



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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February 13, 2001

A-212285F0071  
A-230073F0002

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DOCUMENT  
FOLDER

Application of Pennsylvania-American Water Company.....

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on February 8, 2001 in the above-entitled proceeding has adopted an Opinion and Order.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty  
Secretary

smk  
Enclosure  
cert. Mail

**DOCKETED**

FEB 15 2001

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105**

**APPLICATION OF  
PENNSYLVANIA-AMERICAN  
WATER COMPANY  
(PAWC)...FOR APPROVAL  
OF...THE TRANSFER, BY SALE,  
OF SUBSTANTIALLY ALL OF  
THE WATER WORKS  
PROPERTY AND RIGHTS OF  
THE CITY OF COATESVILLE  
AUTHORITY (CCA) WATER  
SYSTEM...; APPLICATION OF  
PAWC...FOR APPROVAL  
OF...THE TRANSFER, BY  
SALE...OF SUBSTANTIALLY  
ALL OF THE CCA'S ASSETS,  
PROPERTIES AND RIGHTS  
RELATED TO ITS  
WASTEWATER SYSTEM**

**PUBLIC MEETING February 8, 2001  
FEB-2001-OSA-0071\*  
DOCKET Nos. A-212285F0071  
A-230073F0002**

**STATEMENT OF COMMISSIONER TERRANCE J. FITZPATRICK**

This matter comes before the Commission for consideration of Exceptions and Replies to Exceptions filed with respect to the Initial Decision of Administrative Law Judge ("ALJ") Louis G. Cocheres. Exceptions were filed by the City of Coatesville Authority ("CCA"), Pennsylvania-American Water Company ("PAWC"), and Mr. Ernest E. Campos, Sr. ("Campos"). Replies to Exceptions were filed by Campos, CCA, and Philadelphia Suburban Water Company.

This case concerns an Asset Purchase Agreement ("Agreement") for the acquisition of the assets of the water and wastewater system of CCA by PAWC. The most contentious issue in these proceedings deals with an agreement for PAWC to charge the City of Coatesville ("City") for public fire hydrant service. In return, PAWC will make a contribution equal in amount to the public fire hydrant service payments received during that year for the City's Economic Development Fund. Specifically, the Agreement states:

....upon the effective date of the new tariff rates for public fire hydrant service application to the City, PAWC shall issue bills to the City for public fire hydrant service and collect amounts owed in accordance with PAWC's effective tariff. The City shall pay those charges for public fire hydrant service. In each year that the City makes payments to PAWC for public fire service, PAWC shall make a contribution equal in amount to the public fire service payments during that year, to the City's Economic Development Fund. PAWC agrees not to seek recovery of the contribution(s) to the City's Economic Development Fund in any future base rate case.

Stipulation, ¶¶ 10-11, p. 5,

The ALJ concluded that this Agreement was in violation of various sections of the Public Utility Code, and he recommended that the Agreement be modified. I believe that the ALJ reached the correct result, specifically pursuant to 66 Pa. C. S. §1303.

Section 1303 of the Public Utility Code states, in part, as follows:

**§1303. Adherence to tariffs**

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto.

66 Pa. C.S. §1303 (Bold in the original. Underlining added).

As the ALJ correctly noted, the statutory language "directly or indirectly, by any device whatsoever" clearly directs the Commission to examine the substance rather than the form of the transaction. Upon reviewing the above language in the Agreement, I cannot in good conscience reach any conclusion other than that CCA is receiving free fire hydrant service. The fact that this free service is paid for by shareholders rather than ratepayers does not change the basic fact that this transaction contravenes PAWC's tariff. Other municipalities will continue to pay for fire hydrant service under this tariff.

THEREFORE, I dissent on this issue, and join the Commission's resolution of the other issues in the case.

DATE: February 8, 2001

*Terrance J. Fitzpatrick*  
TERRANCE J. FITZPATRICK  
COMMISSIONER

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held February 8, 2001

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
Nora Mead Brownell  
Aaron Wilson, Jr.  
Terrance J. Fitzpatrick, Dissenting in part – Statement attached

DOCUMENT  
FOLDER

Application of Pennsylvania-American Water Company for Approval of (1) The Transfer, By Sale, of Substantially All of the Water Works Property And Rights of the City of Coatesville Authority Water System to Pennsylvania-American Water Company, and (2) The Rights of Pennsylvania-American Water Company To Begin To Offer or Furnish Water Service to the Public in all of the City of Coatesville, Parkesburg Borough, and South Coatesville Borough, Chester County, Pennsylvania and Portions of Sadsbury Township, Caln Township, East Fallowfield Township, Valley Township, Atglen Borough, West Sadsbury Township, and West Caln Township, Chester County, Pennsylvania and Quarryville Borough, Bart Township, Colerain Township, Eden Township and Sadsbury Township, Lancaster County, Pennsylvania; and (3) Certain Additional Regulatory Approvals

A-212285F0071

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Application of Pennsylvania-American Water Company for Approval of (1) The Transfer, By Sale, of Substantially All of the City's of Coatesville Authority's Assets, Properties and Rights Related to its Wastewater System to Pennsylvania-American Water Company; and (2) The Right of Pennsylvania-American Water Company to Begin to Offer, Render or Furnish

A-230073F0002

Wastewater Service to the Public in the City of Coatesville and Parkesburg Borough, Chester County, Pennsylvania and Portions of Caln Township, East Fallowfield Township, Valley Township, Sadsbury Township, and West Sadsbury Township, Chester County, Pennsylvania; and (3) Certain Additional Regulatory Approvals

Assumption of Pennsylvania Water Company of Thirteen (13) Agreements Between the City Of Coatesville Authority and Various Municipalities

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U-00004562

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration are the Exceptions and Replies to Exceptions filed with respect to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Louis G. Cocheres which was issued on January 24, 2001. Exceptions were filed by the City of Coatesville Authority (CCA) and Pennsylvania-American Water Company (PAWC) on January 29, 2001.<sup>1</sup> Mr. Ernest E. Campos, Sr., (an intervenor), filed Exceptions on or about January 26, 2001. Replies to Exceptions were filed by Mr. Ernest Campos, Philadelphia Suburban Water Company (PSW), PAWC, and CCA.<sup>2</sup>

**History of the Proceeding**

On February 15, 2000, the CCA and PAWC entered into an Asset Purchase Agreement for the Acquisition of the Assets of the Water and Wastewater System of CCA (Agreement).

