

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	M-2019-3011972
Thomas V. Tinsley	:	C-2019-3012933
	:	
v.	:	
	:	
Indian Springs Water Company	:	

RECOMMENDED DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

On August 8, 2019, an investigation was initiated by the Pennsylvania Public Utility Commission (Commission), pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529 (Section 529), into whether the Commission should order a capable public utility to acquire the water system assets of Indian Springs Water Company. On December 15, 2020, the parties to this proceeding (Joint Petitioners) filed with the Commission a Joint Petition for Approval of Settlement of All Issues (Joint Petition) in which all issues in this proceeding were resolved and requested that the Commission approve the settlement without modification. This decision finds that the terms of the Joint Petition are in the public interest and recommends approval of the Joint Petition with no modifications.

BACKGROUND AND PROCEDURAL HISTORY

Indian Springs Water Company (ISWC) is a Commission-regulated public utility currently providing water service to approximately five residences in the community of Glen

Summit in Fairview Township, Luzerne County, Pennsylvania. As of January 1, 2018, ISWC had 51 residential customers, most of whom have since drilled private wells and disconnected from the water system.

On February 7, 2019, the Pennsylvania Department of Environmental Protection (“DEP”) directed ISWC to issue to its customers a public notification advising that water produced by ISWC is not safe for consumption due to lead and copper exceedances as well as unsanitary conditions of the water system and to provide bottled water to customers (“Do Not Consume Order”). This Do Not Consume Order followed ten Notices of Violation issued to ISWC by DEP since 2015 for: failure to issue a Tier 3 public notification for asbestos contaminants; Consumer Confidence Report (CCR) report not submitted; failure to monitor or report EP disinfectant residual for groundwater; failure to monitor or report for the disinfectant/disinfectant byproduct (D/DBP) contaminant specified – chlorine, trihalomethanes, and haloacetic acids (five); failure to issue a Tier 2 public notification for lead/copper group contaminants; and failure to do a study or recommend treatment under the Lead and Copper Rule (LCR) for lead/copper group contaminants.

On August 8, 2019, the Commission issued an Order initiating an investigation into whether the Commission should order a capable public utility to acquire ISWC pursuant to 66 Pa. C.S. § 529 and directing the Pennsylvania-American Water Company (PAWC) to serve as the receiver (Receiver) for ISWC pursuant to 66 Pa. C.S. § 529(g) pending the outcome of that investigation and to continue to provide bottled water to customers. PAWC began serving as Receiver for ISWC on August 19, 2019.

On August 16, 2019, counsel for ISWC filed a notice of appearance and letter petition requesting an expedited hearing. The Office of Consumer Advocate (OCA) filed a notice of intervention and public statement on August 21, 2019.

By agreement of the parties, an initial prehearing conference was held on August 27, 2019, rather than an expedited hearing, at which time the parties discussed notice to customers and proximate providers.

On August 29, 2019, the Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance.

On September 5, 2019, Thomas V. Tinsley, Jr. filed a formal complaint against ISWC in which he expressed his disagreement with the involvement of PAWC and the potential requirement that residents be disconnected from the ISWC system and forced to construct and connect to individual wells. Mr. Tinsley filed an addendum to his formal complaint on October 14, 2019 in which he raised further opposition to the proposed settlement.

On September 30, 2019, PAWC provided notice to ISWC's customers of PAWC's receivership and of the initiation of the Section 529 investigation. The Commission provided notice to proximate service providers and proximate municipalities on October 1, 2019.

The Glen Summit Company (Glen Summit) filed a petition to intervene on October 21, 2019.

A further prehearing conference was held in these proceedings on November 13, 2019, and an Order was issued on November 14, 2019 memorializing that Glen Summit's Petition to Intervene was granted, the Formal Complaint of Thomas V. Tinsley against ISWC at Docket No. C-2019-3012933 was consolidated with this proceeding, and it was agreed that a procedural schedule would not be established at that time to allow additional time for settlement discussions. The parties were also directed that, beginning on or before December 13, 2019, and continuing every 30 days thereafter, the parties would file with the Commission a status report in which they provide a summary of settlement efforts that have taken place to date. The parties filed monthly settlement status reports in compliance with that directive.

On December 18, 2019, PAWC submitted its first Quarterly Status Report as Receiver, in compliance with the Order. Quarterly Status Reports were subsequently filed on March 5, 2020, June 9, 2020, September 4, 2020, and December 8, 2020.

On August 27, 2020, the parties participated in an informal call with me and informed me that PAWC, ISWC, Glen Summit, OCA, and I&E had reached a settlement in principle resolving these proceedings, pending the negotiation of an acceptable asset purchase agreement between PAWC, as Receiver, and Glen Summit for sale of land owned by ISWC. The

parties requested until September 30, 2020 to file a joint petition for approval of the settlement to allow for time to negotiate an acceptable asset purchase agreement.

By email dated August 27, 2020, I memorialized the agreements of the parties, including that interested parties would have the opportunity to submit comments to the settlement within 30 days of its filing and that Mr. Tinsley could submit comments on both the settlement and the allegations raised in his complaint. Further, it was agreed that if Mr. Tinsley submitted comments related to the allegations raised in his complaint, parties against whom such allegations were raised would have 15 days to reply to those comments.

The parties were unable to negotiate an asset purchase agreement prior to September 30, 2020 and requested additional time to file a joint petition for approval of settlement, which I granted.

On December 14, 2020, PAWC, as Receiver, ISWC and The Glen Summit Land Trust Ltd. (“Glen Summit Land Trust”), a wholly owned subsidiary of Glen Summit, entered into an Asset Purchase Agreement for the sale of real property owned by ISWC (APA). On December 15, 2020, the Joint Petitioners filed with the Commission the Joint Petition.

By prior agreement of the Joint Petitioners, the Joint Petition was submitted to the residents of Glen Summit and they were provided the opportunity to submit comments either in support of or opposition to the settlement. I kept the record open until March 15, 2021, to allow sufficient time for all interested Customers to review the settlement and prepare and submit comments in response thereto. Upon closing the record on March 15, 2021, twenty-five (25)

Customers had submitted comments in response to the settlement. Twenty-three (23) Customers expressed their support for the proposed settlement and two Customers expressed their opposition to the proposed settlement. Mr. Tinsley was one of the two Customers to oppose the proposed settlement.

FINDINGS OF FACT

A. Joint Stipulation to Findings of Fact

Included by the Joint Petitioners as Appendix E to the Joint Petition are Proposed Findings of Fact. The Joint Petitioners have stipulated in the Joint Petition to the facts set forth therein. No parties or residents who submitted comments opposed or otherwise challenged any of the facts contained in Appendix E. Accordingly, as an initial matter, I will approve this Stipulation and admit into evidence in this proceeding Appendix E to the Joint Petition.

The stipulated findings of fact contained in Appendix E are set forth below and are adopted as the findings of fact in this recommended decision.

THE PARTIES

1. ISWC is a Commission-regulated public utility providing water service to the public for compensation in Fairview Township, Luzerne County, Pennsylvania.

2. PAWC is a regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service is furnished by PAWC to the public in a service territory encompassing more than 400 communities across the Commonwealth with a combined population of over 2,400,000.

