

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of SUEZ Water Pennsylvania Inc., :
Pursuant to the Pennsylvania Public Utility Code, : A-2018-3003517
66 Pa. C.S. § 1102(a), and 66 Pa. C.S. § 1329 :
For approval of 1) the transfer, by sale, of :
Substantially all of the Township of Mahoning’s :
Assets, properties and rights related to its :
Wastewater collection and conveyance system to :
SUEZ Water Pennsylvania Inc., and 2) the rights :
Of SUEZ Water Pennsylvania Inc. to begin to :
Offer or furnish Wastewater collection and :
Conveyance service to the public in portions of the :
Townships of Mahoning, Cooper and Valley, :
Montour County, Pennsylvania :

Application of SUEZ Water Pennsylvania Inc., :
Pursuant to the Pennsylvania Public Utility Code, : A-2018-3003519
66 Pa. C.S. § 1102(a), and 66 Pa. C.S. § 1329 :
For approval of 1) the transfer, by sale, of :
Substantially all of the Township of Mahoning's :
Assets, properties and rights related to its water :
Distribution system to SUEZ Water :
Pennsylvania Inc., and 2) the rights of SUEZ Water :
Pennsylvania Inc. to begin to offer or furnish :
Water distribution service to the public in :
Portions of the Townships of Mahoning, Cooper :
And Valley, Montour County, Pennsylvania :

RECOMMENDED DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision recommends that a joint petition for settlement be approved in its entirety without modification because it is in the public interest. This decision finds that the settlement complies with the relevant sections of the Public Utility Code regarding acquisitions of water and wastewater assets, properties and rights and is consistent with Commission regulations promoting settlements.

HISTORY OF THE PROCEEDING

On July 20, 2018, SUEZ Water Pennsylvania Inc. (Suez or SWPA or Company) filed with the Pennsylvania Public Utility Commission (Commission) an application pursuant to Sections 1102(a) and 1329 of the Public Utility Code, 66 Pa C.S. §§ 1102(a) and 1329, for approval of 1) the transfer, by sale, of substantially all of the Township of Mahoning's assets, properties, and rights related to its wastewater collection and conveyance system to Suez and 2) the rights of Suez to begin to furnish wastewater collection and conveyance service to the public in portions of the Townships of Mahoning, Cooper and Valley, Montour County, Pennsylvania. On August 8, 2018, the Commission's Secretary's Bureau acknowledged receipt of the filing and assigned the filing docket number A-2018-3003517.

Also on July 20, 2018, Suez filed with the Commission an application, pursuant to Sections 1102(a) and 1329 of the Public Utility Code, 66 Pa C.S. §§ 1102(a) and 1329, for approval of 1) the transfer, by sale, of substantially all of the Township of Mahoning's assets, properties, and rights related to its water distribution system to Suez and 2) the rights of Suez to begin to furnish water distribution service to the public in portions of the Townships of Mahoning, Cooper and Valley, Montour County, Pennsylvania. The Commission's Secretary's Bureau also acknowledged receipt of the filing on August 8, 2018 and assigned the filing docket number A-2018-3003519.

On August 8, 2018, the Commission issued a Notice establishing an Initial In-Person Prehearing Conference for Thursday, September 6, 2018 at 2:00 p.m. in Hearing Room 4

of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. Notice of both filings was published in the Pennsylvania Bulletin on August 18, 2018, with a deadline to file an Answer, Protest or Petition to Intervene of September 4, 2018. 48 Pa. Bull. 5111-5112 (August 18, 2018).

On August 10, 2018, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement in response to each filing. On August 13, 2018, the Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance in each filing.

On August 13, 2018, Suez filed a motion to consolidate both filings. On August 20, 2018, the parties filed a Stipulation Regarding Discovery Rule Modifications and a Stipulation of the Parties Regarding Objections and Preservation of Issues.

Also on August 20, 2018, a prehearing conference order was issued setting forth various rules that would govern the initial prehearing conference to be held on September 6, 2018.

On August 21, 2018, Suez filed a Petition for Protective Order.

On August 31, 2018, the Township of Mahoning (Mahoning or the Township) filed a Petition to Intervene.

