

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water	:	
Company Pursuant to Sections 1102 and 1329	:	
of the Public Utility Code for Approval of its	:	A-2019-3006880
Acquisition of the Water System Assets of the	:	
Steelton Borough Authority	:	

RECOMMENDED DECISION

Before
Steven K. Haas
Benjamin J. Myers
Administrative Law Judges

INTRODUCTION

This decision recommends that a Joint Petition for Approval of Settlement be approved in its entirety without modification because it complies with the relevant sections of the Pennsylvania Public Utility Code regarding the acquisition of water system assets, properties and rights, is consistent with Commission regulations promoting settlements and is in the public interest. The statutory six-month deadline for Commission action on this matter is October 16, 2019.

HISTORY OF THE PROCEEDING

Pennsylvania-American Water Company (PAWC or Company) filed an application with the Pennsylvania Public Utility Commission (Commission) on January 2, 2019, as amended on February 19, 2019 (Application), pursuant to the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 1102(a) and 1329, requesting that the Commission issue certificates of public convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the

assets, properties and rights of the Steelton Borough Authority (Steelton), related to Steelton's water system (the Steelton System), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

On January 9, 2019, the Commission's Bureau of Technical Utility Services (TUS) notified PAWC that certain items were missing from the application. PAWC provided the items requested by TUS on January 14, 2019 and, as a result, on January 17, 2019, the Commission issued a secretarial letter notifying PAWC that the application was conditionally accepted and would be finally accepted for filing purposes upon the filing of a verification indicating that PAWC had complied with certain conditions, including notification requirements.

On January 22, 2019 Steelton filed a petition to intervene in this matter.

On January 23, 2019 the Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance.

On February 5, 2019 the Office of Consumer Advocate (OCA) filed a protest to the application and public statement.

On February 6, 2019 the Office of Small Business Advocate (OSBA) filed a notice of intervention in this matter.

On March 11, 2019 PAWC began providing individual notice to its customers of the application through a bill insert during a 31-day billing cycle and provided individual notice of the application to Steelton customers through a direct mailing on March 29, 2019.

On April 15, 2019 PAWC provided verification to the Commission that it had completed individualized notice to potentially affected PAWC water and wastewater customers as well as notice to all then-current Steelton water customers. The Commission accepted the application for filing by secretarial letter dated April 16, 2019 and assigned the matter to the Office of Administrative Law Judge for adjudication and disposition.

On April 17, 2019 a prehearing conference notice was issued scheduling this matter for a prehearing conference on May 17, 2019.

On April 18, 2019 a prehearing conference order was issued which established discovery rule modifications and a tentative litigation schedule and directed the parties to file prehearing memoranda on or before May 15, 2019.

Notice of the application was published in the *Pennsylvania Bulletin* on April 27, 2019. 49 Pa.B. 2099. That notice established the deadline for filing protests and petitions to intervene as May 14, 2019.

On May 10, 2019 OCA filed a motion to compel Steelton to provide answers to OCA interrogatories Set V, Question 2. On May 13, 2019 Steelton filed an answer to this motion. On May 15, 2019 an order was issued denying OCA's motion to compel.

On May 15, 2019 each of the parties filed a prehearing memorandum. PAWC filed a petition for protective order which indicated that there were no objections to said order from any of the parties of record. A protective order was issued on May 15, 2019.

The prehearing conference was held as scheduled on May 17, 2019. At the prehearing conference the parties agreed to modifications of the discovery rules as well as an expedited procedural schedule to comply with the October 16, 2019 statutory deadline for Commission action. 66 Pa. C.S. § 1329(d)(2). None of the parties objected to the petitions to intervene of Steelton or OSBA in this matter.

On May 20, 2019 a hearing notice was issued scheduling this matter for hearing on June 10, 2019. On this same date, and in response to the May 15, 2019 order denying its motion to compel, OCA filed a petition for certification of a discovery ruling for interlocutory review.

On June 3, 2019 an order was issued denying OCA's petition for certification of a discovery ruling for interlocutory review.

The evidentiary hearing was held as scheduled on June 10, 2019. The parties indicated that they were actively working toward a settlement of all issues and therefore had agreed to a mutual waiver of cross-examination of all witnesses and the entry of evidence into the record by stipulation. The testimony and evidence presented by the parties was moved into the record by stipulation at that time.

On June 26, 2019 the parties notified the Administrative Law Judges [ALJs] that a settlement resolving all issues in this matter had been reached and proposed that a joint petition for settlement and statements in support be filed on or before July 2, 2019.

On July 2, 2019, the parties (Joint Petitioners) filed a joint petition for approval of settlement of all issues (Joint Petition) and statements in support.¹ Customers affected by the proposed sale were notified that a settlement had been reached and that comments or objections to the terms of the settlement could be filed with the Commission. Two individual Steelton customers subsequently filed objections to the settlement with each arguing generally that the rate increase established by the settlement was excessive. In addition, 64 other individuals signed a petition indicating their disagreement with "the 40% water increase."

The record in this matter closed on July 12, 2019, the deadline for filing objections to the joint petition for settlement. The statutory six-month deadline for Commission action on this matter is October 16, 2019. The Joint Petitioners have been able to agree on a settlement of all issues and are in full agreement that the settlement is in the best interests of Steelton and its customers. The terms of the settlement are set forth below.

It will be recommended, based on the testimony and evidence presented, that the Commission approve and adopt the settlement set forth in the Joint Petition without modification

¹ I&E joined in the joint petition for settlement but requested to file its statement in support on July 12, 2019.

and the Commission issue certificates of public convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the water system assets, properties and rights of the Steelton Borough Authority.

