

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Pennsylvania American	:	
Water Company and the Sewer Authority	:	
of the City of Scranton for Approval of (1)	:	
the transfer, by sale, of substantially all of the	:	
Sewer Authority of the City of Scranton's	:	A-2016-2537209
Sewer System and Sewage Treatment Works	:	
assets, properties and rights related to its	:	
wastewater collection and treatment system to	:	
Pennsylvania American Water Company, and (2)	:	
the rights of Pennsylvania American Water	:	
Company to begin to offer or furnish wastewater	:	
service to the public in the City of Scranton and	:	
the Borough of Dunmore, Lackawanna	:	
County, Pennsylvania	:	

RECOMMENDED DECISION

Before
David A. Salapa
Steven K. Haas
Administrative Law Judges

INTRODUCTION

A public utility and municipal authority filed a joint application requesting that the Commission approve the public utility's acquisition of the municipal authority's sewer system and sewage treatment works. This decision denies the application because a price adjustment provision in the acquisition agreement is unreasonable, not in the public interest and violates the Public Utility Code.

HISTORY OF THE PROCEEDING

On March 30, 2016, Pennsylvania American Water Company (PAWC) and the Sewer Authority of the City of Scranton (SSA), filed with the Pennsylvania Public Utility Commission (Commission) their joint application requesting that the Commission, pursuant to 66 Pa.C.S. § 1102, approve PAWC's acquisition of substantially all the assets of SSA's sewer system and sewage treatment works and approve PAWC's application to render wastewater service in the areas served by SSA.

The joint application states that PAWC is a public utility regulated by the Commission, providing water and wastewater service to the public. PAWC provides water and wastewater service to more than 400 communities in Pennsylvania. PAWC currently provides water service to the City of Scranton and Borough of Dunmore.

The joint application also asserts that SSA is a municipal authority organized under the laws of Pennsylvania. SSA owns and operates a wastewater collection and treatment system providing wastewater service to the City of Scranton and the Borough of Dunmore. SSA provides wastewater service to approximately 31,229 customers.

Notice of the joint application was published in the April 9, 2016 Pennsylvania Bulletin at 46 Pa.B. 1882, specifying a deadline of April 25, 2016, for filing protests, petitions to intervene and answers to the joint application. PAWC and SSA caused notice of the joint application to be published in the Scranton Times on April 12, 2016 and April 19, 2016. PAWC and SSA filed proofs of publication in the Scranton Times with the Commission on April 25, 2016.

On April 5, 2016, the Office of Consumer Advocate (OCA) filed a protest and public statement.

On April 8, 2016, the Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance.

By hearing notice dated April 20, 2016, the Commission scheduled an in-person prehearing conference on May 10, 2016 at 10:00 a.m. in Room 318, Scranton State Office Building, Scranton and assigned the case to Administrative Law Judge (ALJ) Ember S. Jandebaur.

On April 25, 2015, the Office of Small Business Advocate (OSBA) filed an answer, notice of intervention and public statement.

By hearing notice dated April 27, 2016, the Commission scheduled a telephonic prehearing conference on May 10, 2016 at 10:00 a.m. and reassigned the case to ALJ David A. Salapa and ALJ Steven K. Haas. We issued a prehearing conference order dated April 27, 2016, setting forth the procedural matters to be addressed at the telephonic prehearing conference.

At the request of the parties, the prehearing conference was converted to an in-person prehearing conference. We conducted a prehearing conference in this case on May 10, 2016 at 10:00 a.m. in Harrisburg. Present were counsel for PAWC, SSA, I&E, OCA and OSBA. As a result of the prehearing conference, we issued Prehearing Order #2, dated May 10, 2016. Prehearing Order #2 established a litigation and briefing schedule.

By notice dated May 10, 2016, the Commission scheduled this matter for hearings on July 6-8, 2016 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building in Harrisburg.

On May 13, 2016, PAWC and SSA filed a motion, pursuant to 52 Pa.Code §§ 5.91 and 5.103, to amend Exhibit L of their joint application. No answers were filed in response to the motion to amend the joint application. By order dated June 15, 2016, we granted the motion to amend.

On July 1, 2016, PAWC and SSA filed seven unsigned pro forma agreements, pursuant to 66 Pa.C.S. § 507, seeking Commission approval of those agreements. The pro forma agreements are between PAWC and SSA where PAWC agrees to assume contractual obligations of SSA. The contractual obligations are agreements between SSA and various entities

concerning the acquisition of facilities or the provision of services by SSA. The agreements were captioned as follows:

Agreement between the Sewer Authority of the City of Scranton, Moosic Borough, Pennsylvania, the Lackawanna River Basin Sewer Authority, and the Lower Lackawanna Valley Sanitary Authority, dated April 16, 2008, for the conveyance and acceptance of the Davis Street, Greenwood Avenue, and Corey Street sewer line from Moosic Borough to the Sewer Authority of the City of Scranton, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

Interjurisdictional agreement between the Sewer Authority of the City of Scranton and the Borough of Taylor, Pennsylvania, dated April 9, 2003, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

Agreement between the Sewer Authority of the City of Scranton, the Lackawanna River Basin Sewer Authority, Siniawa Enterprises, and the Borough of Dickson City, Pennsylvania, dated June 14, 1989, for the acceptance, conveyance, treatment, and disposal of wastewater from the Siniawa Enterprises wastewater collection system at the Scranton wastewater collection system and wastewater treatment plant, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

Interjurisdictional agreement between the Sewer Authority of the City of Scranton and Moosic Borough, Pennsylvania, dated May 13, 2003, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

Agreement between the Sewer Authority of the City of Scranton, the City of Scranton, Lackawanna County, the Lackawanna River Basin Sewer Authority, and the Borough of Moosic, Pennsylvania, dated July 24, 2003, for the acceptance, conveyance, treatment, and disposal of wastewater from the Montage, Inc. wastewater collection system at the Scranton wastewater collection system and wastewater treatment plant, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

Interjurisdictional agreement between the Sewer Authority of the City of Scranton and the Borough of Dickson City, Pennsylvania, dated April 14, 2003, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

Agreement between the Lower Lackawanna Valley Sanitary Authority, the Scranton-Dunmore Sewer Authority, and the Borough of Taylor, Pennsylvania, dated January 12, 1976, as will be assumed and assigned upon closing by written agreement in a form substantially similar to the attached pro forma assumption and assignment agreement;

As of the date of this decision, PAWC has not filed executed versions of these agreements.

We conducted hearings as scheduled on July 6-8, 2016. David P. Zambito, Esquire, D. Troy Sellars, Esquire and R. Timothy Weston, Esquire appeared on behalf of PAWC; John F. Poviliatis, Esquire and Alan M. Seltzer, Esquire appeared on behalf of SSA; Allison C. Kaster, Esquire and Gina L. Lauffer, Esquire appeared on behalf of I&E; Christine M. Hoover, Esquire and Erin L. Gannon, Esquire appeared on behalf of OCA and Sharon E. Webb, Esquire appeared on behalf of OSBA. The evidentiary hearings resulted in a transcript of 168 pages, consisting of pages 49 through 217.

On July 19, 2016, the parties filed main briefs (M.B.). On July 27, 2016, the parties, except for OSBA, filed reply briefs (R.B.). The evidentiary record in this proceeding closed on July 27, 2016, the date the parties filed their reply briefs. The matter is now ready for decision.

FINDINGS OF FACT

1. On March 30, 2016, PAWC and SSA filed their joint application requesting that the Commission, pursuant to 66 Pa.C.S. § 1102, approve PAWC's acquisition of all the assets of SSA's sewer system and sewage treatment works and approve PAWC's application to render wastewater service in the areas served by SSA.

2. Notice of the joint application was published in the April 9, 2016 Pennsylvania Bulletin at 46 Pa.B. 1882, specifying a deadline of April 25, 2016, for filing protests, petitions to intervene and answers to the joint application.

3. Notice of the joint application was published in the Scranton Times on April 12, 2016 and April 19, 2016.

4. Proofs of publication in the Scranton Times were filed with the Commission on April 25, 2016.

5. On April 5, 2016, OCA filed a protest and public statement.
6. On April 8, 2016, I&E filed a notice of appearance.
7. On April 25, 2015, OSBA filed an answer, notice of intervention and public statement.
8. On May 13, 2016, PAWC and SSA filed a motion, pursuant to 52 Pa.Code §§ 5.91 and 5.103, to amend Exhibit L of their joint application.
9. By order dated June 15, 2016, the motion to amend was granted.
10. On July 1, 2016, PAWC and SSA filed seven pro forma agreements, pursuant to 66 Pa.C.S. § 507, seeking Commission approval of those agreements.
11. The pro forma agreements are between PAWC and SSA where PAWC agrees to assume contractual obligations of SSA.
12. SSA currently owns and operates a wastewater collection and treatment system providing wastewater service to the City of Scranton and the Borough of Dunmore. SSA St. 1, p. 3.
13. SSA provides wholesale service to several adjacent communities, including the Borough of Dickson, Moosic Borough and the Borough of Taylor. SSA St. 1, p. 3.
14. SSA's wastewater collection and treatment system consists of approximately 275 miles of sewer mains, of which approximately 172 miles are combined sewers, 80 combined outflows and 7 pumping stations. SSA St. 1, p. 3.
15. SSA's wastewater treatment plant has a 20 million gallon daily flow, providing service to approximately 31,000 customers in a total population estimated at 90,000. SSA St. 1, p. 3.