On September 4, 2018, prehearing memoranda were received filed by Suez, Mahoning, OCA and I&E, as requested in the prehearing conference order.

The prehearing conference convened on September 6, 2018, as scheduled. David Zambito, Esquire appeared on behalf of Suez; Ryan M. Tira, Esquire appeared on behalf of Mahoning; Christine Hoover, Esquire appeared on behalf of the OCA; and, Carrie Wright, Esquire appeared on behalf of I&E. Various procedural matters were discussed.

On September 7, 2018, a scheduling order was issued memorializing the procedural matters agreed to in the prehearing conference. In particular, the outstanding motion to consolidate, Stipulation Regarding Discovery Rule Modifications and Stipulation of the Parties Regarding Objections and Preservation of Issues were all granted.

Also on September 7, 2018, a hearing notice was issued formally establishing the evidentiary hearings for October 11-12, 2018.

On September 14, 2018, an order granting the petition for protective order was issued.

Pursuant to the litigation schedule agreed to by the parties, the following preserved testimony was provided in addition to the testimony provided by the Company in the original filing:

- On September 17, 2018, I&E served the direct testimony of Anthony Spadaccio (I&E St. No. 1 and I&E Exh. No. 1) and the direct testimony of Ethan H. Cline (I&E St. No. 2 and I&E Exh. No. 2);
- On September 17, 2018, OCA served the direct testimony of Ashley Everett (OCA St. No. 1) and the direct testimony of Glenn A. Watkins (OCA St. No. 2);
- On September 26, 2018, Mahoning served the rebuttal testimony of James T.S. Scott and the rebuttal testimony of Dylan W. D'Ascendis;
- On September 26, 2018, Suez served the rebuttal testimony of John D. Hollenbach (SWPA St. No. 1-R and SWPA Exh. JDH-2 and JDH-3), rebuttal testimony of Michael Watkin (SWPA St. No. 2-R and SWPA Exh. MW-1 and MW-2) and rebuttal testimony of Harold Walker III (SWPA St. No. 3-R);
- On October 5, 2018, I&E served the surrebuttal testimony of Anthony Spadaccio (I&E St. No. 1-SR) and the surrebuttal testimony of Ethan H. Cline (I&E St. No. 2-SR); and

- On October 5, 2018, the OCA served the surrebuttal testimony of Ashley Everette (OCA St. 1SR) and the surrebuttal testimony of Glenn Watkins (OCA St. 2SR).

Finally, as previously agreed to, both Suez and Mahoning filed oral rejoinder outlines on October 9, 2018.

By email dated October 9, 2018, the parties requested that the first day of hearings be cancelled to allow the parties to engage in additional settlement discussions. That request was granted and the parties were encouraged to engage in further settlement discussions.

By email dated October 11, 2018, the parties indicated that a unanimous settlement in principle of all issues in the proceeding had been achieved. The parties requested that the second day of hearings be cancelled. The parties also indicated that a joint petition for approval of settlement would be submitted no later than November 5, 2018 and that they would introduce pre-served written testimony and exhibits, along with verifications, into the evidentiary record via joint stipulation for admission of evidence. That request was also approved.

As a result, on November 5, 2018, Suez, OCA, I&E, and Mahoning (together, Joint Petitioners) submitted a Joint Petition for Approval of Settlement of All Issues (settlement) requesting, among other things, that the Commission issue certificates of public convenience to Suez for the transfer to Suez by sale of substantially all assets, properties and rights of Mahoning related to Mahoning's water distribution system and Mahoning's wastewater collection and conveyance system. In support of the settlement, the parties attached 1) pro forma water and wastewater tariffs, 2) a status of non-dedicated assets, 3) proposed findings of fact, conclusions of law and ordering paragraphs, and 4) statements in support of the settlement from each of the parties.

Also on November 5, 2018, the parties submitted a Joint Stipulation for Admission of Evidence (joint stipulation). In the joint stipulation, the parties jointly stipulated to the authenticity of and admission into the evidentiary record in this matter of the following pieces of pre-served testimony and exhibits:

On behalf of SWPA:

(1) Direct Testimony

(a) SWPA Statement No. 1, Direct Testimony of John D. Hollenbach, Vice President and General Manager of Suez, together with Exhibit JDH-1 (Water and Wastewater) (these two Exhibits are the Water Application and the Wastewater Application, which were previously filed with the Secretary of the Commission);

(b) SWPA Statement No. 2, Direct Testimony of Michael Watkin, Director of Finance of Suez; and,

(c) SWPA Statement No. 3, Direct Testimony of Harold Walker III, Manager, Financial Studies, Gannett Fleming Valuation and Rate Consultants, LLC, together with Appendix A.