TERMS OF SETTLEMENT

In the settlement, the parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the settlement are as follows – subsections and paragraph numbers are listed as they appear in the original settlement filed with the Commission:

A. Approval of Application

19. The Application shall, subject to the other terms and conditions contained in the Settlement, be approved as being in the public interest and the Commission shall issue such Certificates of Public Convenience as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of Steelton’s assets, properties and rights related to its water treatment, transportation, and distribution facilities to PAWC as provided in the Application, and (ii) PAWC’s right to begin to offer, render, furnish or supply water service to the public in the areas served by Steelton as indicated in the Application.

B. Tariff

20. The pro forma tariff supplement attached to the Amended Application as Revised Appendix A-13 and attached hereto as Appendix A, including all rates, rules and regulations regarding conditions of PAWC’s water service as revised therein, shall be permitted to become effective immediately upon closing of the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

21. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$20,500,000 for ratemaking rate base purposes based on a modified purchase price of \$21,750,000 for the acquired assets. Commission approval of the Transaction shall be conditioned upon PAWC's filing of an amendment to the Asset Purchase Agreement, along with copies of required authorizations from Steelton Borough Authority's Board of Directors that adjusts the purchase price to \$21,750,000.

22. The Joint Petitioners agree that the adjustment to ratemaking rate base reflects a compromise of the various positions of the Joint Petitioners. All Joint Petitioners reserve the right to present adjustments and oppose adjustments to appraisals in future cases.

D. Rates

23. In the first base rate case that includes Steelton water system assets, PAWC will submit a cost of service study that removes all revenues, expenses and rate base associated with the operation of the Steelton System. In the first base rate case that includes Steelton water system assets, PAWC will also provide a separate cost of service study for the Steelton System.

24. Except as explicitly stated herein, nothing contained in the Settlement or in the Commission's approval of the Application shall preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding.

25. Steelton Customer Rates

a. In its first base rate case following the closing of the acquisition, PAWC will propose to move the Steelton System to its cost of service or 1.4 times the current Steelton rates, whichever is lower, based on a separate cost of service study for the Steelton System, provided that such rates for Steelton customers do not exceed the proposed Zone 1 water rate.

b. The current average Steelton rate is \$33.78 per month based on 4,000 gallons of monthly usage.

c. The OCA, I&E and OSBA reserve their rights to fully address this proposal and to make other rate proposals in the base rate case.

E. Low Income Program Outreach

26. Within the first 90 days of PAWC's ownership of the Steelton System, PAWC shall include a bill insert to the Steelton-area customers regarding its low-income programs and shall include such information in a welcome letter to Steelton-area customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low-income programs' eligibility requirements for participation in the programs, and PAWC's contact information.

F. Distribution System Improvement Charge

27. If PAWC proposes to modify its Long-Term Infrastructure Improvement Plan ("LTIIIP") to include the Steelton System, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIIIP, PAWC shall be permitted to collect a distribution system improvement charge ("DSIC") related to the Steelton System prior to the first base rate case in which the Steelton assets are incorporated into rate base.

G. Accrual of Allowance for Funds Used During Construction

28. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to accrue Allowance for Funds Used During Construction ("AFUDC"). Any claim for AFUDC related to post-acquisition improvements not recovered through the DSIC will be addressed in PAWC's first base rate case which includes Steelton water system assets, pursuant to 66 Pa.C.S. § 1329(f)(1). The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

H. Deferral of Depreciation for Post-Acquisition Improvements

29. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claim for deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Steelton water system assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

I. Transaction and Closing Costs

30. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the Transaction. The Joint Petitioners agree that they will not contest this request in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

J. Investigation of Alternatives to Total Replacement of Steelton Water Treatment Plant

31. In the first base rate case that includes a claim for recovery of costs related to a new Steelton water treatment plant, if PAWC constructs such plant, PAWC will provide a report indicating what alternatives to total replacement of the Steelton water treatment plant were considered, provide cost/benefit information for each alternative and support for the chosen action.

32. The report will be included in PAWC's base rate filing and served on all Joint Petitioners and the Commission's Bureau of Technical Utility Services.

33. All Joint Petitioners reserve their respective rights to support or challenge a claim for recovery of costs related to improvements to the Steelton System, including a new Steelton water treatment plant, in future proceedings.

K. Discovery Issue

34. On July 2, 2019, Steelton provided under confidential cover, copies to the OCA, I&E and OSBA of all proposals and accompanying exhibits received by Steelton with respect to the proposed sale of its water system. All Joint Petitioners reserve their rights to raise this issue in any future proceeding and the Joint Petitioners agree that no decision in this case nor this settlement shall be used as precedent in any future proceeding.

L. Customer Notice

35. The Joint Petitioners agree that PAWC shall mail the notice attached hereto as **Appendix B** to existing customers of Steelton notifying them of the settlement in this proceeding concurrently with the filing of this Joint Petition. The Joint Petitioners agree that such notice of settlement provides existing customers of Steelton with adequate notice and opportunity to be heard on this proposed Settlement.

36. The Joint Petitioners agree that, (1) in future Section 1329 water system acquisition proceedings, PAWC will send a notice substantially in the form attached hereto as **Appendix C** to existing customers of the system being acquired and a notice substantially in the form attached hereto as **Appendix D** to existing water customers of PAWC and (2) in future Section 1329 wastewater system acquisition proceedings, PAWC will send a notice substantially in the form attached hereto as **Appendix E** to existing customers of the system being acquired and a notice substantially in the form attached hereto as **Appendix F** to existing water and/or wastewater customers of PAWC. The Joint Petitioners will not challenge the sufficiency or adequacy of such notices in future PAWC Section 1329 proceedings prior to PAWC filing its next base rate case, except the Joint Petitioners may challenge whether the notices conform to Attachment C, D, E or F, or the Rate Impact Calculations attached hereto as **Appendix G**.