On February 29, 2000, PAWC filed two (2) Applications seeking approval from this Commission for the transactions contemplated by the Agreement, including the authorization to begin to render service in the former CCA territory. 66 Pa. C.S. §1102. One (1) Application sought approval of the transaction for the water system and was docketed at No. A-212285F0071 (Water Application). The other Application sought approval of the transaction for the sewer system and was docketed at No. A-230073F0002 (Wastewater Application)(collectively, Applications). Together the Applications spanned a total of thirteen (13) municipalities in two (2) counties.

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<sup>1</sup> The CCA, as will be noted, was an indispensable party to the instant proceedings.

<sup>2</sup> We note that the City of Coatesville (City) accepts and adopts by reference, the Exceptions and Replies to Exceptions of the CCA.

The Water Application was amended on April 7, 2000, and May 25, 2000. The amendments reduced the requested service territory. The Wastewater Application was amended on April 7, 2000. The amendment reduced the requested service territory.

The following entities or individuals filed Protests to the Water Application: the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), PSW and Ernest E. Campos, Sr. (Mr. Campos).

The following entities or individuals filed Protests to the Wastewater Application: the OTS, the OSBA, Sadsbury Township, Chester County (Sadsbury Township) and Mr. Campos.

Evidentiary hearings were held on September 6 and 7, 2000. On October 6, 2000, PAWC, CCA, the City, the OTS, the OCA and the OSBA submitted a Stipulation of Settlement (Stipulation). Attached to the Stipulation was Exhibit 1 which was the First Amendment To The Asset Purchase Agreement For The Acquisition Of The Assets Of The Water System And Wastewater System Of The City Of Coatesville Authority By Pennsylvania-American Water Company, Dated February 15, 2000 (Amendment). PSW and Mr. Campos did not join in the Stipulation.

At the conclusion of the September 7, 2000 hearing, the ALJ informed the Parties that the Applications requested a Section 507 review of certain contracts pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. §507. The ALJ further informed the Parties that those contracts were not included in the record, and that he would not be able to approve those contracts sight unseen. (I.D., p. 2). Subsequently, PAWC submitted thirteen (13) agreements for review. The agreements were identified, but not included, in the Applications as contracts in which PAWC wanted to assume the obligations of CCA. These contracts were filed on September 11, 2000, at Docket

Nos. U-00004550 through U-00004562. By letter dated November 16, 2000, PAWC submitted these documents, labeled PAWC Ex. Nos. 9 through 21, for review by the Parties and the ALJ at the Application docket numbers.

On October 10, 2000, Main Briefs were filed by PAWC, CCA, PSW, and Mr. Campos. On October 20, 2000, Reply Briefs were filed by PAWC, CCA, PSW, and Mr. Campos.

On January 4, 2001, PAWC and PSW filed a Stipulation of Partial Settlement Between Pennsylvania-American Water Company And Philadelphia Suburban Water Company (Stipulation No. 2). Mr. Campos did not join in the Stipulation No. 2.

By letter dated February 5, 2001, Mr. Campos filed a Motion to Strike the Reply Exceptions of CCA and the City. Mr. Campos asserts that the Reply Exceptions of CCA and the City are not responsive to the issues raised on Exceptions and are mere personal attacks on his motives for participating in this proceeding. On February 6, 2001, CCA and the City filed an Answer to this Motion. CCA and the City rejoin that their Reply Exceptions adequately refer to citations to the relevant portions of the record. Further, these Parties suggest that the facts stated in their Reply Exceptions are material to this Commission's evaluation of the weight and credibility to be accorded Mr. Campos' testimony. On consideration of this pleading we shall decline to grant the Motion to Strike filed by Mr. Campos. We find that the Reply Exceptions adequately refer to the record and are not, improper, *ad hominem* attacks.

A detailed procedural history appears at pages 1-4 of the Initial Decision, and is incorporated herein by reference.

## Discussion

### **I. Introduction**

The ALJ made one hundred fifteen (115) Findings of Fact and reached one hundred fifteen (115) Conclusions of Law. We shall adopt and incorporate by reference the ALJ's Findings of Fact and Conclusions of Law to the extent that they are not expressly or by necessary implication overruled by this Opinion and Order.

As noted previously, the matter before us concerns an Asset Purchase Agreement entered into between PAWC and CCA by which PAWC will purchase the assets of CCA's Water and Wastewater systems. The CCA is a municipal authority organized and operated pursuant to the provisions of the Municipality Authorities Act of 1945, 53 P.S. §§301, *et seq.* The City is a city of the Third Class, within Chester County. The City is the incorporating municipality for CCA. *See* Finding of Fact Nos. 3; 5-6.

Two (2) partial settlements were achieved with regard to the Water Assets and Wastewater Assets. As will be discussed, below, PAWC, CCA, City, the OTS, the OCA, and the OSBA, submitted a Stipulation of Settlement . . . (Stipulation) pertaining to the Water Assets and which included Exhibit 1, which was the First Amendment to the Agreement. (I.D., p. 25). Mr. Campos and PSW did not join in this Stipulation.

A second stipulation was reached, Stipulation No. 2, between PAWC and PSW under which PAWC restrictively amended its Water Application consistent with the terms therein. (I.D., p. 62). Mr. Campos did not join in Stipulation No. 2.

## II. Partial Settlements

### A. Fire Hydrant Fees

This matter presents the most contentious issue in the proceedings. On October 6, 2000, PAWC, CCA, the City, the OTS, the OCA, and the OSBA submitted the above-referenced Stipulation and Exhibit 1, which was the First Amendment to the Agreement.

We reprint the significant portions of the above-referenced Stipulation from pages 25-27 of the ALJ's Initial Decision.

