

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company for Approval of (1) the transfer, :
by sale, of substantially all of the Borough of :
New Cumberland’s assets, properties and rights :
related to its wastewater collection and treatment :
system to Pennsylvania-American Water Company, :
(2) the right of Pennsylvania-American Water : A-2016-2544151
Company to begin to offer or furnish wastewater :
service to the public in the Borough of New :
Cumberland, Cumberland County, Pennsylvania, :
and (3) the right of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to three residential customers in Lower :
Allen Township, Cumberland County, :
Pennsylvania :

RECOMMENDED DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

Steven K. Haas
Administrative Law Judge

INTRODUCTION

This decision recommends approval, without modification, of a Joint Petition for Approval of Unanimous Settlement of all Issues (Settlement) in the above-captioned application proceeding as it is in the public interest and supported by substantial evidence.

HISTORY OF THE PROCEEDING

On May 5, 2016, Pennsylvania-American Water Company d/b/a Pennsylvania American Water (PAWC) (A-230073) and the Borough of New Cumberland (Borough) (together, Joint Petitioners) entered into an “Asset Purchase Agreement” (APA) for the transfer, by sale, of substantially all of the Borough’s assets, properties and rights related to its wastewater collection and treatment system (System) to PAWC. On May 6, 2016, PAWC filed the above-captioned application (“Application”) requesting, *inter alia*, Commission approval of the transaction, PAWC’s provision of wastewater service in the applied-for territory, and issuance of Certificates of Filing for certain agreements with municipal corporations.

On May 9, 2016, the Commission’s Secretary acknowledged receipt of the Application, but required proof of service of the Application to certain entities in accordance with 52 Pa. C.S. §§ 1.57 and 1.58. On the same date PAWC filed a certificate of service showing proof of service to those entities. On May 16, 2016, PAWC filed Revised Exhibit I (Schedule 6.7 – Borough of New Cumberland’s Rates to be adopted by PAWC as its base rates effective at Closing) and Revised Exhibit J (PAWC Supplement No. ___ to Tariff Wastewater Pa PUC No. 15, p. 4.11, regarding rates for all Borough of New Cumberland Wastewater customers) to the Application.

Notice of the Application was published on May 21, 2016 in the *Pennsylvania Bulletin*, 46 Pa. B. 2649. The Notice stated that the deadline for protests and petitions to intervene was June 6, 2016. Notice was also published in *The Patriot News* on May 19, 2016 and May 24, 2016. Proof of Publication in *The Patriot News* was filed with the Commission by PAWC on June 6, 2016.

On May 23, 2016, the Commission sent a letter with data requests from the Commission’s Bureau of Technical Utility Services to PAWC. PAWC responded to the requests on June 3, 2016, and provided copies of the Department of Environmental Protection’s Act 537 Official Sewage Facilities Plan for New Cumberland Borough dated June 30, 2009.

The Pennsylvania Office of Consumer Advocate (OCA) filed a protest to the Application on June 6, 2016. No other persons or entities protested the Application or sought to intervene in the proceeding by the June 6, 2016 deadline set by the Commission's Secretary.

On June 30, 2016, a Notice was issued scheduling a Prehearing Conference for July 12, 2016, at 10:00 a.m., in Hearing Room 2 of the Commonwealth Keystone Building in Harrisburg, Pennsylvania and assigning us as presiding officers. Also on June 30, 2016, a Prehearing Order was issued. PAWC and OCA submitted Prehearing Conference Memoranda in accordance with the Prehearing Conference Order. The Prehearing Conference was held as scheduled on July 12, 2016.

By Procedural Order dated July 12, 2016, we addressed certain procedural matters, including discovery rule modifications, and established the following procedural schedule for the case:

Prehearing Conference	July 12, 2016
PAWC Prepared Direct Testimony	July 22, 2016
OCA Prepared Direct Testimony	August 15, 2016
PAWC Prepared Rebuttal Testimony	August 29, 2016
OCA Prepared Surrebuttal Testimony	September 8, 2016
Hearing with Oral Rejoinder	September 19, 2016
Main Briefs	October 7, 2016
Reply Briefs	October 21, 2016.

In accordance with the procedural schedule, PAWC served the following prepared direct testimony and exhibits on July 22, 2016:¹

PAWC Statement No. 1, Direct Testimony of Bernard J. Grundusky, Jr., PAWC Director of Business Development (including PAWC Exhibits BJG-1, BJG-2 & BJG-3);

PAWC Statement No. 2, Direct Testimony of Michael J. Guntrum, P.E., PAWC Senior Project Manager - Engineering (including PAWC Exhibit MJG-1);

¹ By Joint Stipulation for Admission of Evidence filed on the same date as this Settlement, the Joint Petitioners sought admission of the testimony and exhibits into the evidentiary record.

PAWC Statement No. 3, Direct Testimony of Joseph F. Woodward, Jr., PAWC Senior Manager - Operations;

PAWC Statement No. 4, Direct Testimony of John R. Cox, American Water Works Service Company Manager of Rates and Regulations; and,

PAWC Statement No. 5, Direct Testimony of James S. Merante, American Water Works Service Company Director of Financial Strategy, Planning, and Decision Support for the Mid Atlantic Division.

The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance on August 1, 2016. PAWC provided I&E with copies of all previously-served testimony and exhibits.

On August 12, 2016, we granted an electronic mail request by the Joint Petitioners for an extension of the due date for non-company prepared direct testimony until August 18, 2016, in order to facilitate on-going settlement discussions.

On August 18, 2016, the Joint Petitioners notified us by electronic mail that they had reached a unanimous settlement of all issues and requested that we suspend the procedural schedule pending the filing of a joint petition for approval of settlement and stipulation for admission of evidence. By electronic mail on the same day, we granted the request to suspend the procedural schedule.