16. Approximately 95% of SSA's customers are residential customers who account for around 85% of SSA's revenues. SSA St. 1, p. 3.

17. SSA has approximately 84 employees, 72 of whom are covered by a union contract. SSA St. 1, p. 3.

18. The current union contract was signed on April 1, 2013 and will expire on March 31, 2017. SSA St. 1, p. 3.

19. A consent decree with the Pennsylvania Department of Environmental Protection (DEP) and Environmental Protection Agency (EPA) dated January 31, 2013 obligates SSA to implement a long term control plan (LTCP) that requires approximately \$140 million in capital investment over a 25 year period ending December 1, 2037. SSA St. 1, p. 4.

20. Pursuant to this consent decree, SSA has adopted the LTCP and has agreed to take corrective actions to address combined sewer overflows (CSOs), which result in discharging untreated sewage and storm water into streams and to address other issues to limit discharges into streams. SSA St. 1, p. 4.

21. The obligations imposed by the consent decree as well as ongoing maintenance and capital requirements, led SSA to evaluate whether continuing to provide wastewater service was in the best interests of SSA, its customers, the City of Scranton and the Borough of Dunmore. SSA St. 1, p. 4.

22. Simultaneously, SSA's consultants estimated that customer's wastewater rates would increase an average of 4.57% per year over the next 30 years if SSA implemented the LTCP and continued on a standalone basis. SSA St. 1, p. 4.

23. SSA considered entering into an agreement with a third party to operate and maintain its wastewater collection and treatment system or a sale of that system to an entity better able to meet the obligations of the consent decree and keep rates for wastewater service at reasonable levels. SSA St. 1, p. 5.

24. SSA issued a request for proposal (RFP) on March 3, 2015 soliciting proposals for a long term maintenance and operations agreement as well as proposals for the purchase of its wastewater collection and treatment system. SSA St. 1, p. 5.

25. The objectives of the RFP included 1) providing high quality service to SSA's customers; 2) continuing to meet all applicable environmental requirements, including more effective ways of complying with state and federal mandates; 3) ensuring SSA's assets are properly maintained; 4) mitigation of future rate increases; 5) fair treatment of SSA's employees; 6) minimizing future capital costs; 7) supporting local economic objectives. SSA St. 1, p. 5.

26. SSA received four responses to the RFP. SSA St. 1, p. 5.

27. After SSA received these responses and evaluated them, it selected PAWC as the preferred bidder. SSA St. 1, p. 5.

28. SSA executed a memorandum of understanding (MOU) with PAWC on December 15, 2015. SSA St. 1, p. 5.

29. The MOU provided a time period for SSA and PAWC to negotiate and execute a sales agreement. SSA St. 1, p. 5-6.

30. SSA and PAWC successfully negotiated and signed an asset purchase agreement (APA) on March 29, 2016. SSA St. 1, p. 6.

31. The APA obligates PAWC to purchase substantially all the assets, properties and rights of SSA's wastewater collection and treatment system for \$195,000,000, subject to certain adjustments. SSA St. 1, p. 5, PAWC Ex. BJG-1.

32. The APA intends to provide a mechanism by which the rates of SSA's system wastewater customers could gradually come in line with PAWC's average system rates, which are defined by the APA as the PAWC Rate Zone 1 of PAWC's wastewater tariff. PAWC St. 4, p. 3.

33. Rate Zone 1 is the primary rate zone of PAWC's wastewater tariff. PAWC St. 4, p. 3.
34. PAWC is attempting to adopt system wide wastewater rates over time and move all customers, including those currently being served by the SSA, to Rate Zone 1. PAWC St. 4, p. 3.
35. PAWC has committed to adopt, upon closing of the transaction, SSA's current customer charge and consumption charge; provided that the current customer charge will be divided and billed monthly instead of every other month as SSA currently bills. PAWC St. 4, p. 3-4.
36. After PAWC closes the transaction, SSA's system customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission concerning all rates other than the customer charge and consumption charge, including capacity reservation fees, tapping fees and the like, as well as non-rate related terms and conditions of service. PAWC St. 4, p. 4.
37. The initial rates to be applicable to the former SSA wastewater customers are set forth in Exhibit K to the application. PAWC St. 4, p. 4, PAWC Exhibit BJG-I.
38. The initial rates are also set forth in the pro forma tariff supplement attached as Exhibit L to the application. PAWC St. 4, p. 3.
39. SSA system customers will be governed by rates for Rate Zone 1. PAWC St. 4, p. 4.
40. PAWC has agreed not to implement a rate increase for SSA's system wastewater customers prior to January 1, 2018 and not to implement a distribution system improvement charge prior to January 1, 2019. PAWC St. 4, p. 4.

41. In its first base rate case following closing of the transaction, PAWC will propose a 0% increase for SSA's system customers. PAWC St. 4, p. 4.

42. In years 11 through 13 following closing of the transaction, PAWC has agreed to attempt to bring the wastewater rates of SSA's system customers in line with the average system rates in equal increments. PAWC St. 4, p. 5.

43. The APA contains a negotiated adjustment to the purchase price for the sale of SSA's assets to PAWC that may occur should the Commission approve rates that produce revenues from SSA's system wastewater customers in excess of a 1.9% compound annual growth rate ("1.9% CAGR") at the end of year ten following closing of the transaction. PAWC St. 4, p. 2-3.

44. The 1.9% CAGR is a formula by which the parties to the APA can determine if a purchase price adjustment to the transaction is necessary at the end of year 10 following closing of the transaction. PAWC St. 4, p. 6.

45. If revenues from wastewater customers in the service area formerly served by the SSA exceed the 1.9% CAGR after year ten following closing of the transaction, PAWC has agreed to adjust the transaction price to compensate SSA for that excess amount. PAWC St. 4, p. 6.

46. The detailed calculation methodology for any such adjustment is set forth in Schedule 7.07(d) to the APA. PAWC St. 4, p. 6.

47. SSA was first incorporated on May 18, 1953 under the Pennsylvania Municipal Authorities Act. SSA St. 1, p. 2.

48. In 1966, the Borough of Dunmore became a member of SSA. SSA St. 1, p. 2.

49. Portions of SSA's system were constructed as early as the 1870s. SSA St. 1, p. 2.
50. Many of SSA's pipes were constructed before the establishment of SSA. SSA St. 1, p. 2.
51. SSA's system was originally designed to convey both sanitary sewage and storm water. SSA St. 1, p. 2.
52. PAWC currently operates 15 wastewater treatment plants in Pennsylvania. PAWC St. 3, p. 4.
53. PAWC operates three biological nutrient removal ("BNR") wastewater treatment plants, similar to the SSA system. PAWC St. 3, p. 4.
54. These facilities are the Coatesville Wastewater Treatment Plant which PAWC has operated since 2001, the Southern Wastewater Treatment which PAWC has operated since January 2016 and the Franklin Township Treatment Plant which PAWC has operated since September 2013. PAWC St. 3, p. 5-7.
55. As a subsidiary of American Water Works Company, Inc., PAWC has available to it the resources of American Water Works Service Company, Inc. PAWC St. 3, p. 8.
56. American Water Works Service Company, Inc. provides access to professionals with expertise in various specialized areas. PAWC St. 3, p. 8.
57. When operational issues arise at individual facilities owned by PAWC, it can draw on resources from American Water Works Service Company, Inc. to evaluate conditions, identify the potential problems, suggest options, and develop action plans for either operational and/or facility improvements. PAWC St. 3, p. 8.

58. PAWC owns, operates, and maintains 10 water treatment plants, as well as pumping stations, valves, more than 7,700 fire hydrants, and approximately 1,700 miles of pipe to provide water service to its Scranton area customers. PAWC St. 3, p. 8-9.

59. PAWC's Scranton operation services customers in all or portions of Abington, Blakely, Dickson City, Dunmore, Jessup, Moosic, Old Forge, Olyphant, Scott, Taylor and Throop Boroughs, and Scranton City in Lackawanna County. PAWC St. 3, p. 8-9.

60. PAWC serves a population of approximately 135,000 in the Scranton area. PAWC St. 3, p. 8-9.

61. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. 1, p. 9.

62. There are no pending legal proceedings which would suggest that PAWC is legally unfit to provide service to SSA's customers. PAWC St. 1, p. 9.

63. PAWC is the largest water and wastewater provider in Pennsylvania, with total assets of \$3.9 billion and annual revenues of \$613 million for 2015. PAWC St. 5, p. 3.

64. In 2015, PAWC had operating income of approximately \$307 million and net income of approximately \$143 million. PAWC St. 5, p. 3.

65. In 2015, PAWC had cash flows from operations of approximately \$308 million. PAWC St. 5, p. 3.

66. PAWC presently has a \$220 million line of credit through American Water Capital Corp. a wholly owned subsidiary of American Water Works Company, Inc. PAWC St. 5, p. 3.

67. PAWC's strong credit ratings allow PAWC to obtain additional capacity on this line of credit. PAWC St. 5, p. 3.

68. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC St. 5, p. 3.

69. PAWC obtains long-term debt financing through American Water Works Company, Inc. at favorable interest rates and payment terms. PAWC St. 5, p. 3.

70. PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. 5, p. 3.

71. PAWC may obtain additional equity investments through American Water Works Company, Inc. PAWC St. 5, p. 3.

72. PAWC intends to fund the acquisition of SSA's assets with short-term debt. PAWC St. 5, p. 3.

73. PAWC plans to replace the short-term debt with a combination of permanent debt and equity capital. PAWC St. 5, p. 3.

74. The acquisition of SSA's assets will not have a significant impact on PAWC's credit rating. PAWC St. 5, p. 3.

BACKGROUND

In order to provide some context for the discussion that follows, we will provide some background information describing SSA's system and the events leading to the proposed transaction. SSA was first incorporated on May 18, 1953 under the Pennsylvania Municipal Authorities Act. SSA St. 1, p. 2. In 1966, the Borough of Dunmore became a member of SSA. SSA St. 1, p. 2. Portions of SSA's system were constructed as early as the 1870s. SSA St. 1, p. 2. Many of SSA's pipes were constructed before the establishment of SSA. SSA St. 1, p. 2. SSA's system was originally designed to convey both sanitary sewage and storm water. SSA St. 1, p. 2.

SSA currently owns and operates a wastewater collection and treatment system providing wastewater service to the City of Scranton and the Borough of Dunmore. SSA St. 1, p. 3. In addition, SSA provides wholesale wastewater service to several adjacent communities, including the Borough of Dickson, Moosic Borough and the Borough of Taylor. SSA St. 1, p. 3.

SSA's wastewater collection and treatment system consists of approximately 275 miles of sewer mains, of which approximately 172 miles are combined sewers, 80 combined outflows and 7 pumping stations. SSA St. 1, p. 3. SSA's wastewater treatment plant has a 20 million gallon daily flow, providing service to approximately 31,000 customers in an area with total population estimated at 90,000. SSA St. 1, p. 3. Approximately 95% of SSA's customers are residential customers who account for around 85% of SSA's revenues. SSA St. 1, p. 3.

SSA has approximately 84 employees, 72 of whom are covered by a union contract. SSA St. 1, p. 3. The current union contract was signed on April 1, 2013 and will expire on March 31, 2017. SSA St. 1, p. 3.

A consent decree with DEP and EPA dated January 31, 2013 obligates SSA to implement an LTCP that requires approximately \$140 million in capital investment over a 25 year period ending December 1, 2037. SSA St. 1, p. 4. Pursuant to this consent decree, SSA has adopted the LTCP and has agreed to take corrective actions to address CSOs, which result in discharging untreated sewage and storm water into streams and to address other issues to limit discharges into streams. SSA St. 1, p. 4.

The obligations imposed by the consent decree as well as ongoing maintenance and capital requirements, led SSA to evaluate whether continuing to provide wastewater service was in the best interests of SSA, its customers, the city of Scranton and the Borough of Dunmore. SSA St. 1, p. 4. Simultaneously, SSA's consultants estimated that customers' wastewater rates would increase an average of 4.57% per year over the next 30 years if SSA implemented the LTCP and continued on a standalone basis. SSA St. 1, p. 4. SSA considered either entering into an agreement with a third party to operate and maintain its wastewater collection and treatment system or selling the system to an entity better able to meet the

obligations of the consent decree and to keep rates for wastewater service a reasonable levels. SSA St. 1, p. 5.

SSA issued a request for proposal (RFP) on March 3, 2015 soliciting proposals for a long term maintenance and operations agreement as well as proposals for the purchase of its wastewater collection and treatment system. SSA St. 1, p. 5. The objectives of the RFP included 1) providing high quality service to SSA's customers; 2) continuing to meet all applicable environmental requirements, including more effective ways of complying with state and federal mandates; 3) ensuring SSA's assets are properly maintained; 4) mitigating future rate increases; 5) fair treatment of SSA's employees; 6) minimizing future capital costs; and 7) supporting local economic objectives. SSA St. 1, p. 5.

SSA received four responses to the RFP. SSA St. 1, p. 5. After SSA received these responses and evaluated them, it selected PAWC as the preferred bidder. SSA St. 1, p. 5. SSA executed an MOU with PAWC on December 15, 2015. SSA St. 1, p. 5. This MOU provided a time period for SSA and PAWC to negotiate and execute a sales agreement. SSA St. 1, p. 5-6. SSA and PAWC successfully negotiated and signed an APA on March 29, 2016. SSA St. 1, p. 6. The APA obligates PAWC to purchase substantially all the assets, properties and rights of SSA's wastewater collection and treatment system for \$195,000,000, subject to certain adjustments. SSA St. 1, p. 5, PAWC Ex. BJG-1.

Having provided some background information describing SSA's system and the events leading to the proposed transaction, we will now briefly discuss the terms of the APA. Concerning rates for SSA's customers, the APA intends to provide a mechanism by which the rates of SSA's system wastewater customers could gradually come in line with PAWC's average system rates, which are defined by the APA as the PAWC Rate Zone 1 of PAWC's wastewater tariff. PAWC St. 4, p. 3. Rate Zone 1 is the primary rate zone of PAWC's wastewater tariff. PAWC St. 4, p. 3. PAWC is attempting to adopt system wide wastewater rates over time and move all customers, including those currently being served by the SSA, to Rate Zone 1. PAWC St. 4, p. 3.

In order to implement these goals, PAWC has committed to adopt, upon closing of the transaction, SSA's current customer charge and consumption charge; provided that the customer charge will be divided and billed monthly instead of every other month as SSA currently bills. PAWC St. 4, p. 3-4. After PAWC closes the transaction, SSA's system customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission concerning all rates other than the customer charge and consumption charge, including capacity reservation fees, tapping fees and the like, as well as non-rate related terms and conditions of service. PAWC St. 4, p. 4.

The initial rates to be applicable to the former SSA wastewater customers are set forth in Exhibit K to the application. PAWC St. 4, p. 4, PAWC Exhibit BJK-I. The initial rates are also set forth in the pro forma tariff supplement attached as Exhibit L to the application. PAWC St. 4, p. 3. SSA system customers will be governed by rates for Rate Zone 1. PAWC St. 4, p. 4.

PAWC has agreed not to implement a rate increase for SSA's system wastewater customers prior to January 1, 2018 and not to implement a distribution system improvement charge prior to January 1, 2019. PAWC St. 4, p. 4. In its first base rate case following closing of the transaction, PAWC will propose a 0% increase for SSA's system customers. PAWC St. 4, p. 4. However, the APA acknowledges that the Commission has the ultimate authority to decide whether an increase should be implemented as a result of the first base rate case following closing of the transaction and grants PAWC the reasonable discretion to agree to a settlement of the rate case. PAWC St. 4, p. 4.

In years 11 through 13 following closing of the transaction, PAWC has agreed to attempt to bring the wastewater rates of SSA's system customers in line with the average system rates in equal increments. PAWC St. 4, p. 5. Again, any such rate adjustment would be within the discretion of the Commission. PAWC St. 4, p. 5.

The APA contains a negotiated adjustment to the purchase price for the sale of SSA's assets to PAWC that may occur should the Commission approve rates that produce revenues from SSA's system wastewater customers in excess of a 1.9% CAGR at the end of year 10 following closing of the transaction. PAWC St. 4, p. 2-3. The 1.9% CAGR is a formula by

which the parties to the APA can determine if a purchase price adjustment to the transaction is necessary at the end of year 10 following closing of the transaction. PAWC St. 4, p. 6.

If revenues from wastewater customers in the service area formerly served by the SSA exceed the 1.9% CAGR after year ten following closing of the transaction, PAWC has agreed to adjust the transaction price to compensate SSA for that excess amount. PAWC St. 4, p. 6. The detailed calculation methodology for any such adjustment is set forth in Schedule 7.07(d) attached to the APA. PAWC St. 4, p. 6. The 1.9% CAGR would in no way limit the Commission's ability to set just and reasonable rates for PAWC or any interested party's ability to argue in a base rate proceeding for just and reasonable rates. PAWC St. 4, p. 6.

DISCUSSION

Commission Jurisdiction

Having provided some background information describing SSA's system, the events leading to the proposed transaction and briefly discussing the terms of the APA, we will now address the merits of the application starting with the issue of jurisdiction raised by OCA. OCA argues that the Commission lacks jurisdiction to approve the transaction. OCA M.B. 9-28. According to OCA, SSA currently provides two distinct services in the system that PAWC seeks to acquire. Since the SSA system is a combined system it provides both wastewater service and storm water service. OCA M.B. 9.

OCA argues that the Commission lacks jurisdiction over the provision of storm water service and cannot authorize PAWC to provide storm water service for compensation. OCA M.B. 9. In support of its argument, OCA points to the definition of public utility at 66 Pa.C.S. § 102 which states that a public utility operates equipment or facilities for "sewage collection, treatment or disposal for the public for compensation". This definition does not address storm water. OCA M.B. 9.

OCA contends that wastewater and storm water are separate, distinct services. OCA points to the EPA's definition of a combined sewer system as one that "collects rainwater

runoff, domestic sewage and industrial waste water” into one pipe. OCA M.B. 9. OCA asserts that the collection of domestic sewage and industrial waste water is wastewater service which is regulated by the Public Utility Code. Rainwater runoff is storm water which is not a service regulated under the Public Utility Code. OCA M.B. 10.

OCA explains that current engineering practice for sewer systems involves designing separate systems for wastewater and storm water. OCA M.B. 10. Wastewater is conveyed to a wastewater treatment plant and storm water is discharged into a stream without treatment. OCA M.B. 10. In contrast, SSA’s system was designed under accepted engineering practices at the time of construction which permitted both sanitary sewage and storm water to enter into the same system and to be discharged it into a stream without treatment. OCA M.B. 10-11.

