

RECOMMENDED DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Decision recommends the adoption, without modification, of the Joint Petition for Approval of Settlement of the Consolidated Proceeding submitted by Aqua Pennsylvania, Inc. (Aqua or Company), the Borough of Phoenixville (Phoenixville or Borough) and Pennsylvania-American Water Company (PAWC). The proposed Settlement is the result of negotiations among the parties and is a request for the issuance of certificates of public convenience necessary for the acquisition of assets to conclude this case and a request for the approval of a number of contracts needed to effectuate the Settlement.

Specifically, the parties ask the Commission to issue certificates of public convenience approving Aqua's acquisition of certain water system assets of the Borough and allowing Aqua to begin to provide public water service in portions of East Pikeland Township, Chester County, and in portions of Upper Providence Township, Montgomery County. The parties ask the Commission to issue a certificate of public convenience approving the Borough's abandonment of public water service in East Pikeland Township, Chester County, Upper Providence Township, Montgomery County, and to certain locations in Schuylkill Township, Chester County.

The Joint Application and Joint Petition for Approval of Settlement includes a request for approval of contracts including assignment of contracts between Aqua and Phoenixville, pursuant to Section 507 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 507. As proposed in the Joint Application, the assignments included a partial assignment of a water supply agreement between the Borough and PAWC, referred to in the Joint Application as the "1986 Water Supply Agreement."

For reasons stated herein and set forth in the Supporting Statements of the parties, Commission approval of the Joint Application, and the Joint Petition for Approval of Settlement without modification is in the public interest.

HISTORY OF THE PROCEEDING

On January 12, 2018, Aqua and the Borough filed both a Proprietary Version and a Public Version of the Joint Application for Approval of Aqua's Acquisition of certain water system assets of the Borough and the approval of certain contracts. The Joint Application was docketed at Docket Nos. A-2018-2642837 and A-2018-2642839.

On February 12, 2018, Aqua filed proof of publication of the Joint Application as directed by a letter from the Secretary of the Commission on January 18, 2018. Also on February 12, 2018, PAWC filed a protest in this case.

On February 16, 2018, the Office of Consumer Advocate (OCA) filed a protest and public statement in this case.

On March 15, 2018, an Initial Hearing Notice was issued setting April 20, 2018, as the date for an initial hearing. The undersigned was designated as the presiding officer in this matter. That hearing was continued and rescheduled for May 4, 2018. The hearing scheduled for May 4, 2018 was also rescheduled, and this matter was referred to the Mediation Division of the Office of Administrative Law Judge (OALJ). Mediation was initiated on June 12, 2018.

An initial, in-person Prehearing Conference was scheduled for July 25, 2018. That hearing was rescheduled at the request of the parties for September 7, 2018. That hearing was rescheduled at the request of the parties for November 21, 2018, as they continued settlement discussions. The hearing set for November 21, 2018 was cancelled at the request of the parties, as the parties indicated that a settlement might be filed at the end of December, 2018.

On January 10, 2019, in response to an inquiry from the undersigned, the parties stated by email that they were moving forward with the preparation of a settlement petition and related settlement documents. The parties stated that they did not believe that a prehearing conference or a litigation schedule would be needed.

On May 8, 2019, Aqua, the Borough and PAWC filed a joint Motion to Consolidate the Joint Application and Aqua's Section 507 filing, and PAWC's Application (A-2019-3008980) and PAWC's Section 507 filing (U-2019-3009763). The Motion was unopposed, and on May 16, 2019, an Order was issued consolidating these cases.

On June 7, 2019, the parties filed a Joint Petition for Approval of Settlement of the Consolidated Proceeding, along with Statements in Support. A Form of Aqua Tariff Supplement was included as Appendix 15 to the Joint Petition intending to implement the existing Borough rates post-closing.

On August 22, 2019, the parties, in response to a request from the presiding officer, filed a letter at this docket requesting that the proposed Findings of Fact submitted with the Joint Settlement be considered as a Stipulation of Facts by the parties, with the exception of the OCA, which did not oppose that request. Additionally, a Revised Schedule of Rates Tariff Page identifying the Quarterly Customer Charge of \$10.00 as a charge to both 5/8 inch meters and 3/4 inch meters to replace the existing Page in Appendix 15 was filed with the Secretary of the Commission. Aqua, the Borough of Phoenixville and PAWC agree with the tariff revision and that the revised Page should replace the existing page. The OCA, which is not a signatory to the Joint Petition but does not oppose it, does not oppose the Page revision.

On August 26, 2019, an Order was issued adopting the proposed Findings of Fact submitted with the Joint Settlement as a Stipulation of Facts and admitting the same to the record, thus forming the evidentiary basis for the proposed Settlement. The Joint Findings of Facts/Stipulation is attached to this Recommended Decision and is incorporated by reference herein. The Order of August 26, 2019 also admitted into the record the proposed revision to the

existing tariff Page in Appendix 15 filed with the Secretary of the Commission on August 22, 2019, and closed the record in this case.

THE PROPOSED SETTLEMENT

The following are the terms of the proposed Settlement, taken verbatim from the Joint Petition, starting at Paragraph 26 of that document.

