its occurrence. Reports shall be confidential.

14. That Corning Natural Gas Holding Corporation file with the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services a report detailing the results of the workforce study for the electric division, including the average yearly work hours and costs identified as well as the review of the three options explored to meet those needs. This report may be confidential.

15. That Pike County Light & Power Company shall provide a copy of the monthly update referred to in the Joint Settlement ¶36(g) to the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

16. That Pike County Light & Power Company shall immediately notify the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services upon the hiring of its General Manager.

17. That, within 60 days from the entry date of the final Commission Order in this matter, Pike County Light & Power Company, shall, consistent with its submission of January 30, 2015, submit to the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services, an update regarding its Electric Division's Reliability Corrective Action Plan that shall include: a description of the corrective action activities completed in 2015, including key milestone dates, project start, and completion dates, as well as a description of the corrective actions taken and planned for 2016.

18. That filings for approval of the use of contractors under Settlement ¶36(h) shall also be served upon the Supervisor of the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

19. That quarterly status reports required by Settlement ¶36(i) shall be filed with the Commission's Secretary and shall also be served upon the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services.

20. That Pike County Light & Power Company shall meet with the Supervisor of the Commission's Reliability and Emergency Preparedness Section of the Bureau of Technical Utility Services to review the emergency plans required by 52 Pa.Code §§ 57.52 and 101.

Dated: June 30, 2016

/s/
Susan D. Colwell
Administrative Law Judge