(2) Rebuttal Testimony

(a) SWPA Statement No. 1-R, Rebuttal Testimony of John D. Hollenbach, Vice President and General Manager of Suez, together with SWPA Exhibit JDH-2 and SWPA Exhibit JDH-3;

(b) SWPA Statement No. 2-R, Rebuttal Testimony of Michael Watkin, Director of Finance of Suez, together with SWPA Exhibit MW-1 and SWPA Exhibit MW-2; and,

(c) SWPA Statement No. 3-R, Rebuttal Testimony of Harold Walker III, Manager, Financial Studies, Gannett Fleming Valuation and Rate Consultants, LLC, together with Schedule 1.¹

(3) Settlement Appendices:

(a) Appendix A *Pro Forma* Water Tariff;

(b) Appendix B *Pro Forma* Wastewater Tariff;
and,

(c) Appendix C Status of Non-Dedicated Assets.

¹ The Parties have stipulated to striking page 16, lines 12-21 from this testimony. As a result, this passage was redacted from the testimony submitted to the Commission's Secretary's Bureau.

On behalf of Mahoning:

(1) Direct Testimony:

(a) Mahoning Statement No. 1, Direct Testimony of Dylan D'Ascendis, Director, ScottMadden, Inc., together with Appendix A.

(2) Rebuttal Testimony:

(a) Mahoning Statement No. 1-R, Rebuttal Testimony of Dylan D'Ascendis, Director, ScottMadden, Inc., together with Schedule DWD-1R (consisting of 12 schedules) and Schedule DWD-1R (consisting of 1 table); and,

(b) Mahoning Statement No. 2-R, Rebuttal Testimony of James T.S. Scott, Supervisor, Township of Mahoning, together with Exhibit JTSS-1.

On behalf of OCA:

(1) Direct Testimony:

(a) OCA Statement 1, Direct Testimony of Ashley E. Everette, together with Appendix A and OCA Exhibit AEE-1 (Water and Wastewater), AEE-2 I (Water and Wastewater), AEE-3 (Water), AEE-4 (Water and Wastewater) through AEE-6 (Water and Wastewater); and,

(b) OCA Statement 2, Direct Testimony of Glenn A. Watkins, together with Schedule GAW-1 through Schedule GAW-4.

(2) Surrebuttal Testimony:

(a) OCA Statement 1 SR, Surrebuttal Testimony of Ashley E. Everette, together with OCA Exhibit AEE-2S (Water and Wastewater), OCA Exhibit AEE-6S (Water and Wastewater), OCA Exhibit AEE-7 (Water and Wastewater); and,

(b) OCA Statement 2 SR, Surrebuttal Testimony of Glenn A. Watkins.

On behalf of I&E:

(1) Direct Testimony:

(a) I&E Statement No. 1, Direct Testimony of Anthony Spadaccio, together with Appendix A and Exhibit No. 1; and,

(b) I&E Statement No. 2, Direct Testimony of Ethan H. Cline, together with Appendix A and I&E Exhibit No. 2.

(2) Surrebuttal Testimony:

(a) I&E Statement No. 1-SR, Surrebuttal Testimony of Anthony Spadaccio; and,

(b) I&E Statement No. 2-SR, Surrebuttal Testimony of Ethan H. Cline.

The parties submitted two copies of the testimony and exhibits for filing with the joint stipulation for inclusion in the official case record. The joint stipulation will be granted as part of the ordering paragraphs below.

The record in this case closed on November 5, 2018 when the settlement was submitted. For the reasons discussed below, the settlement will be recommended for approval in its entirety without modification.