M. Approval of Section 507 Agreements

37. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue a Certificate of Filing or approvals for the Asset Purchase Agreement By and Between Steelton Borough Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as of November 14, 2018 and the First Amendment to the Asset Purchase Agreement (reflecting revised purchase price per the Settlement).²

N. Other Necessary Approvals

38. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

O. Standard Settlement Conditions

39. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

40. The Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint

² The OCA does not join in this paragraph but does not oppose PAWC's request.

Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

41. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner's position with respect to any issues raised in this proceeding. The Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Settlement.

42. Each Joint Petitioner has prepared a Statement in Support of Settlement (attached as Appendices H-L) setting forth the bases upon which the Joint Petitioner believes the Settlement to be fair, just and reasonable and, therefore, in the public interest.

43. If the ALJs recommend approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

DISCUSSION

I. Legal Standards

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or 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)(3). The acquisition proposed by the joint application falls under Section 1102(a)(3).

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”

According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed transaction would “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, 141, 295 A.2d 825, 828 (1972) (City of York); *see also*, Popowsky v. Pa. Pub. Util. Comm’n, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (when addressing the issue of affirmative public benefits “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 addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.” 66 Pa. C.S. § 1103(a).

Additionally, pursuant to Section 1103 of the Code, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Steelton. Seaboard Tank Lines v. Pa. Pub. Util. Comm’n, 502 A. 2d 762, 764 (Pa.Cmwlth. 1985); Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d 240, 243 (Pa.Super. 1958). As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness. South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992); *see also*, 66 Pa.C.S. § 1329.

With regard to the recently enacted Section 1329 of the Public Utility Code, this section sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. 66 Pa.C.S. § 1329. Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are

acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge.

Section 1329 also enables a public utility or other acquiring entity's post-acquisition improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an "acquiring public utility" and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa.C.S. § 1329(d)(1). For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.

PAWC also seeks approval of an asset purchase agreement (APA) and other connected agreements pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. § 507. Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any

issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission recognizes that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket No. R-20102179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id., *citing*, Warner v. GTE North, Inc., Docket No. C00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm’n v. MXenergy Electric Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. Pennsylvania Pub. Util. Comm’n v. York Water Co., Docket No. R-00049165, (Order entered October 4, 2004); Pa. Pub. Util. Comm’n v. C S Water and Sewer Assoc., 74 Pa. P.U.C. 767 (1991).

II. Technical, Financial and Legal Fitness of PAWC

We initially address the issue of the technical, financial and legal fitness of PAWC to provide the service proposed in its application. As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness. South Hills Movers, Inc. v.

Pa. Pub. Util. Comm'n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992). No party to this proceeding questioned or otherwise challenged the fitness of PAWC to provide the proposed service. Accordingly, there is no record evidence upon which to rebut PAWC's presumption of fitness. In any event, PAWC presented evidence in its direct testimony submitted as part of its application that supports a finding that it does, in fact, possess the requisite fitness. This evidence, which is unchallenged by any of the other Joint Petitioners, is fully set forth in PAWC Stmt. Nos. 1-3. This unchallenged record evidence demonstrates that PAWC does possess the requisite technical, financial and legal fitness to provide the service proposed in its application.

III. Review of Settlement Terms

The Joint Petition resolves all issues raised by the parties during the course of this proceeding. We will review each of the individual settlement terms set forth in the Joint Petition.

A. Approval of Application

The Joint Petition provides that the application shall, subject to the other terms and conditions contained in the Settlement, be approved as being in the public interest and the Commission shall issue such Certificates of Public Convenience as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of Steelton's assets, properties and rights related to its water treatment, transportation, and distribution facilities to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish or supply water service to the public in the areas served by Steelton as indicated in the Application. As more fully addressed below, we recommend that the settlement be approved in its entirety without modification and that all necessary Certificates be issued.

B. Tariff

Since we are recommending that the settlement be approved without modification, we recommend that the pro forma tariff supplement attached to the Amended Application as Revised Appendix A-13 and attached to the Joint Petition as Appendix A,

including all rates, rules and regulations regarding conditions of PAWC's water service as revised therein, be permitted to become effective immediately upon closing of the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

In PAWC's application as originally submitted, the company indicated that the purchase price for the water system assets, as reflected in the Asset Purchase Agreement between PAWC and Steelton, was \$22.5 million, and the company proposed a ratemaking rate base value for those assets of \$22.34 million. Under the settlement, the Joint Petitioners agree that PAWC shall be permitted to use a value of \$20.5 million for ratemaking rate base purposes based on a modified purchase price of \$21.75 million for the acquired assets. Joint Petitioners further agree that Commission approval of the Transaction shall be conditioned upon PAWC's filing of an amendment to the Asset Purchase Agreement, along with copies of required authorizations from Steelton Borough Authority's Board of Directors that adjusts the purchase price to \$21,750,000.

In accepting the revised ratemaking rate base value for the acquired assets, PAWC stated:

The proposed settlement should be adopted because it produces a result that is preferable, in the eyes of each of the Joint Petitioners, to what could have resulted from litigation – including the possibility of appeals. Moreover, the agreed-upon ratemaking rate base of \$20,500,000 is well within the range of litigation positions of the Joint Petitioners and, accordingly, supported by substantial evidence.

(PAWC Stmt. in Support, pp. 8-9).