By Order Suspending Litigation Schedule dated August 18, 2016, we suspended the litigation schedule, cancelled the September 19, 2016 hearing, and gave the parties leave until September 2, 2016, to file a joint petition for approval of settlement and a joint stipulation for admission of evidence (along with statements in support and verifications). Also on August 18, 2016, a Cancellation Notice of the initial hearing was issued.

On September 2, 2016, the Joint Petitioners filed a Joint Petition for Approval of Unanimous Settlement of all Issues (Settlement Petition) and a Joint Stipulation for Admission of Evidence. On September 7, 2016, an omitted page 3 of the Joint Stipulation was filed. On

September 15, 2016, we issued an Order Admitting Testimony and Exhibits into the evidentiary record by which we admitted into evidence PAWC's application, testimony and exhibits. The record closed on September 15, 2016. This matter is ripe for a decision.

FINDINGS OF FACT

We adopt many of the jointly proposed findings of fact attached to the Settlement in Appendix B.

1. Pennsylvania American Water Company (PAWC) is a certificated public utility doing business as Pennsylvania Water Company at Docket No. A-230073 that furnishes water and wastewater service to the public in a Pennsylvania service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York, and serves a combined population of over 2,300,000 across the Commonwealth. PAWC St. No. 1, 10:3-10.

2. The Borough of New Cumberland (Borough) owns and operates a wastewater treatment system (System).

3. The Office of Consumer Advocate (OCA) is authorized to represent the interests of utility consumers before the Commission pursuant to 71 P.S. §309-2, *et seq.*

4. The Commission's Bureau of Investigation and Enforcement (I&E) is authorized under 66 Pa. C.S. §§ 308 and 701 as well as 52 Pa. Code §§ 1.8 and 5.72 to intervene in the instant proceeding for purposes of representing the public interest in ratemaking and service matters before the Commission.

5. PAWC and the Borough entered into an Asset Purchase Agreement (APA) on May 5, 2016, wherein PAWC agrees to pay \$23 million in exchange for the Borough's assets, properties and rights related to the System. PAWC St. No. 1, 4:13-5:2.

6. PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. PAWC St. No. 1, 9:20-10:3; PAWC St. No. 2, 10:9-20.

7. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York. Overall, PAWC serves a combined population of over 2,300,000 across the Commonwealth and is American Water’s largest subsidiary with nearly 21 percent of American Water’s regulated customer base. PAWC St. No. 1, 10:3-10.

8. PAWC has a Call Center with extended hours and a low-income customer assistance program. PAWC St. No. 3, 10:5-12:5.

9. PAWC currently employs approximately 1,000 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting and, most importantly, customer service. PAWC St. No. 1, 10:9-14; PAWC St. No. 2, 10:4-8.

10. American Water has a 50-person team of corporate engineers which has handled a wide variety of system evaluations, selected treatment processes, and established critical design criteria for water and wastewater treatment systems in order to improve operations and prioritize capital improvements. PAWC St. No. 2, 10:21-11:2.

11. PAWC, and its predecessor, Riverton Consolidated Water Company, have been providing local water service to the Borough and the Township of Lower Allen, Cumberland County, PA since 1904. PAWC St. No. 10:22-23.

12. As of June 30, 2016, PAWC furnishes wastewater services to 21,302 customers in Pennsylvania, inclusive of 20,144 residential customers, 1,085 commercial customers, seven industrial customers, and four bulk customers. PAWC St. No. 1, 11:15-17.

13. PAWC currently operates 15 wastewater treatment plants. Treatment processes include state-of-the-art biological nutrient removal (“BNR”) systems, sequential batch reactors, and oxidation ditches. PAWC St. No. 2, 9:20-10:3.

14. PAWC has specific experience in treatment technologies involving BNR. PAWC operates three BNR facilities in Pennsylvania. On a nationwide basis, American Water affiliates operate 54 wastewater treatment plants utilizing BNR technology and processes. PAWC St. No. 2, 11:3-9.

15. PAWC furnishes water services to 653,549 customers, inclusive of 601,147 residential customers, 45,074 commercial customers, 520 industrial customers, 4,350 fire protection customers and 2,458 municipal, resale and other customers. PAWC St. No. 1, 11:17-20.

16. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$275 million to \$300 million per year for the next five years. PAWC St. No. 2, 11:12-17.

17. In the proximity of the Borough, PAWC owns, operates, and maintains two water treatment plants, providing service to more than 39,000 customers in 12 communities in Cumberland County, including PAWC’s water customers located with the Borough limits. PAWC St. No. 1, 11:1-3.

18. PAWC has a good compliance history. There are currently no legal proceedings which would suggest that PAWC is not legally fit to provide service to System customers in the public interest. PAWC St. No. 1, 14:1-3.

19. PAWC had total assets of approximately \$3.9 billion and annual revenues of approximately \$613 million as of December 31, 2015. PAWC St. No. 1, 14:11-13; PAWC St. No. 5, 3:19-20.

20. For 2015, PAWC had operating income of approximately \$307 million and net income of approximately \$143 million. PAWC's operating results produced cash flows from operations of approximately \$308 million. PAWC St. No. 1, 14:12-13.

21. PAWC presently has liquidity through a \$220 million line of credit through American Water Capital Corp. ("AWCC"), a wholly-owned subsidiary of American Water. PAWC's strong credit ratings allow PAWC to obtain additional capacity on this line of credit. PAWC St. No. 5, 4:7-10.

22. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 5, 4:12-17.

23. PAWC may also obtain additional equity investments through American Water. PAWC St. No. 5, 4:19-20.

24. PAWC has strong operating cash flows and net income and, therefore, a strong balance sheet. PAWC's strong operating and financial performance allows it to obtain competitive interest rates for long-term debt financing and access to equity investments from its parent company. PAWC St. No. 5, 5:1-6.

