



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

IN REPLY PLEASE
REFER TO OUR FILE

March 31, 2009

I-00070114
P-00072313
A-230550F2000

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WILKES-BARRE PA 18701-2597

Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. pursuant to Section 529 of the Pennsylvania Public Utility Code; W.P. Water Co., Inc. and W.P. Sanitary Co., Inc.; Application of W.P. Sanitary Co., Inc. for approval of Abandonment of Service.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on March 26, 2009 adopted an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Encls
Cert. Mail
MH

See attached list for additional parties of record.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held March 26, 2009

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Investigation of W.P. Water Co., Inc.
and W.P. Sanitary Co., Inc. Pursuant to
Section 529 of the Pennsylvania Public
Utility Code; W.P. Water Co., Inc. and
W.P. Sanitary Co., Inc.; Application of
W.P. Sanitary Co., Inc. For Approval of
Abandonment of Service

I-00070114, P-00072313 and
A-230550F2000

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Settlement (Settlement Petition)¹ filed on March 18, 2009, by Aqua Pennsylvania, Inc. (Aqua), Little Washington Wastewater Company d/b/a Suburban Wastewater Company (LWWC), the Law Bureau Prosecutory Staff of the Pennsylvania Public Utility Commission (LBPS), the Office of Consumer Advocate (OCA), the Department of Environmental Protection (DEP), Washington Township (Township), W.P. Water

¹ We shall refer to the Settlement Petition, with Attachments A-U, as the Settlement.

Company, Inc. (WP Water), W.P. Sanitary Company, Inc. (WP Sanitary), Pennsylvania-American Water Company (PAWC) and United Water Pennsylvania Inc. (UWP)².

This matter comes before us as a certification of the record. Simultaneous with the filing of the Settlement Petition, the OCA and the LBPS filed a Joint Petition for Certification of the Record and Expedited Treatment of the Settlement and Acquisition of WP Water and WP Sanitary (Certification Petition). By Secretarial Letter dated March 20, 2009, we ordered the Administrative Law Judge in this proceeding to certify the record so we may expeditiously resolve this matter. Administrative Law Judge (ALJ) Ember S. Jandebaur certified the record on March 20, 2009 (*Certification Order*).

Background and Procedural History

The current owners/operators of WP Water and WP Sanitary (collectively, WP), Carl and Sandra Kresge, acquired WP in 1985 and have operated WP since that time. Carl Kresge is the president of WP Water and WP Sanitary, and his wife, Sandra Kresge, is the secretary of both companies.

WP Water operates two water systems: (1) the Sleepy Hollow system, which provides water service to twenty-seven customers in the Sleepy Hollow Development in Kingston Township, Luzerne County; and (2) the Washington Park system, which provides water service to 157 customers in the Washington Park Development in Washington Township, Wyoming County. WP

² Aqua, PAWC and UWP were joined as proximate utilities. Although not formally joined as a proximate utility by the Commission, LWWC has participated in this proceeding as the wastewater subsidiary of Aqua.

Water holds a DEP permit for water supply and a certificate of public convenience.

WP Sanitary provides wastewater service to 156 customers in the Washington Park Development in Washington Township, Wyoming County. WP Sanitary currently holds a certificate of public convenience.

On June 6, 2007, the OCA filed a petition for an emergency order directing WP Water to provide safe, adequate and continuous water service to its customers. Emergency relief was granted. *Ratification of Emergency Order in re: W.P. Water and Sanitary Company and its Duty to Provide Adequate, Safe and Continuous Water Service to its Customers*, Docket No. P-00072312 (Order entered June 21, 2007) (*Ratification Order*).

Also on June 6, 2007, the OCA requested that the Commission institute a proceeding to order the acquisition of WP pursuant to Section 529 of the Public Utility Code (Code), 66 Pa. C.S. § 529. By Investigation Order entered July 11, 2007, the Commission instituted an investigation at Docket No. I-00070114 into whether it should order a capable public utility to acquire WP pursuant to Section 529 of the Code.

The LBPS was directed to participate in the investigation pursuant to Section 529(i) of the Code, 66 Pa. C.S. § 529(i). In addition to LBPS, the Commission directed that Washington Township be joined as a party to the investigation proceeding. The Commission further directed that Aqua, PAWC and UWP be joined as proximate public utilities.

In its Answer to the OCA's Petition, WP did not expressly object to the initiation of the take-over proceeding and admitted that it was "both viable and

practical to transfer assets of WP to a capable public utility and a proximate public utility.” Ans. to OCA’s Petition, ¶18.

The consolidated proceeding was assigned to ALJ Jandebour. The Parties consented to use the mediation process to try to resolve the issues in the consolidated proceeding and the hearings previously scheduled in the matter were continued. Mediation sessions were held in Scranton on September 11, 2007, and October 10 and 29, 2007. Participating in the mediation process were: LBPS, OCA, DEP, Township, WP Water, WP Sanitary, Aqua, LWWC, PAWC, UWP and Commission Mediator Herbert Nurick.

A public input hearing was held in the Wyoming County Courthouse in Tunkhannock on the evening of October 10, 2007, to provide the customers of WP with an opportunity to present testimony concerning their water and wastewater service.

On November 1, 2007, the parties advised ALJ Jandebour and Mediator Nurick that, while many details remained open, they had reached an agreement in principle regarding the purchase price and a utility to acquire the utility assets of WP Water and WP Sanitary. Thereafter, the Parties became aware of several mortgages and mechanic’s liens recorded against WP, which would prevent WP from delivering clear title to an acquiring capable utility until the liens and mortgages were removed or satisfied.

Two Petitions and a Motion were filed asking the Commission to order the liens null and void. ALJ Jandebour issued an Initial Decision on October 8, 2008, that is currently under review by the Commission. In the interim, on October 2, 2008, WP provided notice that the mortgages and mechanic’s liens at issue were recorded in the relevant counties as being satisfied.

On January 25, 2009, Aqua and WP Water executed an Assets Purchase Agreement wherein Aqua would purchase WP Water's water system assets. On that same date, LWWC and WP Sanitary executed an Assets Purchase Agreement wherein LWWC would purchase WP Sanitary's wastewater system assets, subject to certain conditions. Subsequently, the Parties resolved all remaining issues with the language of the instant finalized Settlement.