26. Joint Petitioners agree that this consolidated proceeding can be settled without the need for further litigation. The terms and conditions comprising this Joint Petition, to which Joint Petitioners agree, are as follows:

The Joint Application of Aqua and the Borough

- a. Joint Petitioners agree that Aqua's acquisition of the water system assets of the Borough as proposed in the Joint Application and modified by the following settlement terms will further the public interest and is supported by affirmative public benefits.
- b. The purchase price of \$3,600,000 that Aqua would have paid for the Borough water assets is reduced by \$135,971.22 to account for the removal of the 21 Egypt Road Customers from the transaction. An Amendment to the Assets Purchase Agreement between Aqua and the Borough reflecting the reduced purchase price is attached hereto as Appendix 1.
- c. The Joint Application included a request for approval of Section 507 contracts between Aqua and the Borough. Joint Petitioners agree that the Assets Purchase Agreement and the Amendment to the Assets Purchase Agreement are reasonable, legal and valid and that it would be appropriate for the Commission to issue certificates of filing for the APA and the Amendment to the APA in accordance with Section 507 of the Code.
- d. Addressing the issue of potential overlapping service territory, Aqua has modified its proposed service territory boundaries as presented on the maps attached hereto as Appendix 2 (Schuylkill Township and East Pikeland Township)¹ and Appendix 3 (Upper Providence Township). The maps preserve existing service territory boundaries, to the extent possible, without territory overlap between Aqua and

¹ Appendix 2 includes the area in the Northeast corner of East Pikeland Township presented on Exhibit B to the Joint Application.

PAWC. The Aqua service territory in Upper Providence Township presented in Appendix 3 does not include the 21 Egypt Road Customers. It, additionally, recognizes site specific authority for a single, existing PAWC hydrant at 2nd and Norwood Streets that is served from the existing PAWC main. Aqua and PAWC agree to confer, within one year after closing of the proposed transaction between Aqua and the Borough, on whether this hydrant and the site specific service territory are still necessary.

The Amendment to the 1986 Water Supply Agreement

- e. In lieu of the partial assignment of the 1986 Water Supply Agreement to Aqua, the Borough and PAWC have entered into the Amendment to the 1986 Water Supply Agreement attached hereto as Appendix 4 pursuant to which the Borough will continue to sell water to PAWC.
- f. Under the terms of the Amendment to the 1986 Water Supply Agreement, the Borough will supply PAWC with up to 1.15 million peak gallons per day of water and no less than 150,000 gallons per day of water through January 1, 2026. PAWC shall purchase the water supplied by the Borough at a rate of \$4.50 per 1,000 gallons, which shall increase by \$1.00 per 1,000 gallons on the effective date of any rate increase approved by the Commission for PAWC.
- g. PAWC's request for a Section 507 certificate of filing for the Amendment to the 1986 Water Supply Agreement is pending before the Commission at Docket No. U-2019-3009763. Joint Petitioners agree that the Amendment to the 1986 Water Supply Agreement is reasonable, legal and valid and that it would be appropriate for the Commission to issue a certificate of filing in accordance with Section 507 of the Code.
- h. Joint Petitioners further agree that, in continuing to sell water to PAWC, the Borough will not be offering to serve the public and that the Borough's continuing sale of water to PAWC is a nonregulated service. The Joint Application asks for a certificate of public convenience authorizing the Borough to abandon its Commission regulated utility service and territory.

The Water Wheeling Agreement

- i. To accommodate the continuing sale of water by the Borough to PAWC following Aqua's acquisition of Borough facilities, Aqua and the Borough have entered into the Water Wheeling Agreement, attached hereto as Appendix 5, whereby Aqua will wheel water from the Borough to PAWC through the mains that Aqua is acquiring.
- j. The Water Wheeling Agreement has an end date of January 1, 2026, but may be renewed for a term equal to any new or extended agreement for supply of water between the Borough and PAWC.

- k. Aqua will charge the Borough a wheeling rate of \$0.28 per 1,000 gallons through December 31, 2025. If the Borough and PAWC enter into a new or extended water supply agreement, Aqua's wheeling rate will increase \$0.01 per 1,000 gallons on January 1 of each subsequent year for the term of any new or extended agreement.
- l. The Joint Application included a request for approval of Section 507 contracts between Aqua and the Borough. Joint Petitioners agree that the Water Wheeling Agreement is reasonable, legal and valid and that it would be appropriate for the Commission to issue a certificate of filing in accordance with Section 507 of the Code.

The Amendment to the Water Supply Agreement

- m. In furtherance of the settlement and consistent with the initial termination dates for the Amendment to the 1986 Water Supply Agreement and the Water Wheeling Agreement, Aqua and the Borough have entered into an Amendment to their Water Supply Agreement, dated January 10, 2018, and included as Exhibit G1 to the Joint Application. The Amendment reduces the term of the Agreement from ten (10) years to a term ending on January 1, 2026. The Amendment is attached hereto as Appendix 6.
- n. The Joint Application included a request for approval of Section 507 contracts between Aqua and the Borough. Joint Petitioners agree that the Water Supply Agreement and the Amendment to the Water Supply Agreement are reasonable, legal and valid and that it would be appropriate for the Commission to issue certificates of filing for the Agreement and the Amendment in accordance with Section 507 of the Code.

The PAWC Application

- o. In furtherance of the settlement, PAWC has filed an Application to provide water service to the 21 Egypt Road Customers. The Customers, which, presently, are Borough customers, are served from a main owned by PAWC.
- p. As part of its Application, PAWC has presented maps attached hereto as Appendix 7 (Schuylkill Township and East Pikeland Township) and Appendix 8 (Upper Providence Township).
- q. The Appendix 7 and Appendix 8 maps preserve existing service territory boundaries, to the extent possible, without territory overlap between Aqua and PAWC.
- r. The Appendix 8 map includes the 21 Egypt Road Customers. It, additionally, recognizes site specific authority for a single, existing PAWC hydrant at 2nd and Norwood Streets that is served from the existing PAWC main, which Aqua and PAWC agree will be revisited as set forth in Paragraph 26.d.

- s. Aqua and the Borough support the PAWC Application to the extent that it addresses and resolves issues raised in the Joint Application proceeding.