The OCA, in supporting the revised ratemaking rate base value, stated:

Based on appraisals presented by PAWC and the Authority, PAWC sought a ratemaking rate base of \$22.34 million, which was slightly less than the \$22.5 million price that PAWC agreed to pay for the Steelton Borough Authority water system. The OCA's recommended adjustments to the appraisals resulted in an average appraisal amount of \$17.0 million. OCA St. 1S at 27. The Parties have agreed in the Settlement that the ratemaking rate base should be \$20.5 million. Settlement ¶21. This number represents a compromise of the parties'

positions and, in the OCA's judgement, represents a result that is within the range of likely outcomes if the case were fully litigated.

(OCA Stmt. in Support, pp. 3-4).

Neither I&E nor OSBA oppose the \$20.5 million ratemaking rate base value and both agree that this figure is in the public interest as a reasonable compromise. (I&E Stmt. in Support, p. 9; OSBA Stmt. in Support, p. 3).

As noted, PAWC originally requested a ratemaking rate base value of \$22.34 million in its application. The OCA proposed an adjusted value of \$17 million. (OCA Stmt. 1S, p. 27). We agree with the Joint Petitioners that the agreed upon ratemaking rate base value of \$20.5 million represents a reasonable compromise of the parties' various litigation positions and that it falls within the range of likely outcomes of a fully litigated proceeding. Accordingly, we find that this settlement term is in the public interest and recommend that it be approved by the Commission without further modification.

D. Rates

Under the settlement, the Joint Petitioners have agreed that, in its first base rate case that includes Steelton water system assets, PAWC will submit a cost of service study that removes all revenues, expenses and rate base associated with the operation of the Steelton System. In addition, in its first base rate case that includes Steelton water system assets, PAWC will also provide a separate cost of service study for the Steelton System. The Joint Petitioners further agree that, except as explicitly stated in the Joint Petition, nothing contained in the Settlement or in the Commission's approval of the Application will preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding.

With respect to Steelton customer rates, the Joint Petitioners agree that, in its first base rate case following the closing of the acquisition, PAWC will propose to move the Steelton system to its cost of service or 1.4 times the current Steelton rates, whichever is lower, based on the separate cost of service study for the Steelton System. The Joint Petitioners further agree that

the OCA, I&E and OSBA reserve their rights to fully address this proposal and to make other rate proposals in the base rate case.

The OCA argued in this proceeding for the need for a separate cost of service study for the Steelton water system in the first base rate case in which PAWC includes the Steelton assets in rate base. It argued that a cost of service study will provide information necessary to establish rates that accurately reflect the costs for the system. (OCA Stmt. 1, pp. 13-14). In supporting these settlement terms, the OCA stated:

These settlement terms will provide a means for the parties to use the cost of service data to set rates for those customers that differ, as appropriate, from the rates established for other water customers. This will help mitigate the potential level of subsidy by PAWC's other water customers and applies the ratemaking principle of gradualism to rates set for customers in the Steelton service area.

(OCA Stmt. in Support, pp. 4-5).

In supporting these terms, both I&E and OSBA emphasized that the settlement allows I&E, OCA and OSBA to reserve their rights to fully address this proposal and to make other rate proposals in PAWC's next base rate case. (I&E stmt. in Support, p. 10; OSBA Stmt. in Support, p. 3).

We agree with the Joint Petitioners that these settlement terms are reasonable and provide protections to both existing PAWC customers and Steelton customers. The rate cap provision provides the Steelton customers a degree of protection against an excessive rate increase in PAWC's next base rate case as the company moves those rates toward the cost of service for that system. This provision also reflects the favored concept of gradualism. The requirement that PAWC include cost of service studies in its first base rate case in which it includes the Steelton system assets in rate base provides a degree of protection to PAWC's existing customers against subsidization of the newly acquired Steelton customers. Accordingly, we find that these settlement terms are in the public interest and recommend that they be approved by the Commission without modification.

E. Low Income Program Outreach

The settlement requires that, within the first 90 days of PAWC's ownership of the Steelton System, PAWC shall include a bill insert to the Steelton-area customers regarding its low-income programs and shall include such information in a welcome letter to Steelton-area customers. The bill insert and welcome letter must include, at a minimum, a description of the available low-income programs' eligibility requirements for participation in the programs, and PAWC's contact information.

This settlement term is in the public interest in that it requires the provision of useful and necessary information about assistance programs and eligibility requirements to low-income customers who may benefit greatly from such programs. As the OCA notes, “. . . this provision is reasonable and will provide timely information that may be helpful to some of the Steelton system customers.” (OCA Stmt. I Support, p. 7). We find that this settlement term is in the public interest and recommend that it be approved by the Commission without modification.

F. Distribution System Improvement Charge

The Joint Petitioners agree that, if PAWC proposes to modify its Long-Term Infrastructure Improvement Plan (“LTIIIP”) to include the Steelton System, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. The Joint Petitioners further agree that, upon approval by the Commission of such modification to its LTIIIP, PAWC shall be permitted to collect a distribution system improvement charge (“DSIC”) related to the Steelton system prior to the first base rate case in which the Steelton assets are incorporated into rate base.

A concern was raised in this proceeding that if PAWC revises its LTIIIP and associated DSIC to include improvements to the Steelton system, it not be permitted to re-direct or reprioritize DSIC investment away from existing water service areas to which it is committed under its existing LTIIIP. In supporting this settlement term, the OCA states, “[t]his settlement term allows for Steelton customers to begin contributing, up to 7.5% of their total water bill,

toward DSIC-eligible capital projects and helps to ensure that DSIC investment is not shifted away from PAWC's existing water service areas during the amended LTIP period." (OCA Stmt. in Support. P. 5).