25. PAWC will initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 5, 10-12.

26. As of March 31, 2016, the Borough furnishes wastewater services to 3,158 customers, inclusive of 2,890 residential customers, 258 commercial customers and 10 municipal customers. PAWC St. No. 1, 11:13-14.

27. The System is a typical sanitary sewer system with a collection system consisting of approximately 27 miles of pipe ranging from 6 to 21-inch diameter, three lift stations (or sewer pumping stations) and a wastewater treatment plant (“WWTP”). The majority of the collection system was constructed in the 1950’s with terra cotta (vitrified clay pipe) mains and brick manholes. The lift stations are all float controlled and are locally operated. PAWC St. No. 2, 2:15-3:15.

28. The WWTP appears to be well-designed and maintained, be in good physical condition, and has sufficient capacity. PAWC St. No. 2, 3:15-4:7.

29. The System has had no violations or compliance issues with the Pennsylvania Department of Environmental Protection (“DEP”) or the United States Environmental Protection Agency in the past five years. PAWC St. No. 2, 4:11-16.

30. There currently are no industrial waste dischargers in the Borough nor is the WWTP experiencing any treatment difficulties commonly associated with industrial waste discharges in a primarily domestic wastewater system. PAWC St. No. 2 4:17-5:1.

31. Pursuant to the APA, the Borough has agreed to retain ordinances that prohibit stormwater system facilities from being connected to, or from causing stormwater flows into, the System. PAWC St. No. 2, 5:1-3.

32. The Borough currently has four employees that PAWC intends to employ to manage the System in conjunction with PAWC’s existing operations in Central Pennsylvania. PAWC St. No. 3, 4:4-13, 9:6-17.

33. PAWC intends to regionalize the wastewater operations of its Fairview Township system and the System for purposes of emergency response and shared equipment, which will give PAWC greater flexibility and efficiencies to operate the System. PAWC St. No. 3, 7:9-22.

34. PAWC's Central Pennsylvania operations include resources from more than 100 operational, engineering, and administrative staff. These resources will be available to assist with operation of the System. The resources of PAWC's other operating divisions and of American Water will also be available. PAWC St. No. 3, 8:1-9:5.

35. PAWC has assembled a transition team to manage the transition of existing staff and operations of the System from the Borough to PAWC. PAWC St. No. 3, 4:14-5:4.

36. PAWC, in conjunction with the Borough, has committed to educate System customers regarding the transition of ownership and operation -- including an announcement letter to customers following closing of the Transaction which will provide information regarding rates, billing, and customer service center hours and phone number. PAWC St. No. 3, 9:18-10:4.

37. PAWC maintains cyber security, physical security, business continuity, and emergency plans and has strong working relationships with the Commission's Emergency Response Staff. PAWC also coordinates closely with local first responders and participates in emergency exercises. PAWC St. No. 3, 14:12-16:11.

38. PAWC participates in the Pennsylvania One-Call System, and each of PAWC's operating districts has at least one member of its personnel dedicated to completing dig notifications. PAWC St. No. 3, 16:12-19.

39. PAWC maintains an employee health and safety program. PAWC St. No. 3, 16:20-18:3.

40. PAWC has a customer compliance team located in its Hershey Office responsible for ensuring that customer disputes are resolved in compliance with the Commission's regulations. PAWC also has a customer advocacy team located in the Hershey Office responsible for addressing customer disputes and escalated concerns. PAWC St. No. 3, 18:4-15.

41. PAWC has a program to protect customers against utility employee imposters. PAWC informs customers of the dangers of imposter-related crimes, and the precautions that can be taken, through bill inserts, news releases, social media posts, and website information. PAWC helped to form the Keystone Alliance to Stop Utility Imposters and to launch the Alliances' public awareness campaign. PAWC St. No. 3, 18:16-19:4.

42. PAWC's applied for service territory complies with the Borough's DEP-approved Act 537 Plan. PAWC St. No. 2, 5:6-13.

43. PAWC has committed to \$2,000,000 in capital improvements in water and wastewater infrastructure located in the Borough over the first five years of PAWC ownership of the System. PAWC St. No. 2, 5:15-9:10.

44. No municipal authority, corporation, partnership or individual other than the Borough is now furnishing or has corporate or franchise rights to furnish service similar to that to be rendered by PAWC in service territory applied for by PAWC, and no competitive condition will be created. PAWC St. No. 1, 15:13-16.

45. Upon closing of the Transaction, the Borough will permanently discontinue all wastewater service to the public. PAWC St. No. 1, 15:16-17.

46. In addition to the service territory within the limits of the Borough, PAWC will provide wastewater service to three residential customers located in the Township of Lower Allen, Cumberland County ("Lower Allen"). The Borough currently provides wastewater services to the three customers pursuant to an existing agreement which will be assumed by PAWC. PAWC St. No. 1, 15:18-16:5.

47. Service to the customers located in Lower Allen will overlap with the wastewater service territory of Lower Allen; however, Lower Allen supports PAWC's continued service to such customers. PAWC St. No. 1, 16:6-16; PAWC Exh. BJG-1 (Exh. N.).

48. The initial rates to be applied to System customers following closing of the Transaction will be the Borough's current customer charge and consumption charge; provided, however, that the customer charge and consumption charges will be divided and billed monthly instead of quarterly as the Borough currently bills. Following closing, System customers will be subject to all rates other than the customer charge and consumption charge, including capacity reservation fees, tapping fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4, 3:19-4:11.

49. As part of the request for bids process conducted by the Borough for the sale of the System, PAWC entered into an Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016. PAWC Exh. BJG-1 (Exh. A to APA).

50. Pursuant to the APA, PAWC will assume contracts in accordance with a Form of Assignment of Contracts Agreement to be entered into by and between the Borough and PAWC as of the closing date of the transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the APA will be assigned from the Borough to PAWC. PAWC St. No. 1, 17:11-18:4; PAWC Exh. BJG-1 (Exh. B to APA).