The Settlement is conditioned upon the Commission's approval of all terms and conditions contained therein. If the Commission should fail to grant such approval or should modify the terms and conditions herein, the Joint Petition may be withdrawn upon written notice to the Commission and all parties within three (3) business days by any one of the Joint Petitioners and, in such event, shall be of no force and effect. Regardless of whether this Settlement is approved or not, no adverse inference shall be drawn to any party in this or any other proceeding as a consequence of this Settlement.

The Settlement is proposed to resolve this matter and is made without any admission against or prejudice to any position which any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by any one of the Joint Petitioners. The parties have agreed that no part of the Joint Petition and Settlement shall be cited for any purpose in this or any other proceeding in this or any other jurisdiction.

The Joint Petitioners have waived the right to file Exceptions to this Recommended Decision as I am recommending the approval of the Joint Petition and Settlement without modification.

As a final matter, the Joint Application asks the Commission to issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the Borough water system assets.

PUBLIC INTEREST CONSIDERATIONS

The parties maintain that the proposed Settlement is in the public interest, and I agree. The Joint Petition resolves all issues in the Joint Application proceeding. The resolution is the result of negotiations among the Joint Petitioners over an extended period. The Joint Petitioners submit that the resolution of this proceeding through settlement will further the public

interest and have provided Supporting Statements which are summarized, below. Although not a signatory to the Joint Petition, the Office of Consumer Advocate does not oppose the Joint Petition or adoption of the Settlement.

Supporting Statement of Aqua Pennsylvania, Inc.

Aqua submits that the approval of the Joint Petition will minimize litigation and administrative burden by avoiding the submission of testimony and participation in adversarial evidentiary hearings, the preparation, filing and consideration of main and reply briefs, exceptions and replies to exceptions, and by avoiding the possibility of appellate court review of a Commission Opinion and Order. More importantly, approval of the Joint Petition will further the public interest by promoting the consolidation and regionalization of water operations. Aqua Supporting Statement at 2-3.

Aqua contends that the Joint Petition is fully consistent with the Commission's guidance in a prior Order denying the Borough's request for a finding that its service to customers in adjoining outside townships does not constitute public utility service subject to the Commission's jurisdiction.² The Commission declined to exempt the Borough's outside service from regulation while noting that the Borough is proximately located to other regulated water systems, including Aqua in adjoining Schuylkill Township. The Commission stated as follows:

[T]he Commission would also be remiss if we did not acknowledge that unlike in the prior municipal corporation cases, there are viable options for the Borough, namely ... Aqua Pennsylvania's provision of public utility service in Schuylkill Township. In conclusion, Phoenixville clearly has options to ... perceived regulatory 'burdens' which may prove beneficial to explore.³

Aqua acquired its adjoining Schuylkill Township service area from the Borough in 1995 in a Commission approved transaction involving the transfer of more than 650 outside

² *Petition of the Borough of Phoenixville for a Declaratory Order that the Provision of Water and Wastewater Service to Isolated Customers in Adjoining Townships Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2013-2389321 (Order entered May 19, 2015).

³ *Id.* at 7-8.

Borough customers to Aqua.⁴ Aqua and the Borough now propose to transfer the remaining outside Borough assets and remaining 556 outside Borough customers (exclusive of the Borough's twenty-one Egypt Road customers) to Aqua. Aqua maintains that the public interest supports the transfer of the remaining assets and remaining 556 customers in the same way that the public interest supported the transfer of the initial 650 customers in 1995. Aqua Supporting Statement at 3-4.

Aqua has the technical, regulatory, financial and legal fitness to acquire and operate the Borough's extraterritorial water system assets used to provide public water service in East Pikeland, Schuylkill and Upper Providence Townships and to maintain the operations and make improvements to meet continuing and future customer needs. The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua. As a certificated provider of utility service, Aqua's fitness is presumed. See *Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995). Aqua Supporting Statement at 5.

In sum, Aqua will acquire the remaining outside Borough water assets and expand its service territory to the remaining outside Borough customers in compliance with Commission regulations. Economies of scale of an expanded customer base has a beneficial effect on existing customers, and Aqua will meet the needs of new customers without any detriment to those existing customers. Aqua, accordingly, submits that the Commission should find that approval of the Joint Petition and proposed transfer of assets and customers and expansion of service territory are necessary or proper for the service, accommodation, convenience, or safety of the public. Aqua Supporting Statement at 6-7.

Supporting Statement of the Borough of Phoenixville

The Borough of Phoenixville submits that the Joint Petition and the Settlement, itself, reflect a full settlement of all issues. The Borough contends that the Joint Petition is in the public interest and is supported by the following public benefits:

⁴ *Joint Application of Philadelphia Suburban Water Company and the Borough of Phoenixville*, Docket No. A-212370F0017, Corrected Order entered April 25, 1995.

- a. The Joint Petition provides clarity regarding service territories and the customers served within, as well as confirms arrangements regarding provision of water to customers.
- b. As a result of the Joint Petition, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be less than they would have been if the proceeding had been fully litigated.
- c. Uncertainties regarding further expenses associated with possible appeals from the final order of the Commission are avoided as a result of the Joint Petition.
- d. The Joint Petition reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding.
- e. The Joint Petition is presented without prejudice to any position any party may advance in future proceedings involving the Company.