On March 18, 2009, after nearly two years of litigation, the Parties filed the Settlement with the Commission for its approval. On that same date, the OCA and the LBPS filed the Certification Petition, in which the OCA and the LBPS contended that expedited treatment of the Settlement Petition is necessary to avoid further delays in the take-over of these troubled utilities. They argued that expedited treatment is necessary to ensure that the lack of safe and reliable water and wastewater services is addressed expediently to preserve the health and safety of the customers of WP Water and WP Sanitary. By Secretarial Letter dated March 20, 2009, the Commission ordered ALJ Jandebour to certify the record so that this matter may be resolved in an expeditious manner. As stated previously, ALJ Jandebour certified the record on March 20, 2009.³

Terms of the Settlement

The Settlement proposes a comprehensive resolution of these consolidated proceedings. The Parties submit that the Settlement is in the public interest because it promotes the maintenance of safe and adequate service and

³ As requested by the Parties, the *Certification Order* specifically identified the items to be included in the record in this expedited proceeding and accepted certain stipulations of the Parties. See, *Certification Petition* at 9-12 and *Certification Order* at 2.

minimizes expensive litigation and administrative burden. Settlement Petition at 23. The settlement is conditioned on the Commission's approval of all the terms and conditions contained therein without modification. *Id.* A copy of the Settlement Petition was served on the Office of Trial Staff as well as all customers of WP Water and WP Sanitary. *Id.* at 25.

Acquisition of WP Water Assets

Aqua will acquire the water system assets of WP Water⁴ for \$115,000 (\$45,000 for the Sleepy Hollow water system assets and \$70,000 for the Washington Park water system assets), to be distributed and allocated as provided in the Assets Purchase Agreement. The purchase price, plus Aqua's closing costs and reasonable attorney's fees, will constitute the depreciated original cost of the water systems for accounting and ratemaking purposes as of the date of closing without further or additional original cost study. Settlement Petition at 6.

Aqua submitted a plan for improving the two water systems to bring them into compliance with applicable statutory and regulatory standards. The capital cost of implementing this plan is within the range of reasonableness of \$125,000 to \$200,000 for the Sleepy Hollow water system, and in the range of reasonableness of \$899,000 to \$1,769,000 for the Washington Park water system.

⁴ The assets of WP Water and WP Sanitary are to be transferred free and clear of all mortgages, liens, and encumbrances. Settlement Petition, Attachments A, B and H. We note, in this regard, that the record contains evidence of contested mortgages and mechanics liens against the assets of WP Water and WP Sanitary. See, e.g., LBPS Ex. 6. However, the record also contains the following stipulations between LBPS and WP: (a) the mortgages and mechanics liens at issue were never filed for approval with the PUC; (b) the mortgage liens at issue will be stricken as null and void in violation of the Code and contrary to the public interest; (c) the mechanics liens are found invalid and ineffective; and (d) the contract between WP and Carl L. Kresge and Sons is found void. Certification Petition at 11.

Aqua has applied for financial assistance from the Pennsylvania Infrastructure Investment Authority (PennVest) to fund the Washington Park improvements. The Parties agree to Aqua's recovery of a reasonable amount of costs and expenses related to these improvements, and such costs and expenses will be accepted as reasonable provided that they are documented by Aqua in accordance with the normal ratemaking rules and regulations. Settlement Petition at 6-8.

Customers of WP Water will continue to pay the effective tariff rates of WP Water until closing. Upon closing, residents of the Sleepy Hollow Development will become Main Division customers of Aqua. They will be charged Aqua's NUI Division III base unmetered Flat Rate of \$47.41 per month. As water meters are installed, they will be charged Aqua's Main Division base rates. Upon closing, residents of the Washington Park Development will become NUI Division III customers of Aqua. They will be charged Aqua's NUI Division III base unmetered Flat Rate of \$47.41 per month. As water meters are installed, they will be charged the NUI Division III base metered rates. Settlement Petition at 8-9.

After closing, WP Water will refund a total of \$12,500 to its Washington Park water customers. This refund will be accomplished by credits applied by Aqua over the twelve month period following closing. Settlement Petition at 12-13.

Aqua's service territory will be expanded to include the territory now served by WP Water, and WP Water will abandon service. Settlement Petition at 10-11 and 13.

In an Initial Decision dated August 16, 2007, in *Kathleen Sylvester, et al. v. Washington Park Water Company and Washington Park Sanitary*

Company, Docket Nos. C-20055453 *et al.*, (*Sylvester Complaint*), ALJ Jandebour recommended the following fines and penalties: \$547,500 payable by WP Water, \$547,500 payable by WP Sanitary, \$109,500 payable by Carl Kresge, and \$109,500 payable by Sandra Kresge, all for violations of the Code and Commission Regulations. The Settlement Petition provides that a total of \$11,000 in civil penalties will be divided equally between WP Water and WP Sanitary. Upon closing, the Commission will terminate all pending actions initiated by the Commission and LBPS against WP Water, Carl Kresge and Sandra Kresge that relate to WP Water. The LBPS agrees not to initiate any new actions before the Commission against Carl Kresge and Sandra Kresge that relate to WP Water, except for actions to enforce the Settlement. This provision, however, does not pertain to actions initiated by persons who are not a party to the Settlement (such as customers of WP Water). Settlement Petition at 11-12.

Section 529(k) of the Code, 66 Pa. C.S. § 529(k), provides for limitations on the liability of the public utility ordered to acquire a small water utility. Similarly, Section 529(l) of the Code, 66 Pa. C.S. § 529(l), provides for limitations on enforcement actions against the public utility ordered to acquire a small water utility. The Settlement Petition at 9-10 states that these statutory provisions shall apply in full to Aqua's acquisition of the assets of WP Water.

Acquisition of WP Sanitary Assets

LWWC will acquire the wastewater system assets of WP Sanitary for \$70,000, subject to the contingency described below. The purchase price, plus LWWC's closing costs and reasonable attorney's fees will constitute the depreciated original cost of the system for accounting and ratemaking purposes as of the date of closing without further or additional original cost study. Settlement Petition at 14.

LWWC submitted a plan for improving the sewer system to bring it into compliance with applicable statutory and regulatory standards. The capital cost of implementing this plan is within the range of reasonableness of \$1,627,000 to \$1,970,000. The Parties agree to LWWC's recovery of a reasonable amount of costs and expenses related to these improvements, and such costs and expenses will be accepted as reasonable provided that they are documented by LWWC in accordance with the normal ratemaking rules and regulations. Settlement Petition at 14-16.