51. PAWC will assume the Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland. Assumption of this agreement is necessary in order to continue wastewater service to the three customers located in Lower Allen following the close of the Transaction. PAWC St. No. 1, 17:11-18:4; PAWC Exh. BJG-1 (Exh. M to Application).

52. PAWC will assume the Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date of the Transaction. Assumption of this agreement is necessary in order for PAWC to receive a necessary waste hauling service related to the operation of the System. PAWC St. No. 1, 17:11-18:4; PAWC Exh. BJJ-1 (Exh. B, Sch. 5.1(c), and Sch. 4.1(k) to APA); PAWC St. No. 2, 4:4-7.

LEGAL STANDARDS

In this case, the signatory Joint Petitioners submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011) (Lancaster). The Commission must review proposed settlements to determine whether the terms are in the public interest. Pa. Pub. Util. Comm’n v. The York Water Company, PUC Docket No. R-00049165 (Order entered October 4, 2004); Pa. Pub. Util. Comm’n v. C S Water and Sewer Associates, 74 Pa. PUC 767 (1991). Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation, M-2009-2058182 (Opinion and Order November 23, 2009); Pa. Pub. Util. Comm’n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201 Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

Additionally, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western

Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

Pursuant to 66 Pa.C.S. §§1102 and 1103, the Applicant must demonstrate by a preponderance of the evidence that the party to whom the assets and service obligations are being transferred is technically, financially and legally fit. Seaboard Tank Lines, 502 A.2d 762, 764 (Pa.Cmwlth. 1985); Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n, 138 A.2d 240, 243 (Pa.Super. 1958). Under the proposed transaction, as modified by the conditions of the Settlement Petition, PAWC would acquire substantially all of the Borough's wastewater collection and treatment system assets, as well as the rights to provide wastewater service in the Borough and to three residential customers in Lower Allen Township, Cumberland County. Accordingly, PAWC must demonstrate that it is technically, financially and legally capable of owning and operating the facilities involved in the transaction.

In City of York v. Pennsylvania Pub. Util. Comm'n, 295 A.2d 825 (Pa. 1972), the Pennsylvania Supreme Court held that the proponents of a merger or acquisition must show, by a preponderance of the evidence, that the proposed transaction will also promote the service, accommodation, convenience or safety of the public in some substantial way. In Popowsky v. Pennsylvania Public Utility Commission, 937 A.2d 1040 (Pa. 2007), the Pennsylvania Supreme Court explained the City of York standard as follows:

In summary, as indicated in City of York, the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

937 A.2d at 1057.

In this proceeding, the parties have reached an agreement, set forth in the Settlement Petition, settling all issues in the case.

SETTLEMENT TERMS

The settlement terms that have been agreed upon by the parties are as follows, with the original numbering as set forth in the settlement retained for ease of reference:

A. Approval of Application

13. The Application shall, subject to the other terms and conditions contained in this Settlement, be approved as being in the public interest and the Commission shall issue a Certificate of Public Convenience pursuant to 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3) evidencing the rights requested by PAWC in the Application.

B. Rates

14. Upon closing of the Transaction, PAWC shall issue, to become effective on the same date as issuance, a tariff supplement consistent with the *pro forma* tariff supplement contained in PAWC Exhibit BJG-2 to PAWC Statement No. 1 (Direct Testimony of Bernard J. Grundusky, Jr.) and labeled as Revised Exhibit J. A copy of the *pro forma* tariff supplement is attached hereto as **Appendix A**.

15. PAWC shall propose base rate increases for System customers consistent with one of the following two options, subject to challenge in the base rate case by a Party and subject to the Commission's approval:

a. To the extent PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect in the year 2018 or 2019, PAWC shall propose a maximum rate increase for System customers consistent with the terms set forth in Section 6.7 of the APA. In PAWC's second and third base rate filings following closing of the Transaction, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the

effective date of rates resulting from the respective second and third base rate filings following closing of the Transaction. Nothing contained in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.

b. To the extent PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect no earlier than January 1, 2020, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the first and second base rate filings following closing of the Transaction. Nothing in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.

16. In order to include the plant-in-service of the System in PAWC's rate base, PAWC shall perform an original cost plant-in-service study of the System in compliance with the Commission's statements of policy at 52 Pa. Code § 69.711, 69.721 (whichever may apply). Nothing in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from contesting the ratemaking claims made by PAWC as a result of the original cost plant-in-service study of the System.

17. No acquisition adjustment is proposed or approved in this proceeding. In the event that PAWC makes a claim in its next base rate proceeding that the acquisition price for ratemaking purposes should be higher than book value, or that any increment above book value should be included in rates as an acquisition adjustment, such claim will be addressed in the base rate proceeding. OCA and I&E reserve their respective rights to oppose such claim.

18. Except as explicitly agreed upon in this Settlement Term Sheet, nothing contained herein or in the Commission's approval of the Joint Application shall preclude any Party from asserting any position or raising any issue in a future base rate proceeding.

C. Capital Improvements

19. The \$2 million in capital improvements promised by PAWC in Section 6.8 of the APA shall be in addition to and shall not reprioritize any capital improvements to which PAWC committed in its Long Term Infrastructure Improvement Plan for its Wastewater Operations (“LTIP”), as approved by Commission order entered May 7, 2015 at Docket No. P-2014-2431005.

20. PAWC shall not seek to recover eligible capital expenses associated with the System through its wastewater Distribution System Improvement Charge (“DSIC”) until the plant-in-service of the System is incorporated into PAWC’s rate base through a base rate case following closing of the Transaction.

21. PAWC shall not seek to include revenues associated with System customers in the calculation of its wastewater DSIC until the plant-in-service of the System is incorporated into PAWC’s rate base through a base rate case following closing of the Transaction.