\* \* \*

6. In the certificated service territories granted to PAWC in these proceedings, PAWC shall charge CCA's existing rates until the later of two events: (1) the expiration of three (3) years from closing on the underlying acquisition or (2) the effective date of new tariff rates approved by the PUC in the first PAWC base rate case to conclude by PUC Order following the expiration of the three-year period.
7. Any issues that OTS, OCA, and OSBA have raised in these proceedings regarding rates, cost allocation and cost recovery are preserved in full and may be raised in the PAWC base rate case referred in paragraph 6 above. Nothing in this Stipulation of Settlement ("Stipulation") shall be construed as limiting the rights of OTS, OCA, and OSBA, to raise any claim, argument or defense in the PAWC base rate case referred to in Paragraph 6 above.
8. While the PUC does not have direct jurisdiction over the initial implementation of the bidding process of CCA and Coatesville, (a) the PUC at all times retains jurisdiction and authority over the rates and service of

PAWC applicable to Coatesville and other municipalities serviced by CCA (i) no matter how such rates and services were determined or mandated in that bidding process or (ii) no matter how such rates and services are addressed in the purchase agreement resulting from that bidding process, and (b) the agreement between PAWC and the CCA cannot abrogate or modify the PUC's jurisdiction and authority in any manner.

9. PAWC agrees that the Waterworks Application is hereby amended to delete Paragraph 25 to the extent it states that "In fulfillment of the contract provision which requires that the City shall not pay public fire hydrant charges, Pennsylvania-American proposes to continue to recover the costs of providing public fire service through customer water rates and not to impose a separate public fire hydrant charge on any municipality within CCA's current service area".
10. PAWC, the City and CCA agree to revise the Asset Purchase Agreement ("APA") as follows:

To delete Article 3, Section 3.4(b) to the extent it states that "[t]he City shall not at any time, be required to pay charges for public fire hydrants," as shown on the First Amendment attached hereto and made a part hereof and identified as Exhibit 1, and to provide that, upon the effective date of the new tariff rates for public fire hydrant service applicable to the City, PAWC shall issue bills to the City for public fire hydrant service and collect amounts owed in accordance with PAWC's effective tariff. The City shall pay those charges for public fire hydrant service. In each year that the City makes payments to PAWC for public fire service, PAWC shall make a contribution equal in amount to the public fire service payments during that year, to the City's Economic Development Fund. PAWC

agrees not to seek recovery of the contribution(s) to the City's Economic Development Fund in any future base rate case.

11. PAWC shall not seek recovery of the contribution(s) to the City's Economic Development Fund, as described in paragraph 10, above, in any future base rate case.

Stipulation ¶¶ 6-11, pp. 4-5.

### **1. ALJ's Recommendation**

As part of the above-cited Stipulation, all parties to the proceeding, with the exception of Mr. Campos and PSW, agreed to the revision of the pertinent provisions pertaining to fire hydrant service for the City. It is clear that the principal parties to the proposed transaction, PAWC, the City, and CCA, attempted to restructure the transaction so as not to violate pertinent provisions of the Code. Particularly, Sections 1303 and 1304 of the Code were at issue when the revision was reached. 66 Pa. C.S. §1303; 1304. Notwithstanding, the presiding ALJ concluded that the revision did not, in his opinion, cure the infirmities of the transaction so as to render it in compliance with the Code:

The next question is whether the language in the Amendment sufficiently revised the free hydrant concept to escape the violations. I find that the answer is "No." While the Amendment may now require PAWC to charge and the City to pay in accordance with the tariffed rate, it also requires PAWC to annually contribute an equal amount right back to the City's control. The fact that the source of the money returned is from shareholder funds, and not from ratepayers, does not change the big picture. The result is still the same, i.e. the City is still receiving free hydrant service. And free hydrant service continues to contradict PAWC's tariff and the Declaratory Order. Any attempt by PAWC to characterize the changes set forth in the Amendment as a "charge and

contribution” format is nothing more than an untenable form over substance argument.

(I.D., p. 53).

## 2. PAWC’s Exceptions

PAWC, in its Exception No. 1, argues that the ALJ discussion of the original language at Article 3, Section 3.4(b) of the Agreement, at Paragraph 25 was in error. PAWC states that the First Amendment repealed and replaced the original language in the Agreement and, therefore, the language was no longer before the Commission for consideration and should not have had any bearing on the outcome. (PAWC Exc., p. 2). Notwithstanding the First Amendment and repeal, PAWC observes that the ALJ discussed the original language and made several rulings and Conclusions of Law relating to the consistency of the original language with the Code and the Commission’s Declaratory Order.

PAWC urges that the portions of the Initial Decision relative to the original contract language be considered dicta and, therefore, advisory. Thus, PAWC argues that the specific Conclusion of Law regarding the original contract language be deleted. (PAWC Exc., p. 3).<sup>3</sup>

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<sup>3</sup> Specific exception is taken to Conclusions of Law Nos. 4, 5, 16, 17, 19, 21, 22 and 23, and corresponding Findings of Fact to the extent they find Section 4.1(g) and 4.2(f) of the Agreement inconsistent with the Code and the Declaratory Order (Order entered October 1, 1999).

### 3. CCA Exceptions

The CCA (and the City) also object to the ALJ's rejection of the revised Stipulation pertaining to fire hydrant service. The CCA asserts that it is a mischaracterization to declare the restructured transaction as furnishing "free" public fire hydrant service. The CCA points out that the provision of "free" hydrant service was a *quid pro quo* for the negotiation and acceptance by the City, of a lower purchase price for the sale of the Water Assets than it would have received without this concession. Under the Amended Provision, however, the City makes payment for public fire hydrant service and receives an equivalent contribution to its Economic Development Fund From PAWC. (CCA Exc., p. 5). Most importantly, argues the CCA, the contribution made is at the sole expense of PAWC's shareholders. (Exc., p. 6).

CCA continues to develop this point by reference to the financial resources and shareholder resources available to PAWC through its parent, American Water Works Company, Inc. The record indicates that PAWC is a wholly-owned subsidiary of American Water Works, Inc., the largest investor-owned company in the United States with a capitalization of more the \$4.1 billion. Thus, asserts CCA, "[n]o ratepayer would ever be required to pay a nickel of this contribution." (CCA Exc., p. 6). CCA strongly advises that the source of funds should be irrelevant to the ALJ's analysis when it was determined that the source would not be ratepayer funds. *Id.* The CCA continues:

. . . The Public Utility Code does not preclude a public utility from making contributions, and that is what PAWC has lawfully elected to do here. Nor does the Public Utility Code consider the source of funds used by ratepayers to pay utility bills. The ALJ has gone too far by, in effect, banning certain sources of funds from being used by ratepayers to pay utility bills.