LWWC's agreement to purchase the assets of WP Sanitary is conditioned on the receipt of adequate financial assistance. LWWC has applied for financial assistance from PennVest in order to fund the improvements to the wastewater treatment plant. "LWWC shall be reasonably satisfied with the level of financing and/or grants that it will receive to make the much needed capital improvements to the assets of WP Sanitary." Settlement Petition at 16. If LWWC is not reasonably satisfied with the level of financing it receives, the OCA, the LBPS, the Township and DEP retain the right to pursue a Commission order requiring a utility to acquire WP Sanitary. *Id.* at 16-17.

The Settlement Petition notes that LWWC presently operates several wastewater divisions in Northeastern Pennsylvania. It further states "[c]onsolidation of these divisions into a single Northeastern Pennsylvania Wastewater Division ('NEPWD') for accounting and ratemaking purposes is reasonable and appropriate." Settlement Petition at 17. Washington Park will be included in the NEPWD in the next rate case before the Commission and the Parties agree to support this inclusion.

Customers of WP Sanitary will continue to pay the effective tariff rates of WP Sanitary until closing. Upon closing, residents of the Washington Park Development will become Rivercrest Division customers of LWWC. They will be charged a flat rate of \$47.08 until water meters are installed. As water meters are installed, they will be charged the Rivercrest Division base metered rates. Settlement Petition at 17.

After closing, WP Sanitary will refund a total of \$12,500 to its Washington Park wastewater customers. This refund will be accomplished by credits applied by LWWC over the twelve month period following closing. Settlement Petition at 21.

LWWC's service territory will be expanded to include the territory now served by WP Sanitary, and WP Sanitary will abandon service. Settlement Petition at 19 and 22.

Upon closing, the Commission will terminate all pending actions initiated by the Commission and LBPS against WP Sanitary, Carl Kresge and Sandra Kresge that relate to WP Sanitary. The LBPS agrees not to initiate any new actions before the Commission against WP Sanitary, Carl Kresge or Sandra Kresge that relate to WP Sanitary, except for actions to enforce the Settlement. This provision, however, does not pertain to actions initiated by persons who are not parties to the Settlement (such as customers of WP Sanitary). Settlement Petition at 20.

Section 529(k) of the Code, 66 Pa. C.S. § 529(k), provides for limitations on the liability of the public utility ordered to acquire a small sewer utility. Similarly, Section 529(l) of the Code, 66 Pa. C.S. § 529(l), provides for limitations on enforcement actions against the public utility ordered to acquire a

small sewer utility. The Settlement Petition at 18-19 states that these statutory provisions shall apply in full to LWWC's acquisition of the assets of WP Sanitary.

Discussion

The Parties have filed a Settlement Petition in accordance with the Commission's Regulations at Section 5.232. Considering that the matter has been certified for a decision, pursuant to 52 Pa. Code § 5.531, we will review the Settlement Petition as required by 52 Pa. Code § 5.232(g).

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. However, the Commission must review a proposed settlement to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004). For the reasons set forth below, after reviewing the terms of the Settlement, we are satisfied that approval of the Settlement is in the public interest and is consistent with the terms of the Code and the Commission's Regulations.

Transfer of the Assets of WP Water

Section 529(a) and (d)

Pursuant to 66 Pa. C.S. § 529(a), we are empowered to order a capable public utility to acquire a small water or sewer utility if, after notice and an opportunity to be heard, we determine:

- (1) that the small water 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 service 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 public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

The determinations of Section 529(a) appear in the conjunctive. Thus, we must determine that each of the six standards is met before ordering Aqua to acquire WP Water. In making these determinations, the Commission is to consider the factors set forth in Section 529(c), including (a) the expenditures

necessary to make improvements to the water system assets to assure compliance with applicable statutory and regulatory standards and (b) the opinion and advice of DEP. Based on the following analysis, we conclude that the transfer of the assets of WP Water to Aqua is justified pursuant to Section 529(a).

The first required determination is that the small water utility is in violation of statutory or regulatory standards. 66 Pa. C.S. § 529(a)(1). The second required determination is closely related: that the small water utility has failed to comply within a reasonable period of time with any order of the Commission or DEP concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2).

DEP and Aqua entered into a Consent Order and Agreement “to provide Aqua with sufficient time to address the deficiencies of the WP System.” Settlement Petition, Attachment E at 3. According to that Agreement, at 2, DEP has issued:

(1) [A]n Order dated October 25, 2007 against WP Water, for failing to comply with the special permit conditions set forth in an Emergency Permit dated September 10, 2007, for Well #4, which details various violations of the Safe Drinking Water Act, 35 P.S. § 721 *et seq.* and the Department’s regulations; and (2) an Order dated May 20, 2008, against WP Water which details various allegations, including failure to provide a properly certified water works operator and failure to properly submit required monthly chlorine residual reports to the Department, constituting violations of the Safe Drinking Water Act, 35 P.S. § 721 *et seq.* and the Department’s regulations.

In its Statement in Support, DEP stated that WP Water “continues to be in violation of applicable rules and regulations of this Department.” Settlement Petition, Attachment P; at 1.

In its Statement in Support, the LBPS states: “WP’s financial, technical and managerial inability is of a very serious nature and resulted in multiple serious service interruptions in violation of 66 Pa. C.S. § 1501.” Settlement Petition, Attachment N, at 3. LBPS adds that the consequences of these violations were very severe, resulting in customers either not having water altogether or experiencing low water pressure on an ongoing basis. *Id.* at 4.

The Township’s Statement in Support of the Settlement contends that WP is not able to provide sufficient water and sewer service for a development of this size. The Township notes that WP Water customers have experienced extended service outages and those customers who did not lose water had extremely low water pressure. Settlement Petition, Attachment Q.

We note that, in a recent proceeding, Aqua filed an application seeking to provide water service to the Saddle Ridge development. WP Water filed a protest to the application because Saddle Ridge was located in its *certificated service territory, thus creating a rebuttable presumption that WP was fit to serve the new development.* In his Initial Decision, ALJ Cocheres found that there was more than enough evidence to conclude that WP Water rendered inadequate service to the Sleepy Hollow development and that it is unfit to render service to Saddle Ridge even though Saddle Ridge is included in its certificated service territory. The ALJ concluded that WP Water’s service was inadequate to serve its current Sleepy Hollow customers and the prospective new customers of the Saddle Ridge Development. *Aqua Pennsylvania, Inc. for*

approval to begin to offer, render, furnish and supply water service to the public in portions of Dallas Township, Luzerne County, Pennsylvania, Docket No. A-210104F0074, at 19-20. The ALJ observed that the record reflected a history of DEP violations by WP Water, which included: (1) failure to monitor drinking water for radiological contaminants; (2) observed instances of red, brown, black or otherwise discolored water; (3) DEP chapter 109.501(c) and 704(a) violations that led DEP to refuse the issuance of an Operations Permit; and (4) failure to use a licensed waterworks operator. Id. at 20. The Commission adopted the ALJ's decision by Order entered July 12, 2007.