This settlement term ensures that an amended LTIP will not reprioritize existing commitments in other service areas. This provides protections to those existing PAWC customers who will benefit from the company's existing LTIP commitments. For these reasons, we find that this settlement term is in the public interest and recommend that it be approved by the Commission without modification.

G. Accrual of Allowance for Funds Used During Construction

Under the settlement, the Joint Petitioners acknowledge that PAWC's application includes a request that PAWC be permitted to accrue Allowance for Funds Used During Construction ("AFUDC"). Any claim for AFUDC related to post-acquisition improvements not recovered through the DSIC will be addressed in PAWC's first base rate case which includes Steelton water system assets, pursuant to 66 Pa.C.S. § 1329(f)(1). The settlement further provides that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review, and that the Joint Petitioners' assent to this term will not be construed to operate as their preapproval of PAWC's request.

Section 1329(f)(1) of the Code allows acquiring public utilities to accrue an allowance for funds used during construction on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following two events: (1) the asset has been in service for a period of four years, or (2) the asset is included in the acquiring utility's next base rate case. In its application, PAWC is merely requesting permission, pursuant to Section 1329(f)(1), to accrue AFUDC on post-acquisition improvements that are not included in a DSIC.

The Joint Petitioners all recognize, in supporting this settlement term, that OCA, I&E and OSBA reserve their rights to challenge or litigate future claims made by PAWC for

AFUDC. PAWC states, “[t]he settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in the first base rate case that includes the Steelton System assets.” (PAWC Stmt. in Support, p. 11).

By taking this approach, the parties have reached a settlement that will provide for the acquisition of the water system now without further litigation or delay while allowing the parties to address issues such as this at a later date. We agree with the Joint Petitioners and find that this settlement term is in the public interest and recommend that it be approved by the Commission without modification.

H. Deferral of Depreciation for Post-Acquisition Improvements

Under the settlement, the Joint Petitioners acknowledge that PAWC’s Application includes a request that PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claim for deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case which includes Steelton water system assets. The settlement further provides that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review, and that the Joint Petitioners’ assent to this term will not be construed to operate as their preapproval of PAWC’s request.

Section 1329(f)(2) of the Code allows acquiring public utilities to defer depreciation on post-acquisition improvements that are not included in a DSIC. In its application, PAWC is merely requesting permission, pursuant to Section 1329(f)(2), to defer depreciation on post-acquisition improvements that are not included in a DSIC.

The Joint Petitioners all recognize, in supporting this settlement term, that OCA, I&E and OSBA reserve their rights to challenge or litigate future claims made by PAWC to defer depreciation on post-acquisition improvements that are not included in a DSIC. PAWC states,

“[t]he settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in the first base rate case that includes the Steelton System assets.” (PAWC Stmt. in Support, p. 11).

As with the issue related to AFUDC discussed above, the parties have reached a settlement that will provide for the acquisition of the water system now without further litigation or delay while allowing the parties to address issues such as this at a later date. We agree with the Joint Petitioners and find that this settlement term is in the public interest and recommend that it be approved by the Commission without modification.

I. Transaction and Closing Costs

Under the settlement, the Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the Transaction. The Joint Petitioners agree that they will not contest this request in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The settlement further provides that the Joint Petitioners’ assent to this term should not be construed to operate as their preapproval of PAWC’s request.

Section 1329(d)(1)(iv) of the Code allows acquiring public utilities to include, in their next base rate case, claims for transaction and closing costs incurred for acquisitions. Here, PAWC is merely requesting approval to include, as allowed by Section 1329(d)(1)(iv), transaction and closing costs in its next base rate case, while agreeing that the Joint Petitioners reserve their rights to fully litigate their positions on this issue in future rate cases when this issue is ripe for review.

The Joint Petitioners all recognize, in supporting this settlement term, that OCA, I&E and OSBA reserve their rights to challenge or litigate future claims made by PAWC for transaction and closing costs. PAWC states, “[t]he settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. (PAWC Stmt. in Support, p. 11).

As with the previous issues discussed above, the parties have reached a settlement that will provide for the acquisition of the water system now without further litigation or delay while allowing the parties to address issues such as this at a later date. We agree with the Joint Petitioners and find that this settlement term is in the public interest and recommend that it be approved by the Commission without modification.

J. Investigation of Alternatives to Total Replacement of Steelton Water Treatment Plant

The settlement provides that, in the first base rate case that includes a claim for recovery of costs related to a new Steelton water treatment plant, PAWC will provide, if it constructs such plant, a report indicating what alternatives to total replacement of the Steelton water treatment plant were considered, provide cost/benefit information for each alternative and support for the chosen action. The report will be included in PAWC's base rate filing and served on all Joint Petitioners and the Commission's Bureau of Technical Utility Services. The settlement further provides that all Joint Petitioners reserve their respective rights to support or challenge a claim for recovery of costs related to improvements to the Steelton system, including a new water treatment plant, in future proceedings.

A concern was raised in this proceeding about the need for PAWC to construct a new water treatment plant and the impact such a project would have on rates in the event a new plant was built. (See, OCA Stmt. 1, pp. 17-18). OCA recommended that PAWC be required to investigate alternatives to building a new plant that would result in lower costs. (OCA Stmt. 1, p. 19). OCA stated, "[t]his information will facilitate review by the Commission and interested parties of PAWC's chosen action to determine whether the costs are properly recovered in rates." (OCA Stmt. in Support, p. 8). I&E agrees that this settlement term is reasonable and in the public interest as it protects customers from excessive claims that would unreasonably increase rates. (I&E Stmt. in Support, p. 17).