3. I&E serves as the Commission’s prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters and enforcing compliance with the Pennsylvania Public Utility Code (“Code”) and Commission Regulations and Orders. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

4. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

5. Glen Summit is a Pennsylvania company, which serves the functions of a homeowners’ association for the Glen Summit community (the “Community”).

ISWC’s WATER SYSTEM

6. ISWC owns and operates a water system (the “System”) currently providing water service to approximately five (5) customers. As of January 1, 2018, ISWC had 51 customers, most of whom have since drilled private wells and disconnected from the water system. The assets of the System include a water spring with springhouse, pump house with disinfection treatment reservoir and distribution system.

7. On February 7, 2019, the Pennsylvania Department of Environmental Protection (“DEP”) directed ISWC to issue to its customers a public notification advising that water produced by ISWC is not safe for consumption due to lead and copper exceedances as well as unsanitary conditions of the water system and to provide bottled water to customers (the “Do Not Consume Order”). This Do Not Consume Order followed ten Notices of Violation issued to ISWC by DEP since 2015 for: failure to issue a Tier 3 public notification for asbestos contaminants; Consumer Confidence Report (CCR) report not submitted; failure to monitor or report EP disinfectant residual for groundwater; failure to monitor or report for the disinfectant/disinfectant byproduct (D/DBP) contaminant specified – chlorine, trihalomethanes, and haloacetic acids (five); failure to issue a Tier 2 public notification for lead/copper group

contaminants; and failure to do a study or recommend treatment under the Lead and Copper Rule (LCR) for lead/copper group contaminants.

8. On August 8, 2019, the Commission issued an Order initiating an investigation into whether the Commission should order a capable public utility to acquire ISWC pursuant to 66 Pa. C.S. § 529 and directing PAWC to serve as the receiver (the “Receiver”) for ISWC pursuant to 66 Pa. C.S. § 529(g) pending the outcome of that investigation and to continue to provide bottled water to customers (the “Order”). Attachment A to the Order outlined the powers and duties of the Receiver.

THE RECEIVER’S AUTHORITY AND EXPENSES OF RECEIVERSHIP

9. PAWC began serving as Receiver for ISWC on August 19, 2019 and continues to serve as receiver.

10. Appendix A to the Order lists the powers and duties of the Receiver. Appendix A provides at Paragraph 1.c. that PAWC shall:

Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.

11. Appendix A to the Order also states that PAWC, as Receiver, is to assume ISWC’s billing and collection functions, Paragraph 1.i., and comply with ISWC’s effective tariff for ISWC’s customers, Paragraph 1.m. PAWC has billed ISWC’s customers in compliance with ISWC’s effective tariff since it began serving as Receiver.

12. Appendix A to the Order further states that PAWC, as Receiver, has the duty and responsibility to:

Establish deferred accounting treatment for expenses incurred by Indian Springs that are payable to the Receiver and to present those expenses for recovery as a part of a subsequent base rate proceeding if not recoverable from Indian Springs. Paragraph 1.s.

Establish deferred accounting treatment for reasonable capital costs incurred by the Receiver to restore safe, adequate, and reasonably continuous service to Indian Springs customers and to present those costs for recovery as a part of a subsequent base rate proceeding if not recoverable from Indian Springs. Paragraph 1.t.

Charge Indian Springs reasonable rates for all services rendered to or for Indian Springs on behalf of the receivership and to present those charges for recovery as a part of a subsequent base rate proceeding if not recoverable from Indian Springs. Paragraph 1.x.

Establish a deferred expense account for expenses incurred by the Receiver resulting from this order, including prudent and reasonable legal expenses for presentation in a subsequent rate proceeding and to present those expenses for recovery as a part of a subsequent base rate proceeding if not recoverable from Indian Springs. Paragraph 2.b.

13. PAWC, as Receiver, has incurred considerable operations and maintenance expenses as well as limited capital expenditures. *See, e.g.*, Exhibit B to the APA.

14. PAWC, as Receiver, is to make reasonable efforts to establish the financial position of ISWC as of the date that PAWC assumed Receivership of the System, Order Paragraph 1.r., and to maintain financial and accounting records for ISWC. Paragraph 1.h.

15. The Settlement would clarify that all of the expenses that PAWC has incurred and will incur as Receiver, will be paid by ISWC from three sources: (1) all funds in the ISWC business checking account at First Keystone Community Bank; (2) all revenues collected by PAWC from ISWC customers as of the date a final Order is entered by the Commission in this proceeding; and (3) proceeds from the sale of real property as described in the Joint Petition. The Settlement would further clarify PAWC's ability to seek recovery in rates of those receivership expenses (subject to challenge), in the event that ISWC is unable to pay those costs in full.

ABANDONMENT OF SERVICE

16. Appendix A to the Order also states that PAWC, as Receiver, “Participate in discussions with the Commission regarding alternatives to the acquisition of Indian Springs, pursuant to 66 Pa. C.S. § 529(b).”

17. PAWC determined, in consultation with OCA, I&E, ISWC and Glen Summit, that capital improvements necessary to remove the Do Not Consume Order and bring the System into regulatory compliance are not recommended and that the most cost efficient and prudent course of action is to pursue a permanent source of alternative water supply (i.e., individual wells) for ISWC customers and abandonment of the ISWC System. The Settlement implements that agreed upon course of action.

18. Pursuant to 66 Pa. C.S. §1102(a)(2), obtaining a certificate of public convenience from the Commission is required “For any public utility to abandon or surrender, in whole or in part, any service...”

19. At the time PAWC was named Receiver of ISWC, the System was in violation of statutory or regulatory standards affecting the safety, adequacy, efficiency or reasonableness of the service provided by ISWC, as demonstrated by the Do Not Consume Order issued by DEP on February 7, 2019.

20. Between February 7, 2019 and August 8, 2019, ISWC took no actions to lift the Do Not Consume Order.

21. At this time, only five (5) customers remain connected to the ISWC System and as such, the System’s annual revenue is \$1,777.52.

22. If PAWC would cease to operate as Receiver, and ISWC would resume operating the System, ISWC could not reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. For the Do Not Consume Order

to be lifted, the finished water reservoir would need to be replaced with a new tank and associated piping. Lead and copper level exceedances as well as other deficiencies would also need to be addressed. PAWC estimates that the cost just to lift the Do Not Consume and make the water potable would be \$500,000 to \$750,000. PAWC estimates that a five-year capital plan to bring the system to PAWC standards is estimated to be approximately \$2.5 million.

23. Maintaining PAWC as Receiver of the System on a long-term basis is not a practical or economically feasible alternative to ISWC's abandonment of service.

24. The settlement provides an offer of a one-time payment of \$5,000 to owners of the residences that were connected to the ISWC System as of January 1, 2018, as a contribution toward the costs incurred by Customers for drilling private wells.

25. The one-time payment will be funded by the proceeds from the sale of ISWC's real property to Glen Summit Land Trust, a wholly-owned subsidiary of Glen Summit. The real property therefore will remain a community asset of the Glen Summit community.

26. The settlement provides direct, written notice of the proposed abandonment of service to ISWC customers remaining on the System at least three (3) months before the abandonment, if approved, would take place.

27. The settlement provides that ISWC customers remaining on the System will have at least 30 days to drill a well after receipt of the \$5,000 payment prior to abandonment of service.

28. The settlement provides that following abandonment of service, PAWC will continue to provide an alternative supply of water, in quantities sufficient for basic household purposes, to customers who are delayed by winter weather from drilling a well, until such customer drills a well or April 30, 2021, whichever is sooner.