To this day, WP Water has failed to comply with a metering order issued by the Commission in 1991. In the Commission's Order entered April 26, 1991, at Docket No. M-820308, the Commission directed WP Water to provide metered service to its existing customers no later than March 1995, and to meter all its new residential, commercial and industrial customers as their respective services were connected. WP Water ignored the Commission's Order regarding the metering of its existing customers and failed to meter the connections of a hundred or more new customers. Eighteen years later, WP Water's customers' usage is still not metered, and its customers are charged flat rates for water service.

Based on the above, we have no difficulty concluding that WP Water is in violation of statutory or regulatory standards and has failed to comply, within a reasonable period of time, with any order of the Commission or DEP concerning the safety, adequacy, efficiency or reasonableness of service.

The third determination we are required to make pursuant to Section 529(a) is that the small water utility 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). This Commission has previously noted that WP has a long history of non-compliance with statutory and regulatory standards. *In re: W.P. Water and Sanitary Company and its Duty to Provide Adequate, Safe and Continuous Water Service to its Customers*, Docket No. P-00072312 (Emergency Order dated June 15, 2007, ratified June 21, 2007) (*Emergency Order*). Similarly, DEP has pursued “multiple enforcement actions” against WP Water, with little success. DEP’s Statement in Support, Settlement Petition, Attachment P at 1. The Township states that the number of service outages and low pressure problems for WP Water customers has been increasing. Settlement Petition, Attachment Q at 2. Substantial upgrades to WP Water’s system are necessary to provide adequate, efficient, safe and reasonable service and facilities in the future, but WP Water lacks the financial wherewithal to make improvements. We therefore conclude that WP Water cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

The fourth required determination is that alternatives to acquisition have been considered, and the Commission determines them to be impractical or not economically feasible. 66 Pa. C.S. § 529(a)(4). Section 529(b) requires the Commission to discuss with the utility, and give it a reasonable opportunity to explore, alternatives to acquisition. During the pendency of this proceeding, the LBPS and the utility have had an opportunity to discuss alternatives to acquisition. By entering into an Assets Purchase Agreement with Aqua, WP Water demonstrates that alternatives to acquisition are not practical or economically feasible. In its Statement in Support, DEP asserts that the proposed Settlement is

the only viable alternative that will address the chronic problems plaguing WP Water. Settlement Petition, Attachment P at 1. In its Statement in Support, Aqua notes that other capable utilities are Parties to this proceeding, but Aqua was the only utility to step forward and negotiate an amicable resolution for the acquisition of WP Water's assets. Settlement Petition, Attachment L at 4. We, therefore, find that alternatives to the acquisition of WP Water by Aqua have been considered, and we determine that those alternatives are impractical or are not economically feasible.

The fifth required determination is that the acquiring capable public utility is *financially, managerially and technically capable of acquiring and operating the small water utility in compliance with applicable statutory and regulatory standards.* 66 Pa. C.S. § 529(a)(5). As noted by the OCA in its Statement in Support, Aqua is an existing utility currently certificated by this Commission, and so is presumed fit. Settlement Petition, Attachment O at 10. No Party to this proceeding has seriously questioned Aqua's capabilities. We find that Aqua is financially, managerially and technically capable of acquiring and operating the Sleepy Hollow water system and the Washington Park water system in compliance with applicable statutes and regulations.

The final required determination is that the rates charged by the acquiring public utility to its pre-acquisition customers will not increase unreasonably because of the acquisition. 66 Pa. C.S. § 529(a)(6). The transaction will have no immediate impact on rates to Aqua's pre-acquisition customers. The transaction will have an impact in Aqua's next rate case because the Parties have agreed to the depreciated original cost of the water systems for ratemaking purposes and because the Parties have agreed to Aqua's recovery in rates of a reasonable amount of the costs and expenses related to Aqua's improvements to

the water systems. Nevertheless, LBPS states “because of the economies of scale, the customers of the acquiring companies will not be negatively impacted by this acquisition.” Settlement Petition, Attachment N at 6. We agree, and we find that the rates Aqua charges to its pre-acquisition customers will not increase unreasonably because of the acquisition of WP Water.

For the reasons set forth above, pursuant to our authority in Sections 529(a) and (d) of the Code, 66 Pa. C.S. § 529(a) and (d), we will order Aqua to acquire the assets of WP Water. Further, in accordance with Section 529(d), we will order the service territory of Aqua to be expanded to include the service territory described in Attachments F and G of the Settlement Petition. Concurrently, we shall issue a certificate of public convenience to WP Water authorizing it to abandon its water service in the Commonwealth of Pennsylvania.

Section 529(e)

Section 529(e) of the Code, 66 Pa. C.S. § 529(e), requires that we determine that the negotiated price for the acquisition of the water utility is reasonable. Aqua will pay \$45,000 for the Sleepy Hollow water system assets. We note that \$5,000 of this sum will be used to pay WP Water’s legal fees in connection with the closing. The assets of this system include a well and related treatment facility, distribution facilities, real estate, and miscellaneous tangible and intangible property. Settlement Petition, Attachment A, at Schedule 1.1. Aqua will pay \$70,000 for the Washington Park water system assets. We note that \$5,000 of this amount will be used to pay for WP Water’s legal fees in connection with the closing, \$5,500 will be used to pay fines and penalties imposed on WP Water, and \$12,500 will be used to pay for refunds to customers. Settlement Petition, Attachment B at 2-3. This system’s assets include three wells and related treatment facilities (and one additional well which does not yet have a DEP

permit), distribution facilities, real estate, and miscellaneous tangible and intangible property. Settlement Petition, Attachment B, at Schedule 1.1.

Aqua agreed to pay these amounts for the water assets of WP Water despite limited access to the facilities and limited information regarding their performance. Settlement Petition at 7. Nevertheless, it is clear that the assets are deficient and Aqua needs to make substantial improvements to the two water systems in compliance with applicable statutory and regulatory standards. Settlement Petition, Attachments C and D. The capital cost of these improvements is within the range of reasonableness of \$1,014,000 to \$1,969,000. Settlement Petition at 8.