This settlement term protects PAWC's customers from potentially excessive claims for costs associated with a new treatment plant, in the event PAWC elects to build a new plant, by requiring the provision of information about treatment alternatives necessary for

interested parties to challenge the reasonableness of claims made by PAWC. Further, this term specifically reserves the rights of all interested parties to challenge any claims made by PAWC in a future base rate proceeding. We find these protections to be reasonable and in the public interest and recommend that they be approved without modification.

K. Discovery Issue

On July 2, 2019, Steelton provided, under confidential cover, copies to the OCA, I&E and OSBA of all proposals and accompanying exhibits received by Steelton with respect to the proposed sale of its water system. This settlement term recognizes the resolution of this issue by the parties and notes that all Joint Petitioners reserve their rights to raise this issue in any future proceeding. The Joint Petitioners further agree that no decision in this case nor this settlement shall be used as precedent in any future proceeding.

This settlement term merely indicates that the parties in this proceeding resolved a discovery dispute among themselves, while agreeing that this resolution does not impact the rights of any party to raise the issue in future proceedings. We find this settlement term to be reasonable and in the public interest and recommend that it be approved by the Commission.

L. Customer Notice

The settlement provides that PAWC shall mail the notice attached to the Joint Petition as **Appendix B** to existing customers of Steelton notifying them of the settlement in this proceeding concurrently with the filing of this Joint Petition. The Joint Petitioners agree that such notice of settlement provides existing customers of Steelton with adequate notice and an opportunity to be heard on this proposed settlement.

Additionally, the settlement requires that, (1) in future Section 1329 water system acquisition proceedings, PAWC will send a notice substantially in the form attached to the Joint Petition as **Appendix C** to existing customers of the system being acquired and a notice substantially in the form attached to the Joint Petition as **Appendix D** to existing water

customers of PAWC, and (2) in future Section 1329 wastewater system acquisition proceedings, PAWC will send a notice substantially in the form attached to the Joint Petition as **Appendix E** to existing customers of the system being acquired and a notice substantially in the form attached to the Joint Petition as **Appendix F** to existing water and/or wastewater customers of PAWC. The Joint Petitioners agree that they will not challenge the sufficiency or adequacy of such notices in future PAWC Section 1329 proceedings prior to PAWC filing its next base rate case, except the Joint Petitioners may challenge whether notices actually used by PAWC conform to Appendices C, D, E or F, or the Rate Impact Calculations attached to the Joint Petition as **Appendix G**.

The notice attached to the Joint Petition as Appendix B provided notice of the settlement in this proceeding to Steelton customers, as well as information on potential rate increases that may result from the settlement in the company's next base rate case. It also provided instructions about how these customers could provide comments about the settlement to the Commission. The notices attached to the Joint Petition as Appendices C-F are to be used by PAWC to provide notice to customers of both PAWC and the systems to be acquired in future Section 1329 proceedings. These notices will include information about potential rate increases that may result from the acquisition and about how impacted customers may provide input on the proposed acquisition.

PAWC supports this settlement term, explaining:

Pursuant to the Commonwealth Court's decision in *McCloskey v. Pa. Public Utility Commission*, 195 A.3d 1055 (Pa. Cmwlth. 2018) and the Commission's Final Supplemental Implementation Order in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Order entered February 28, 2019), individual notice of Section 1329 proceedings is required in accordance with 52 Pa. Code §53.45. The settlement is in the public interest because it resolves the issue of customer notice, not only for Steelton customers in this proceeding, but also for future Section 1329 water acquisitions. The agreement of the Joint Petitioners on future 1329 water acquisition notices will limit litigation of this issue, conserving the resources of all Joint Petitioners and the Commission, which benefits the public interest.

(PAWC Stmt. in Support, p. 12).

OCA supports this settlement term, stating:

The notices will provide more accurate information regarding the level of rate increase that may result from PAWC's acquisition of additional water or wastewater systems and inform customers of their options to request a public input hearing on the proposed acquisition. Further, the creation of templates for the notices preemptively addresses common challenges to the notices that might otherwise be litigated and, thus, may help to avoid the necessity of sending more than one notice to the same group of customers in future PAWC Section 1329 proceedings.

(OCA Stmt. in support, pp. 6-7).

We find these settlement terms to be in the public interest and provide affirmative public benefits in that they require the provision of more accurate and useful information about the potential rate impacts of future acquisitions to impacted customers, as well as additional information about how those customers may become involved and present input on proposed acquisitions. The Joint Petitioners have all agreed on the content of the required notices to be used by PAWC in future acquisition proceedings. Accordingly, we recommend that this settlement term be approved by the Commission.

M. Approval of Section 507 Agreements

Having found that the settlement terms set forth in the Joint Petition are reasonable and in the public interest, we recommend that the Commission, pursuant to 66 Pa. C.S. § 507, issue a Certificate of Filing or approvals for the Asset Purchase Agreement By and Between Steelton Borough Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as of November 14, 2018 and the First Amendment to the Asset Purchase Agreement (reflecting revised purchase price per the Settlement).

N. Other Necessary Approvals

Having found that the settlement terms set forth in the Joint Petition are reasonable and in the public interest, we recommend that the Commission issue any other

approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

O. Standard Settlement Conditions

The Joint Petition includes the following additional settlement terms:

1. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

2. The Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

3. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner's position with respect to any issues raised in this proceeding. The Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Settlement.

4. If the ALJs recommend approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

These terms are standard terms typically included in many settlements before the Commission and merely act to protect the rights of the various parties to pursue their original litigation positions in the event the Commission modifies the settlement in any way. We find these terms to be reasonable and in the public interest and recommend that they be approved by the Commission.