OCA states that there are other combined sewer systems operating in Pennsylvania. However, those systems are owned by municipal authorities or corporations over which the Commission has no jurisdiction. OCA M.B. 11.

OCA points to the Commission’s decision in Pa. Pub. Util. Comm’n v City of Lancaster-Sewer Fund, Docket No. R-00049862 (Opinion and Order entered September 15, 2008) (Lancaster Remand) as support for its position. OCA M.B. 11. OCA asserts that the Lancaster Remand decision held that the City of Lancaster could not recover the costs of treatment of its storm water in its combined system from customers living outside the City of Lancaster who are under the Commission’s jurisdiction. OCA M.B. 11.

OCA contends that storm water costs cannot be recovered in this case because storm water is not a jurisdictional service regulated by the Commission. OCA M.B. 14. OCA concludes that the Commission should deny the application.

In response, PAWC and SSA contend that the Commission has authority over the transaction. According to PAWC and SSA, SSA’s system is an integrated wastewater system designed and operated to collect and treat pollutants in wastewater. In other words, the system is a facility for “sewage collection, treatment or disposal” as set forth in 66 Pa.C.S. § 102.

PAWC/SSA M.B. 15-16. The fact that SSA's system collects and transports storm water in addition to sewage does not change the character of the facilities used for sewage collection, treatment or disposal. PAWC/SSA M.B. 16.

In addition, PAWC and SSA argue that any storm water that commingles with sewage in SSA's system becomes wastewater which must be treated before being discharged into a stream. PAWC/SSA M.B. 20-21. The wastewater is sewage that must be collected, treated and disposed of as set forth in 66 Pa.C.S. § 102. PAWC and SSA conclude that the Commission has jurisdiction over the service provided by SSA's system and the application.

Resolution of this issue turns on whether the storm water collected by SSA's combined system is sewage or wastewater. If the storm water is sewage or wastewater, then SSA's combined system is providing utility service since it is providing sewage collection, treatment or disposal as set forth in 66 Pa.C.S. § 102. This appears to be a case of the first impression. For the reasons set forth below, we conclude that storm water collected in SSA's combined system is sewage and subject to the Commission's jurisdiction.

Initially, we do not find the Lancaster Remand decision cited by OCA to be controlling or persuasive. As noted in the Commission's decision in Pa. Pub. Util. Comm'n v City of Lancaster-Sewer Fund, Docket No. R-00049862 (Opinion and Order entered August 26, 2005) (Lancaster), there were no combined sewers located within the area where the jurisdictional customers resided. Lancaster p. 13. The Commission concluded in Lancaster that the City of Lancaster was unfairly allocating storm water costs to jurisdictional customers. Lancaster p. 17-18. Nowhere in its Lancaster or Lancaster Remand decisions did the Commission state that it lacked jurisdiction over a combined sewer system.

In the absence of any controlling Commission decisions concerning Commission jurisdiction over combined sewer systems, we will look to the provisions of the Public Utility Code to determine whether the Commission has jurisdiction over a combined system as a sewage system pursuant to 66 Pa.C.S. § 102. Initially, there is some confusion over terms. The parties and their witnesses used the terms "sewer", "sewage" and "wastewater" interchangeably. In

addition, the parties used different definitions for “sewer”, “sewage” and “wastewater” from different sources.

This confusion is compounded by the fact that the Public Utility Code uses the term “sewer” in some sections such as 66 Pa.C.S. §§ 102, 510, 529, 1327 and 1526 and “wastewater” in other sections such as 66 Pa.C.S. §§ 1311, 1351, 1358, 1403. The provision at 66 Pa.C.S. § 1403, for purposes of Chapter 14, defines a “wastewater utility” as “an entity owning or operating equipment or facilities for the collection, treatment or disposal of sewage to or for the public for compensation”. The Public Utility Code does not otherwise define either “sewer” or “wastewater”. In addition, the Public Utility Code does not define or even contain the term “storm water”.

In an apparent attempt to clarify its use of these terms, the Commission in the rulemaking order published February 14, 1998 at 28 Pa.B. 801 changed the words “sewer” and “sewerage” found throughout 52 Pa.Code to “wastewater”. In doing so, the Commission indicated that it was substituting the term “wastewater” for the terms “sewer” and “sewerage” to reflect current industry standard terminology. However, the Commission did not define the term “wastewater” in its rulemaking order or indicate what industry manual or other standard it was using.

Looking at the Statutory Construction Act of 1972 for guidance in defining the terms “sewage”, “sewer” and “wastewater”, the Statutory Construction Act of 1972 at 1 Pa.C.S. § 1991 does not provide any help. The provision at 1 Pa.C.S. § 1991 does not contain definitions for “sewage”, “sewer”, or “wastewater”.

In the absence of definitions for “sewage”, “sewer” and “wastewater”, in the Public Utility Code or Commission regulations, we will look to where and when the definition of public utility at 66 Pa.C.S. § 102 began to include an entity that operates equipment or facilities for “sewage collection, treatment or disposal for the public for compensation”. The definition at 66 Pa.C.S. § 102 is taken word for word from the previous Act of May 28, 1937, creating the Public Utility Commission and found at 66 P.S. § 1102(17)(g). The previous Act of May 28, 1937 did not define the term “sewage”.

The Act of May 28, 1937, abolished the Public Service Commission, which had been created by the Act of July 26, 1913, P.L. 1374. The repealed Act of July 26, 1913, P.L. 1374 at Article I §1 defined a public service company as including “sewage corporations”. The Act of July 26, 1913, P.L. 1374 did not define the term “sewage” or “sewage corporation”.

From this review of where and when the definition of public utility at 66 Pa.C.S. § 102 began to include sewage collection, treatment and disposal it is evident that, from the creation of the Public Service Commission in 1913, entities that operated equipment for collection, treatment or disposal of sewage have been considered public service companies and later, public utilities. Wayne Title & Trust Co., et. al. v Wayne Sewerage Co, 3 Pa. P.S.C. 1170 (1919) (Wayne); Wayne Sewerage Co. v. Fronfield, 76 Pa.Super 491 (1921) (Fronfield) and Dickson v. Drexel, 132 A. 284 (Pa. 1926) (Dickson).

Since entities collecting, treating and disposing of sewage have been treated as public service companies since the creation of the Public Service Commission in 1913, it is useful to see what services these companies provided when they first became regulated by the Public Service Commission. In order to see what services these companies provided, we will review one of the earliest Public Service Commission decisions concerning regulation over what were then referred to as sewage corporations.

The decision in Wayne cited above concerns a rate case involving the Wayne Sewerage Company. The appellate court decisions in Fronfield and Dickson cited above concern free sewer service provided by the Wayne Sewerage Company and its predecessors prior to it being regulated by the Public Service Commission and whether the Wayne Sewerage Company could still provide free sewer service once it was subject to regulation by the Public Service Commission.

The decisions in Fronfield and Dickson describe the Wayne Sewerage Company’s predecessors in 1883 as having constructed the town of Wayne, laying out streets and lots and constructing a gravity drainage or sewage system by laying drains or pipes in the streets. Subsequently, these predecessors constructed houses and connected the houses to the drainage system. From this description in Fronfield and Dickson of the service being provided by the

Wayne Sewerage Company, it appears that the Wayne Sewerage Company's system was initially constructed as a combined system, handling both water from the streets and sewage from the houses.

When the Public Service Commission assumed regulatory authority over the Wayne Sewerage Company, there is no indication in the Public Service Commission's Wayne decision that it determined that it had no jurisdiction over the system because it handled water from the streets. Rather, the Commission referred to the entire system as a sewage system. Therefore the Public Service Commission interpreted the term "sewage" in its enabling statute to include water from the streets and sewage from the houses. In other words, since the time that the Public Service Commission began regulating public service companies, it appears that it regulated combined sewage systems.

This conclusion is supported by the testimony of PAWC's witness who indicated that combined systems like SSA's had been used from the mid-1800s to the mid-1900s. N.T. 139. Combined systems such as SSA's are no longer designed or built. N.T. 145. However, SSA's combined system, parts of which were constructed in 1870s, continues to operate as a legacy system. N.T. 145.

Since the Public Service Commission began regulating combined sewage systems, the term "sewage" has been used in the definitions in the Act of July 26, 1913, P.L. 1374, Act of May 28, 1937 and the current Public Utility Code to describe one type of public service company or public utility. The General Assembly has not substituted the term "wastewater" for the term "sewage" at 66 Pa. C.S. § 102. The General Assembly has not defined the term "sewage" at 66 Pa.C.S. § 102 at all, let alone define it to exclude storm water.

In the absence of any definition in the Public Utility Code for the term "sewage", we conclude that the General Assembly intended that the definition of "sewage" continue to have the same meaning and usage that it had in the Act of July 26, 1913, P.L. 1374. The Public Service Commission regulated a combined system as a sewage corporation and therefore a public service company in the Wayne case.

The General Assembly has not altered the definition of sewage at 66 Pa. C.S. § 102 in light of the decisions in Wayne, Fronfield and Dickson. We conclude that the General Assembly intended to continue regulation of combined systems as sewage systems because it would have been aware of the decisions in Wayne, Fronfield and Dickson. While being aware of the decisions in Wayne, Fronfield and Dickson, the General Assembly never modified the term “sewage” to exclude storm water.