22. PAWC shall not charge a wastewater DSIC to System customers until after Commission disposition of PAWC’s first base rate filing following closing of the Transaction in which the plant-in-service of the System is incorporated into PAWC’s rate base.

D. Agreements with Municipal Corporations

23. The Commission shall issue Certificates of Filing under Section 507 of the Code, 66 Pa. C.S. § 507, for the APA and all agreements with a municipal corporation identified therein as either having been entered into or to be entered into or assumed by PAWC, to include:

a. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);

b. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and PAWC as of the closing date of the transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the APA will be assigned from the Borough to PAWC at closing;

c. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application) (to be assigned to PAWC at closing per the Assignment of Contracts Agreement described in subsection (b) above); and,

d. Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date (to be assigned to PAWC at closing per the Assignment of Contracts Agreement described in subsection (b) above).

Settlement at 5-9.

DISCUSSION

The issues before us are whether PAWC has the technical, financial, and legal fitness to acquire and operate the System in a compliant manner and whether approval of the Settlement is in the public interest and supported by substantial evidence.

Technical, Financial and Legal Fitness of PAWC to acquire the System

There is a presumption that PAWC is technically, financially and legally fit as it is currently a certificated public utility. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). This presumption has not been rebutted by any intervenor in this proceeding, and we are unaware of any significant major complaints pending against PAWC regarding the company's fitness. Further, the Application was directly served upon the Department of Environmental Protection (DEP) as well as Cumberland County Commissioners and the Cumberland County Planning Commission. Also, the Application was served upon the local authorities including: Lower Allen Twp. Authority, Lemoyne Municipal Authority, and Lower Allen Township. None of these entities have intervened to protest the Application and the DEP has not reported any pending actions or complaints against the Borough. This weighs in favor of finding fitness.

Additionally, there is substantial evidence in the stipulated record to support findings of technical, financial and legal fitness as PAWC is a subsidiary of American Water Works Company, Inc. (“American Water”), the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. PAWC St. No. 1, 9:20-10:3; PAWC St. No. 2, 10:9-20. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York. In the proximity of the Borough, PAWC owns, operates, and maintains two water treatment plants, providing service to more than 39,000 customers in 12 communities in Cumberland County, including PAWC’s water customers located within the Borough limits. PAWC St. No. 1, 11:1-3.

Overall, PAWC serves a combined population of over 2,300,000 across the Commonwealth and is American Water’s largest subsidiary with nearly 21 percent of American Water’s regulated customer base. PAWC St. No. 1, 10:3-10. PAWC currently employs approximately 1,000 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting and, most importantly, customer service. PAWC St. No. 1, 10:9-14; PAWC St. No. 2, 10:4-8.

As of June 30, 2016, PAWC furnishes wastewater services to 21,302 customers in Pennsylvania, inclusive of 20,144 residential customers, 1,085 commercial customers, seven industrial customers, and four bulk customers. PAWC St. No. 1, 11:15-17. PAWC currently operates 15 wastewater treatment plants. Treatment processes include state-of-the-art biological nutrient removal systems, sequential batch reactors, and oxidation ditches. PAWC St. No. 2, 9:20-10:3.

PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$275 million to \$300 million per year for the next five years. PAWC St. No. 2, 11:12-17.

With regard to financial fitness, PAWC had total assets of approximately \$3.9 billion and annual revenues of approximately \$613 million as of December 31, 2015. PAWC St. No. 1, 14:11-13; PAWC St. No. 5, 3:19-20. For 2015, PAWC had operating income of approximately \$307 million and net income of approximately \$143 million. PAWC's operating results produced cash flows from operations of approximately \$308 million. PAWC St. No. 1, 14:12-13. PAWC presently has liquidity through a \$220 million line of credit through American Water Capital Corp., a wholly-owned subsidiary of American Water. PAWC's strong credit ratings allow PAWC to obtain additional capacity on this line of credit. PAWC St. No. 5, 4:7-10. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 5, 4:12-17. PAWC may also obtain additional equity investments through American Water. PAWC St. No. 5, 4:19-20. PAWC has strong operating cash flows and net income and, therefore, a strong balance sheet. PAWC's strong operating and financial performance allows it to obtain competitive interest rates for long-term debt financing and access to equity investments from its parent company. PAWC St. No. 5, 5:1-6.

PAWC plans to initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 5, 10-12. This shows a financial ability to fund the Transaction.

With regard to legal fitness, PAWC has a relatively good compliance history. There are currently no significantly major pending complaints at the Commission which would

suggest that PAWC is not legally fit to provide service to System customers in the public interest. PAWC St. No. 1, 14:1-3. Accordingly, we find substantial record evidence to support the Settlement and approval of the Transaction. PAWC is technically, financially, and legally fit to own and operate the System in the public interest.

Public Interest

The parties agreed and stipulated that the Transaction will produce affirmative public benefits of a substantial nature. These benefits include, but are not limited to: 1) further regionalization of wastewater operations in Pennsylvania; 2) greater access to technical resources for operation of the System; 3) greater access to capital for necessary investments to the System; and 4) improved customer service for System customers.

PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York. PAWC St. No. 1, 10:3-10. As of June 30, 2016, PAWC furnishes wastewater services to 21,302 customers in Pennsylvania, inclusive of 20,144 residential customers, 1,085 commercial customers, seven industrial customers, and four bulk customers. PAWC St. No. 1, 11:15-17. Approval of the Transaction would enable PAWC to continue to regionalize its operations. Regionalization permits PAWC to pursue economies of scale and spread costs over a larger customer base for the benefit of all of its ratepayers. The Borough currently has only four employees who operate the System. PAWC St. No. 3, 4:4-13, 9:6-17. In contrast, PAWC's Central Pennsylvania operations include resources from more than 100 operational, engineering, and administrative staff. These resources will be available to assist with operation of the System. The resources of PAWC's other operating divisions and of American Water will also be available. PAWC St. No. 3, 8:1-9:5. Moreover, PAWC intends to employ the Borough's four employees and regionalize the wastewater operations of its Fairview Township system and the System for purposes of emergency response and shared equipment, which will give PAWC greater flexibility and efficiencies to operate the System. PAWC St. No. 3, 7:9-22.