There should be no difference between a City using as a source of funds to pay utility bills, dollars received in a lump

sum at the consummation of a transaction, and dollars received over a period of time, in installment payments, for the same transaction. Utilities should be given broad latitude in structuring the consideration portion of transactions, particularly when there is no adverse effect upon ratepayers. Utility transactions are not, as a matter of law, precluded from providing for deferred payments of the purchase price. The contributions made by PAWC to the City's Economic Development Fund are deferred payments of the purchase price.

(CCA Exc, pp. 6-7).

The CCA's Exceptions, pages 7-8, argue that approval of the amended provision is in the public interest. CCA references the testimony of Paul G. Janssen, City Manager, regarding the economic plight of the City. In recognition of the economically depressed condition of the City, CCA and the City offered the water and wastewater systems for sale and imposed terms to provide long term tax relief and financial stability to the residents of the City. (CCA Exc., p. 7). The main purpose of the original provision relating to fire hydrant service was, according to the statement of Mr. Janssen, "... to invest the net proceeds in a trust and to use the annual income to reduce taxes and fund projects to aid our residents. The City does not want to pay for hydrant services and then have to pass those charges onto its taxpayers in the form of taxes. A purpose of the sale is to decrease the burden on the City's taxpayers, not to increase the burden." (*Id.* citing City statement No. 1.0, p. 3).

The next section of CCA's Exceptions discusses the applicability of Section 1328 of the Code, 66 Pa. C.S. §1328, and addresses the compliance of the original (and amended) provision of the Agreement with this section of the Code. (CCA Exc., pp. 8-10). Significantly, CCA explains that Section 1328 of the Code is applicable to the Amended Provision and said provision is in compliance with this Section. PAWC will, according to the Stipulation, issue bills to the City for public fire hydrant service and

collect amounts owed in accordance with PAWC's effective tariff. The City will pay the charges. Thus, observes CCA, Section 1328 of the Code specifies a range for tariff rates to be set by the Commission. Sources of funds for payment are neither regulated under Section 1328, nor are they contributions from public utilities regulated by the Commission. (CCA Exc., p. 10).

CCA continues to distinguish the appellate cases cited by ALJ Cocheres from the facts presented by this proceeding. (See *Dormont Borough v. South Pittsburgh Water Company*, 322 Pa. 60, 185 A. 263 (1936); *Bell Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission*, 417 A.2d 827, (Pa. Cmwlth. 1980); and *Scranton Electric Company v. Avoca Borough School District*, 155 Pa. Superior Ct. 270, 37 A.2d 725 (1944).

#### **4. Disposition**

We shall grant the Exceptions of CCA and PAWC concerning the Stipulation relative to fire hydrant fees. We conclude that approval of the Amended Provision is in the public interest and is consistent with the applicable provisions of the Code. We shall, however, condition our approval of the Agreement, as amended, on the implementation and filing of an annual tracker mechanism by PAWC to ensure that the contributions to the City's Economic Development Fund are accurately attributed to shareholder funds.

We find that the appellate cases cited by the ALJ are distinguishable from the circumstances presented in the instant transaction. *Dormont*, *Bell*, and *Scranton*, are all cases that establish the primacy of Commission jurisdiction over the rates of public utilities and municipal authorities subject to our jurisdiction, notwithstanding the existence of an agreement. In light of the First Amendment to the Agreement which

provides, that the City shall pay the tariffed rate for fire hydrant service provided by PAWC, we conclude that the restructured transaction comports with the Code.

It is the payment of a contribution to the City's Economic Development fund, equal to the tariffed rate paid by the City for public fire hydrant service, that has caused the opponents of this transaction much consternation. This Commission concludes that this preoccupation is misplaced.

In *Philadelphia Suburban Water v. Pa.PUC*, 427 A.2d 1244 (Pa. Cmwlth. 1981), *appeal dismissed* (1981), it was held that gain from the sale of land is to be credited to a shareholder surplus account and does not enure to the benefit of the ratepayers inasmuch as the shareholders contributed the capital from which the land was purchased and bore the risk of any decline in the value of the land. In *Pa. Gas & Water Co. v. Pa. PUC*, 456 A.2d 1126 (Pa. Cmwlth. 1983); 52 P.U.R.4<sup>th</sup> 659, the Commission followed and applied the holding of the *Suburban Water* case, *supra*.

Similar to the considerations addressed by the Court and this Commission regarding the relative risks and benefits to ratepayers and shareholders arising from the sale of land not a part of the rate base, so is our consideration of the use of shareholder funds to consummate the instant transaction. The treatment of the contribution as a "below the line" item is not without precedent and is not improper pursuant to the Code. We would agree with the position espoused by PAWC that:

Contrary to the ALJ's statement that "[It] simply does not matter how the contracting parties structure the transaction," the structure of a transaction does matter. Parties frequently structure transactions in different ways because of the advantages/disadvantages of one approach rather than another. Some retailers cut the price of their products, others offer rebates. Some utilities buy real estate for power plants, others obtain the property without a sale to, and long-term lease from, an affiliated entity. Transactions are structured in

various ways to meet the needs of the particular contracting parties while complying with applicable laws.

(PAWC Exc., p. 12).

We could only agree with the presiding ALJ's reasoning were we to conclude that the object of the transaction, which the Parties readily acknowledge, is to provide a contribution to the City's Economic Development Fund equal to that paid for fire hydrant service is unlawful *per se*. On the contrary, we find that the transaction is in the public interest and provides several benefits to the public with no demonstrable detriments shown in this record to any of the parties in interest. (See discussion regarding the Public Interest, *infra*). The instant transaction could have been structured in any number of ways so as to achieve the objectives of the negotiating parties and allay the concerns of the public advocates who are now signatories to the First Amendment. Such possibilities, however, are not before this Commission. Neither do we find a sufficient basis in this record to impute improper motives on the part of the negotiating Parties regarding the transaction. (See discussion regarding Section 4.1(g) of the Agreement, *infra*).

The financial strength of the parent company of PAWC leads us to the conclusion that use of shareholder funds will not, under any scenario, imperil the financial integrity of the enterprise and impact service. In *Pa. PUC v. Phila. Electric Co.*, 501 Pa. 153, 460 A.2d 734 (1983), the Commission used its review authority pursuant to Section 1903 of the Code, 66 Pa. C.S. §1903 to, *inter alia*, conclude that funding burdens of Limerick Unit 2 would incur a risk of deterioration in future service rendered by the utility.