Further, the Joint Petition specifically satisfies the concerns of the Borough by:

- a. Confirming that Aqua may acquire the Borough's outside water system assets, as previously suggested by the Commission, proposed in the Joint Application, and modified by the Joint Petition;⁵
- b. Confirming that the Assets Purchase Agreement and the Amendment to the Assets Purchase Agreement referenced in the Joint Application are reasonable, legal, and valid and merit receipt of certificates of filing in accordance with Section 507 of the Code;⁶
- c. In lieu of the partial assignment of the 1986 Water Supply Agreement to Aqua, the Joint Petition provides for an alternative resolution, the Amendment to the 1986 Water Supply Agreement, pursuant to which the Borough will continue to sell water to PAWC at certain rates and quantities;⁷

⁵ Joint Petition, Paragraph 26(a). The Commission in its Order entered May 19, 2015, in *Petition of the Borough of Phoenixville for a Declaratory Order that the Provision of Water and Wastewater Service to Isolated Customers in Adjoining Townships Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2013-2389321 (“PDO Order”), encouraged the Borough to pursue a sale of its outside water system assets as a means to address the Borough's concerns regarding the inefficiency of incurring costs for Commission rate cases and other proceedings when just 9.1% of the Borough’s water service customers are subject to PUC jurisdiction. PDO Order, at 7-8. As a result, this Joint Petition furthers the Borough's desire to sell its outside water system assets and is consistent with the Commission's observations in 2015.

⁶ Joint Petition, Paragraph 26(c).

⁷ Joint Petition, Paragraph 26(e).

- d. The Joint Petition also justifies that the Parties' agreement that the Amendment to the 1986 Water Supply Agreement is reasonable, legal, valid, and meriting an issue of certificate of filing in accordance with Section 507 of the Code;⁸
- e. The Joint Petition further affirms the Parties' agreement that, by continuing to offer wholesale water supply to PAWC, the Borough is not offering to serve the public and that the Borough's continuing sale of water is a non-regulated service;⁹
- f. The Joint Petition also further requests that the Borough be authorized to abandon its PUC-regulated utility service and territory;¹⁰
- g. In connection with the Borough's commitment to sell water to PAWC, the Joint Petition also clearly sets forth a water wheeling arrangement (the Water Wheeling Agreement) to facilitate those sales of water at established rates and quantities, and for a defined term;¹¹
- h. The Joint Petition sets forth that the Joint Petitioners agree that the Water Wheeling Agreement is reasonable, legal, and valid and appropriate for PUC issuance of a certificate of filing in accordance with Code Section 507;¹² and
- i. The Joint Petition establishes the provision of water service to the 21 Egypt Road Customers for the future.¹³

Phoenixville Supporting Statement at 7-9.

Supporting Statement of Pennsylvania-American Water Company

PAWC filed a protest in response to the Joint Application because PAWC's review of the Joint Application suggested that the service territory requested by Aqua encroached on PAWC's existing certificated territory. In addition, PAWC's review of the Asset Purchase Agreement suggested that Phoenixville was attempting to sell assets to Aqua that were owned by PAWC. Finally, PAWC protested the Joint Application because the Joint Application requested approval of a Water Supply Agreement between Phoenixville and Aqua (the "2018

⁸ Joint Petition, Paragraph 26(g).

⁹ Joint Petition, Paragraph 26(h).

¹⁰ Joint Petition, Paragraph 26(h).

¹¹ Joint Petition, Paragraphs 26(i)-(n).

¹² Joint Petition, Paragraph 26(l).

¹³ Joint Petition, Paragraphs 26(o)-(s)

Water Supply Agreement”) that included a partial assignment of rights and obligations in the 1986 Water Supply Agreement between Phoenixville and Citizen Utilities Home Water Company (“1986 Water Supply Agreement”). PAWC is the successor to the rights and obligations of Citizen Utilities Home Water Company under the 1986 Water Supply Agreement. PAWC’s consent was a necessary precondition for the assignment, but PAWC did not consent to the assignment. PAWC states that the Settlement resolves all of these issues. PAWC Supporting Statement at 4.

The Joint Petitioners have had an opportunity to review detailed maps and have been able to clarify the respective service territories of Aqua and PAWC. As a result, the Settlement would result in certificates of public convenience that avoid overlapping service territory. The Settlement would also result in certificates of public convenience that more accurately reflect the actual provision of water service to the public. PAWC Supporting Statement at 4-5.

The Joint Petitioners have agreed that the Egypt Road main actually belongs to PAWC and should not have been included in the Borough’s sale of assets to Aqua. The proposed transaction between the Borough and Aqua does not involve any other assets of PAWC. PAWC Supporting Statement at 5.

Finally, PAWC states that the Joint Petitioners have had an opportunity to negotiate new contracts that eliminate the partial assignment of the 1986 Water Supply Agreement. The Joint Petitioners have executed several agreements which ensure that PAWC will receive an adequate supply of water from the Borough at stable rates. PAWC will use this water to continue to provide reasonable and adequate water service to its customers at just and reasonable rates. PAWC Supporting Statement at 5.

PAWC correctly states that Section 507 of the Code requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariffed 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. Aqua and the Borough have submitted two agreements for the Commission's approval: a Water Wheeling Agreement and an amendment to the 2018 Water Supply Agreement. The Water Wheeling Agreement essentially permits PAWC to continue receiving water from Borough, even though the pipes that carry the water will be owned by Aqua after closing on the transaction. Aqua will charge the Borough (rather than PAWC) a fee for this service. The Water Wheeling Agreement is in the public interest because it permits PAWC to continue supplying water to its customers at just and reasonable rates. The Commission should issue a certificate of filing approving the contracts between Aqua and the Borough. PAWC Supporting Statement at 6-7

PAWC is already providing service to eight existing customers in the requested service territory in Upper Providence, Montgomery County, and six existing customers in the requested service territory in East Pikeland Township, Chester County. PAWC will continue to serve all of these customers through the Black Rock Road Tanks facilities. The Shady Lane Treatment Plant has a permitted capacity of 3.7 mgd and the average system delivery in 2017 was 3.3 mgd. With regard to the 21 Borough customers along Egypt Road who will become PAWC customers pursuant to the Settlement, these customers are currently receiving water from a PAWC main. PAWC has the technical capacity to continue to serve all of the customers in the requested service territories. PAWC has the financial fitness to serve the customers in these requested territories. No additional capital or financing will be necessary as a result of the requested additional service territories. PAWC Supporting Statement at 7-8.