29. PAWC is not able to connect Customers to its distribution system because it would not be permitted under the Company's DEP Orders of Confirmation.

30. Other alternatives to abandonment of service (such as acquisition, reorganization, merger, and acquisition by a municipality or municipal authority), have been considered by the Joint Petitioners, but found to be impractical or not economically viable. Additionally, no other water utility in the proximate area indicated either the capacity or desire to acquire or otherwise take over the operations of the ISWC System.

DISCUSSION

A. Settlement Terms

The settlement terms agreed upon by the Joint Petitioners are stated below. The numbering is shown as it appears in the Joint Petition for ease of reference.

A. Receivership

17. PAWC shall continue to serve as Receiver of ISWC, pursuant to the Order, until the terms of this Settlement are met (as those terms are hereinafter defined) and a Certificate of Public Convenience for Abandonment is subsequently issued by the Commission.

18. PAWC's costs of receivership shall be paid by ISWC from three sources: (1) all funds in the ISWC business checking account at First Keystone Community Bank; (2) all revenues collected by PAWC from ISWC customers as of the date a final Order is entered by the Commission in this proceeding; and (3) proceeds from the sale of real property, as described in Paragraph 26 below. PAWC's costs of receivership shall include all reasonable costs necessary to effectuate the terms of this Settlement. Such costs may be reviewed and questioned by the parties.

19. PAWC shall remove its costs of ISWC receivership from its claim in the pending base rate proceeding at Docket Nos. R-2020-3019369, *et al.* in Rebuttal Testimony in that proceeding.¹ If PAWC does not receive full reimbursement for all

¹ PAWC revised its claim for costs associated with its receivership of ISWC in Exhibit 3-A Revised as explained in PAWC Statement No. 4-R at page 12, the Rebuttal Testimony of Ashley E. Everette, submitted on September 29, 2020 at Docket No. R-2020-3019369.

costs of receivership from ISWC for any reason, including but not limited to this Settlement not being approved by the Commission or the sale of real property, described in paragraph 26 below, not closing, PAWC may claim any unreimbursed costs in a subsequent base rate case. All parties to the Settlement reserve their respective rights to challenge a claim for recovery of such costs.

B. Conditions for Certificate of Public Convenience for Abandonment of Service

1. Notice

20. PAWC, as Receiver, shall mail direct notice of the proposed Settlement (“Notice”) to all current owners of residences that were connected to the ISWC system as of January 1, 2018 (hereafter “Customers”). A list of the fifty one (51) Customers is attached hereto as **Confidential Appendix A**. Customers shall have the opportunity to provide written comments to the ALJ regarding the proposed Settlement within 30 days of filing. The Notice will specify the offer that will be made to Customers pursuant to Paragraph 22, below. It will also specify that ISWC will no longer provide water service if the Settlement is approved, whether or not Customers refuse the offer. The Joint Petitioners will jointly develop the content of the Notice and submit it to ALJ Haas for review and approval prior to filing the Settlement. The Notice will include a link to “A Quick Guide for Well Owners” at <https://www.watersystemscouncil.org/wp-content/uploads/2019/04/Quick-Guide-Brochure-Fillable.pdf> and a link to the Pennsylvania Department of Environmental Protection’s webpage with additional information about privately-owned wells at <https://www.dep.pa.gov/Citizens/My-Water/PrivateWells/Pages/default.aspx>. The Notice is attached hereto as **Appendix B**.²

21. PAWC, as Receiver, shall mail the Notice to Customers on the date the proposed Settlement is filed and provide thirty (30) days for Customers to email or mail comments. Consistent with the ALJ’s directive, if comments are submitted with regard to the separate allegations raised in Mr. Tinsley’s complaint at Docket No. C-2019-3012933, the parties against whom such allegations are raised will have fifteen (15) days after the filing date of such comments to file a reply.

2. Contribution toward the Costs for Alternative Supply (Wells)

22. ISWC shall offer to provide a one-time payment of \$5,000 to Customers (the “Offer”). The payment is a contribution toward the costs incurred by Customers to obtain alternative water supply.

23. The Joint Petitioners will jointly develop the content of the Offer. The Offer is attached hereto as **Appendix C**.

² The proposed Notice was submitted to ALJ Haas on November 30, 2020 and approved by email dated December 3, 2020.

24. PAWC, as Receiver, shall mail the Offer to all Customers within one (1) day after entry of a final Commission Order approving the proposed Settlement without modification that impacts the Offer. If the Offer is modified, PAWC shall mail the Offer within three (3) business days after entry of the final Commission Order. Each Customer shall have thirty (30) days after the Offer is postmarked to refuse the Offer in writing. Refusal will be registered by postmark or the email "sent" date.

25. Within forty-five (45) days after entry of a final Commission Order approving the proposed Settlement or ten (10) days after closing of the transaction contemplated in Paragraph 26, below, whichever is later, PAWC, as Receiver, shall mail a check in the amount of \$5,000 to all Customers unless the contribution was refused in the manner described in Paragraph 24, above. Checks shall be mailed to the Customers' addresses used for billing. PAWC, as Receiver, shall use best efforts to deliver the funds to all Customers. PAWC also shall contact all Customers who received checks but did not cash them within forty-five (45) days after the checks were mailed. PAWC shall comply with Pennsylvania unclaimed property requirements with regard to the balance of all uncashed checks.

3. Sale of Real Property

26. The proposed Settlement shall seek Commission approval for PAWC, as Receiver, to transfer title to 86.4 acres of real property owned by ISWC (the "Land") (a legal description of the property is attached as Exhibit A to the APA) from ISWC to Glen Summit Land Trust ("Sale"), upon terms agreed to by PAWC, ISWC and Glen Summit in the APA, provided that:

(1) Proceeds of the Sale are, at a minimum, sufficient to meet ISWC's obligations in Paragraphs 18 and 25, above. The minimum is not intended to represent a fair market value of the real property to be transferred or anything other than the sum necessary to meet ISWC's obligations in paragraphs 18 and 25;

(2) PAWC is given a temporary easement, as Receiver, to continue to access the spring, spring house, pump house and any other part of the ISWC distribution system as necessary to provide water service until a Certificate of Public Convenience for Abandonment is subsequently issued by the Commission; and

(3) Commission approval of the proposed Settlement is a condition of closing the Sale.

27. Closing of the Sale shall be a condition for a certificate of public convenience for abandonment of service.

28. The APA is attached as Appendix D.

4. Verification by PAWC, as Receiver

29. Once the requirements below have been met, PAWC shall file a statement with the Commission's Secretary's Bureau, copied to all Joint Petitioners, verifying that:

a. PAWC, as Receiver, has complied with Paragraphs 20, 21, 24 and 25, above; and

b. All residences formerly served by ISWC have wells connected to the homes, which are producing water of adequate quality and quantity for domestic use, or

PAWC, as Receiver, has obtained written confirmation from the Customer that the home will remain unoccupied while that Customer retains ownership, or

PAWC mailed the Customer a \$5,000 check and the Customer was afforded thirty (30) days after the check was mailed to have a well drilled and, if applicable, water is continuing to be provided pursuant to Paragraphs 31 and 32 below; or

The Customer refused a \$5,000 contribution in the manner described in Paragraph 24, above; and

c. The Sale has closed.