FINDINGS OF FACT

The following findings of fact were proposed by the parties in the settlement and are adopted herein:

A. Parties

1. SWPA is one of the Commonwealth's largest water and wastewater providers, with total assets of \$291,184,950 and annual revenues of \$44,803,459 for 2017. For

2017, SWPA had operating income of approximately \$16,318,486 and net income of approximately \$9,485,906. SWPA Statement No. 2 p. 2.

2. SWPA provides water service to approximately 60,400 customers with approximately 90 percent being residential, eight percent commercial and the remaining two percent industrial, public and private fire. SWPA Statement No. 1 p. 8.

3. The Company's service territory includes eight counties and 39 municipalities throughout Pennsylvania. It operates five surface water treatment plants ranging in size from three quarters to twelve million gallons per day. It also operates 29 wells with varying degrees of treatment, 30 booster stations and 36 storage facilities. Its infrastructure includes over 800 miles of main, 12,500 valves and 4,000 hydrants. SWPA Statement No. 1 p. 8.

4. Mahoning is a Township of the Second Class in Montour County, Pennsylvania. Application ¶ 7.

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

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

B. The Systems

7. Mahoning Township owns a water distribution system ("Water System") and a wastewater collection and conveyance system ("Wastewater System") (together, the "Systems"). Water Application ¶ 12, Wastewater Application ¶ 12.

8. Mahoning’s water distribution system includes approximately twenty-three miles of water distribution piping, three water storage tanks and four water booster/pumping stations. Mahoning obtains potable water from Danville Borough (“Danville”) via two interconnections. Mahoning’s permit authorizes it to purchase up to 765,000 gallons of water per day from Danville. SWPA Statement No. 1 pp. 7-8.

9. Mahoning’s wastewater collection and conveyance system includes approximately twenty-six miles of vitrified clay and PVC gravity sewer mains and three pumping stations. This system collects wastewater from residences in Mahoning. In addition, this system collects wastewater directly from several residences in Cooper Township and from an interconnection with the Cooper Township Municipal Authority. Mahoning’s wastewater system also collects wastewater from certain residences in Valley Township. The wastewater thus collected is conveyed to the Danville Municipal Authority for treatment and disposal. SWPA Statement No. 1 p. 8.

10. The Water System and the Wastewater System currently include assets that have not been dedicated to Mahoning. The Joint Petitioners agree that the Commission’s approval of the Transaction should be conditioned on dedication of all of these assets to Mahoning prior to closing on the Transaction. Settlement ¶ 16.

C. The Transaction and the Asset Purchase Agreement

11. Mahoning Township issued a Request for Proposal (“RFP”) on August 7, 2017. The Township subsequently issued an addendum to the RFP. SWPA Statement No. 1 p. 9.

12. On October 5, 2017, SWPA submitted a bid of \$9.5 million for the purchase of both the Water System and Wastewater System. SWPA Statement No. 1 p. 9.

13. SWPA was notified by Mahoning that SWPA was selected as the successful bidder for the Systems, and Mahoning sent a draft asset purchase agreement to SWPA for review and comment. SWPA Statement No. 1 p. 9.

14. The final asset purchase agreement (“APA”) was signed on April 20, 2018. SWPA Statement No. 1 p. 9.

15. The APA sets forth the terms and conditions pursuant to which Mahoning will sell, and SWPA will purchase, substantially all assets, properties and rights that Mahoning owns and uses in connection with the Systems. Under the APA, the closing of the Transaction will occur after the receipt of all applicable governmental approvals, including approvals from the Commission, and after all applicable conditions have been met (or waived) by the parties. SWPA Statement No. 1 p. 10.

16. Upon closing of the Transaction, SWPA will take ownership of the Systems and begin rendering water distribution and wastewater collection and conveyance services to Mahoning’s current customers and Mahoning will permanently discontinue providing or furnishing water distribution and wastewater collection and conveyance service to the public. SWPA Statement No. 1 p. 10.

17. The negotiated purchase price is \$9,500,000 for both the Water System and the Wastewater System. SWPA has allocated \$4,734,800 of the negotiated purchase price to the Water System and \$4,765,200 of the negotiated purchase price to the Wastewater System. SWPA Statement No. 1 pp. 11-12.