Therefore, in this case, SSA’s combined system is a sewage system as defined by 66 Pa.C.S. § 102 and subject to regulation by the Commission. The Commission therefore has jurisdiction over the service provided by SSA and the application.

Burden of Proof and Legal Standards

Having addressed the issue of jurisdiction raised by OCA, we will now address the merits of the application starting with the burden of proof and the legal standards for approving the proposed transaction. PAWC and SSA have the burden of proof in this proceeding to establish that they are entitled to the relief they are seeking. 66 Pa. C.S. §332(a). They must establish their case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet their burden of proof, PAWC and SSA must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). In this case, PAWC requests that the Commission approve its acquisition of substantially all of the assets of SSA’s sewer system and sewage treatment works and approve its application to render wastewater service in the areas served by SSA.

Having set forth the burden of proof, we will now discuss the legal standards for approving the proposed transaction. Pursuant to 66 Pa. C.S. §§ 1102 and 1103, PAWC and SSA must demonstrate by a preponderance of the evidence that the party to whom the assets and service obligations are being transferred is technically, legally, and financially fit. Seaboard Tank Lines, 502 A.2d 762, 764 (Pa.Cmwlth. 1985); Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d 240, 243 (Pa.Super. 1958).

Under the proposed transaction, SSA's assets would be owned and operated by PAWC. Therefore, PAWC must demonstrate by a preponderance of the evidence that it is technically, legally and financially capable of owning and operating the assets its will acquire from SSA.

In addition to demonstrating that PAWC is technically, legally and financially capable of operating SSA's system, PAWC and SSA must demonstrate that the transaction produces a public benefit. In City of York v. Pennsylvania Pub. Util. Comm'n, 295 A.2d 825 (Pa. 1972), the Pennsylvania Supreme Court held that the proponents of a merger or acquisition must show, by a preponderance of the evidence that the proposed transaction will also promote the service, accommodation, convenience or safety of the public in some substantial way.

In Popowsky v. Pennsylvania Public Utility Commission, 937 A.2d 1040 (Pa. 2007), the Pennsylvania Supreme Court explained the City of York standard as follows:

In summary, as indicated in City of York, the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

937 A.2d at 1057.

Even where the Commission finds sufficient public benefit, the Commission has the discretion to impose conditions which it deems just and reasonable. 66 Pa.C.S. § 1103(a).

PAWC's Fitness

Having set forth the burden of proof and discussed the legal standards for approving the proposed transaction, we will now address whether PAWC is technically, legally and financially capable of owning and operating the assets it will acquire from SSA and whether the proposed transaction will promote the service, accommodation, convenience or safety of the public in some substantial way. Turning first to technical fitness, PAWC must have sufficient staff, facilities and operating skills to provide the proposed service. Re: Perry Hassman, 55 Pa. PUC 661 (1982); Mertz White Ways Tours v. Pa. Pub. Util. Comm'n, 201 A.2d 446 (Pa.Super. 1964). In support of its position that it is technically fit, PAWC presented evidence that it currently operates 15 wastewater treatment plants in Pennsylvania. PAWC St. 3, p. 4. PAWC operates three biological nutrient removal ("BNR") wastewater treatment plants, similar to SSA's system. PAWC St. 3, p. 4. These facilities are the Coatesville Wastewater Treatment Plant which PAWC has operated since 2001, the Southern Wastewater Treatment which PAWC has operated since January 2016 and the Franklin Township Treatment Plant that PAWC has operated since September 2013. PAWC St. 3, p. 5-7.

In addition, as a subsidiary of American Water Works Company, Inc., PAWC has available to it the resources of American Water Works Service Company, Inc. PAWC St. 3, p. 8. American Water Works Service Company, Inc. provides access to professionals with expertise in various specialized areas. PAWC St. 3, p. 8. When operational issues arise at individual facilities owned by PAWC, it can draw on resources from American Water Works Service Company, Inc. to evaluate conditions, identify the potential problems, suggest options, and develop action plans for either operational and/or facility improvements. PAWC St. 3, p. 8.

Finally, PAWC already operates water facilities in the Scranton area. PAWC owns, operates, and maintains 10 water treatment plants, as well as pumping stations, valves, more than 7,700 fire hydrants, and approximately 1,700 miles of pipe to provide water service to its Scranton area customers. PAWC St. 3, p. 8-9. Its Scranton operation services customers in all or portions of Abington, Blakely, Dickson City, Dunmore, Jessup, Moosic, Old Forge, Olyphant, Scott, Taylor and Throop Boroughs, and Scranton City in Lackawanna County. PAWC St. 3, p. 8-9. PAWC estimates that it serves a population of 135,000 in the Scranton area. PAWC St. 3,

p. 8-9. OCA, I&E and OSBA did not present any evidence challenging PAWC's technical fitness to own and operate the assets it will acquire from SSA. We conclude, based on the evidence presented, that PAWC has demonstrated by a preponderance of the evidence that it is technically fit to provide the proposed service.

Turning next to legal fitness, PAWC must demonstrate that it has obeyed the Public Utility Code and Commission regulations. Re: Perry Hassman, 55 Pa. PUC 661 (1982). In support of its position that it is legally fit, PAWC's witness stated that PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. 1, p. 9. The witness asserted that there are no pending legal proceedings which would suggest that PAWC is not legally fit to provide service to SSA's customers. PAWC St. 1, p. 9. OCA, I&E and OSBA did not present any evidence challenging PAWC's legal fitness to own and operate the assets it will acquire from SSA. We conclude, based on the evidence presented, that PAWC has demonstrated by a preponderance of the evidence that it is legally fit to provide the proposed service.

Turning finally to PAWC's financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. Re: Perry Hassman, 55 Pa. PUC 661 (1982). In support of its position that it is financially fit, PAWC's witness stated that PAWC is the largest water and wastewater provider in Pennsylvania, with total assets of \$3.9 billion and annual revenues of \$613 million for 2015. PAWC St. 5, p. 3. In 2015, PAWC had operating income of approximately \$307 million and net income of approximately \$143 million. PAWC St. 5, p. 3. These operating results produced cash flows from operations of approximately \$308 million. PAWC St. 5, p. 3.

In addition, PAWC presently has a \$220 million line of credit through American Water Capital Corp. a wholly owned subsidiary of American Water Works Company, Inc. PAWC St. 5, p. 3. PAWC's witness asserted that PAWC's strong credit ratings allow PAWC to obtain additional capacity on this line. PAWC St. 5, p. 3.

PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC St. 5, p. 3. PAWC's

witness alleged that PAWC obtains long-term debt financing through American Water Works Company, Inc. at favorable interest rates and payment terms. PAWC St. 5, p. 3. PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. 5, p. 3. PAWC may obtain additional equity investments through American Water Works Company, Inc. PAWC St. 5, p. 3. PAWC's witness concludes that PAWC has the ability to acquire SSA's assets. PAWC St. 5, p. 3.

PAWC's witness testified that PAWC intends to fund the acquisition of SSA's assets with short-term debt. PAWC St. 5, p. 3. Later PAWC plans to replace the short-term debt with a combination of permanent debt and equity capital. PAWC St. 5, p. 3. PAWC does not anticipate that the acquisition of SSA's assets will have a significant impact on its credit rating. PAWC St. 5, p. 3. OCA, I&E and OSBA did not present any evidence challenging PAWC's financial fitness to own and operate the assets it will acquire from SSA. We conclude, based on the evidence presented, that PAWC has demonstrated by a preponderance of the evidence that it is financially fit to provide the proposed service. In summary, PAWC is technically, legally and financially capable of owning and operating the assets it will acquire from SSA.

Public Interest

Having addressed PAWC's fitness, we now address whether the proposed transaction will also promote the service, accommodation, convenience or safety of the public in some substantial way. OCA, OSBA and I&E all oppose the variance adjustment set forth in sections 7.07(d) and (e) of the APA. All three contend that the variance adjustment violates provisions of the Public Utility Commission and is contrary to the public interest for a variety of reasons.

Under Section 3.01 of the APA, PAWC has agreed to purchase the combined wastewater system from SSA for \$195 million, subject to certain adjustments set forth in the APA. Section 707(d) of the APA describes one such adjustment, the variance adjustment. The variance adjustment is based on the provision of the APA that limits the level to which PAWC can increase rates to customers in the SSA service area over the ten year period following the

closing date of the transaction. As explained by PAWC and SSA, “the variance adjustment was specifically incorporated into the APA to allow for a *possible* (but by no means certain or guaranteed) change in the overall purchase price for the Combined Wastewater System if the revenues actually collected by PAWC from the former SSA customers exceed the predetermined level based on the 1.9% CAGR during the 10 years following the closing of the Transaction.” PAWC/SSA R.B. 31.

If actual revenues received over the ten year period exceed the 1.9% per year CAGR, PAWC must pay a variance adjustment to the SSA, as an adjustment to the purchase price, in an amount equal to the excess amount of revenues received over the ten year period. As explained by PAWC and SSA, the variance adjustment provision is intended to provide an incentive to PAWC to control costs and thus revenues collected, in order to avoid an obligation under the APA to have to make an additional purchase price payment to SSA at the end of 10 years following the transaction closing date. PAWC/SSA R.B. 32.