Based on the foregoing, we shall grant the Exceptions of PAWC, CCA, and the City, and approve the Amended Agreement, subject to the condition that PAWC file an annual tracking report related to its contributions to the Economic Development Fund.

## **B. Service Territory**

The presiding ALJ concluded that Stipulation No. 2, between PAWC and PSW, could be approved. (I.D., p. 62). In Stipulation No. 2, PAWC restrictively amended its Water Application by reducing the service territory requested in Caln Township, West Caln Township and East Fallowfield Township, Chester County. Revised maps and written descriptions of the requested service territories for those affected townships were included with Appendices A and B. Further, PSW agreed not to continue to contest the service territory boundary issues with PAWC. (*See* I.D., p. 62 citing Stipulation No. 2, p. 4, Para. 7).

On consideration of the recommendation of the ALJ, we shall adopt it, consistent, however, with our discussion concerning the demonstration of public need for service territories not encompassed by Stipulation No. 2.

## **C. Public Need for Service**

This issue concerns the adequacy of need for PAWC to serve those areas beyond the properties of CCA's existing customers. (I.D., p. 94). As noted in the Main Brief of PSW, there is no service territory for CCA, a municipal system, which can be defined with the precision that is associated with that of a utility regulated by this Commission. Municipal authorities have no defined service territory and PAWC readily acknowledged the distinction between a municipal authority's lack of territorial boundaries and those defined territories for a regulated entity.<sup>4</sup> With regard to the areas where service was provided by CCA's facilities, there is no dispute that a presumption of

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<sup>4</sup> As observed by PSW, PAWC was buying the assets of CCA, not CCA statutory authority to serve in any given area. (*See* I.D., p. 90).

continuing need would apply. However, the controversy arose over PAWC's requirement to prove need for areas beyond current CCA customers.

ALJ Cocheres concluded that, with regard to the territory not presently served by existing CCA facilities, PAWC had not adequately shown public need, consistent with the Code. The ALJ noted as follows:

I regard this failure to produce witnesses who wished to use CCA and/or PAWC services in the near future in the requested service territory as a crucial omission from the Company's case. Insofar as this judge is concerned, PSW was correct. There are really two requested service territories at issue for each Application. The first territory concerns existing customers. The second territory concerns individuals and developers whose homes, businesses or business complexes will be located near existing CCA facilities and who wish to have service in the future. The omission, highlighted above, concerns only the second territory.

Returning to the issue of extending the territory beyond the properties of the existing customers, I find that PAWC failed to establish a prima facie case. My understanding of the presumption (as noted above for the existing customers) is that it ends at the current customers' property lines. My understanding of the Asset Purchase Agreement is that its purpose was to secure the transfer of CCA's physical assets to PAWC in return for a specified purchase price. Accordingly, I regard the request by the Company to go beyond those property lines as simply a second application for the grant of a certificate of public convenience to serve a new territory...

\* \* \*

There is not a doubt in my mind that the best evidence of public need in a proposed new service territory is the testimony of members of the public who say they want to use the services offered by the applicant. As noted at the start of this discussion, PAWC chose not to use this method at all. Instead, PAWC chose to present the testimony of Mr. Johnston to describe the methodology the Company used

to identify the enlarged territory and to describe public interest in securing service. His efforts fell far short of the standard.

I have reviewed the record to determine if there was any other evidence of public desire for service beyond the existing customers. Essentially, I found none. Mr. Johnston outlined a four-pronged test which PAWC used to define the requested territory. Among those steps was to include territory associated with any political subdivision agreements and requests for service. Another step was to consider the topography, likely areas of future growth and any other land-use policies (based on input from local municipalities). PAWC St. No. 1.0 at 4. After doing this analysis prior to the filing of the Applications, the Company would have identified all of the people who could have been excellent witnesses to demonstrate a future need for service. However, PAWC made no effort to bring the actual people into the hearing room.

PAWC did submit a series of agreements and offered some of them as evidence of need. I examined all of the agreements for some suggestion of need without regard to the purpose suggested by the Company...

(I.D., pp. 92-96).

#### **1. PAWC Exceptions**

PAWC makes four (4) points in its Exceptions to the ALJ's recommendation that it only be permitted to serve customers who were currently receiving service from the CCA system, or who would shortly be connected to each system on the date of closing. (PAWC Exc., pp. 20-25). First, PAWC emphasizes that the settlement reached

with PSW, Stipulation No. 2, substantially resolved the territorial issue.<sup>5</sup> Second, PAWC argues that its Exhibit 8.0, demonstrates that numerous individuals and developers have requested service throughout the applied-for territory.<sup>6</sup> Third, PAWC points to the testimony of its witness, Mr. Johnston, who explained the detailed four-step process that it used in identifying the area to be included in its applied-for territory. The four-step process included a step to ensure that PAWC did not request territory currently served by another utility and a step to insure consistency with local zoning laws and land use policies, consistent with later-enacted state laws and Commission policies (52 Pa. Code §69.101). Fourth, PAWC explains that it here seeks to purchase an on-going system, currently owned and operated by a municipal authority which does not have a certificated service territory, but has the legal right and authority to provide service in a loosely-defined area in and about the City. (PAWC Exc, pp. 22-23).

In its Replies to the Exceptions of Mr. Campos, PAWC rejoins that there is a presumption of need in an area currently receiving utility service. Thus, PAWC finds it difficult to understand Mr. Campos' position that the Applications should be rejected in their entirety, simply because PAWC applied for too much service territory. (R.Exc., p. 9).

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<sup>5</sup> In this regard, PAWC argues that the only Party in this case, other than PSW and PAWC, who addressed the service territory issue was Mr. Campos. PAWC states that Mr. Campos did not file a response to Stipulation No. 2, nor did he present any record evidence demonstrating that no public need exists (or that service is adequate), in the territory addressed by the Stipulation. (PAWC Exc., p. 21).

<sup>6</sup> Exhibit 8.0, which was the subject of extensive discussion by the presiding ALJ, was rejected for inclusion in the record as inadmissible hearsay. PAWC devotes considerable time to address the ALJ's rejection of this exhibit as improper.