PAWC contends that its acquisition of the requested service territories has several affirmative public benefits in that it promotes regionalization and consolidation because PAWC has certificated service territories abutting the applied-for territories. It also promotes compliance with law, because PAWC discovered that it is inadvertently providing service in areas that are not currently certificated. Consequently, the Settlement is in the public interest to the extent that it includes a request for Commission approval of the additional service territories described in the PAWC Application. PAWC Supporting Statement at 8.

PAWC's Application also includes a request to abandon a portion of PAWC's existing service territory in Upper Providence Township, Montgomery County and East Pikeland Township, Chester County, in which PAWC has no existing customers. PAWC asserts that the only existing customer in the territory will continue to be served by the Borough. The factors to be considered in determining whether a utility may abandon service are: (1) the extent of loss to the utility, (2) the prospects of the system being used again in the future; (3) the balancing of the utility's loss with the hardship on the public, and (4) the availability of alternative service. See *Commuters Commission v. Pa. Pub. Util. Comm'n*, 88 A.2d 420 (Pa. Super. 1952). In this case, there is no real loss to the utility, there is little prospect that PAWC will seek to serve the territory in the near future, and the only existing customer is being served by the Borough. Balancing the utility's loss with the hardship on the public clearly favors approval of the proposed abandonment. PAWC Supporting Statement at 8-9.

In sum, PAWC supports the Settlement and submits that the Settlement is in the public interest and should be approved without modification.

DISCUSSION

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

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western*

Ry. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 hearing 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. Many proceedings are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

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. C S Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

Section 1102 of the Code provides that the Commission must issue a Certificate of Public Convenience (Certificate) as a legal prerequisite to a public utility offering service or abandoning service and certain property transfers by public utilities. 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(2), 1102(a)(3). Pursuant to Section 1103 of the Code, the Joint Applicants must show that Aqua is technically, legally, and financially fit to own and operate the assets it will acquire. *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). Further, under Section 507, the Commission may approve a contract between a public utility and a municipal corporation by issuing a certificate of filing or instituting 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.

Applying these principles, it is clear that the Joint Settlement Petition and Settlement should be approved by the Commission.

First, the Settlement is in compliance with all applicable regulatory requirements and is clearly reasonable. As a certificated public utility, Aqua enjoys a rebuttable presumption that it possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

Next, Aqua's acquisition and operation of the Phoenixville system will, "... affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The acquisition provides an affirmative benefit as the benefits of the transaction outweigh any adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984). None of the parties have complained about adverse impacts as a result of the Settlement, and by its terms the Settlement promotes the service, accommodation, convenience or safety of the public in a substantial way by providing efficient and cost effective service to the public in addition to resolving the ownership of and responsibility for facilities questioned at the start of the proceeding.

As Aqua has pointed out, the Joint Petition is fully consistent with the Commission's guidance (essentially a regulatory requirement) in a prior Order denying the Borough's request for a finding that its service to customers in the adjoining outside townships does not constitute public utility service subject to the Commission's jurisdiction. The public interest supports the transfer of the remaining assets and remaining customers to Aqua.

The purchase price of \$3,600,000 that Aqua would have paid for the Borough water assets has been agreed to by the parties but is reduced by \$135,971.22 to account for the removal of the 21 Egypt Road Customers from the transaction. With respect to purchased water rates, these have also been negotiated. I agree with the Borough when it states that:

[T]he 1986 Water Supply Agreement provided that the purchased water rate would be established by the Commission. Both Phoenixville and PAWC had the right to ask the Commission to change the purchased water rate at any time. The 2019 Amendment, in contrast, sets an initial purchased water rate of \$4.50 per 1,000 gallons. This rate will increase by \$1.00 on the effective date of any general base rate increase approved by the Commission. This modification is in the public interest because it provides for greater rate stability; the signatories will not be able to request that the Commission modify the rates at any time. The 2019 Amendment, together with the two agreements between Aqua and the Borough, is vital for ensuring that PAWC continues to have an adequate supply of water for its customers at just and reasonable rates. Consequently, the agreement between PAWC and the Borough is in the public interest and should be approved.

Phoenixville Supporting Statement at 10.

The parties have established that the proposed terms and conditions of the Settlement will lead to increased efficiency and cost-effectiveness that is in the public interest. Therefore, it is recommended that the Commission grant the Joint Application and the Joint Petition for Approval of Settlement and approve and adopt the Settlement without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties, to this consolidated proceeding. 66 Pa.C.S. § 1102.
2. The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa. C.S. § 332; therefore, the Applicant has the burden of proving its entitlement to certification and must do so by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v.*

Margulies, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

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

4. Before rendering public utility service, an entity is required to obtain a certificate of public convenience. 66 Pa. C.S. § 1101.

5. A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. . . .” 66 Pa. C.S. § 1103(a).

6. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest. *Pa. Pub. Util. Comm'n. v. C S Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991) and *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

7. The Joint Petition submitted by Aqua, the Borough and PAWC is in the public interest as it will lessen the time and expense of litigation and conserve administrative hearing resources; moreover, it is supported by substantial evidence in the form of stipulated findings of fact.

8. In a utility merger, the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972).

9. The party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013).

10. An existing provider of public utility service is presumed fit. See *Re Pennsylvania-American Water Company*, 85 Pa. PUC 548 (1995).