Considering all of the above, we find that the purchase price for the assets of WP Water is reasonable.

Section 529(j)

Section 529(j) of the Code, 66 Pa. C.S. § 529(j), requires that the acquiring public utility provide an improvement plan (including timetables) to us for approval. In compliance with this subsection, improvement plans for WP Water's Sleepy Hollow and Washington Park system were submitted as Attachments C and D to the Settlement Petition. However, the Parties recognize that Aqua has had limited access to the facilities and limited information regarding their performance. Consequently, the improvement plan to be implemented may vary from what is described in the plan submitted for our approval. Settlement Petition at 7.

In the first year after the acquisition, the improvements Aqua proposes for the Sleepy Hollow system include: (1) construction of an

interconnection between Sleepy Hollow and an adjacent water system (Aqua's Midway Manor system) that will permit Sleepy Hollow's existing well to be used as an emergency source; (2) repair of Sleepy Hollow's well station; (3) installation of metering for all Sleepy Hollow customers; and (4) preparation of an analysis of Sleepy Hollow's consumed and lost water. In years two through five, Aqua plans to make whatever main replacements may be needed, upon identification of any significant and identifiable main leaks. Settlement Petition, Attachment C.

In the first year after the acquisition, the improvements Aqua proposes for the Washington Park system include: (1) installation of metering for all Washington Park customers; (2) construction of a new well and treatment facility; (3) demolition of existing structures and construction of a new treatment station for two of the existing wells; and (4) construction of a 50,000 gallon storage tank. In years two through five, Aqua plans to implement a main replacement program and abandon/cap one of the existing wells. Settlement Petition, Attachment D at 7-9.

DEP acknowledges that it had full opportunity to review these improvement plans, and that it supports the plans as appropriate for bringing the water systems into compliance with applicable statutory and regulatory standards. Settlement Petition at 7. The LBPS and the OCA have also reviewed the plans and found them to be reasonable and appropriate for bringing the two water systems into compliance with applicable statutory and regulatory standards. *Id.*

We agree with the Parties that Aqua's proposed improvement plans for Sleepy Hollow and Washington Park are reasonable and appropriate. Accordingly, we will approve the plans as set forth in Attachments C and D. If Aqua determines that significant changes are necessary to either plan, in terms of the activities to be conducted and/or the milestones for completing those activities,

Aqua shall submit a revised plan to this Commission for approval based on the criteria set forth in 529(j) of the Code.

Transfer of the Assets of WP Sanitary

Section 529(a) and (d)

As stated previously, Section 529(a) requires that the Commission make six determinations before ordering the acquisition of a public utility pursuant to Section 529(d). That is, we must determine that each of the six standards is met before ordering LWWC to acquire WP Sanitary. In making these determinations, the Commission is to consider the factors set forth in Section 529(c), including (a) the expenditures necessary to make improvements to the sewer system assets to assure compliance with applicable statutory and regulatory standards and (b) the opinion and advice of DEP. Based on the following analysis, we conclude that the transfer of the assets of WP Sanitary to LWWC is justified pursuant to Section 529(a).

The first required determination is that the small sewer utility is in violation of statutory or regulatory standards. 66 Pa. C.S. § 529(a)(1). The second required determination is closely related: that the small sewer utility has failed to comply within a reasonable period of time with any order of the Commission or DEP concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2).

DEP and LLWC entered into a Consent Order and Agreement “to provide LWWC with sufficient time to address the deficiencies of the WP

System.” Settlement Petition, Attachment J at 3. According to that Agreement, at 3, on October 2, 2004, DEP published notice of a draft National Pollutant Discharge Elimination System (NPDES) permit for WP, but that draft NPDES permit was never issued as final by DEP. In fact, on November 10, 2005, DEP sent WP Sanitary a letter stating that DEP would not issue an NPDES Permit due to WP Sanitary’s lack of ability or intention to comply with DEP regulations as indicated by past and continuing violations. DEP issued an Order against WP Sanitary, dated December 29, 2006, detailing numerous violations of the Clean Streams Law. Settlement Petition, Attachment J at 2-3. DEP’s Statement in Support succinctly states that WP Sanitary, like WP Water, is in violation of applicable DEP rules and regulations. Settlement Petition, Attachment P at 1.

LBPS’s Statement in Support notes that “WP’s wastewater plant experiences frequent peak flows at rates greater than its treatment plant can effectively treat. As a result, WP Sanitary is overloaded on a daily basis.” Settlement Petition, Attachment N at 4-5.

Based on the above, we have no difficulty determining that WP Sanitary is in violation of statutory or regulatory standards and that WP Sanitary has failed to comply within a reasonable period of time with an order of DEP concerning the safety, adequacy, efficiency or reasonableness of its wastewater service.

The third determination we are required to make pursuant to Section 529(a) is that the small sewer utility 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). This Commission has previously noted that WP has a long history of non-compliance with statutory and regulatory standards. *Emergency Order*. Similarly, DEP has pursued “multiple enforcement actions”

against WP Sanitary, with little success. DEP Statement in Support, Settlement Petition, Attachment P at 1. Substantial upgrades to WP Sanitary's wastewater system are necessary to provide adequate, efficient, safe and reasonable service and facilities in the future, but WP Sanitary lacks the financial capability to make the necessary improvements. OCA Statement in Support at O-3. Finally, it is significant to note that WP has filed an Application at Docket No. A-230550F2000 to abandon its wastewater service. Based on all of the above, we determine that WP Sanitary cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

The fourth required determination is that alternatives to acquisition have been considered, and the Commission determines them to be impractical or not economically feasible. 66 Pa. C.S. § 529(a)(4). Section 529(b) requires the Commission to discuss with the utility, and give it a reasonable opportunity to explore, alternatives to acquisition. During the pendency of this proceeding, the LBPS and the utility have had an opportunity to explore alternatives to acquisition. By entering into an Assets Purchase Agreement with LWWC, WP Sanitary demonstrated that alternatives to acquisition are not practical or economically feasible. In its Statement in Support, DEP asserts that "the proposed Settlement is the only viable option to address the chronic problems plaguing the WP Water Company (WP Water) and WP Sanitary Company (SP Sanitary) systems." Settlement Petition, Attachment P at 1. In its statement in Support, LWWC notes that other capable utilities are Parties to this proceeding, but LWWC was the only utility to step forward and negotiate an amicable resolution for the acquisition of WP Sanitary's assets. Settlement Petition, Attachment M at 4. We therefore find that alternatives to the acquisition of WP Sanitary by LWWC have been considered and we determine that those alternatives are impractical or not economically feasible.