IV. Customer Comments

In response to the notice attached to the Joint Petition as Appendix B, titled, “Notice of Proposed Joint Settlement of Water Acquisition and Rate Base Addition,” we received several individual letters from Steelton customers, as well as a petition signed by an additional 63 customers.³ The customers who submitted individual letters merely indicated that they opposed the potential rate increase. The petition included the following statement at the top of each signature page: **“July 11, 2019 PETITION TO STOP PENNSYLVANIA-AMERICAN WATER RATE INCREASE. Pursuant to PUC Docket Number A-2019-3006889, we the undersigned are in total disagreement of the 40% water increase.”**

None of the customers who signed either individual letters or the petition presented any information or analysis in support of their positions against a potential rate increase. These customers had notice and an opportunity to be heard by presenting evidence or testimony when they received individual notice of this proceeding from the company beginning on March 11, 2019. None of those customers took advantage of that opportunity. They all merely indicated their opposition to the potential increase.

The Joint Petitioners, on the other hand, conducted extensive discovery and engaged the services of technical and financial experts to review the application, all relevant supporting information and discovery responses in developing both their original litigation positions and their ultimate settlement positions. The Joint Petitioners all agree that the rate increase/rate cap term set forth in ¶25 of the Joint Petition represents a fair and reasonable

³ There are 64 signatures on the petition. One of the customers who submitted an individual letter also signed the petition.

compromise on the issue of a potential rate increase for Steelton customers in PAWC's next base rate case. As explained by the OCA in agreeing to this settlement term, "this will help mitigate the potential level of subsidy by PAWC's other water customers and applies the ratemaking principle of gradualism to rates set for customers in the Steelton service area." (OCA Stmt. in Support, pp. 4-5). Additionally, the Joint Petitioners have all agreed that I&E, OCA and OSBA reserve their rights to fully address this proposal and to make other rate proposals in PAWC's next base rate case. (I&E stmt. in Support, p. 10; OSBA Stmt. in Support, p. 3).

We have reviewed and considered the comments submitted by the Steelton customers and find that they provide no basis upon which to conclude that the rate increase/rate cap settlement provisions contained in the Joint Petition are unjust, unreasonable or otherwise in violation of the Public Utility Code.

V. Affirmative Public Benefits

Our review of the various settlement terms set forth in the Joint Petition identifies a number of affirmative public benefits that will be realized as a result of approval of the Joint Petition. By way of example, the low-income program outreach requirement will ensure that Steelton customers will be aware of PAWC's low-income assistance programs and their eligibility requirements so that eligible customers may take advantage of these programs. Further, the requirement that PAWC investigate and provide a report on potential alternatives to the construction of a new treatment plant offers protection to the company's ratepayers against the potential of excessive future rate increases associated with construction of a new treatment plant if there are reasonable, less costly alternatives. Additionally, the requirement that PAWC provide cost of service studies as part of its first base rate case that includes the Steelton system assets in rate base will help protect the company's existing customers from subsidizing the Steelton customers because a cost of service study will provide information necessary to develop rates that accurately reflect the costs for the system.

In addition to the affirmative public benefits identified above and in our review of all of the settlement terms, additional public benefits will be realized as a result of approval of the Joint Petition. These benefits include:

- Promotion of the Commission's policy favoring regionalization and consolidation of water and wastewater systems. (PAWC Stmt. 1, p. 13).
- The Steelton system becomes part of a Commission-regulated public utility and its customers gain the protection of the Code, the Commission, and the oversight of I&E, the OCA and the OSBA.
- The Steelton system and its customers will benefit from PAWC's significant engineering and technical experience in operating water systems, as well as its substantial financial resources. (PAWC Stmt. 2, p. 10).
- PAWC's existing customers will benefit, in the long term, since adding the Steelton customers to PAWC's overall system will allow costs of operating the system to be spread over a larger customer base. (PAWC Stmt. 1, p. 14).

As addressed in our review of all of the settlement terms set forth in the Joint Petition, as well as the additional items noted above, we find that the transaction will result in the realization of sufficient affirmative public benefits such that approval of the Joint Petition is appropriate and in the public interest.

CONCLUSION

For the reasons set forth above, we recommend that the Joint Petition be approved by the Commission without modification because it is in the public interest, realizes the Commission's policy of promoting settlements, is consistent with the Public Utility Code and is supported by substantial evidence.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. §§ 1102, 1103, 1329.
2. Commission policy promotes settlement. 52 Pa. Code § 5.231.
3. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.
4. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165 (Order entered Oct. 4, 2004); Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs., 74 Pa. PUC 767 (1991).
5. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).
6. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized....” 66 Pa. C.S. § 1102(a)(1).
7. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

8. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. Seaboard Tank Lines v. Pa. Pub. Util. Comm'n, 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).

9. The fitness of a currently certificated public utility is presumed. *See e.g.*, South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

10. Financial fitness means that the applicant should possess the financial resources to provide the proposed service. Re Perry Hassman, 55 Pa. PUC 661 (1982).

11. Technical fitness means that the applicant should have sufficient staff, facilities and operating skills to provide the proposed service. Re Perry Hassman, 55 Pa. PUC 661 (1982); Merz White Ways Tours v. Pa. Pub. Util. Comm'n, 201 A.2d 446 (Pa. Super. 1964).

12. Legal fitness means that the applicant has a propensity to obey the Code and the Commission's regulations. Re Perry Hassman, 55 Pa. PUC 661 (1982).

13. An applicant for a certificate of public convenience must demonstrate that the 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).

14. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

15. For an acquisition in which a selling utility and an acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the application is to contain a tariff equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. 66 Pa. C.S. § 1329(d)(1)(v).