Together, the initial payment of \$195 million by PAWC and the variance adjustment, if any, will make up the total purchase price for the system. As acknowledged by the PAWC and SSA, however, the amount of additional purchase price, if any, will not be known until ten years from the date of closing of the transaction. PAWC and SSA stated, “. . . no Variance Adjustment exists today or will exist at the time of Transaction closing. In fact, as repeatedly stated in this proceeding, if and whether a Variance Adjustment will be due and owing is currently speculative and unknown since the calculation of such adjustment, by definition, cannot under the terms of the APA occur until the end of year ten following closing.” PAWC/SSA M.B. 85.

Despite the uncertainty described above by PAWC and SSA, which will not be fully resolved for at least 10 years, they are seeking Commission approval of the transaction now, including the formula for calculating the variance adjustment set forth in the APA. Our difficulty in analyzing and evaluating the reasonableness of the transaction is that, as acknowledged by PAWC and SSA, the total purchase price, including the variance adjustment, an essential term of the transaction, is unknown at this time. We are being asked to determine, among other things, whether the total purchase price is reasonable and in the public interest when

we do not now know what the amount of the variance adjustment is and therefore, we also do not know what the total purchase price is. OCA has attempted to provide an estimate of the amount of the variance adjustment.

OCA, in its analysis of the variance adjustment provision, has opined that the amount PAWC could potentially owe at the end of ten years may be as high as \$104 million. OCA St. 2 at 24-25. OCA arrived at this figure by considering known capital investments that will be made to the system over the next ten years, and the revenue requirements that will be needed to meet these expenditures. This analysis is set forth in OCA witness Scott Rubin's prepared testimony at OCA St. 2. Mr. Rubin considered capital investments and SSA's projected revenue requirement figures over the next ten years in arriving at his \$104 million potential variance adjustment figure.

However, OCA's analysis does not factor in the potential for the addition of customers in the SSA service area. Since the variance adjustment will be determined by the revenue realized by PAWC from customers in the SSA service area over the next ten years, the addition, for example, of one or more large commercial or industrial customers could have a significant impact on PAWC's revenues which, in turn, would impact the calculation of the variance adjustment owed by PAWC. Regardless of the accuracy of the OCA's or any other party's estimates of the potential variance adjustment liability after ten years, the point is that the amount of the variance adjustment, if any, that will be owed by PAWC as an adjustment to the purchase price at the end of ten years is impossible to determine or even accurately estimate at this time. Since the cost of the transaction will ultimately be borne by PAWC's customers, the Commission must have accurate information indicating the total purchase price in order to approve the transaction

PAWC and SSA argue that the rate treatment of the variance adjustment need not be determined now but, rather, should be made in a future base rate case after the precise figure is known. PAWC/SSA M.B. 85. PAWC and SSA are asking the Commission to approve the transaction now, while leaving for a time at least ten years in the future the question of the calculation and recovery of the variance adjustment. PAWC and SSA state that these issues, “. . . should be deferred to a future PAWC base rate proceeding This proceeding should be

limited to an adjudication of the threshold jurisdictional issues, whether PAWC is fit (which is presumed and unrefuted), and whether the Transaction will produce an affirmative public benefit of a substantial nature (which it clearly will).” PAWC/SSA R.B. 28.

However, approval of the application would necessarily include approval of the various provisions and calculations contained within the APA, including the very concept of a variance adjustment in the first instance, the formula for calculating the variance adjustment, and the provisions directing its payment to customers in the SSA service area. Aside from the issue of whether the variance adjustment should be recoverable in rates, approval of the application now would mean approval of the concept of the variance adjustment as a reasonable adjustment to the purchase price.

If the Commission approves the application now, the issue of the reasonableness of the variance adjustment would already be decided when the variance adjustment amount is actually calculated. In that case, the sole issue to be determined by the Commission in the future when calculating the variance adjustment would be whether the variance adjustment was calculated correctly, in accordance with the formula set forth in Section 7.07 of the APA, not whether the variance adjustment or final purchase price is reasonable. We must therefore determine in this decision whether the variance adjustment is reasonable and in the public interest.

OCA contends that it is not reasonable or consistent with the public interest for the purchase price to be at least \$104 million higher than the \$195 million purchase price set forth in the APA. OCA MB. 33. OCA argues that the \$195 million purchase price is already more than two times the book value of SSA’s assets. OCA MB. 33. SSA’s balance sheet shows as of March 31, 2015, that the book value of all SSA’s property, plant and equipment is approximately \$74 million. OCA MB. 33. PAWC is not acquiring all of SSA’s assets so the actual book value of the assets PAWC is acquiring is actually less than \$74 million. OCA MB. 33-34. According to OCA it is not reasonable for PAWC to pay an addition estimated \$104 million under the terms of the variance adjustment for SSA’s assets. OCA MB. 34.

OCA points out that PAWC's investors are not agreeing to absorb the estimated \$104 million variance adjustment. OCA MB. 34. Rather, the APA is predicated on PAWC being able to charge \$104 million to PAWC's existing water customers. OCA MB. 34. The APA states that in PAWC's first base rate proceeding following closing, PAWC will include a request to combine partially, water and wastewater revenue requirements for ratemaking purposes, pursuant to 66 Pa.C.S. § 1311(c). OCA MB. 34. OCA contends that PAWC is attempting to obligate its existing customers to pay the estimated \$104 million variance adjustment in addition to the purchase price of \$195 million and the estimated \$144 to \$199 million in capital improvements to SSA's system. OCA M.B. 34. OCA contends that PAWC's customers will receive no benefit from the \$104 million variance adjustment. OCA therefore opposes Commission approval of the transaction.

I&E agrees with OCA that the variance adjustment should not be recovered in rates because it is contrary to ratemaking principals. I&E M.B. 15-19. I&E explains that the variance adjustment is based solely on revenue growth while ignoring expenses. I&E M.B. 16. I&E argues that this is not an adequate measure to determine the value of an acquisition because revenues can increase while at the same time net income decreases. I&E M.B. 16. Under the variance adjustment, PAWC may be required to pay SSA for revenues above the 1.9% benchmark even though net income may not increase. I&E M.B. 16.

I&E also posits that revenue increases in excess of 1.9% may occur because larger revenue increases may be required to cover operating expenses. I&E M.B. 16-17. In this scenario, PAWC would be required to pay the variance adjustment even though it was necessary to recover normal operating costs, not because SSA's system was any more valuable than anticipated. I&E M.B. 17.

To illustrate this point further, I&E points to the provision in the APA requiring PAWC to bring 100 new jobs to SSA's service territory. I&E M.B. 17. Increased labor costs could drive the revenue requirement above 1.9% per year and potentially increase the variance adjustment, not because SSA's system is unexpectedly profitable but because PAWC's expenses increased and its revenues needed to be increased accordingly. I&E M.B. 17.

I&E contends that the variance adjustment is not an asset purchase and is not related to used and useful plant. I&E M.B. 17. I&E likens the variance adjustment to an intangible asset, such as goodwill, which is not recoverable for ratemaking purposes. I&E M.B. 17-18.

I&E points out that PAWC's witness stated that the variance adjustment was required by SSA and that PAWC complied with the requirement and that the 1.9% figure was arrived at through arms-length negotiations. I&E M.B. 18. I&E argues that this explanation fails to demonstrate that the variance adjustment is a reasonable or normal operating expense. I&E M.B. 18. I&E contends that the variance adjustment should not be recovered from PAWC's customers and that the Commission should make that determination now, rather than doing so in a future rate case as advocated by PAWC. I&E M.B. 18-19.

We conclude that the proposed variance adjustment, which is an adjustment to the purchase price, fails to provide a fixed sales price but rather creates an imprecise sales price and places the risks of paying that imprecise sales price on PAWC and its customers. The Commonwealth Court in Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa.Cmwlt. 2002) (Philadelphia Suburban), noted the same deficiencies in the agreement under review in that case.

In Philadelphia Suburban, PAWC executed an asset purchase agreement with the City of Coatesville Authority for the purchase of the city's water system. The agreement, as subsequently amended, required PAWC to make an annual contribution to the Coatesville Economic Development Fund in an amount equal to Coatesville's annual charge from PAWC for fire hydrant service. The Commonwealth Court noted that this arrangement failed to provide a fixed sales price and placed the risk of future fire hydrant service on PAWC.

According to PAWC and SSA, the purchase price in this case is not open ended and indefinite as in Philadelphia Suburban. PAWC/SSA R.B. 32. PAWC and SSA argue that, pursuant to the APA, the variance adjustment to the purchase price to be paid by PAWC to SSA at the end of ten years following closing, will establish a fixed sale price for the transaction. PAWC/SSA R.B. 32. Although this is correct it misses the point.

PAWC and SSA are asking that the Commission approve the proposed transaction, including the terms of the APA, as reasonable and in the public interest. The APA contains the formula used to calculate the variance adjustment. However, at this time the variance adjustment amount is unknown and unknowable because it is based on future revenues which in turn are based on the rates the Commission will approve in the future. It is at this time open ended.

In effect, PAWC and SSA are asking the Commission to approve the method for calculating the variance adjustment set forth in the APA now as reasonable and in the public interest. If the Commission approves the method for calculating the variance adjustment as reasonable and in the public interest now, it is also approving the amount that results from using that method as reasonable and in the public interest without knowing what that amount is. This is neither reasonable nor in the public interest.