The fifth required determination is that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small sewer utility in compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(a)(5). As noted by the OCA in its Statement in Support, LWWC is an existing utility currently certificated by this Commission, and so is presumed to be fit. Settlement Petition, Attachment O at O-10. No Party to this proceeding has seriously questioned LWWC's capabilities. We find that LWWC is financially, managerially and technically capable of acquiring and operating the Washington Park wastewater system in compliance with applicable statutes and regulations.

The final required determination is that the rates charged by the acquiring public utility to its pre-acquisition customers will not increase unreasonably because of the acquisition. 66 Pa. C.S. § 529(a)(6). The Settlement Petition notes that LWWC presently operates several wastewater divisions in Northeastern Pennsylvania. Consolidation of those divisions is "reasonable and appropriate," according to the Settlement Petition. If LWWC purchases the assets of WP Sanitary, LWWC will include the Washington Park wastewater system in the NEPWD in its next rate case. Settlement Petition at 17.

The transaction will have no immediate impact on rates to LWWC's pre-acquisition customers. The transaction will have an impact in LWWC's next rate case because the Parties have agreed to the depreciated original cost of the sewer system for ratemaking purposes and because the Parties have agreed to LWWC's recovery of a reasonable amount of the costs and expenses related to LWWC's improvements to the sewer system. Nevertheless, LBPS states "because of the economies of scale, the customers of the acquiring companies will not be negatively impacted by this acquisition." Settlement Petition, Attachment N at 6. We agree, and we find that the rates LWWC charges to its pre-acquisition

customers will not increase unreasonably because of the acquisition of WP Sanitary.

For the reasons set forth above, pursuant to our authority in Sections 529(a) and (d) of the Code, 66 Pa. C.S. § 529(a) and (d), we will order LWWC to acquire the assets of WP Sanitary, subject to the condition that LWWC is reasonably satisfied with the level of financial assistance it will receive to make the capital improvements to the assets of WP Sanitary. Within 120 days of entry of this Opinion and Order, LWWC shall notify the Commission and all Parties to this proceeding whether the funding contingency has been satisfied.

If the funding contingency is satisfied, and LWWC closes on the acquisition of WP Sanitary, in accordance with Section 529(d), the service territory of LWWC shall be expanded to include the service territory described in Attachment K of the Settlement Petition. Concurrently, we shall issue a certificate of public convenience to WP Sanitary authorizing it to abandon its wastewater service in the Commonwealth of Pennsylvania.

529(e)

Section 529(e) of the Code, 66 Pa. C.S. § 529(e), requires that we determine that the negotiated price for the acquisition of WP Sanitary is reasonable. LWWC will pay \$70,000 for the assets of WP Sanitary. We note that \$5,000 of this sum will be used to pay WP Sanitary's legal fees in connection with the closing, \$5,500 will be used to pay fines and penalties imposed on WP Sanitary, and \$12,500 will be used to pay for refunds to customers. Settlement Petition, Attachment H at 2-3. The system's assets include a wastewater treatment plant and disposal facilities, a wastewater collection system, real estate,

and miscellaneous tangible and intangible property. Assets Purchase Agreement, Settlement Petition, Attachment H, at Schedule 1.1.

LWWC agreed to pay this amount for the wastewater assets of WP Sanitary despite limited information about, and limited access to, those assets. Settlement Petition at 14 and Attachment I at 1. Nevertheless, it is clear that the assets are deficient and LWWC needs to make substantial improvements to the wastewater system to bring it into compliance with applicable statutory and regulatory standards. Settlement Petition, Attachment I. The capital cost of these improvements is within the range of reasonableness of \$1,627,000 to \$1,970,000. Settlement Petition, at 15, n. 5.

Considering all of the above, we find that the purchase price for the assets of WP Sanitary is reasonable.

Section 529(j)

Section 529(j) of the Code, 66 Pa. C.S. § 529(j), requires that the acquiring public utility provide an improvement plan to the Commission for approval. In compliance with this subsection, an improvement plan for WP Sanitary's wastewater system was submitted as an attachment to the Settlement Petition. LWWC noted, however, that its access to the wastewater system had been limited, and that the final improvement plan to be implemented may vary from what is described in the plan submitted for approval. Settlement Petition at 15.

During the period before closing, the improvements LWWC proposes for the system includes: (1) determining the proper sizing for the treatment unit processes; (2) performing preliminary designs; and (3) submitting

grant and loan applications. Due the first two years after closing, LWWC will: (1) perform flow and water quality assessments; (2) complete final design and permitting activities; (3) construct the wastewater treatment facilities; and (4) develop an infiltration and inflow corrective action plan. Within three years after closing, LWWC will: (1) prepare the bid documents for sewer collection system repairs; (2) issue the contracts; (3) complete construction activities; and (4) monitor the collection system after all construction is completed. Settlement Petition, Attachment I. The capital cost of implementing the plan is within the range of reasonableness of \$1,627,000 to \$1,970,000. Settlement Petition, at 15, n. 5.

DEP acknowledged that it had full opportunity to review the plan and supports it as appropriate for bringing the wastewater system into compliance with applicable statutory and regulatory standards. Settlement Petition at 14-15. LBPS and OCA have also reviewed the plan and found it to be reasonable and appropriate for bringing the wastewater system into compliance with applicable statutory and regulatory standards. *Id.* at 15.

We agree with the Parties that LWWC's proposed improvement plan for the Washington Park wastewater system is reasonable and appropriate. Accordingly, we will approve the plan as set forth in Attachment I. If LWWC determines that significant changes are necessary in that plan, in terms of the activities to be conducted and/or the milestones for completing those activities, LWWC shall submit a revised plan to this Commission for approval based on the criteria set forth in Section 529(j) of the Code.