D. The Application and the Utility Valuation Expert (“UVE”) Appraisals

18. On July 20, 2018, SWPA filed an application with the Commission to acquire the Water System (the “Water Application”) and an application to acquire the Wastewater System (“Wastewater Application”) (together, the “Applications”). Water

Application (Correspondence dated July 20, 2018) and Wastewater Application (Correspondence dated July 20, 2018).

19. On July 27, 2018, the Commission's Bureau of Technical Utility Services ("TUS") notified SWPA that it believed the Water Application and the Wastewater Application did not contain certain required information. SWPA Responses to Bureau of Technical Utility Service's Deficiency Letters (Correspondence dated August 2, 2018).

20. On August 2, 2018, SWPA responded to TUS's Deficiency Letter regarding the Water Application and TUS's Deficiency Letter regarding the Wastewater Application. SWPA Responses to Bureau of Technical Utility Service's Deficiency Letters (Correspondence dated August 2, 2018). On August 3, 2018, SWPA provided a Supplemental Response to TUS's Deficiency Letter concerning the Water Application. Correspondence dated August 3, 2018.

21. The Commission acknowledged receipt of the complete Water Application on August 8, 2018. Water Application Secretarial Letter dated August 8, 2018. The Commission also acknowledged receipt of the complete Wastewater Application on August 8, 2018. Wastewater Application Secretarial Letter dated August 8, 2018.

22. Notices of both Applications were published in the Pennsylvania Bulletin on August 18, 2018. 48 Pa. Bull. 5111 (Wastewater Application) and 48 Pa. Bull. 5112 (Water Application).

23. SWPA's Applications seek to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the Systems' assets and the ratemaking rate base of those assets. Water Application ¶ 2; Wastewater Application ¶ 2.

24. As required by Section 1329, SWPA and Mahoning jointly retained the services of Larson Design Group to complete the engineer's assessment of tangible assets pursuant to Section 1329. SWPA Statement No. 3 p. 8.

25. As required by Section 1329, the Application included the appraisals of SWPA's UVE and Mahoning's UVE. Application, Attachment A-5.

26. SWPA retained the services of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming") to complete an appraisal of the Systems. SWPA Statement No. 3 p. 3.

27. Gannett Fleming is registered as a utility valuation expert with the Commission. SWPA Statement No. 3 p. 4.

28. Gannett Fleming issued a fair market valuation report dated April 30, 2018. SWPA Statement No. 3 pp. 3-4.

29. Gannett Fleming's fair market value report utilized the cost approach, the income approach, and the market approach. Gannett Fleming filed a verification that states the fair market report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). SWPA Statement No. 3 p. 10; Application Attachment A-7.

30. Gannett Fleming's fair market value report concluded that the value of the Water System is \$5,688,000, the value of the Wastewater System is \$5,414,000, and the value of both Systems together is \$11,046,000. SWPA Statement No. 3 pp. 14-15.

31. Mahoning retained the services of ScottMadden, Inc. ("ScottMadden") to complete an appraisal of the System. Mahoning Statement No. 1 p. 3.

32. ScottMadden is registered as a utility valuation expert with the Commission. Mahoning Statement No. 1 p. 4.

33. ScottMadden issued a fair market valuation of the Systems as of June 26, 2018. Mahoning Statement No. 1 p. 3.

34. ScottMadden's fair market value report utilized the cost approach, the income approach, and the market approach. ScottMadden filed a verification that states the report was prepared in compliance with USPAP. Mahoning Statement No. 1 p. 10 ; Application Attachment A-7.

35. ScottMadden's fair market value report concluded that the value of the Water System is \$5,384,879, the value of the Wastewater System is \$5,731,341, and the value of both Systems is \$11,116,220. Mahoning Statement No. 1 p. 10.

E. SWPA's Financial Fitness

36. No party to this proceeding challenged SWPA's financial fitness to own and operate the Systems.

37. SWPA has a long-demonstrated history with the Commission of financial stability. SWPA Statement No. 1 p. 13.

38. SWPA has the financial stability and wherewithal to acquire the Systems and operate them in the public interest. SWPA Statement No. 1 p. 14.

39. SWPA (water operations) had total assets of approximately \$291,217,000 as of December 31, 2017 and net income of approximately \$9,524,000 for the 12 months ending December 31, 2017. SWPA (wastewater operations) had total assets of approximately \$(32,308) as of December 31, 2017 and a net income of \$57,500. Application, Appendices D and E.