PAWC has represented that it has significant access to capital and that access will be used to ensure that necessary investment is made in the System and that the System is operated in the public interest. This capability is demonstrated by PAWC's commitment to invest \$2,000,000 in capital improvements in water and wastewater infrastructure located in the Borough over the first five years of PAWC ownership of the System. PAWC St. No. 2, 5:15-9:10. Under PAWC ownership, System customers should experience improved and broadened customer service -- including extended call center hours, rapid response to emergency situations, additional bill payment options, enhanced customer information and education programs, and access to PAWC's low-income customer assistance program. PAWC St. No. 3, 10:5-12:5. These benefits are possible because of PAWC's larger customer base, expertise, and financial capabilities.

The Joint Petitioners agreed that the Settlement will ensure that PAWC implements rates for System customers in a gradual manner and that System customers will not be unreasonably subsidized by other PAWC customers. Under Paragraphs 15.a. and 15.b. of the Settlement, PAWC has committed to increase rates for System customers in a gradual manner over the course of PAWC's next two to three base rate cases and to bring such rates in line with PAWC's system average rates (Rate Zone 1) over that time period. *See* Settlement, ¶¶ 15.a., 15.b. These Settlement provisions are consistent with the Commission's policies of rate gradualism and single tariff pricing and economically benefit both the customers of the acquired wastewater system as well as the existing customers of PAWC. 66 Pa.C.S. §§ 1102(a) and 1103.

We agree that the rates set forth in the *pro forma* tariff supplement attached to the Settlement as Appendix A regarding a new Zone 12 for New Cumberland customers appear to be somewhat comparable to existing rates in PAWC's current Zones 1 and 2, and do not appear to be unjust or unreasonable; therefore, they should be adopted as PAWC's initial rates for System customers.

Finally, and importantly, we note that OCA, I&E, and other interested parties have not waived any right to participate in, and advocate their positions in, future PAWC base rate proceedings. *See, e.g.,* Settlement, ¶¶ 15.a., 15.b., 16, 17 ("Except as explicitly agreed upon

in this Settlement Term Sheet, nothing contained herein or in the Commission's approval of the Joint Application shall preclude any Party from asserting any position or raising any issue in a future base rate proceeding.”).

PAWC's Long Term Infrastructure Improvement Plan (LTIIIP) and Distribution System Improvement Charge (DSIC)

As part of the Settlement, PAWC has affirmed that its promised \$2 million in capital improvements will be consistent with its Long Term Infrastructure Improvement Plan for its Wastewater Operations (“LTIIIP”) and its wastewater Distribution System Improvement Charge (“DSIC”). Specifically, PAWC has agreed that: (a) the promised \$2 million in capital improvements shall be in addition to and shall not reprioritize any capital improvements to which PAWC committed in its LTIIIP; (b) PAWC shall not seek to recover eligible capital expenses associated with the System through its wastewater DSIC until the plant-in-service of the System is incorporated into PAWC's rate base through a base rate case following closing of the Transaction; (c) PAWC shall not seek to include revenues associated with System customers in the calculation of its wastewater DSIC until the plant-in-service of the System is incorporated into PAWC's rate base through a base rate case following closing of the Transaction; and, (d) PAWC shall not charge a wastewater DSIC to System customers until after Commission disposition of PAWC's first base rate filing following closing of the Transaction in which the plant-in-service of the System is incorporated into PAWC's rate base. *See* Settlement, ¶¶ 18-21.

Certificates of Filing

As part of the Settlement, the Joint Petitioners have agreed that that Commission should issue Certificates of Filing under Section 507 of the Code, 66 Pa. C.S. § 507, for certain agreements between PAWC and municipal corporations. Such agreements include the Asset Purchase Agreement for the Transaction, the escrow agreement pursuant to which PAWC participated in the Borough's request for bids process, and other agreements regarding PAWC's assumption of Borough responsibilities in order to operate the System in the public interest upon closing of the Transaction. The agreements, or forms of the agreements, have been provided to the Commission and the parties in conjunction with this proceeding. They are reasonable and, therefore, Certificates of Filing should be issued.

Joint Petition addresses OCA and I&E Concerns

PAWC will initially charge current Borough customers the base rates charged by the Borough at the time of closing. (OCA Stmt. in Support, p.2). The company will not increase the rates of its acquired customers before January 1, 2018. The settlement provides for the gradual increase in rates for current Borough customers over the course of the next two to three base rate cases in order to bring those rates in line with PAWC's existing system average rates (Rate Zone 1) over that time period. (PAWC Stmt. in Support, p. 9). This will be accomplished under one of two scenarios, depending on the timing of the company's next base rate case, as set forth in paragraphs 15.a. and 15.b of the APA:

a. To the extent PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect in the year 2018 or 2019, PAWC shall propose a maximum rate increase for System customers consistent with the terms set forth in Section 6.7 of the APA. In PAWC's second and third base rate filings following closing of the Transaction, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the respective second and third base rate filings following closing of the Transaction. Nothing contained in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.

b. To the extent PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect no earlier than January 1, 2020, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the first and second base rate filings following closing of the Transaction. Nothing in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.