Civil Penalties

In the *Sylvester Complaint*, ALJ Jandebour recommended fines and

penalties to be paid by WP Water, WP Sanitary, Carl Kresge and Sandra Kresge in the amount of \$547,500, \$547,500, \$109,500 and \$109,500, respectively, for violations of Chapter 15 of the Code and Commission Rules and Regulations. ALJ Jandebeur recommended that the civil penalties assessed against WP Water and WP Sanitary be held in abeyance until the resolution of this consolidated proceeding. As part of the Settlement, the Parties agree that a civil penalty totaling \$11,000 will be imposed on WP Water and WP Sanitary, to be divided equally between those two companies, and paid by them at closing from the purchase price for the water and wastewater system assets.⁵

As stated previously, after a review of the terms of the Settlement, we are satisfied that the Agreement is in the public interest. We further find that approval of this Settlement is consistent with the final *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and the Commission's Regulations (Policy Statement)*, Docket No. M-00051875 (Order adopted November 30, 2007).⁶ Under the *Policy Statement*, the Commission will consider the following specific factors when evaluating settlement of alleged violations of the Code and the Commission's Regulations.

The *Policy Statement* sets forth ten factors that we may consider in determining whether to impose a civil penalty for a violation, and, if so, the amount of that civil penalty. The first factor is whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a

⁵ The customer complainants in the pending *Sylvester Complaint* were given an opportunity to review and comment on the Settlement. In all other respects, the findings and recommendations in the Initial Decision in the complaint proceeding are not modified and are ripe for review.

⁶ The final *Policy Statement* became effective upon publication in the *Pennsylvania Bulletin* on December 22, 2007. 52 Pa. Code § 69.1201.

higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.* We consider WP’s provision of inadequate water and wastewater service to be very serious violations. WP’s inability to take appropriate action where and when needed clearly involved more than administrative or technical errors. LBPS’s Statement in Support, *Settlement Petition, Attachment N* at 4.

The second factor we may consider is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* The consequences of WP’s actions were of a serious nature. WP’s customers suffered prolonged water outages, low water pressure and inadequate wastewater service.

The third factor pertains to litigated cases only, and so is irrelevant in this proceeding. 52 Pa. Code § 69.1201(c)(3).

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). There is no evidence in the record that WP has modified its internal policies and procedures to address the problems facing its water and wastewater companies. Nevertheless, the proposed Settlement will effectuate the transfer of WP’s water and wastewater systems to two capable utilities, Aqua and LWWC, which will address the problems of WP’s customers. To the extent that WP has participated in this proceeding and signed the Settlement Petition, WP has taken steps to address the conduct at issue.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Virtually all of WP's water and wastewater customers have received inadequate and unreasonable service from WP.

The sixth factor we may consider is the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). The record contains overwhelming evidence of WP's long-standing failure to comply with the Code, Commission Regulations and Orders, and pertinent environmental statutes and regulations.

The extent of WP's cooperation with the Commission's investigation and the amount of the civil penalty necessary to deter future violations are additional factors to be taken into consideration. 52 Pa. Code § 69.1201(c)(7). We are persuaded by the following statement from the LBPS's Statement in Support:

LBPS believes that it is appropriate to reduce the penalties recommended by the ALJ for the following reasons. Penalties are usually imposed to induce future timely compliance with Commission orders, rules and regulations. Because of the serious nature of this case, WP will no longer provide utility services and will no longer be subject to Commission jurisdiction. Therefore, LBPS submits that it is more important to transfer these facilities and authority to a more capable and compliant utility at a reasonable price that would not negatively impact customers.

Settlement Petition, Appendix N at 8.

The ninth factor we may consider is past Commission decisions in similar situations. When we published the *Policy Statement*, we stated:

Commission precedent may be considered in both litigated and settled cases; however, parties in settled cases will have flexibility in determining whether and how this factor should be applied within the specific facts of the case in order to develop innovative solutions and to reach an equitable agreement.

37 Pa.B. 6755, 6758 (December 22, 2007). Considering all the facts and circumstances of this case, we believe the Settlement Petition taken as a whole is consistent with past Commission decisions.

The tenth factor we may consider is other relevant factors. No other relevant factors are present in this case.

Based on all of the factors discussed above, and considering that we today order the acquisition of WP Water and WP Sanitary pursuant to Section 529, we find a total civil penalty of \$11,000, divided equally between WP Water and WP Sanitary, is consistent with the *Policy Statement*.

Termination of Proceedings

The Settlement Petition provides for the termination of the instant consolidated proceedings following closing on the sale of WP Water and WP Sanitary and completion of all associated tasks. Settlement Petition, at 22-23. Specifically, upon closing on the sale of WP Water, the Commission will terminate all actions initiated by the Commission and the LBPS against WP Water, Carl Kresge and Sandra Kresge that relate to WP Water, which are pending before the Commission on that date. Thereafter, LBPS will not initiate any new

actions before the Commission against Carl Kresge or Sandra Kresge relating to WP Water, except for actions to enforce the terms of the Settlement. Settlement Petition at 12.

Similarly, upon closing of the sale of WP Sanitary, the Commission will terminate all actions initiated by the Commission and the LBPS against WP Sanitary and Carl Kresge and Sandra Kresge that relate to WP Sanitary, which are pending before the Commission on that date. Thereafter, LBPS will not initiate any new actions before the Commission against Carl Kresge or Sandra Kresge relating to WP Sanitary, except for actions to enforce the terms of the Settlement. Settlement Petition at 20-21.

This agreement does not pertain to actions initiated by persons who are not a party to the Settlement, such as customers of WP Water or WP Sanitary. We specifically note that the Initial Decision at Docket Nos. C-20055453 et al. is ripe for Commission review. In addition, the agreement to terminate current proceedings before the Commission, and to refrain from instituting future proceedings before the Commission, does not pertain to actions against Carl Kresge or Sandra Kresge for their actions relating to any other jurisdictional public utilities.

We find these provisions to be reasonable and in the public interest. The Settlement appropriately balances the interests of the Parties who negotiated it, while preserving the rights of non-parties.

Conclusion

It is the Commission's policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient

information upon which to thoroughly consider the terms of the Settlement. The Settlement effectively addresses the issues which arose during the course of the proceedings, and avoids the expense of litigation and the possibility of appeals. Accordingly, we find that the Settlement is in the public interest and merits approval; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Settlement filed on March 18, 2009, by Aqua Pennsylvania, Inc., Little Washington Wastewater Company d/b/a Suburban Wastewater Company, the Law Bureau Prosecutory Staff of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, the Department of Environmental Protection, Washington Township, W.P. Water Company, Inc., W.P. Sanitary Company, Inc., Pennsylvania-American Water Company and United Water Pennsylvania Inc., and the terms of the Settlement described therein, are approved.