## 2. Replies of Campos

Mr. Campos is, apparently, the only party that takes the position that the rights sought by PAWC are “excessive.” (Campos R.Exc., p. 3; Exc., p. 4). It does not appear that any other party is challenging the public need showing in support of the applied-for territory by PAWC.

## 3. Disposition

On consideration of the record in this matter, we conclude that the ALJ’s analysis concerning the establishment of public need is unduly restrictive and shall be modified, consistent with the discussion contained in this Opinion and Order. ALJ Cocheres heavily relied on the analysis of ALJ Paist in *Application of Citizens/ Application of Philadelphia Suburban*. (See, Docket No. A-211070F0007). This case did not, however, involve the circumstances presented here - that is, the acquisition of a former, municipal-owned system.

Thus, this Commission’s consideration of the adequacy of a demonstration of public need must be tempered by the realities of the subject transaction. As noted by PAWC, this is not a situation where a utility is seeking to expand from an existing certificated territory into an area not currently served by another regulated entity. Rather, the territory involved is admittedly defined with less precision than the demarcation of service territories associated with Commission-regulated entities.

Based on the foregoing, we conclude that the four-step procedure explained by PAWC’s witness Johnston is reasonable and adequate under the circumstances. As argued by PAWC, the standard for public need is not to establish or prove absolute necessity or present demand for the service in every part of the territory involved. (*Purolator Courier Corp v. Pa. PUC*, 335 A.2d 850 (Pa. Cmwlth. 1976); *Application of*

*Interstate Energy Co.*, Docket No. A-00140200 (Order entered August 11, 1994)).

Public need must be evaluated in light of the overall public interest. The Legislature has directed the Commission to determine whether the fundamental requirement of the public interest is present in any application for a certificate of public convenience. (*City of York v. Pa.PUC*, 449 Pa. 136, 295 A.2d 825 (1972)).

After reviewing the considerations involved in the four-step process, we conclude that PAWC met its burden of going forward on the issue of need. We find no evidence in this record of equal or persuasive value to rebut the burden of going forward met by PAWC. Review of the four-step process, in conjunction with the reality that the Agreement contemplates the sale of CCA's water and wastewater assets and the obligations to serve attendant to those facilities supports our determination. Because of PAWC's succession to contracts relative to this service, we are faced with a situation wherein the application of a standard of need, under the restrictive interpretation of the presiding ALJ, would leave certain areas with no existing provider.<sup>7</sup> (*See* Finding of Fact No. 47). This is a result that would be contrary to the public interest. Finally, in light of the preference for negotiated settlements between the Parties, we find that no sufficient justification has been presented (particularly on the part of Mr. Campos) to set aside Stipulation No. 2.

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<sup>7</sup> Ostensibly, after the consummation of the transaction, CCA will no longer possess any means of rendering service and, if it did retain any such means, serious questions of frustration of business purposes and alleged breach of contract could be raised.

Based on the foregoing, we recognize the ALJ's concern regarding the imprecision of the defined territory acquired by PAWC as a result of our consideration of the instant Applications.<sup>8</sup> We also note that ALJ Cocheres discussed certain portions of the acquired territory where there were no water and sewer lines in existence. (*See* discussion and finding of no water facilities in certain portions of Caln Township and some areas where the requested service territories overlap. There are only facilities for one (1) service in the vicinity). However, this is a function of the former municipal owned system and not a failure of PAWC to adequately address public need to the extent permissible under the facts of this case. We shall grant the Exceptions of PAWC and reject the ALJ's analysis, consistent with our discussion.

**(a) Admission of Exhibit No. 8**

In light of our conclusions regarding the establishment of public need relative to the four-step process, it is unnecessary to extensively address the contentions regarding the proffered Exhibit No. 8. We disagree with ALJ Cocheres that the Exhibit No. 8 was inappropriately offered for inclusion in the record. Exhibit No. 8 contains the same confidential material which PAWC gave to PSW pursuant to their on-the-record data request. (I.D., p. 121). Consequently, on this basis, we find no merit in PSW's objections to the proffer of this exhibit and would conclude that PSW is estopped from objecting to its inclusion.

Regarding the merits of Exhibit No. 8, we find the information to be probative of the issue of public need separate and apart from the concerns relative to its

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<sup>8</sup> *See, e.g.*, ALJ discussion regarding PAWC Ex. No. 16. The Agreement did not indicate that there were any specific customers who required service and did not allow CCA to require property owners with septic systems to migrate to the CCA system. Further, the Agreement cross-referenced a map of the granted territory which was not attached to Ex. No. 16. Without the map, ALJ Cocheres could not compare the area described in the Agreement to requested service territory on the maps.

hearsay nature. (See PAWC Exc., pp. 16-19). We find no indication that any participant has been prejudiced by Exhibit No. 8. And, in conjunction with the acquisition of a former, municipal-owned system, the information corroborates the testimony of PAWC's other witness concerning the reasonable steps taken regarding the service territory acquired. We shall reject the ALJ recommendation and, consequently, conclude that sanctions are not appropriate.

### **III. Miscellaneous Issues**

#### **A. Public Interest**

ALJ Cocheres concluded that approval of the instant Applications, subject to the conditions recommended, was in the public interest. (I.D., pp. 107-109). Additionally, there was no dispute concerning the financial and managerial fitness of PAWC to provide the service. Mr. Campos, in his Exceptions, disagreed with the ALJ's conclusion regarding the public interest. He asserted that the record, when viewed as a whole, did not support approval of the transaction as being in the public interest. At the other end of the spectrum, CCA strenuously argues that approval of the Agreement, as amended, is in the public interest. (CCA Exc., pp. 7-8). CCA explains the background which led to the determination to auction the system. CCA queries, who stands to incur any detriment from the Amended Provision, in particular. CCA states that no detriment is incurred by any interested party. (CCA Exc., p. 8).

Mr. Campos' disagreement is based, *inter alia*, on his view that the fire hydrant provision was "illegal" and, as a result, PAWC should be punished or, at least, not rewarded, for agreeing to the provision. (Campos Exc., p. 2). Mr. Campos further finds "arrogance" and "contempt" on the part of PAWC for failing to submit certain contracts to the Commission for review under Section 507 of the Code, 66 Pa. C.S. §507.