The settlement addresses a concern raised by the OCA as to whether the proposed rates and increase limitations were reasonable, given that the rate for PAWC's current wastewater customers under its Rate Zone 1 is nearly \$10 per month higher, for a customer using 3,000 gallons per month, than the rates of current Borough customers. The settlement satisfies the concerns raised by the OCA. The OCA states:

The proposed Settlement addresses these issues by ensuring that PAWC will begin moving rates for the acquired customers toward PAWC's system-average wastewater base rates in its first or second base rate case post-closing. Settlement, ¶15.a, b. It also preserves the right of OCA and other parties to propose further movement in those cases. Id. These terms help to limit the rate impact of the acquisition on PAWC's existing customers.

(OCA Stmt. in Support, p. 3).

I&E agrees that these rate provisions in the settlement are in the public interest, as it states:

Regardless of the terms of the APA, PAWC has acknowledged that nothing in the APA is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes. From I&E's perspective, this is an essential element of the Settlement because it ensures protection for PAWC's existing ratepayers. Specifically, PAWC's rate commitments under the APA will not restrict other parties from recommending, or the Commission from approving, higher rates for System customers than now contemplated in the APA. This reservation of rights respects the Public Utility Code because the Commission is obligated to set just and reasonable rates in every PAWC base rate case filed, regardless of the APA's terms.

(I&E Stmt. in Support, p. 8).

We agree that the evidence of record shows the Settlement is in the public interest in that it will ensure that PAWC implements rate increases for current Borough customers in a gradual manner and that these customers will not be unreasonably subsidized by other PAWC customers. The Settlement Petition makes clear that Commission approval of the Transaction

will in no way infringe upon or impede the rights of OCA, I&E or other interested parties to participate in and advocate their positions in future PAWC rate proceedings. (Settlement, ¶¶ 15.a., 15.b., 16, 17).

Under the settlement, PAWC has committed to spend \$2 million for capital improvements to the water and wastewater infrastructure located within the Borough over the five year period immediately following the closing date of the Transaction. APA, §6.8. OCA expressed concern about how this commitment would fit with PAWC's obligations under its existing Long Term Infrastructure Improvement Plan, approved by the Commission on December 4, 2014 at Docket No. P-2014-2431005, as well as the calculation of the wastewater Distribution System Improvement Charge (DSIC). (OCA Stmt. in Support, p. 3). The Settlement Petition makes clear that the spending of the \$2 million in capital improvements will be in addition to, and will not reprioritize, any capital improvements that PAWC is already committed to undertake for its existing customers. (Settlement, ¶19). In addition, the Settlement provides that PAWC shall not seek to recover eligible capital expenses associated with the System through its DSIC until the plant-in-service of the system is incorporated into PAWC's rate base through a base rate case following closing of the Transaction. (Settlement, ¶20). OCA agrees that these terms “. . . will help to mitigate the rate impact of the proposed improvements to the acquired system on existing customers until the acquired customers begin paying a wastewater DSIC.” (OCA Stmt. in Support, p. 3). I&E states:

In I&E's view, this term benefits System customers while protecting existing PAWC customers. System customers will benefit from improved water and wastewater infrastructure, promoting safer and more reliable service. At the same time, the capital improvements already identified and planned for existing PAWC ratepayers will not be jeopardized by PAWC's commitments to the Borough. Therefore, I&E opines that this term is in the public interest.

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

PAWC has agreed, as part of the Settlement, to perform an original cost plant-in-service study of the System prior to including it in rate base, in compliance with the

Commission's policy statements at 52 Pa. Code §§ 69.711 or 69.721. PAWC has further agreed that neither I&E, OCA nor any other party will be prohibited from contesting PAWC's future ratemaking claims made resulting from the original cost plant-in-service study of the system. I&E supports this settlement provision, stating, "... while the original cost plant-in-service study should be performed, it is of paramount importance that parties will not be bound by its results for ratemaking purposes. (I&E Stmt. in Support, pp. 8-9). We find this provision to be in the public interest in that it assures compliance with applicable Commission policy statements while, at the same time, preserves the rights of interested parties to challenge the results of the study in a future rate proceeding.

In addition to the various terms discussed above, the Settlement will produce a number of other affirmative public benefits. First, approval of the Transaction will enable PAWC to further regionalize its operations, which allows the company to realize economies of scale and spread costs over a larger customer base, thereby benefitting all customers. (PAWC Stmt. in Support, pp. 7-8). Further, the Borough currently has only four employees who operate the System. PAWC's Central Pennsylvania operations, by contrast, include more than 100 operational, engineering and administrative staff. These resources, as well as the resources of PAWC's other operating divisions and American Water, will be available to assist in operating the newly acquired System. (PAWC Stmt. in Support, p. 8). Additionally, System customers will benefit from improved and expanded customer service resources, such as extended call center hours, rapid response to emergency conditions, additional bill payment options, enhanced customer information and education programs, and access to PAWC's low-income customer assistance program. (PAWC Stmt. in Support, p. 8; I&E Stmt. in Support, p. 8). All of these benefits are in the public interest and support approval of the Transaction.

Lastly, PAWC is requesting that the Commission issue Certificates of Filing, under Section 507 of the Public Utility Code, 66 Pa. Code § 507, for the APA and all agreements with a municipal corporation identified therein as either having been entered into or to be entered into or assumed by PAWC. These agreements are set forth in Paragraph 23 of the Settlement Petition and include the APA, the escrow agreement pursuant to which PAWC participated in the Borough's request for bids process, and other agreements regarding PAWC's assumption of

Borough responsibilities associated with the operation of the System. The Joint Petitioners agree that the Commission should issue the necessary Certificates of Filing. No party to this proceeding challenged or otherwise questioned the legality or necessity of these agreements. We agree that these various agreements are a necessary part of the transaction, are reasonable and are in the public interest.

For all of the reasons set forth above, we find that the Joint Petition for Approval of Unanimous Settlement of all Issues, which is not opposed by any party, is in the public interest. Additionally, we find PAWC has the financial, technical and legal fitness to acquire and operate in a compliant manner the Borough's System. Accordingly, we recommend that the Commission approve the settlement without modification. The benefits of the proposed transaction, as modified by the settlement, warrant issuance of the requested Certificates of Public Convenience and Certificates of filing.