The verified statement will specify the number of Customers who do not have wells connected to their homes as of the date the statement is filed. In addition, under confidential cover, PAWC shall file a list of amounts paid to each Customer pursuant to Paragraphs 22 and 25, above, copied to all Joint Petitioners.

30. When the foregoing requirements are met but no earlier than sixty (60) days after entry of a Commission Order approving this Settlement (to provide adequate time for remaining Customers to drill wells), PAWC, as Receiver, shall comply with DEP requirements, if any, for abandonment of the ISWC system with such costs added to its costs of receivership and file a verification statement with the Commission's Secretary's upon completion of this action.

31. If any Customer, who is mailed a \$5,000 check and is unable, due to winter weather, to drill a well within thirty (30) days after the check is mailed, PAWC, as Receiver, will continue to provide an alternative supply of water to such Customer, in quantities sufficient for basic household purposes, following abandonment of service until such Customer drills a well or until April 30, 2021, whichever is sooner.

32. Following entry of a final Commission Order approving the Settlement, if significant investment becomes required to restore or continue service from the ISWC facilities, PAWC, as Receiver, will not be obligated to make such investment and instead will continue to provide an alternative supply of water, in quantities sufficient for basic household purposes, to all Customers who are taking service from the ISWC system for at least sixty (60) days after the entry of the Order and until the conditions of Paragraph 30 and, if applicable, Paragraph 31, above, are met.

5. Certificate of Public Convenience to Abandon Service

33. The Joint Petitioners request that, conditioned on compliance with Paragraphs 17 through 32, above, the Commission issue a Certificate of Public Convenience authorizing ISWC to abandon public water supply service.

C. Termination of Proceedings

34. The Joint Petitioners request that the Commission terminate and close the proceeding at Docket No. M-2019-3011972 upon the issuance of the certificate of public convenience described in Paragraph 33, above.

D. Other Necessary Approvals

35. The Joint Petitioners request that the Commission issue any other certificates or approvals as may be appropriate, customary or necessary under the Code to effectuate the terms of the Settlement in a lawful manner.

E. Standard Settlement Conditions

36. 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 Parties 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.

37. The Settlement is proposed by the Joint Petitioners to settle all issues in these proceedings. 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 testimony and to conduct full cross-examination, briefing and argument.

38. 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.

39. 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 this Settlement.

40. The Joint Petitioners agree to diligently pursue Commission approval of the Settlement, without modification, using reasonable efforts in the ordinary course of business.

F. Record Supporting the Settlement

41. The Joint Petitioners have prepared Proposed Findings of Fact (Appendix E), Proposed Conclusions of Law (Appendix F) and Proposed Ordering Paragraphs (Appendix G). The Joint Petitioners stipulate to the facts in Appendix E.

42. Several of the Joint Petitioners have prepared a Statement in Support of Settlement (attached as Appendices H-J) setting forth the bases upon which the Joint Petitioner believes the Settlement to be in the public interest.

43. If the ALJ recommends approval of the Settlement without modification, the Joint Petitioners waive their rights to file Exceptions.

(Joint Petition, pp. 5-12).

B. Approval of Settlement

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. In order to approve a settlement, however, 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 October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

Section 529 provides a mechanism by which the Commission may order a capable public utility to acquire and operate going forward a troubled small water or sewer utility. In order to issue such a directive, the Commission, after providing notice to the parties and an opportunity to be heard, must determine that the following conditions exist:

1. that the small water or sewer or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Streams Law, the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P. L. 206, No. 43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the services provided by the small water or sewer utility;
2. that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;
3. that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;
4. that alternatives to acquisition have been considered in accordance with subsection(b) and have been determined by the commission to be impractical or not economically feasible;
5. that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and
6. that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

66 Pa. C.S. § 529(a) (internal footnotes omitted).

In addition, various other requirements must typically be satisfied as set forth in Section 529. For example, Section 529(e) requires that the Commission find the agreed upon purchase price of the acquired system to be reasonable. 66 Pa. C.S. § 529(e). Additionally, the capable public utility ordered to acquire a small water or sewer utility must submit for Commission approval an improvement plan for bringing the small company into compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(j). On the other hand, a capable public utility ordered to acquire a small troubled system is afforded protections against liability and limitations on enforcement actions by State or local agencies where the bases of the liability or enforcement actions were proximately related to violations by the acquired system. 66 Pa. C.S. § 529(k)(1).

I note, however, that this proceeding is not a typical Section 529 acquisition proceeding. This proceeding will not result in a Commission-ordered acquisition of a troubled system by a capable public utility where the acquiring entity will continue operating the system as a public utility. Rather, PAWC has served as Receiver of the system and has operated the system and provided potable water to residents from the date of the August 8, 2019 Order to the present. The Joint Petitioners in this proceeding are seeking Commission-approval for the abandonment of service to ISWC's remaining five customers and the conversion of those remaining customers to an alternate water supply. If the Settlement is approved, the ISWC system will not continue operating as an ongoing public utility. As a result, the considerations required under a typical Section 529 analysis, such as, for example, the reasonableness of the purchase price, the adequacy of a system improvement plan, the fitness of the acquiring public utility, or whether the small water or sewer utility can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future are not relevant considerations in this proceeding.

I find, in any event, that the record would support a Commission-ordered acquisition in this proceeding under 66 Pa. C.S. § 529(a). By way of examples, the record demonstrates (1) that ISWC is in violation of statutory or regulatory standards (66 Pa. C.S. § 529(a)(1)), (2) that it has failed to comply, within a reasonable period of time, with an order of the Department of Environmental Resources or the commission concerning the safety, adequacy,

efficiency or reasonableness of service (66 Pa. C.S. § 529(a)(2)), (3) that it cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future (66 Pa. C.S. § 529(a)(3)), and (4) that alternatives to acquisition have been considered and have been determined by the Commission to be impractical or not economically feasible (66 Pa. C.S. § 529(a)(4)). FOF Nos. 20-23, 30.

Here, as in all proposed settlements, the Commission must determine that the transaction is in the public interest before issuing its approval. As more fully explained below, I find that the settlement terms are in the public interest and, accordingly, I recommend that the Joint Petition be approved without modifications.

a. Costs of Receivership

The Settlement provides that PAWC is entitled to recover its costs of receivership from ISWC from three sources: (1) all funds in the ISWC business checking account at First Keystone Community Bank; (2) all revenues collected by PAWC from ISWC customers as of the date a final Order is entered by the Commission in this proceeding; and (3) proceeds from the sale of real property, as described in Paragraph 26 of the settlement. PAWC's costs of receivership includes all reasonable costs necessary to effectuate the terms of this Settlement. PAWC has agreed to remove its costs of ISWC receivership from its claim in its pending base rate proceeding at Docket Nos. R-2020-3019369.³ The Settlement further provides that, if PAWC does not receive full reimbursement for all costs of receivership from ISWC for any reason, including but not limited to this Settlement not being approved by the Commission or the sale of real property described in paragraph 26 of the Settlement not closing, PAWC may claim any unreimbursed costs in a subsequent base rate case. The Settlement provides, however, that all parties to the Settlement reserve their respective rights to challenge a claim for recovery of such costs in a future rate proceeding.