16. A rate stabilization plan is defined as, “A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa. C.S. § 1329(g).

17. Section 1329 permits an acquiring public utility’s post-acquisition improvements, which are not included in a distribution system improvement charge, to accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility’s next base rate case, whichever is earlier. 66 Pa. C.S. § 1329(f)(1).

18. Section 1329 permits an acquiring public utility to defer depreciation on post-acquisition improvements, which are not included in a distribution system improvement charge. 66 Pa. C.S. § 1329(f)(2).

19. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa. C.S. § 1329(d)(2).

20. Transaction and closing costs include the utility valuation expert’s appraisal fee, the buyer’s share of the costs related to the engineer’s assessment, and the buyer’s closing costs, including reasonable attorney fees. These costs are properly reviewed in SWPA’s next base rate case that follows the acquisition, and they will be subject to the preponderance of evidence standard in that review. The Commission will not approve these costs during the 1329 proceeding. Implementation of Section 1329 of the Public Utility Code, Docket No. M-20162543193 (Final Implementation Order entered October 27, 2016).

21. A contract between a municipality and a public utility (other than a contract to furnish service at regular tariff rates) must be filed with the Commission at least 30 days before the effective date of the contract. The Commission may approve it by issuing a certificate of filing or institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. 66 Pa. C.S. § 507.

22. The settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Settlement of All Issues filed by Pennsylvania-American Water Company, the Steelton Borough Authority, the Office of Consumer Advocate, the Office of Small Business Advocate and the Bureau of Investigation and Enforcement (together, Joint Petitioners) on July 2, 2019 at Docket No. A-2019-3006880, including all terms and conditions thereof, be approved without modification.

2. That the application filed by Pennsylvania-American Water Company on January 2, 2019 as amended on February 19, 2019 is granted, subject to the following conditions (subsections and paragraph numbers are listed as they appear in the original settlement filed with the Commission):

a. In the first base rate case that includes Steelton water system assets, PAWC will submit a cost of service study that removes all revenues, expenses and rate base associated with the operation of the Steelton System.

b. In the first base rate case that includes Steelton water system assets, PAWC will also provide a separate cost of service study for the Steelton System.

c. That PAWC file an amendment to the Asset Purchase Agreement, along with copies of required authorization from Steelton Borough Authority's Board of Directors that adjusts the purchase price to \$21,750,000.

d. That PAWC, in its first base rate case following the closing of the acquisition, will propose to move the Steelton System to its cost of service or 1.4 times the current Steelton rates, whichever is lower, based on a separate cost of service study for the Steelton System, provided that such rates for Steelton customers do not exceed PAWC's proposed Zone 1 water rate.

e. That PAWC will, in the first base rate case that includes a claim for recovery of costs related to a new Steelton water treatment plant, if PAWC constructs such plant, PAWC will provide a report indicating what alternatives to total replacement of the Steelton water treatment plant were considered, provide cost/benefit information for each alternative and support for the chosen action. The report will be included in PAWC's base rate filing and served on all Joint Petitioners and the Commission's Bureau of Technical Utility Services.

f. That Steelton provide under confidential cover, copies to the OCA, I&E and OSBA of all proposals and accompanying exhibits received by Steelton with respect to the proposed sale of its water system.

g. That PAWC will provide customer notice in future Section 1329 water and wastewater acquisition proceedings consistent with Appendices C-G and Paragraph 36 of the Settlement in this case.

h. The Commission issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of Steelton's assets, properties and rights related to its water system to PAWC as provided in the Application, and (ii) PAWC's right to begin

to offer, render, furnish or supply water service in the areas served by Steelton as indicated in the Application.

i. The Commission permit PAWC, upon closing of the Transaction, to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement (attached hereto as **Appendix A**), to be effective on the date of issuance.

j. The Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$20,500,000 associated with the acquisition of the System.

k. Within the first 90 days of PAWC's ownership of the Steelton System, PAWC shall include a bill insert to the Steelton-area customers regarding its low-income programs and shall include such information in a welcome letter to Steelton-area customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low-income program eligibility requirements for participation in the programs, and PAWC's contact information.

l. The Commission approve, pursuant to 66 Pa. C.S. § 1329(d), the collection of a distribution system improvement charge related to the Steelton System prior to the first base rate case in which the Steelton assets are incorporated into rate base, conditioned on PAWC filing and the Commission approving a modified water long term infrastructure improvement plan to include the Steelton System, which does not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas.

m. The Commission, pursuant to 66 Pa. C.S. § 1329(f), permit PAWC to accrue an allowance for funds used during construction ("AFUDC"). The Commission recognizes that any claims for AFUDC will be addressed in PAWC's first base rate case which includes Steelton water system assets.

n. The Commission, pursuant to 66 Pa. C.S. § 1329(f), permit PAWC to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that any claims for recovery of deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, will be addressed in PAWC's first base rate case which includes Steelton water system assets.

o. The Commission, pursuant to 66 Pa. C.S. § 1329(d)(iv), permit PAWC to include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Steelton System. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

p. The Commission issue Certificates of Filing or approval for the Asset Purchase Agreement By and Between Steelton Borough Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as of November 14, 2018 and the First Amendment to the Asset Purchase Agreement (reflecting revised purchase price per the Settlement).

q. The Commission issue any other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

3. That any filings designated as "confidential" be placed in the non-public folders by the Secretary of the Pennsylvania Public Utility Commission.

4. That Docket No. A-2019-3006880 be marked closed.

Date: August 9, 2019

/s/
Steven K. Haas
Administrative Law Judge

/s/
Benjamin J. Myers
Administrative Law Judge