In addition, the 1.9% CAGR, which serves to trigger the variance adjustment, is based on arms-length negotiations between PAWC and SSA and bears no relationship to either the value of the assets that PAWC is acquiring or the estimated future revenue needs for SSA's system based on estimated operating costs. Since the variance adjustment is open ended, bears no relationship to either the value of the assets or estimated operating costs, it is not in the public interest or reasonable as an adjustment to the purchase price.

While PAWC and SSA characterize the variance adjustment as an adjustment of the purchase price, it is actually an attempt to provide a buffer for SSA's customers against future anticipated rate increases. This conclusion is reinforced by the fact that the variance adjustment is only directed to PAWC. If the variance adjustment were an adjustment to the purchase price, one would expect that if the actual revenues fall below the 1.9% CAGR, SSA would have to pay a variance adjustment to PAWC because, under the rationale offered for the variance adjustment, SSA's system would be worth less than originally anticipated and PAWC would be entitled to a refund of a portion of its purchase price because it had overpaid for the system. Instead, under the terms of the APA, the variance adjustment is only payable by PAWC.

The conclusion that the variance adjustment is an attempt to provide a buffer for SSA's customers against future anticipated rate increases is also readily evident in the language in Section 7.07(e) of the APA providing that the variance adjustment is to be distributed to SSA's customers by either PAWC or SSA in year 10 following the closing of the transaction. In years 11 through 13 following closing of the transaction, PAWC has agreed to attempt to bring the wastewater rates of SSA's system customers in line with the average system rates in equal increments. Therefore, the variance adjustment will be distributed to customers in SSA's former territory prior to PAWC increasing the rates of those customers to match the rates charged to the rest of PAWC's customers.

While it is laudable that PAWC and SSA are attempting to provide a buffer for SSA's customers against future anticipated rate increases, they cannot accomplish this by requesting that the Commission approve a variance adjustment which is unknown and unknowable at this time and bears no relationship to either the value of the assets or estimated operating costs. As an adjustment to the purchase price, the variance adjustment is neither reasonable or in the public interest.

In addition to being an unreasonable adjustment to the purchase price, we are also convinced that as an attempt to provide a buffer for SSA's customers against future anticipated rate increases, payment of the variance adjustment violates 66 Pa.C.S. § 1303. With respect to disposition of any variance adjustment payment, the APA provides, in relevant part, as follows:

Within thirty (30) days of final resolution of the calculation of the Variance Adjustment, Seller shall notify Buyer whether the adjustment to the Purchase Price in the amount of the Variance Adjustment shall be paid directly to the Seller or distributed to Buyer's then-current wastewater customers in the Service Area If Seller elects distribution of the adjustment of the Purchase Price for the Variance Adjustment to Buyer's then-current wastewater customers in the Service Area, Buyer shall at its sole cost and expense, subject to PaPUC approval and applicable law, timely implement procedures and protocols reasonably acceptable to Seller and then make a one-time equal, flat-rate distribution to all customers then being served by Buyer in the Service Area their proportionate share of the Variance Adjustment as mutually agreed by Buyer and Seller In the event the PaPUC fails to allow Buyer to timely implement procedures and protocols and make

distributions to customers in the service Area as aforesaid, Buyer shall pay the Variance Adjustment as an adjustment to the Purchase Price directly to Seller within thirty (30) days of the final resolution of the calculation of the Variance Adjustment In the event the PaPUC fails to allow distribution by Buyer to then-current Service area wastewater customers, Buyer shall also timely pay Seller the reasonable costs of (i) hiring a third-party administrator and pay the Variance Adjustment to wastewater customers in the Service Area and (ii) establishing the processes and protocols to make such payment as described herein.

APA, §707(e), at 58.

Under this provision of the APA, PAWC will either pay the variance adjustment directly to the then customers in the SSA service area, or it will make the payment directly to the SSA which, in turn, will distribute the payment, via a third party administrator, to those customers. In either case, we are in agreement with I&E that the payments would violate 66 Pa.C.S. § 1303 which states:

§ 1303. Adherence to tariffs.

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.

I&E cites Philadelphia Suburban and contends that the variance adjustment violates 66 Pa.C.S. § 1303, which prohibits a utility from charging a rate other than the rate set forth in its tariff. I&E explains that, pursuant to section 7.07(e), PAWC has agreed, if SSA desires, that it will pay the variance adjustment directly to customers in the former SSA territory. I&E M.B. 20. Alternatively, PAWC has agreed to distribute the variance adjustment to SSA and to pay for a third party to administer and distribute the variance adjustment to those same customers. I&E M.B. 20. I&E contends that both the direct and indirect payment provisions violate the Public Utility Code. I&E M.B. 20.

I&E argues that if PAWC directly pays the variance adjustment to customers in SSA's former territory, the payment would operate as a rate refund to SSA customers. I&E M.B. 20. SSA's customers will be paying Commission-approved tariff rates for ten years. Upon receipt of the variance adjustment payment, the SSA customers would have paid less for utility service than prescribed under PAWC's tariff. I&E contends this is prohibited by the Public Utility Code, citing Philadelphia Suburban.

Alternatively, if the Commission does not allow PAWC to directly distribute the payment to SSA customers, PAWC will distribute the variance adjustment to SSA and pay a third party to distribute the variance adjustment to SSA's customers. I&E M.B. 21. I&E concedes that while this is not a direct disbursement, it still violates 66 Pa.C.S. § 1303 since that provision prohibits a utility from directly or indirectly charging a greater or lesser rate than that specified in its tariff. I&E M.B. 21.

I&E contends that paying a third party is an indirect way of carrying out an illegal act. I&E M.B. 21. I&E points out that use of a third party administrator could prove even more costly to ratepayers if they have to pay the costs of the administrator through increased rates. I&E M.B. 21. I&E concludes that the Commission should reject the variance adjustment provision of the APA. I&E M.B. 21. OSBA makes these same arguments. OSBA M.B. 2-4.

In response to I&E's contentions concerning violation of 66 Pa.C.S. § 1303, PAWC explains that the option of returning the variance adjustment paid by PAWC to customers through PAWC was presented in the APA as an alternative so that the Commission could consider and accept or reject PAWC's involvement in the distribution process. PAWC/SSA R.B. 33. PAWC states that if the Commission finds that PAWC's involvement is unacceptable, the alternative of using an independent third party for distributing the funds to customers is offered. PAWC/SSA R.B. 33. The point, according to PAWC is that SSA as the seller holds all of the rights to determine what happens to the variance adjustment, not PAWC or any customers. PAWC/SSA R.B. 33.

PAWC and SSA contend that given this structure, there is no way that the variance adjustment can be characterized as a refund to customers or as a deviation from

PAWC's tariff. PAWC/SSA R.B. 33. PAWC and SSA reason that not only does PAWC have no choice in the matter but, if the Commission has any concern about any distribution of the variance adjustment to customers potentially being characterized as a refund or tariff deviation, the Commission could direct SSA to retain the variance adjustment. PAWC/SSA R.B. 33. According to PAWC and SSA, there is no intention through the variance adjustment for customers to pay less than what is authorized by the Commission. PAWC/SSA R.B. 33. According to PAWC and SSA, all the Commission has to do is advise if it believes any distribution is inappropriate and it will not be done. PAWC/SSA R.B. 33.

In addition, PAWC and SSA argue that any potential future distribution of the variance adjustment to customers could not reasonably be considered a refund because it is a one-time payment to existing customers. PAWC/SSA R.B. 33. Any distribution of a variance adjustment would not be tied to any rate that a particular customer actually paid. PAWC/SSA R.B. 33.

The provision at 66 Pa.C.S. § 1303 has been strictly interpreted by Pennsylvania's Courts to mean that "public utility tariffs have the force and effect of law, and are binding on the customers as well as the utility." Philadelphia Suburban. Whether or not the variance adjustment is paid to customers directly by PAWC or via a third party administrator, we agree that the payments would constitute de facto refunds to customers in the SSA service area, with the ultimate result being that those customers will have paid less than tariffed rates for service received during the time between transaction closing and disbursement of the variance adjustment.

This conclusion is supported by the Commonwealth Court's decision in Philadelphia Suburban. In that case, PAWC executed an asset purchase agreement with the City of Coatesville Authority for the purchase of the city's water system. The agreement, as subsequently amended, required PAWC to make an annual contribution to the Coatesville Economic Development Fund in an amount equal to Coatesville's annual charge from PAWC for fire hydrant service. PAWC agreed not to seek recovery of its contributions in future base rate cases. The application was protested by several parties, including Philadelphia Suburban Water Company.

The Administrative Law Judge (ALJ) recommended that PAWC's acquisition of the Coatesville system be approved, subject to removal from the agreement of the requirement that PAWC make the annual payment to the Economic Development Fund. The ALJ concluded that, with the required annual payments by PAWC, Coatesville would, in effect, be receiving free water service in violation of PAWC's tariff. The ALJ characterized the "charge and contribution" arrangement as an untenable form over substance argument.

By a 4-1 vote, the Commission rejected the ALJ's recommendation to delete the annual contribution provision and, instead, approved the agreement "subject to the establishment of a tracking mechanism designed to ensure that only shareholder funds would be used to make the annual payments to Coatesville's Economic Development Fund." Philadelphia Suburban, 808 A.2d at 1048.

Philadelphia Suburban appealed the Commission's decision to the Commonwealth Court, arguing that the agreement violates Section 1303's prohibition against utility charging a different rate than specified in its approved tariff.