³ PAWC revised its claim for costs associated with its receivership of ISWC in Exhibit 3-A Revised as explained in PAWC Statement No. 4-R at page 12, the Rebuttal Testimony of Ashley E. Everette, submitted on September 29, 2020 at Docket No. R-2020-3019369.

The parties agree that this term is in the public interest in that it insulates PAWC's customers from having to bear any costs associated with the company's role as receiver or with actions undertaken to secure completion of the transaction. PAWC states in its statement in support, ". . . all of PAWC's costs of receivership are to be paid by ISWC and not by PAWC's customers through base rates. PAWC customers are not responsible for the condition of the ISWC system and gain no benefit from PAWC's receivership of such system." PAWC Stmt. in Support, p. 3. OCA notes, ". . . the Settlement benefits PAWC's existing customers because it recovers the costs of ISWC's receivership from ISWC, largely to be funded by the sale of ISWC's real property to the Glen Summit Land Trust." OCA Stmt. in Support, p. 4. OCA goes on to state, "[a]ll together, the terms of the proposed Settlement are fair and in the public interest as ISWC, and not PAWC's customers, will properly bear the costs of receivership and ISWC's customers will continue to receive water service until ISWC is permitted to abandon service under the terms of the Settlement." OCA Stmt. in Support, p. 4.

I agree that these provisions are in the public interest and recommend that they be approved. As the parties emphasize, all costs associated with PAWC's roles as receiver and in securing completion of the transaction will be borne by ISWC and not PAWC's customers. This insulates PAWC's customers from financial responsibility related to the troubled ISWC system. In the event PAWC is unable, for whatever reason, to recover its full costs of receivership, it may claim those unreimbursed costs in a future base rate case. All parties have agreed in the Settlement, however, that any party may challenge such claims, thereby providing further protection to PAWC's existing customers from having to bear any financial responsibility related to the ISWC system.

b. Notice of the Transaction to Current and Former ISWC Customers

The Settlement provides that PAWC, as Receiver, will mail direct notice of the proposed Settlement ("Notice") to all current owners of residences that were connected to the ISWC system as of January 1, 2018 (hereafter "Customers"). Customers were given the opportunity to provide written comments to the proposed Settlement within 30 days of filing. The Notice described the offer made to Customers pursuant to Paragraph 22 of the Settlement,

and also specified that ISWC would no longer provide water service if the Settlement is approved, whether or not Customers refuse the offer. The Notice sent to customers is attached to the Settlement as Appendix B. A full copy of the Settlement was also sent to customers along with the Notice. The Notice summarized the Settlement terms and fully explained how interested persons could submit comments either in support of or opposition to the proposed Settlement.

In response to the Notice, twenty-five (25) Glen Summit residents submitted comments in response to the proposed settlement. Of the twenty-five (25) comments received, twenty-three (23) were in support of the Settlement and two (2) were in opposition to the Settlement. The comments in opposition to the Settlement will be discussed more fully below.

The parties agreed that the Notice and accompanying Settlement adequately informed interested persons about the details of the Settlement and how to submit comments so their views on the Settlement could be considered by the Commission in its decision on the Joint Petition. As the OCA summarized, “[m]oreover, all Customers will be afforded the opportunity to file Comments that will be considered by the ALJ and Commission in their consideration of the Settlement. Thus . . . these Settlement provisions will ensure that Customers have reasonable and adequate notice and opportunity to be heard.” OCA Stmt. in Support, p. 5.

I agree with the parties that provision of the Notice attached as Appendix B to the Settlement, as well as a copy of the Settlement itself, adequately informed interested persons about the details of the proposed transaction and how to participate in the Commission’s decision via the submission of comments. As noted, the Notice summarized the Settlement and fully explained how to submit comments thereto. The fact that twenty-five (25) residents successfully submitted comments supports a conclusion that the Notice was successful in informing interested residents about the proposed transaction and soliciting their input. I find, therefore, that the Settlement provisions related to providing interested persons with noticed and an opportunity to be heard were reasonable and in the public interest, and I recommend that the Settlement be approved.

c. Contribution Toward the Cost of Wells

The Settlement provides that ISWC will offer to provide a one-time payment of \$5,000 to Customers (the “Offer”). The payment is a contribution toward the costs incurred by Customers to obtain an alternative water supply. A copy of the Offer is attached to the Settlement as Appendix C. PAWC, as Receiver, will mail the Offer to all Customers within one (1) day after entry of a final Commission Order approving the proposed Settlement without any modifications that impact the Offer. If the Offer is modified, PAWC shall mail the Offer within three (3) business days after entry of the final Commission Order. Each Customer shall have thirty (30) days after the Offer is postmarked to refuse the Offer in writing. Refusal will be registered by postmark or the email “sent” date.

The Settlement further provides that, within forty-five (45) days after entry of a final Commission Order approving the proposed Settlement, or ten (10) days after closing of the transaction contemplated in Paragraph 26 of the Settlement, whichever is later, PAWC, as Receiver, will mail a check in the amount of \$5,000 to all Customers unless the contribution was refused in the manner described in the Settlement.

The OCA summarizes the impact and significance of these settlement terms as follows:

The signatory parties have agreed that ISWC will contribute \$5,000 toward the cost incurred by Customers to secure their own source of water so that ISWC may abandon service. This provision aligns with prior water utility abandonment case law where utilities contributed payments to remaining customers to help defray the cost of obtaining alternative water supply before the Commission granted approval of a certificate for abandonment for service. The condition that ISWC must contribute \$5,000 to each Customer for the installation of a well is in the public interest as it defrays some of the costs for the Customers to establish their own source of water to replace the unsafe and inadequate service from ISWC’s failing water system. It also recognizes that with only five remaining customers, making the necessary investment in the ISWC system to provide safe and adequate service in the short or long-term is not practical or economically feasible. As such, the OCA submits that contributing funds from the sale of ISWC’s real property to the Customers is a more reasonable and productive use of ISWC’s available assets.

OCA Stmt. in Support, pp. 5-6.

The parties agree that capital improvements necessary to remove the Do Not Consume Order and bring the System into regulatory compliance are not recommended and that the most cost efficient and prudent course of action is to pursue a permanent source of alternative water supply (i.e., individual wells) for ISWC customers and abandonment of the ISWC System. FOF No. 17. The parties further agree that if PAWC would cease to operate as Receiver, and ISWC would resume operating the System, ISWC could not reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. For the Do Not Consume Order to be lifted, the finished water reservoir would need to be replaced with a new tank and associated piping. Lead and copper level exceedances as well as other deficiencies would also need to be addressed. PAWC has estimated that the cost just to lift the Do Not Consume and make the water potable would be \$500,000 to \$750,000, and that a five-year capital plan to bring the system to PAWC standards is estimated to be approximately \$2.5 million. FOF No. 22.

I agree with the parties that offering to provide residents a \$5,000 payment for use toward establishing an alternate source of water is a fair and reasonable condition of approval of the abandonment of service to Customers. The undisputed record establishes that it would be cost prohibitive, given that only five (5) customers remain on the system, to make the improvements necessary to (1) eliminate the need for the Do Not Consume Order in the short term, and (2) implement a five-year capital improvement plan developed by PAWC to bring the system up to acceptable standards in the long term, with the total costs likely exceeding \$3 million. FOF No. 25.