11. Aqua's proposed acquisition of the Borough of Phoenixville's water system assets will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways.

12. Aqua's proposed acquisition of the Borough of Phoenixville's water system assets and initiation of wastewater service in East Pikeland Township, Chester County, and Upper Providence Township, Montgomery County, will further the public interest.

13. The Borough's proposed sale of its water system assets and abandonment of regulated service will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways.

14. The Commission in its Order entered May 19, 2015, in *Petition of the Borough of Phoenixville for a Declaratory Order that the Provision of Water and Wastewater Service to Isolated Customers in Adjoining Townships Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2013-2389321, encouraged the Borough to pursue a sale of its water system assets.

15. The transfer of the 21 Egypt Road Customers to PAWC and resolution of PAWC's overlapping service territory concerns through implementation of the settlement terms further the public interest.

16. Except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. 66 Pa. C.S. § 507.

17. Under Section 507, the Commission may approve a contract between a public utility and a municipal corporation by issuing a certificate of filing or instituting 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.

18. The following contracts are accepted as valid pursuant to Section 507:

i. Assets Purchase Agreement, dated April 26, 2017, submitted by Aqua and the Borough as Exhibit D to the Joint Application and the Amendment to Assets Purchase Agreement, between the Borough and Aqua included as Appendix 1 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.

ii. Amendment to 1986 Water Supply Agreement, by and between the Borough and PAWC included as Appendix 4 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.

iii. Water Wheeling Agreement by and between the Borough and Aqua included as Appendix 5 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.

iv. Water Supply Agreement, dated January 10, 2018, submitted by Aqua and the Borough as Exhibit G1 to the Joint Application and Amendment to Water

Supply Agreement between the Borough and Aqua included as Appendix 6 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That Aqua Pennsylvania, Inc.'s acquisition of the water system assets of the Borough of Phoenixville as proposed in the Joint Application and modified by the Joint Petition for Settlement be approved.
2. That the Commission find that the Assets Purchase Agreement and the Amendment to the Assets Purchase Agreement between Aqua and the Borough is reasonable, legal and valid.
3. That the Amendment to the 1986 Water Supply Agreement between Pennsylvania-American Water Company and the Borough be approved as reasonable, legal and valid, pursuant to Section 507 of the Public Utility Code.
4. That the Water Wheeling Agreement between Aqua and the Borough be approved as reasonable, legal and valid pursuant to Section 507 of the Public Utility Code.
5. That the Water Supply Agreement between Aqua and the Borough, dated January 10, 2018, and the Amendment to the Water Supply Agreement between Aqua and the Borough be approved as reasonable, legal and valid pursuant to Section 507 of the Public Utility Code.

6. That the Application of Pennsylvania-American Water Company addressing the territory boundaries of PAWC in East Pikeland Township and Upper Providence Township and PAWC service to the 21 Egypt Road Customers be approved.

7. That the Secretary of the Commission issue certificates of public convenience evidencing Aqua Pennsylvania, Inc's right under Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, to: (a) acquire the water system assets of the Borough of Phoenixville used in connection with water service provided by the Borough in East Pikeland Township and Schuylkill Township, Chester County, and in Upper Providence Township, Montgomery County, Pennsylvania and (b) to begin to offer, render, furnish and supply water service to the public in portions of East Pikeland Township, Chester County, and in Upper Providence Township, Montgomery County, Pennsylvania, as presented in Appendix 2 (Schuylkill Township and East Pikeland Township) and Appendix 3 (Upper Providence Township) to this Joint Petition.

8. That the Secretary of the Commission issue certificates of public convenience evidencing Pennsylvania-American Water Company's right under Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, to offer, render, furnish and supply water service to the public in East Pikeland Township, Chester County, and in Upper Providence Township, Montgomery County, Pennsylvania, and to abandon service territory in certain portions of Upper Providence Township, Montgomery County, Pennsylvania, and East Pikeland Township, Chester County, Pennsylvania as presented in Appendix 7 (Schuylkill Township and East Pikeland Township) and Appendix 8 (Upper Providence Township).

9. That the Secretary of the Commission issue a certificate of public convenience evidencing the Borough's right under Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, to abandon its regulated water service in the Commonwealth of Pennsylvania including portions of East Pikeland Township, Chester County, and Upper Providence Township, Montgomery County, and to certain locations in Schuylkill Township, Chester County, Pennsylvania.

10. That within 10 days after closing of the acquisition, Aqua Pennsylvania, Inc. shall file a tariff supplement in the form attached hereto as Appendix 15 implementing rates for Phoenixville customers post-closing.

11. That the Secretary of the Commission issue certificates of filing pursuant to Section 507 for the following agreements:

i. The Assets Purchase Agreement, dated April 26, 2017, submitted by Aqua and the Borough as Exhibit D to the Joint Application and the Amendment to Assets Purchase Agreement, between the Borough and Aqua included as Appendix 1 to this Joint Petition.

ii. The Amendment to 1986 Water Supply Agreement, by and between the Borough and PAWC included as Appendix 4 to the Joint Petition.

iii. The Water Wheeling Agreement by and between the Borough and Aqua included as Appendix 5 to the Joint Petition.

iv. The Water Supply Agreement, dated January 10, 2018, submitted by Aqua and the Borough as Exhibit G1 to the Joint Application and Amendment to Water Supply Agreement between the Borough and Aqua included as Appendix 6 to the Joint Petition.

12. That all other approvals, certificates, registrations and relief are hereby issued with respect to Aqua's acquisition of the water system assets of the Borough. of Phoenixville.

13. That the Protests of Pennsylvania-American Water Company and the Office of Consumer Advocate be deemed resolved consistent with the foregoing.