He maintains that these are the contracts PAWC needs to continue to operate CCA's systems in the same manner as CCA. (Exc., p. 3).

Finally, Mr. Campos is severely critical of PAWC's alleged attempt to acquire a service territory "way beyond" where CCA currently provides service and where CCA has no facilities. (Exc., p. 4). He also objects to PAWC's alleged failure to follow the ALJ's clear instructions, given at the Prehearing Conference, to distinguish between the areas currently served by CCA and the additional areas claimed. (*Id.*).

### 1. Disposition

The benefits of the proposed transaction are: (1) economies of scale; (2) access to PAWC call centers; (3) inclusion in PAWC's maintenance program; (4) access to experts and resources of PAWC's affiliates; (5) uniform Commission regulation; (6) access to the Commission's Bureau of Consumer Services; (7) access to the OCA and the OSBA; (8) a three-year rate freeze; and (9) a wider customer base over which to spread system costs. (I.D., p. 107).

We further note the presiding ALJ recited that the system is expected to show a \$600,000, *pro forma* loss annually over the period of the three (3) year rate freeze. Also, the system will need capital improvements. Furthermore, the ALJ observed that an earlier PAWC bid price exceeded an approximate 110% premium of value. (I.D., pp. 107-108).<sup>9</sup> In sum, however, the ALJ noted that the projected losses and necessary capital improvements provide for only a minimal impact on PAWC's financial health. (I.D., p. 109).

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<sup>9</sup> The ALJ also speculated that "it is highly likely that the CCA customers will face a rate hike at the expiration of the rate freeze." (I.D., p. 108).

On consideration of the positions of the Parties, we find that the transaction is in the public interest. It is well settled that when the “public interest” is considered, it is contemplated that the benefits and detriments of an application must be measured as they impact on all affected parties. (*See Middletown Twp. v. Pa. PUC*, 482 A.2d 674 (Pa. Cmwlth. 1984)). Based on our review of the record as developed in this proceeding, we conclude that approval of the Applications, subject to the conditions imposed by this Opinion and Order, is in the public interest.

### **B. Assumed Contracts**

PAWC Exhibit Nos. 9-21 are thirteen (13) agreements submitted at the direction of the ALJ and reviewed pursuant to Section 507 of the Code, 66 Pa. C.S. §507. (I.D., pp. 110-117). The ALJ modified these contracts to provide that, in the event of a conflict, PAWC’s tariff provisions would prevail.

In Exceptions, PAWC argues that there is no need to strike any provisions from those contracts. PAWC represents that it will apply the rules and regulations regarding conditions of service contained in its tariff in effect on the closing date. Additionally PAWC points to Exhibit K, which is a tariff supplement to become effective as of the date of the closing. (PAWC Exc., p. 27).

On consideration of the Exceptions of PAWC relative to contracts, we shall grant said Exceptions consistent with the foregoing discussion. We note that, by operation of law, the tariff provisions on file with the utility are conclusive and supercede any conflicting contract between PAWC and another party. (*See Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). Thus, the modifications proposed by the presiding ALJ are not necessary to enforce the primacy of Commission jurisdiction. Therefore, we shall approve the subject contracts pursuant to Section 507 of the Code, 66 Pa. C.S. §507.

In Exceptions, PAWC complains that certain contracts with the Veterans Administration, Air Liquide America Corporation, Metropolitan Communications, Inc., Comcast Metrophone, and Trilogy Development Corporation are not contracts between a utility and a municipality. (*See* PAWC Exc., p. 28). Thus, PAWC argues that such contracts are not subject to review under Section 507 of the Code, 66 Pa. C.S. §507, and the ALJ should be reversed to the extent inconsistent.

On consideration of the position of PAWC, we shall grant its Exceptions while noting that, to the extent it agreed to assume these contracts as part of the Application proceedings before this Commission, it was proper for the presiding ALJ to review them irrespective of the reference to Section 507 of the Code.<sup>10</sup>

Concerning five (5) other contracts, which were discussed in Conclusion of Law No. 2, PAWC explains that these contracts were inadvertently omitted. It requests authority to defer consideration at this time and proposes to refile these contracts in a separate proceeding for review. (PAWC. Exc., pp. 28-29).

We shall grant PAWC's Exceptions and direct the filing of the above-referenced, five (5) agreements for Commission review in a separate proceeding.

**C. Filing of a Map to Denote Service Area**

We shall direct that PAWC, prepare, within sixty (60) days of the closing date of the Asset Purchase Agreement, a map and a metes and bounds description of the new territory acquired as a result of our approval of the instant application proceedings. We do not endorse the definition recommended by the presiding ALJ, but, instead, desire

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<sup>10</sup> Requisite authority for consideration could be found pursuant to Section 508, 66 Pa. C.S. §508.

that the Commission be furnished with a complete list of the service territory encompassed by the CCA systems.

**D. Intent to Evade Commission Jurisdiction**

We have reviewed the pertinent contractual provisions, namely Article 4, Section 4.1(g) and 4.2(f) in the Agreement. On review of the explanation provided by PAWC in its Exceptions, we are satisfied that there was no improper attempt to evade Commission review in its entirety of the transactions presented in these proceedings. Therefore, we shall grant PAWC's Exceptions to the extent consistent.<sup>11</sup>

**ORDER**

1. That the Exceptions of Pennsylvania-American Water Company's and the City of Coatesville Authority are granted, to the extent consistent with this Opinion and Order.

2. That the January 24, 2001, Initial Decision of Administrative Law Judge Louis G. Cocheres is adopted as modified, by this Opinion and Order.

3. That the Stipulation Of Settlement Among Pennsylvania-American Water Company, City Of Coatesville And The City Of Coatesville Authority, The Office Of Trial Staff, The Office Of Small Business Advocate And The Office Of Consumer Advocate, filed October 6, 2000, is hereby approved to the extent that it is consistent with this Opinion and Order.

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<sup>11</sup> We note that the Declaratory Order petition of October 1, 1999, was filed by PSW. However, we find no indication in this record that PAWC or CCA attempted to avoid full Commission review of the transactions involved.

4. That Pennsylvania-American Water Company shall file an annual tracking report with the Commission which details the accounting treatment of its annual payments to the City of Coatesville Economic Development Fund.