As noted, the Settlement provides that all Customers will be offered a payment of \$5,000 for use toward an alternate water source. While the record does not provide an estimate of actual costs that Customers may incur in constructing their own private wells, all parties agree that \$5,000 is a fair and reasonable amount to offer Customers as a contribution toward those costs. The OCA stated in its Statement in Support, “[t]he condition that ISWC must contribute \$5,000 to each Customer for the installation of a well is in the public interest as it defrays some of the costs for the Customers to establish their own source of water to replace the unsafe and inadequate service from ISWC’s failing water system.” OCA Stmt. In Support, p. 6. I&E stated,

“I&E agrees with the Parties that as part of ISWC’s proposal to abandon water service to its customers, a one-time payment of \$5,000.00 represents a full and fair compromise.” I&E Stmt. In Support, p. 8.

For the reasons cited above, I find that this settlement term is reasonable and in the public interest and I recommend that it be accepted by the Commission.

d. Sale of Real Property

Under the proposed Settlement, the Commission is asked to approve the sale, by PAWC as Receiver, of 86.4 acres of real property owned by ISWC (the “Land”) to Glen Summit Land Trust (“Sale”) provided that:

- (1) Proceeds of the Sale are, at a minimum, sufficient to meet ISWC’s obligations in Paragraphs 18 and 25 of the Settlement. The minimum is not intended to represent a fair market value of the real property to be transferred or anything other than the sum necessary to meet ISWC’s obligations in the Settlement;
- (2) PAWC is given a temporary easement, as Receiver, to continue to access the spring, spring house, pump house and any other part of the ISWC distribution system as necessary to provide water service until a Certificate of Public Convenience for Abandonment is subsequently issued by the Commission; and
- (3) Commission approval of the proposed Settlement is a condition of closing the Sale.

The Settlement further provides that closing of the Sale shall be a condition for a certificate of public convenience for abandonment of service.

The OCA stated:

This condition requiring the sale of ISWC’s real property is in the public interest as it provides funds to contribute toward the Customer’s costs to secure alternative water supply and reimburses PAWC for the costs of receivership. This helps to ensure that ISWC contributes toward its Customers’ costs before ISWC is

permitted to abandon service and that ISWC, and not PAWC's customers, will properly bear the costs of receivership.

OCA Stmt. in Support, p. 7.

I&E agrees that this term is in the public interest, as it states:

I&E and the Parties agree that in order to effectuate the proposed dissolution of ISWC and the abandonment of service, the sale of 86.4 acres of real property to Glen Summit is integral to the proposed Settlement reaching its desired conclusion. After lengthy negotiations between and among the Parties, I&E supports this settled upon term as a full and fair compromise that provides regulatory certainty and a resolution of this proceeding, all of which facilitates the Commission's stated preference favoring negotiated settlements as in the public interest.

I&E Stmt. in Support, pp. 9-10.

In addition to the financial considerations associated with the proposed sale addressed by OCA and I&E, there are also conservation and recreation considerations that support approval of this Settlement term. ISWC and Glen Summit summarize these considerations in their Statement in Support as follows:

The Glen Summit community has for over a century used the recreational land for swimming, hiking, cycling, camping, fishing and community events. Glen Summit residents have invested a considerable amount to preserve the undeveloped woodlands, and Fountain Lake is an important gathering place for the community.

The woodlands and lake, by historical occurrence, are owned by Indian Springs but have been used exclusively by the Glen Summit community for over 120 years.

...

The recreational land enhances the value of the real estate in Glen Summit. It is basically conservation land. Potential loss of any of that land has motivated this settlement because it would be a significant detriment to the community and possibly the local environment.

...

Many Glen Summit residents thought that it was unlikely that Indian Springs would be able to find another buyer that would agree to the same terms and were very concerned about the possibility of losing the recreational land.

ISWC/Glen Summit Company Stmt. In Support, pp. 2-3.

I agree with the parties that these provisions are in the public interest and support approval of the Settlement. The sale will provide the proceeds from which \$5,000 contributions will be made to those residents who choose to accept the payments, thereby insulating, as noted above, PAWC's existing customers from the burden of having to contribute toward the payments to ISWC's customers or other costs associated with PAWC's efforts as receiver of the troubled ISWC system. While the Settlement provides that PAWC may seek to recover any receiver-related costs not covered by the sale proceeds in a future base rate case, all parties have the right under the Settlement to challenge any such claims they believe were imprudently incurred, thereby offering an additional layer of insulation to PAWC's customers from expenses related to the ISWC system. Additionally, Glen Summit residents will receive the benefit of retaining the subject property and Fountain Lake as an important asset of the Glen Summit community. This Settlement term will enhance the value of real estate in Glen Summit to the benefit of all Glen Summit residents.

For the reasons stated above, I agree with the Joint Petitioners that this provision of the Settlement is in the public interest and I recommend that it be approved by the Commission.

e. Verification by PAWC, as Receiver

Once the requirements set forth below have been met, PAWC is required to file a statement with the Commission's Secretary's Bureau, copied to all Joint Petitioners, verifying that:

a. PAWC, as Receiver, has complied with Paragraphs 20, 21, 24 and 25 of the Settlement; and

b. All residences formerly served by ISWC have wells connected to the homes, which are producing water of adequate quality and quantity for domestic use, or

PAWC, as Receiver, has obtained written confirmation from the Customer that the home will remain unoccupied while that Customer retains ownership, or

PAWC mailed the Customer a \$5,000 check and the Customer was afforded thirty (30) days after the check was mailed to have a well drilled and, if applicable, water is continuing to be provided pursuant to Paragraphs 31 and 32 below; or

The Customer refused a \$5,000 contribution in the manner described in Paragraph 24, above; and

c. The Sale has closed.

These provisions merely require that PAWC verify and confirm in writing to the Commission and other parties when certain requirements under the Settlement have been completed. This is a reasonable provision that serves to keep the Commission and Parties informed as to the status of various actions required to be completed under the Settlement. These provisions are in the public interest and support approval of the Settlement.

f. Standard Settlement Conditions

The Joint Petitioners have agreed on standard settlement conditions that are typical of settlements before the Commission. These standard settlement terms are set forth below and are reasonable and in the public interest in that they merely protect the ability of the parties to advocate their litigation positions in the event the Commission does not accept the Settlement.

The settlement outlined in the Joint Petition is conditioned upon the Commission's approval of the terms and conditions contained in the Joint Petition without modification. If the Commission modifies the Joint Petition, the Joint Petitioners may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Joint Petition 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 parties within five (5) business days after the entry of an order modifying the Joint Petition. The Joint Petitioners acknowledge and

agree that the Joint Petition, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

The Joint Petition is proposed to settle all issues in the instant proceeding. If the Commission does not approve the Joint Petition 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 Joint Petition is made without any admission against, or prejudice to, any position which the Joint Petitioners may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

C. Comments to Settlement

In response to the notice and proposed settlement sent to Glen Summit residents, twenty-five (25) people submitted comments. Of the twenty-five (25) comments received, twenty-three (23) expressed support for the Settlement and two expressed opposition to the Settlement.