CONCLUSIONS OF LAW

We adopt many of the parties' proposed conclusions of law as attached to the Settlement at Appendix C.

1. Commission policy promotes settlement. *See* 52 Pa. Code § 5.231.

2. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401.

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

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

5. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a) (“Procedure to obtain certificates of public convenience”).

6. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1).

7. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

8. An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” City of York v. Pa. Pub. Util. Comm’n, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

9. PAWC ownership and operation of the System, consistent with the terms and conditions of the Settlement, will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way.

10. An applicant for a certificate of public convenience public must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. Seaboard Tank Lines v. Pa. Pub. Util. Comm’n, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d. 240, 243 (Pa. Super. 1958).

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

12. Financial fitness means that the applicant should possess the financial ability to give reliable and respectable service to the public. The applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service. Re Perry Hassman, 55 Pa. P.U.C. 661, 662-63 (1982); Re: O'Connor, 54 Pa. P.U.C. 547 (1980); Merz White Way Tours v. Pa. Pub. Util. Comm'n, 201 A.2d 446 (Pa. Super. 1964).

13. Technical fitness means that the applicant has the technical capacity to meet a public need in a satisfactory fashion. It must possess sufficient staff, facilities, and operating skills to make the proposed service feasible, profitable, and a distinct service to the public. Re Perry Hassman, 55 Pa. P.U.C. 661, 662-63 (1982); Re: O'Connor, 54 Pa. P.U.C. 547 (1980); Pa. Pub. Util. Comm'n v. Pa. Radio Tele. Corp., 342 A.2d 489 (Pa. Cmwlth. 1975); Merz White Way Tours v. Pa. Pub. Util. Comm'n, 201 A.2d 446 (Pa. Super. 1964).

14. Legal fitness means a public utility's propensity to operate safely and legally. Seaboard Tank Lines, Inc., 502 A.2d at 764. The lack of legal fitness is demonstrated by persistent disregard for, flouting, or defiance of the Code and the Commission's orders and regulations. For applicants that already possess operating authority, past performance should be analyzed to determine whether the applicant has obeyed the Code and Commission regulations, particularly those regulations dealing with public safety. Re Perry Hassman, 55 Pa. P.U.C. 661, 662-63 (1982); Re: O'Connor, 54 Pa. P.U.C. 547 (1980).

15. PAWC is technically, financially, and legally fit to own and operate the System in the public interest.

16. Issues relating to rates are properly reserved for a future PAWC rate proceeding.

17. Public utility rates must be just and reasonable. 66 Pa. C.S. § 1301.

18. The rates set forth in the *pro forma* tariff supplement attached to the Settlement as Appendix A regarding a new Zone 12 for New Cumberland customers are comparable to existing rates in PAWC’s current Zone 1 and 2 rates, and do not appear to be unjust or unreasonable; therefore, should be adopted as PAWC’s initial rates for System customers.

19. The Settlement preserves the rights of interested parties to raise rate-related issues in a future PAWC rate proceeding and does not restrict the Commission from adjudicating rate-related issues in a future rate proceeding.

20. A contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date. 66 Pa. C.S. § 507 (“Contracts between public utilities and municipalities”).

21. The Commission will initiate proceedings regarding a contract between a public utility and a municipal corporation only if the Commission has a concern regarding the reasonableness, legality or any other matter affecting the validity thereof. 66 Pa. C.S. § 507.

22. The following agreements between PAWC and a municipal corporation do not appear to be unreasonable, illegal, or otherwise invalid and, accordingly, the Commission should issue Certificates of Filing for such agreements pursuant to Section 507 of the Code, 66 Pa. C.S. § 507:

- i. “Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company,” dated May 5, 2016;
- ii. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);
- iii. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and Pennsylvania-American Water Company as of the closing date of the Transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the APA will be assigned from the Borough to PAWC at closing;

- iv. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application) (to be assigned to PAWC at closing of the Transaction); and,
- v. Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date (to be assigned to PAWC at closing of the Transaction).

23. The Transaction is in the public interest and, consistent with the terms and conditions of the Settlement, should be approved.

24. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding. 66 Pa. C.S. § 1327.

ORDER

THEREFORE,

IT IS RECOMMENDED:

- 1. That the Joint Petition for Approval of Unanimous Settlement of All Issues, filed by Pennsylvania-American Water Company, the Office of Consumer Advocate, and the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission on September 2, 2016 at Docket No. A-2016-2544151, including all terms and conditions thereof, is approved without modification.
- 2. That all protests at Docket No. A-2016-2544151 are dismissed.
- 3. That the Commission's Secretary shall issue a Certificate of Public Convenience, pursuant to Sections 1102(a)(1) and 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3), evidencing the Commission's approval of (i) the transfer, by sale, of substantially all of the Borough of New Cumberland, Cumberland County,

Pennsylvania's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (ii) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania, and (iii) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania.

4. That Pennsylvania-American Water Company is directed to file a tariff supplement on at least one day's notice, consistent with the *pro forma* tariff supplement attached to the Joint Petition for Approval of Unanimous Settlement of All Issues as Appendix A, to become effective upon the closing date of this Transaction.

5. That the Commission's Secretary shall issue Certificates of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 507, for the "Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company," dated May 5, 2016, and all agreements with a municipal corporation identified therein as either having been entered into or to be entered into or assumed by Pennsylvania-American Water Company, to include:

- a. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);
- b. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and Pennsylvania-American Water Company as of the closing date of the Transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the "Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company," dated May 5, 2016, will be assigned from the Borough of New Cumberland to Pennsylvania-American Water Company ("Assignment Agreement");
- c. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application), as will be assigned to Pennsylvania-American Water Company at closing of the Transaction; and,