ATTACHMENT

JOINTLY STIPULATED PROPOSED FINDINGS OF FACT

- **AQUA AND PHOENIXVILLE**

1. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Joint Application ¶ 11.

2. Aqua furnishes water service to over 430,000 customer accounts, representing a population of approximately 1.4 million people, in various Counties throughout Pennsylvania including parts of Chester and Montgomery Counties. Joint Application ¶ 11.

3. The Borough of Phoenixville is an incorporated borough organized and existing under the laws of the Commonwealth of Pennsylvania. Joint Application ¶ 12.

4. The Borough furnishes water service to customers in the Borough of Phoenixville and to 455 residential, 75 commercial, 18 multi-residential, 4 industrial and 4 institutional customers in East Pikeland and Schuylkill Townships, Chester County, and Upper Providence Township, Montgomery County. Joint Application ¶ 17.

- **ASSET PURCHASE AGREEMENT**

5. Aqua and Phoenixville are parties to an *Assets Purchase Agreement* dated April 26, 2017 (“APA”) and an *Amendment to Assets Purchase Agreement* dated May 30, 2019. Joint Application ¶ 21 and Joint Petition Appendix 1.

6. The negotiated purchase price, which is based on arms’ length negotiation, was initially Three Million Six Hundred Thousand Dollars (\$3,600,000.00) but was reduced by \$135,971.22 to Three Million Four Hundred Sixty-Four Thousand, Twenty-Eight dollars and Seventy-Eight cents (\$3,464,028.78) to account for the removal of the 21 Egypt Road Customers from the transaction. Joint Application ¶ 21 and Joint Petition for Approval, Appendix 1.

7. Aqua and the Borough are not affiliated with each other. Joint Application ¶ 21.

8. Aqua will use cash on hand or established lines of credit arrangements to pay the purchase price for the assets. Joint Application ¶ 21.

- **ASSETS BEING TRANSFERRED**

8. Aqua will acquire all of the assets, properties and rights of the Borough's water distribution system which the Borough holds and uses for water service in East Pikeland, Schuylkill and Upper Providence Townships. The assets to be acquired include all transmission and distribution mains, services, curb stops, meters and hydrants (except for hydrants in Schuylkill Township that Aqua already owns and except for mains identified and excluded in the Schuylkill Township area as depicted in Schedule 1.3 of the APA). Joint Application ¶ 14.

9. Aqua will acquire the assets free and clear of all mortgages, bonds, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any nature whatsoever. All liabilities and obligations of the Borough shall remain its sole responsibility. Joint Application 14.

10. Excluded assets include customer service lines, piping internal to individual customer residences, cash and accounts receivables up to the date of Closing, certain distribution mains located within Schuylkill Township as depicted on Schedule 1.3 of the APA and the Borough treatment plant, supply and transmission assets feeding the treatment plant and all distribution assets serving customers within the Borough. Joint Application ¶ 24.

11. The tentative journal entries to record the transfer in Aqua's accounts consist of the following:

	Debit	Credit
Utility Plant Purchased	\$3,464,028.78	
Cash		\$3,464,028.78

Joint Application ¶ 29.

- **WATER SUPPLY**

Water Supply for former Borough Customers

12. Aqua and the Borough have entered into the Water Supply Agreement (the “Water Supply Agreement”) attached as Exhibit G1 to the Joint Application for Approval of Consolidated Proceeding and an Amendment to the Water Supply Agreement whereby the Borough will supply water to Aqua for customers other than PAWC. Joint Application ¶ 25 and Joint Petition for Approval, Appendix 6.

13. The Water Supply Agreement, as amended, has a term ending on January 1, 2026, which may be extended, or otherwise modified, upon new terms that are mutually satisfactory to the parties based on good faith negotiations. Joint Application ¶ 25 and Joint Petition for Approval, Appendix 6.

Water Supply for Pennsylvania American Water Company

14. The Borough and PAWC (as successor to the rights and obligations of Citizens Utilities Home Water Company) are parties to a Water Supply Agreement, dated March 10, 1986, (“1986 Water Supply Agreement”). Joint Application ¶ 26.

15. Aqua and the Borough proposed, initially, in their Joint Application, to partially assign the 1986 Water Supply Agreement to Aqua with Aqua becoming water supplier to PAWC. Joint Application ¶ 26, ¶ 27 and ¶ 28.

16. In lieu of the partial assignment, the Borough and PAWC have entered into an Amendment to the 1986 Water Supply Agreement pursuant to which the Borough will continue to sell water to PAWC. Joint Petition for Approval, Appendix 4.

17. Under the terms of the Amendment to the 1986 Water Supply Agreement, the Borough will supply PAWC with up to 1.15 million peak gallons per day of water and no less than 150,000 gallons per day of water through January 1, 2026. PAWC shall purchase the water

supplied by the Borough at a rate of \$4.50 per 1,000 gallons, which shall increase by \$1.00 per 1,000 gallons on the effective date of any rate increase approved by the Commission for PAWC.

Joint Petition for Approval, Appendix 4.

The Borough's Continued Service

18. Although selling water to Aqua and continuing to sell water to PAWC, the Borough will not be offering to serve the public and the Borough's sale of water to Aqua and to PAWC is a nonregulated service.

Water Wheeling Agreement

19. To accommodate the continuing sale of water by the Borough to PAWC following Aqua's acquisition of Borough facilities, Aqua and the Borough have entered into the Water Wheeling Agreement, whereby Aqua will wheel water from the Borough to PAWC through the mains that Aqua is acquiring. Joint Petition for Approval, Appendix 5.

20. The Water Wheeling Agreement has an end date of January 1, 2026, but may be renewed for a term equal to any new or extended agreement for supply of water between the Borough and PAWC. Joint Petition for Approval, Appendix 5.