Several of the residents who expressed support for the Settlement offered no specific reasons for their support. They merely stated that they supported the Settlement. A number of the people who did state specific reasons for their support cited a strong desire that the lake and surrounding woodlands be retained under their control in order to assure that these resources remain in a natural and undisturbed condition. These residents noted the importance to themselves and the community of retaining the pristine nature of the lake and woodlands. They believe that the Settlement will help ensure that these natural features will remain undisturbed into the future. Other people cited the poor quality of the water produced by the ISWC system as

their main reason for supporting the Settlement. These people expressed that the ISWC system is a very troubled system and believe that abandoning it in favor of private wells is a desirable outcome of the Settlement.

As noted, two people expressed opposition to the settlement. One of the customers was primarily concerned about the potential cost of having to install a private well on her property. She was concerned that the actual cost to do the work on her property could greatly exceed the \$5,000 payment provided under the Settlement. The other customer opposing the Settlement raised concerns primarily about cost, the managerial ability of the entity that will take title to the lake and woodlands to manage and maintain the property into the future, and the adequacy of the sales price of the property.

As noted above, I agree with the Joint Petitioners that a one-time payment of \$5,000 is a fair and reasonable amount as a contribution to residents who drill wells as their alternate source of water supply. In addition to the Joint Petitioners, twenty-three of the twenty-five Customers who submitted comments had no opposition to the amount of the proposed offer. There is no record evidence as to actual costs that individual customers may incur to drill their own wells. Accordingly, the concern that actual costs may greatly exceed \$5,000 is based purely on speculation and provides no basis to reject the Settlement. The record evidence is clear, however, that if PAWC would cease to operate as Receiver, and ISWC would resume operating the System, ISWC could not reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. The Parties agree that, for the Do Not Consume Order to be lifted, the finished water reservoir would need to be replaced with a new tank and associated piping. Lead and copper level exceedances as well as other deficiencies would also need to be addressed. FOF No. 22. In fact, PAWC has estimated that the cost just to lift the Do Not Consume and make the water potable would be \$500,000 to \$750,000, and that a five-year capital plan to bring the system to PAWC standards would cost approximately \$2.5 million. FOF No. 22. The Joint Petitioners further agree that maintaining PAWC as Receiver of the System on a long-term basis is not a practical or economically feasible alternative to ISWC's abandonment of service. FOF No. 23.

I find that, even if actual costs to drill private wells exceeds \$5,000, the overall benefits of the Settlement, including the elimination of a chronically troubled, non-viable system that has been under a Do Not Consume Order for over two years, greatly outweighs the cost considerations raised by only two Customers.

The other person who expressed opposition to the Settlement is Thomas Tinsley. In addition to filing comments, Mr. Tinsley filed a formal complaint against the acquisition on September 5, 2019 at Docket No. C-2019-3012933, as well as an addendum to his complaint on October 14, 2019. In his original complaint, Mr. Tinsley alleged that negotiations that occurred between ISWC, the Glen Summit Company and PAWC were improper, and that actual costs for residents to install private wells will be in the \$20,000 to \$25,000 range. He requests, by way of relief, that the Commission ensure compliance with issues in favor of all customers without outside interference from unrelated parties. In his October 14, 2019 addendum, Mr. Tinsley added an allegation that ISWC may not have performed adequate flushing of its water lines.

On December 3, 2019, PAWC filed an answer to Mr. Tinsley's complaint. In its answer, PAWC acknowledged that negotiations between it and ISWC resulted in an Asset Purchase Agreement dated December 19, 2018, but that the APA was terminated on May 31, 2019. PAWC denied any improper behavior and requested that the complaint be denied.

On December 6, 2019, ISWC filed an answer to Mr. Tinsley's complaint. In its answer, ISWC admitted that it had been in negotiations with PAWC more than a year before the Commission's August 8, 2019 Order initiating the instant Section 529 investigation. It denied any improper negotiations with Glen Summit Company. It further denied that it did not adequately flush its water lines. ISWC requested that Mr. Tinsley's complaint be denied.

In his comments to the Settlement, Mr. Tinsley raised concerns primarily about potential costs to drill private wells, the managerial ability of the entity that will take title to the lake and woodlands to manage and maintain the property into the future, and the adequacy of the sales price of the property.

With respect to potential costs to drill private wells, I find, as explained above, that the overall benefits of the Settlement outweigh the speculative cost concerns raised by only two people who filed comments.

With respect to Mr. Tinsley's concerns about the managerial ability of the entity that will take title to the lake and woodlands to manage and maintain the property into the future, I again find that the overall benefits of the Settlement outweigh such concerns. Again, his concerns are purely speculative and offer no valid reason to reject the Settlement that has been crafted after extensive negotiations by the Joint Petitioners, including ISWC and the Glen Summit Company. Management of the property will be under the control of the Glen Summit Land Trust, a subsidiary of the Glen Summit Company. FOF No. 25. There is simply no record evidence demonstrating that Glen Summit Land Trust is incapable of successfully managing and maintaining the property on a going forward basis.

I likewise find that Mr. Tinsley's allegation about the inadequacy of the ultimate purchase price of the property does not provide a basis to reject the Settlement. The Asset Purchase Agreement, which is attached to the Settlement as Appendix D, was negotiated between PAWC, as Receiver for ISWC, and the Glen Summit Land Trust, Ltd., a wholly owned subsidiary of the Glen Summit Company. The Asset Purchase Agreement provides that the purchase price will be calculated as the sum of (1) total customer payments, (2) Receivership costs, and (3) PAWC's Public Utility Realty Tax Assessment (PURTA) liability to the extent not included in the Receivership costs. The final purchase price has not yet been determined. Under the Asset Purchase Agreement, it will be calculated following the payment to Customers of the \$5,000 contribution toward establishing an alternate water supply. Mr. Tinsley stated in his complaint that he is a stockholder of both ISWC and the Glen Summit Company. Accordingly, he will have an opportunity to challenge the ultimate purchase price through his position as a stockholder in those entities. I do not find his concern sufficient reason to recommend rejection of the Settlement.

CONCLUSION

As discussed above, this is not a typical Section 529 investigation where the end result is a Commission Order directing that a capable public utility purchase and operate going forward a troubled system. Rather, the Joint Petitioners have negotiated a settlement whereby current and former Customers of the system will be offered a one-time payment of \$5,000 for use toward the establishment of an alternate water supply. The ultimate goal of the Settlement, after completion of a number of conditions, is for the issuance by the Commission of a Certificate of Public Convenience authorizing the abandonment of the system. There will be no ongoing public utility providing service to its customers. Therefore, a typical analysis of the various requirements set forth in 66 Pa. C.S. § 529(a) is not required or appropriate. Rather, the overriding consideration and analysis to be conducted is to determine whether the Settlement is in the public interest.

For the reasons set forth above, I find that the proposed settlement is in the public interest and, accordingly, I recommend that the Commission approve the proposed Settlement without modifications.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this investigation. 66 Pa. C.S. § 529.
2. Commission policy promotes settlements. *See* 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. *See* 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 October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

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

6. At the time that the Pennsylvania Public Utility Commission ordered Pennsylvania-American Water Company to become the receiver of Indian Springs Water Company, Indian Springs Water Company was in violation of statutory or regulatory standards enforced by the Pennsylvania Department of Environmental Protection which affect the safety, adequacy, efficiency or reasonableness of the service provided by Indian Springs Water Company. 66 Pa. C.S. § 529(a)(1).

7. When the Pennsylvania Public Utility Commission ordered Pennsylvania-American Water Company to become the receiver of Indian Springs Water Company, Indian Springs Water Company had failed to comply, within a reasonable period of time, with an order of the Pennsylvania Department of Environmental Protection concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2).