5. That the First Amendment [dated October 5, 2000] To The Asset Purchase Agreement For The Acquisition Of The Assets Of The Water System And Wastewater System Of The City Of Coatesville Authority By Pennsylvania-American Water Company, Dated February 15, 2000, is hereby approved.

6. That the Stipulation Of Partial Settlement Between Pennsylvania-American Water Company And Philadelphia Suburban Water Company, filed January 4, 2001, is hereby approved.

7. That Pennsylvania-American Water Company Exhibit No. 9, which was the Water Service Agreement between Valley Township and City of Coatesville Authority dated March 1990, and amended in May 1991, is hereby approved.

8. That Pennsylvania-American Water Company Exhibit No. 10, which was the Sewage Treatment Agreement between Valley Township and City of Coatesville Authority dated January 1992, is hereby approved.

9. That Pennsylvania-American Water Company Exhibit No. 11, which was the bulk water sales agreement between the Octoraro Water Company and Quarryville Borough, dated May 1957, is hereby approved.

10. That Pennsylvania-American Water Company Exhibit No. 12, which was a Sewage Treatment Agreement, dated April 1966, among City of Coatesville Authority and Caln Township and its Authority, is hereby approved.

11. That Pennsylvania-American Water Company Exhibit No. 13, which was a Supplemental Agreement among City of Coatesville Authority, Caln Township and its Authority, dated September 1968, is hereby approved in its entirety.

12. That Pennsylvania-American Water Company Exhibit No. 14, which was entitled "Sewage Treatment Agreement #2" among City of Coatesville Authority, Caln Township and its Authority, dated 1971, is hereby approved.

13. That Pennsylvania-American Water Company Exhibit No. 15, which was a Sewage Treatment Agreement between City of City of Coatesville Authority and West Brandywine Township, dated June 1994, and an Addendum To Sewage Treatment Agreement, dated September 1995, is hereby approved.

14. That Pennsylvania-American Water Company Exhibit No. 16, which was a Waste And Wastewater Service Agreement between City of Coatesville Authority and West Sadsbury Township, dated March 1998, is hereby approved.

15. That Pennsylvania-American Water Company Exhibit No. 17, which was a Sewage Treatment Agreement between City of Coatesville Authority and Sadsbury Township, dated July 1997, and a Protocol and an Addendum To Protocol which were not dated, is hereby approved.

16. That Pennsylvania-American Water Company Exhibit No. 18, which was an Agreement between City of Coatesville Authority and Parkesburg Borough, dated June 1994, and an Agreement between the same parties, dated September 1998, is hereby approved.

17. That Pennsylvania-American Water Company Exhibit No. 19, which was a Consent and Assignment between Parkesburg Borough and City of Coatesville Authority, dated December 1998, is hereby approved in its entirety.

18. That Pennsylvania-American Water Company Exhibit No. 20, which was a Water And Wastewater Service Agreement between East Fallowfield Township and City of Coatesville Authority, dated July 1991, is hereby approved.

19. That Pennsylvania-American Water Company Exhibit No. 21, which was a Water and Wastewater Service Agreement between East Fallowfield Township and City of Coatesville Authority, dated July 1991, and contained two (2) amendments to the original agreement, dated December 1992, and March 1993, is hereby approved.

20. That Pennsylvania-American Water Company's request to assume and comply with the obligations in the following listed contracts, agreements, and commitments shall be granted: Veterans Administration Hospital; Air Liquide America Corporation; Metropolitan Communications, Inc.; Comcast Metrophone; and Trilogy Development Corporation (two (2) contracts).

21. That the following contracts shall be submitted for Commission review pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507 in a separate proceeding:

- (a) Valley Township
  - (1) Water conveyance agreement (1992)
  - (2) Sewer conveyance agreement (1992)
  
- (b) Caln Township and Caln Authority
  - (1) Stipulation from Chester County Court of Common Pleas (1981)

- (c) East Fallowfield Township
  - (1) Water and Wastewater Conveyance and Lease Agreement to CCA For 99 years (1991)
  - (2) Water Conveyance Agreement for Mount Carmel Road (1992)

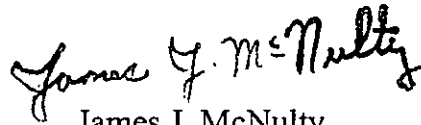
22. That the Application of Pennsylvania-American Water Company for Approval of (1) The Transfer, By Sale, of Substantially All of the Water Works Property And Rights of the City of Coatesville Authority Water System to Pennsylvania-American Water Company, and (2) The Rights of Pennsylvania-American Water Company to Begin to Offer or Furnish Water Service to the Public in all of the City of Coatesville, Parkesburg Borough, and South Coatesville Borough, Chester County, Pennsylvania and Portions of Sadsbury Township, Caln Township, East Fallowfield Township, Valley Township, Atglen Borough, West Sadsbury Township, and West Cain Township, Chester County, Pennsylvania and Quarryville Borough, Bart Township, Colerain Township, Eden Township and Sadsbury Township, Lancaster County, Pennsylvania; and (3) Certain Additional Regulatory Approvals at Docket No. A-212285F0071, is hereby approved. That the Application of Pennsylvania-American Water Company for Approval of (1) The Transfer, By Sale, of Substantially All of the City's of Coatesville Authority's Assets, Properties and Rights Related to its Wastewater System to Pennsylvania-American Water Company; and (2) The Right of Pennsylvania-American Water Company to Begin to Offer, Render or Furnish Wastewater Service to the Public in the City of Coatesville and Parkesburg Borough, Chester County, Pennsylvania and Portions of Caln Township, East Fallowfield Township, Valley Township, Sadsbury Township, and West Sadsbury Township, Chester County, Pennsylvania; and (3) Certain Additional Regulatory Approvals at Docket No. A-230073F0002 is hereby approved and a Certificate of Public Convenience issued.

23. That Pennsylvania-American Water Company shall prepare, within sixty (60) days of the closing date of the Asset Purchase Agreement, a map and a metes

and bounds description of the new territory acquired from the City of Coatesville Authority systems and submit those documents to the parties and to the Commission.

24. That the record at Docket Nos. A-212285F0071, A-230073F0002, and U-00004550 through U-00004562, be marked closed.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: February 8, 2001

ORDER ENTERED: FEB 13 2001

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