2. That, pursuant to the authority granted to the Commission in 66 Pa. C.S. § 529, Aqua Pennsylvania, Inc. is ordered to acquire the assets of W.P. Water Company, Inc. according to the terms set forth in the Joint Petition for Settlement and its attachments. Aqua Pennsylvania, Inc. is hereby authorized to file tariffs, tariff supplements or tariff revisions pertaining to the customers of W.P. Water Company, Inc., consistent with the findings herein. Within ten days after closing has occurred on the acquisition, Aqua Pennsylvania, Inc. and W.P. Water Company, Inc. shall so notify the Commission.

3. That, upon receipt of the notice of consummation required by Ordering Paragraph 2, a certificate of public convenience shall be issued to Aqua

Pennsylvania, Inc. authorizing it to provide service in the territory described in Attachments F and G.

4. That, upon receipt of the notice of consummation required by Ordering Paragraph 2, and receipt of the payment required by Ordering Paragraph 6, a certificate of public convenience shall be issued to W.P. Water Company, Inc. authorizing it to abandon water service in the Commonwealth of Pennsylvania.

5. The improvement plans submitted by Aqua Pennsylvania, Inc. for the Sleepy Hollow water system and the Washington Park water system are approved. If Aqua Pennsylvania, Inc. determines that significant changes are necessary to either improvement plan, in terms of the activities to be conducted and/or the milestones for completing those activities, Aqua Pennsylvania, Inc. shall submit a revised plan to this Commission for approval.

6. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, at closing, W.P. Water Company, Inc. shall pay a civil penalty in the amount of \$5,500 by check or money order for violations of the Public Utility Code and the Commission's regulations. Said check or money order shall be made payable to:

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

7. That upon receipt of the notice of consummation required by Ordering Paragraph 2, all pending actions initiated by the Commission and its Law Bureau Prosecutory Staff against W.P. Water Company, Inc., Carl Kresge and Sandra Kresge that relate to W.P. Water Company, Inc. shall be terminated. In addition, upon receipt of the notice of consummation required by Ordering

Paragraph 2, the Commission and its Law Bureau Prosecutory Staff shall not initiate any new actions before the Commission against W.P. Water Company, Inc., Carl Kresge and Sandra Kresge that relate to W.P. Water Company, Inc., except for actions to enforce the terms of the Settlement.

8. That, pursuant to the authority granted to the Commission in 66 Pa. C.S. § 529, Little Washington Wastewater Company d/b/a Suburban Wastewater Company is ordered to acquire the wastewater assets of the W.P. Sanitary Company, Inc., subject to the condition that Little Washington Wastewater Company d/b/a Suburban Wastewater Company is reasonably satisfied with the level of financial assistance it will receive to make the capital improvements to the assets of WP Sanitary Company, Inc. Within 120 days of entry of this Opinion and Order, Little Washington Wastewater Company d/b/a Suburban Wastewater Company shall notify the Commission and all Parties to this proceeding whether the funding contingency has been satisfied.

9. If Little Washington Wastewater Company d/b/a Suburban Wastewater Company notifies the Commission that the funding contingency has not been satisfied, the Secretary's Bureau shall refer these matters to the Office of Administrative Law Judge for further proceedings consistent with this Opinion and Order.

10. If Little Washington Wastewater Company d/b/a Suburban Wastewater Company proceeds to closing on the acquisition, it is authorized to file tariffs, tariff supplements or tariff revisions pertaining to the customers of W.P. Sanitary Company, Inc., consistent with the findings herein. In addition, if Little Washington Wastewater Company d/b/a Suburban Wastewater Company proceeds to closing on the acquisition, W.P. Sanitary Company, Inc. and Little

Washington Wastewater Company d/b/a Suburban Wastewater Company shall, within ten days following closing, so notify the Commission.

11. That, upon receipt of the notice of consummation required by Ordering Paragraph 10, a certificate of public convenience shall be issued to Little Washington Wastewater Company d/b/a Suburban Wastewater Company authorizing it to provide service in the territory described in Attachment K.

12. That, upon receipt of the notice of consummation required by Ordering Paragraph 10, and receipt of the payment required by Ordering Paragraph 14, a certificate of public convenience shall be issued to W.P. Sanitary Company, Inc. authorizing it to abandon wastewater service in the Commonwealth of Pennsylvania.

13. The improvement plan submitted by Little Washington Wastewater Company d/b/a Suburban Wastewater Company for the Washington Park wastewater system is approved. If Little Washington Wastewater Company d/b/a Suburban Wastewater Company determines that significant changes are necessary to that improvement plan, in terms of the activities to be conducted and/or the milestones for completing those activities, Little Washington Wastewater Company d/b/a Suburban Wastewater Company shall submit a revised plan to this Commission for approval.

14. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, at closing, W.P. Sanitary Company, Inc. shall pay a civil penalty in the amount of \$5,500 by check or money order for violations of the Public Utility Code and the Commission's regulations. Said check or money order shall be made payable to:

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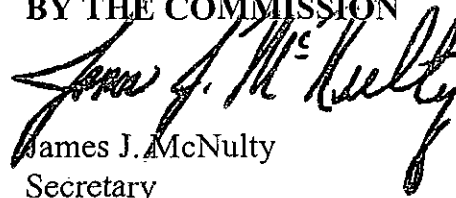
15. That upon receipt of the notice of consummation required by Ordering Paragraph 10, all pending actions initiated by the Commission and its Law Bureau Prosecutory Staff against W.P. Sanitary Company, Inc., Carl Kresge and Sandra Kresge that relate to W.P. Sanitary Company, Inc. shall be terminated. In addition, upon receipt of the notice of consummation required by Ordering Paragraph 10, the Commission and its Law Bureau Prosecutory Staff shall not initiate any new actions before the Commission against W.P. Sanitary Company, Inc., Carl Kresge and Sandra Kresge that relate to W.P. Sanitary Company, Inc., except for actions to enforce the terms of the Settlement.

16. That a copy of this Opinion and Order be served upon the Financial and Assessment Chief, Office of Administrative Services.

17. That a copy of this Opinion and Order be served upon all parties in *Kathleen Sylvester, et al. v. Washington Park Water Company and Washington Park Sanitary Company*, Docket Nos. C-20055453 *et al.*

18. That this proceeding at Docket Nos. I-00070114, P-00072313 and A-230550F2000 shall remain open until all of the steps listed in Ordering Paragraphs 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15 and 16 have been completed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is written in a cursive style with a large, sweeping initial "J".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 26, 2009

ORDER ENTERED: MAR 31 2009

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