8. If Pennsylvania-American Water Company would cease to be the receiver of Indian Springs Water Company, Indian Springs Water Company cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. 66 Pa. C.S. § 529(a)(3).

9. The Settlement affords current and former customers of Indian Springs Water Company an adequate opportunity and means to drill wells that produce an alternative source of water supply.

10. Alternatives to the abandonment of service by Indian Springs Water Company have been considered and the Pennsylvania Public Utility Commission determines they are impractical or not economically feasible. 66 Pa. C.S. § 529(a)(4).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Stipulation to Proposed Findings of Fact set forth as Appendix E to the Joint Petition for Approval of All Issues be admitted into the record and adopted as the Findings of Fact in this proceeding.

2. That the Joint Petition for Approval of Settlement of All Issues executed by Pennsylvania-American Water Company, The Indian Springs Company, The Glen Summit Company, the Office of Consumer Advocate, and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement is approved without modification.

3. That Pennsylvania-American Water Company continue to serve as Receiver of Indian Springs Water Company until a Certificate of Public Convenience to Abandon Service is issued by the Commission.

4. That Pennsylvania-American Water Company's costs of receivership shall be paid by Indian Springs Water Company from three sources: (1) all funds in the Indian Springs Water Company business checking account at First Keystone Community Bank; (2) all revenues collected by Pennsylvania-American Water Company from The Indian Springs Water Company customers as of the date a final Order is entered by the Commission in this proceeding; and (3) proceeds from the sale of real property owned by Indian Springs Water Company to The Glen Summit Company, consistent with Paragraph 8, below. Pennsylvania-American Water

Company's costs of receivership shall include all reasonable costs necessary to effectuate the terms of the Settlement. Such costs may be reviewed and questioned by the parties.

5. That if Pennsylvania-American Water Company does not receive full reimbursement for all costs of receivership from The Indian Springs Water Company for any reason, including but not limited to this Settlement not being approved by the Commission or the Sale not closing, Pennsylvania-American Water Company may claim any unreimbursed costs in a subsequent base rate case. All parties to the Settlement reserve their respective rights to challenge a claim for recovery of such costs.

6. That Pennsylvania-American Water Company, as Receiver, on behalf of The Indian Springs Water Company, shall offer to provide a one-time payment of \$5,000 to Customers as a contribution toward the costs incurred by Customers to obtain alternative water supply, such offer to be mailed by Pennsylvania-American Water Company in the form attached to the Joint Petition for Approval of Settlement of All Issues as Appendix C within one (1) day after entry of a final Commission Order approving the proposed Settlement without modification that impacts the Offer. If the Offer is modified, Pennsylvania-American Water Company shall mail the Offer within three (3) business days after entry of the final Commission Order.

7. That each Customer shall have thirty (30) days after the Offer is postmarked to refuse the Offer in writing. Refusal will be registered by postmark or the email "sent" date.

8. That within forty-five (45) days after entry of a final Commission Order approving the proposed Settlement or ten (10) days after closing of the transaction contemplated in Paragraph 8, below, whichever is later, Pennsylvania-American Water Company, as Receiver, shall mail a check in the amount of \$5,000 to all Customers unless the contribution was refused in the manner described in Paragraph 6, above. Checks shall be mailed to the Customers' addresses used for billing. Pennsylvania-American Water Company, as Receiver, shall use best efforts to deliver the funds to all Customers. Pennsylvania-American Water Company also shall contact all Customers who received checks but did not cash them within forty-five (45) days

after the checks were mailed. Pennsylvania-American Water Company shall comply with Pennsylvania unclaimed property requirements with regard to the balance of all uncashed checks.

9. That Pennsylvania-American Water Company, as Receiver, transfer title to the Land and consummate the Sale pursuant to the terms of the Asset Purchase Agreement attached to the Settlement as Appendix D.

10. That Pennsylvania-American Water Company, once the requirements below have been met, file a statement with the Commission's Secretary's Bureau, copied to all signatory parties, verifying that:

a. Pennsylvania-American Water Company, as Receiver, has complied with the terms of the Settlement to provide the Notice and Offer to Customers; and

b. All residences formerly served by The Indian Springs Water Company have wells connected to the homes, which are producing water of adequate quality and quantity for domestic use, or

That Pennsylvania-American Water Company, as Receiver, has obtained written confirmation from the Customer that the home will remain unoccupied while that Customer retains ownership, or

That Pennsylvania-American Water Company mailed the Customer a \$5,000 check and the Customer was afforded thirty (30) days after the check was mailed to have a well drilled and, if applicable, water is continuing to be provided, or

The Customer refused a \$5,000 contribution in the manner described in Settlement Paragraph 24; and

c. The Sale has closed.

The verified statement will specify the number of Customers who do not have wells connected to their homes as of the date the statement is filed. In addition, under confidential cover, PAWC shall file a list of amounts paid to each Customer pursuant to Settlement Paragraphs 22 and 25, copied to all Joint Petitioners.

11. That Pennsylvania-American Water Company file under confidential cover a list of amounts paid to each Customer copied to all signatory parties.

12. That Pennsylvania-American Water Company, when the foregoing requirements are met, but no earlier than sixty (60) days after entry of a Commission Order approving this Settlement, comply with DEP requirements, if any, for abandonment of The Indian Springs Water system with such costs added to its costs of receivership and file a verification statement with the Commission's Secretary's upon completion of this action.

13. That Pennsylvania-American Water Company continue to provide an alternative supply of water to any Customer who is mailed a \$5,000 check and is unable, due to winter weather, to drill a well within thirty (30) days after the check is mailed, in quantities sufficient for basic household purposes, following abandonment of service until such Customer drills a well or until April 30, 2021, whichever is sooner.

14. That following entry of a final Commission Order approving the Settlement, if significant investment becomes required to restore or continue service from The Indian Springs Water Company facilities, Pennsylvania-American Water Company, as Receiver, will not be obligated to make such investment and instead will continue to provide an alternative supply of water, in quantities sufficient for basic household purposes, to all Customers who are taking service from The Indian Springs Water Company's system for at least sixty (60) days after the entry of the Order and until the conditions of Section III of the Settlement, Settlement Paragraph 30 and, if applicable, Paragraph 31 are met.

15. That, conditioned on compliance with the terms of Section III of the Settlement (Settlement Paragraphs 17 through 32), the Secretary's Bureau shall issue a certificate of public convenience evidencing Commission approval of The Indian Springs Water Company's abandonment of the provision of water service to the public in Pennsylvania.

16. That any other certificates or approvals necessary under the Code to effectuate the term of the Settlement in a lawful manner be issued.

17. That the Secretary's Bureau close Docket No. M-2019-3011972 upon the issuance of the certificate of public convenience evidencing Commission approval of The Indian Springs Water Company's abandonment of the provision of water service to the public in Pennsylvania.

18. That, upon the issuance of the certificate of public convenience evidencing Commission approval of The Indian Springs Water Company's abandonment of the provision of water service to the public in Pennsylvania, the Secretary's Bureau mark the formal complaint proceeding of Thomas Tinsley v. Indian Springs Water Company at Docket No. C-2019-3012933 as closed.

Date: May 3, 2021

/s/

Steven K. Haas
Administrative Law Judge