21. Aqua will charge the Borough a wheeling rate of \$0.28 per 1,000 gallons through December 31, 2025. If the Borough and PAWC enter into a new or extended water supply agreement, Aqua's wheeling rate will increase \$0.01 per 1,000 gallons on January 1 of each subsequent year for the term of any new or extended agreement. Joint Petition for Approval, Appendix 5.

- **RATES**

22. After Closing, Aqua will begin charging the Borough's current rates, to be billed on a quarterly basis. A draft tariff supplement implementing rates for customers in East Pikeland and Upper Providence Townships and for the four Schuylkill Township customers (three

locations), post-closing is attached to the Joint Petition for Approval of Consolidated Proceeding as Appendix 15. Joint Application ¶ 30 and Joint Petition for Approval, Appendix 15.

23. Based on the current rate schedule, Aqua projects annual revenue of \$171,000 from Borough customers with annual operating and maintenance expenses of \$146,000. *See* Joint Application ¶ 33 and ¶ 34, revised to reflect removal of PAWC as an Aqua customer.

24. Aqua will implement its Tariff Rules and Regulations to govern the provision of water service. Joint Application ¶ 31.

- **INTEGRATION WITH CURRENT OPERATIONS**

25. Aqua will operate and manage the water system as part of its Main Division. It has existing facilities within approximately 3,371 feet of the facilities being acquired and an existing emergency interconnection with Phoenixville. Mr. Curt Steffy will be the assigned Certified Water Operator for the system. Joint Application ¶ 36.

26. Aqua has an existing operational presence and water professionals in the area. Aqua provides water service to approximately 69,104 customers in Chester County and approximately 102,386 customers in Montgomery County. The acquisition will easily fold into Aqua's existing water operations. Joint Application ¶ 37.

27. Aqua and the Borough submitted acknowledgements that the transaction is consistent with the Comprehensive Plans of Montgomery County, the Borough of Phoenixville and East Pikeland, Schuylkill and Upper Providence Townships. They also included with the Joint Application correspondence from Chester County advising that it declines to review the transaction for consistency with *Landscapes2*. Joint Application ¶ 38.

- **DEP COMPLIANCE**

28. The Borough is not operating under any DEP consent order and is in full compliance with its water supply permits and reporting. There are no water supply or water quality management permits for the facilities being transferred. Joint Application ¶ 39.

- **AFFECTED PERSONS**

29. No corporation or entity, except Phoenixville, is now furnishing or has corporate or franchise rights to furnish water service in the Requested Territory, and no competitive condition will be created by approval of the settlement.

- **PUBLIC INTEREST AND AFFIRMATIVE PUBLIC BENEFITS**

30. The Commission has long supported the consolidation/regionalization of water/wastewater systems throughout Pennsylvania. In 2006, the Commission explained that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers’ daily lives, promote community economic development, and provide environmental enhancements.” *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order entered August 17, 2006 (“*Policy Statement*”), slip op. at 18. Aqua’s acquisition of Borough water system assets is consistent with this long-standing policy.

31. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of the Borough used to provide public water service in East Pikeland, Schuylkill and Upper Providence Townships and to maintain the operations and make improvements to meet continuing and future customer needs. The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua. Joint Application ¶ 43.a.

32. The Borough has agreed to sell its Assets used to provide public water service in East Pikeland, Schuylkill and Upper Providence Townships. The public interest and need will be served by allowing Aqua, in lieu of the Borough, to provide water service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The Borough system will benefit from the support of water professionals throughout Aqua's organization. Joint Application ¶ 43.a.

33. Expansion of Aqua's service territory, upon completion of the proposed transaction, will further the benefits of regionalization and economies of scale. Joint Application ¶ 43.c.

- **PAWC'S APPLICATION**

34. PAWC's Application seeks authority to provide water service to 21 Egypt Road Customers, in Upper Providence Township, Montgomery County. The Customers, which, presently, are Borough customers, are served from a main owned by PAWC.

35. When the Joint Application was filed in January 2018, the Borough was believed to own the main along Egypt Road and the Borough and Aqua proposed, in the Joint Application, to include the 21 Egypt Road Customers in their transaction.

36. Having now determined that the Egypt Road main from which the 21 Egypt Road Customers are served is owned by PAWC and that the 21 Egypt Road Customers are currently served on Borough accounts, the Borough and Aqua have modified their transaction to effect the transfer of the 21 Egypt Road Customers to PAWC.

37. The PAWC Application also addresses the issue of potential overlapping service territory through limited service territory expansions and abandonments.

- **SECTION 507 CERTIFICATES OF FILING**

38. Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

39. Joint Petitioners asks that the Commission, to the extent necessary, issue certificates for filing, pursuant to Section 507 for the following:

- i. Assets Purchase Agreement, dated April 26, 2017, submitted by Aqua and the Borough as Exhibit D to the Joint Application and the Amendment to Assets Purchase Agreement, between the Borough and Aqua included as Appendix 1 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.
- ii. Amendment to 1986 Water Supply Agreement, by and between the Borough and PAWC included as Appendix 4 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.
- iii. Water Wheeling Agreement by and between the Borough and Aqua included as Appendix 5 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.
- iv. Water Supply Agreement, dated January 10, 2018, submitted by Aqua and the Borough as Exhibit G1 to the Joint Application and Amendment to Water Supply Agreement between the Borough and Aqua included as Appendix 6 to the Joint Petition for Approval of Settlement of Consolidated Proceeding.

- **OTHER APPROVALS**

40. Joint Petitioners also ask the Commission to issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to approval of the Joint Petition for Approval of Consolidated Proceeding.