In reversing the PUC's decision, the Court emphasized the language in Section 1303, which prohibits a utility from straying from its approved tariff, "directly or indirectly, by any device whatsoever, or in anywise . . ." 66 Pa.C.S §1303. The Court noted:

Coatesville will pay the public utility for fire hydrant service and then the public utility, Pennsylvania-American, will pay, dollar for dollar, an equal amount into the Coatesville Economic Development Fund. This is free service. Using shareholder funds to make the "contribution," establishing a tracking mechanism and separating these contributions from Pennsylvania-American's rate base do not provide a safe harbor from Section 1303's mandate. They merely do indirectly what the Free Service Covenant does directly; effect a tariff deviation.

Philadelphia Suburban, 808 A.2d at 1052.

The Court went on to conclude:

In its request for proposal, Coatesville stated that the successful bidder had to make “whatever arrangements necessary to waive or pay these charges [fire hydrant fees] on behalf of the City. Pennsylvania-American honored this demand by structuring the payment of Coatesville’s fire hydrant service charge as a contribution to a special fund of the City. However, the law does not permit such an arrangement for relieving Coatesville of the obligation to pay Pennsylvania-American’s scheduled tariff amount for fire hydrant service.

Philadelphia Suburban, 808 A.2d at 1062.

Here, PAWC is obligated by the APA to refund to the SSA service area customers, after ten years, an amount equal to the variance adjustment. The refund will be paid by PAWC to the customers either directly or through a third party administrator mechanism. In either case, the end result is the same. The SSA service area customers will realize a price break from PAWC’s tariffed rates for service received during the previous ten years. Consistent with Philadelphia Suburban, we find this to be in impermissible violation of Section 1303.

PAWC and SSA attempt to distinguish Philadelphia Suburban from this case by arguing that the APA gives the SSA all of the rights and options to determine what happens to the presently unknown variance adjustment, and that the payment, if any, may, at SSA’s discretion, be retained by the SSA. They argue that, under these circumstances, there is no way the variance adjustment may be characterized as a refund to customers from PAWC, or as a deviation from PAWC’s retail tariff. PAWC/SSA R.B. 33. We disagree.

Our reading of Section 7.07(e) of the APA convinces us that SSA does not have the option of retaining the variance adjustment payment. Rather, the payment must ultimately be refunded to SSA service area customers, either directly from PAWC or through the third party administrator mechanism. The relevant passage of Section 7.07(e) to which we refer requires:

In the event the PaPUC fails to allow distribution by Buyer to then-current Service area wastewater customers, Buyer shall also timely pay Seller the reasonable costs of (i) hiring a third party to

administer and pay the Variance Adjustment to wastewater customers in the Service Area and (ii) establishing the processes and protocols to make such payment as described herein

PAWC and SSA argue that the Commission could simply direct the SSA or its successor to retain the variance adjustment. Again, we disagree. Commission approval of the application includes approval of the APA, by which the transaction is structured. As noted, the APA requires that any variance adjustment be paid to SSA service area customers, either through PAWC or a third party. Therefore, our approval of the transaction would include our approval of the requirement that any variance adjustment must be distributed to SSA service area customers which, as discussed, constitutes a violation of Section 1303. To do otherwise would be to modify the APA.

In addition, it is not clear that the Commission has the authority to direct SSA to retain the proceeds of the sale. The Commission only has authority to regulate a municipal authority if it provides utility service outside its service territory. Such is not the case here.

I&E also contends that the variance adjustment violates 66 Pa.C.S. § 1304 which states:

§ 1304. Discrimination in rates.

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. Unless specifically authorized by the commission, no public utility shall make, demand, or receive any greater rate in the aggregate for the transportation of passengers or property of the same class, or for the transmission of any message or conversation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or any greater rate as a through rate than the aggregate of the intermediate rates. This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates or, in the case of common carriers, the issuance of excursion, commutation, or other special tickets at special rates, or the granting of nontransferable free passes, or passes at a discount to any officer, employee, or pensioner of such common carrier. No rate charged by a municipality for any public utility service rendered or furnished beyond its corporate limits shall be considered unjustly discriminatory solely by reason of the fact that a different rate is charged for a similar service within its corporate limits.

I&E asserts that a utility must show that any difference in rates is justified by the difference in costs required to deliver service to each class. I&E M.B. 21-22. I&E argues that there is no connection between PAWC's distribution of the variance adjustment and the cost of serving customers in SSA's territory. I&E M.B. 22. Instead the variance adjustment payment is based solely on the customers' status as customers in SSA's territory. I&E M.B. 22. This operates as an unreasonable advantage to customers in SSA's territory. I&E M.B. 22. I&E concludes that the Commission should reject the variance adjustment provision of the APA. I&E M.B. 21.

In response to I&E's contentions concerning violation of 66 Pa.C.S. § 1304, PAWC and SSA argue that just as in Philadelphia Suburban, there is no unreasonable preference being made by PAWC if the variance adjustment is paid to SSA or even if it is distributed to customers since that decision would be made by SSA and not PAWC. PAWC/SSA R.B. 33-34. If PAWC is not involved in making the determination about the manner and method of treating the variance adjustment, there is no way that PAWC could be said to have created an unreasonable prejudice or disadvantage to any customers. PAWC/SSA R.B. 34.

We disagree with I&E that the variance adjustment violates 66 Pa.C.S. § 1304 by creating as an unreasonable advantage to customers in SSA's territory. As explained in Philadelphia Suburban, 66 PA. C.S. § 1304 establishes standards that a utility must follow when making a rate. The rate making referred to in 66 Pa.C.S. § 1304 results in rates that end up in the utility's tariff. A charge that deviates from the scheduled tariff is unlawful, pursuant to 66 PA. C.S. § 1303, even if the rates contained in the tariff satisfy the standards set forth in 66 Pa.C.S. § 1304. Philadelphia Suburban.

This is not a case where the tariff itself provides an undue preference for one class of ratepayers at the expense of another. Philadelphia Suburban. The variance adjustment creates the rate differential based on the identity of the ratepayer by providing a refund in violation of 66 Pa.C.S. § 1303. There is no evidence that the underlying tariff applicable to SSA's customers itself creates an unreasonable advantage to SSA's customers in violation of 66 Pa.C.S. § 1304. It is the variance adjustment, which is not part of the tariff applicable to SSA's customers, which

creates an advantage to SSA's customers. Since the variance adjustment is not part of the tariff applicable to SSA's customers, it does not violate 66 Pa.C.S. § 1304.

In conclusion, the variance adjustment set forth in the APA is not reasonable or in the public interest and violates the Public Utility Code. Since the variance adjustment is not reasonable or in the public interest and violates the Public Utility Code, the Commission cannot approve it or the underlying APA which creates it. The Commission cannot approve the APA without also approving the variance adjustment since the variance adjustment is an integral part of the transaction.

Any alleged benefits to SSA's customers, PAWC's customers and the City of Scranton cannot overcome the fact that the variance adjustment violates the Public Utility Code, is not reasonable and is not in the public interest. The Commission should therefore deny PAWC's and SSA's joint application.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding. 66 Pa.C.S. §§ 1102 and 1103.

2. PAWC and SSA have the burden of proof in this proceeding to establish that they are entitled to the relief they are seeking. 66 Pa. C.S. §332(a).

3. PAWC and SSA must establish their case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992)

4. To meet their burden of proof, PAWC and SSA must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

5. PAWC and SSA must demonstrate by a preponderance of the evidence that the party to whom the assets and service obligations are being transferred is technically, legally, and financially fit. 66 Pa. C.S. §§ 1102 and 1103, Seaboard Tank Lines, 502 A.2d 762, 764 (Pa.Cmwlt. 1985); Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n, 138 A.2d 240, 243 (Pa.Super. 1958).

6. PAWC and SSA must show, by a preponderance of the evidence that the proposed transaction will also promote the service, accommodation, convenience or safety of the public in some substantial way. City of York v. Pennsylvania Pub. Util. Comm'n, 295 A.2d 825 (Pa. 1972).

7. The Commission has the discretion to impose conditions which it deems just and reasonable. 66 Pa.C.S. § 1103(a).

8. SSA's combined system is a sewage system as defined by 66 Pa.C.S. § 102 and subject to regulation by the Commission.

9. PAWC has sufficient staff, facilities and operating skills to provide the proposed service. Re: Perry Hassman, 55 Pa. PUC 661 (1982); Mertz White Ways Tours v. Pa. Pub. Util. Comm'n, 201 A.2d 446 (Pa.Super. 1964).

10. PAWC has obeyed the Public Utility Code and Commission regulations. Re: Perry Hassman, 55 Pa. PUC 661 (1982).

11. PAWC has sufficient financial resources to perform the proposed service. Re: Perry Hassman, 55 Pa. PUC 661 (1982).

12. Payment of the variance adjustment, as contemplated in the APA, violates the Public Utility Code. 66 Pa.C.S. § 1303.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the application of Pennsylvania American Water Company and Sewer Authority of the City of Scranton for approval Pennsylvania American Water Company's acquisition of all the assets of Sewer Authority of the City of Scranton's sewer system and sewage treatment works and approval of Pennsylvania American Water Company's application to render wastewater service in the areas served by Sewer Authority of the City of Scranton at A-2016-2537209 is denied.

2. That this proceeding be marked closed.

Date: August 17, 2016

_____/s/
David A. Salapa
Administrative Law Judge

_____/s/
Steven K. Haas
Administrative Law Judge