40. SWPA's strong operating and financial performance allows it to be an integral component within SUEZ Water Resources Inc. ("SWR") to obtain competitive interest rates for long-term debt financing and access to equity investments from its parent company. SWPA Statement No. 2 pp. 2-3.

41. SWPA, as part of SWR, intends to fund the acquisition utilizing a combination of cash and debt. SWPA Statement No. 2 p. 3.

42. SWPA, as part of SWR, does not anticipate that the acquisition of the Systems will have a negative impact on SWR's operating income, credit ratings or access to capital. SWPA Statement No. 2 p. 3.

F. SWPA's Technical Fitness

43. No party to this proceeding challenged SWPA's technical fitness to own and operate the Systems.

44. SWPA is engaged in the business of treating, storing and distributing water to the public, and collecting, treating, transporting and disposing of wastewater for the public. SWPA Statement No. 1 p. 14.

45. SWPA has significant water operations, as well as a smaller wastewater operation, in Pennsylvania. SWPA Statement No. 1 p. 14.

46. SWPA is experienced in undertaking and completing water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. SWPA Statement No. 1 p. 14.

47. SWPA, as a large and long-established public utility, has the managerial, technical, and financial fitness to operate the Systems in a safe and efficient manner in compliance with the Pennsylvania Public Utility Code, the Pennsylvania Clean Streams Law, and all other applicable statutory and regulatory requirements. SWPA has extensive experience in the operation of water distribution and wastewater collection and conveyance systems. SWPA Statement No. 1 p. 15.

G. SWPA's Legal Fitness

48. No party to this proceeding challenged SWPA's legal fitness to own and operate the System.

49. SWPA is a Commission-regulated public utility with a good compliance history. SWPA Statement No. 1 p. 13.

50. There are no pending legal proceedings that would suggest that SWPA is not legally fit to provide service to customers of the Systems. SWPA Statement No. 1 p. 13.

H. Benefits of the Transaction

51. SWPA is a large, financially-sound company that has the capacity to finance capital additions and improvements that will benefit its customers. In addition, given its size, its access to capital, and its recognized strengths in system planning, capital budgeting, and construction management, SWPA is well-positioned to ensure that high quality water and wastewater service meeting all applicable state and federal regulatory requirements is provided to Mahoning's customers. SWPA Statement No. 1 p. 15.

52. The acquisition will have no immediate rate impact on SWPA's wastewater customers. SWPA Statement No. 2 pp. 8-9. Since Mahoning was removed from SWPA's water rate case, the acquisition will have no immediate rate impact on SWPA's water customers.

53. SWPA will offer employment to the existing employee of Mahoning, who will continue to operate the Systems. SWPA Statement No. 1 p. 13

54. The operator of the Systems will be supported by professionals from throughout SWPA's system. SWPA Statement No. 1 p. 13.

55. SWPA brings the technical expertise and resources required to meet the increasing demands facing water and wastewater utilities. These increasing demands include but are not limited to complying with new and emerging water quality regulations, accessing capital for replacement of aging infrastructure, implementing new technologies to promote efficiencies, maintaining a culture that promotes employee safety, and recruiting and keeping the technical expertise needed to protect against cyber-attacks. SWPA Statement No. 1 p. 17

56. SWPA has a commitment to making the Systems “Smart Utilities” within six months of taking over the Systems. SWPA will accomplish this by having all equipment included in its INFOR asset management program, including all of the underground assets of the Systems in the Company’s GIS system, implementing monthly billing, commencing an AMI strategy, and developing computerized models of its distribution and collection systems. SWPA Statement No. 1 p. 17.

57. Since SWPA is a public utility, unlike Mahoning, SWPA is regulated by the Commission, which means that its rates must be just and reasonable, and service and facilities must be adequate and efficient. Customers also will have access to the Commission’s complaint process, which they do not currently enjoy. SWPA Statement No. 1 p. 15

58. Mahoning area customers will have access to SWPA’s enhanced customer service, which includes additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to SWPA’s customer assistance program (SUEZ Cares). SWPA Statement No. 1 pp. 15-16.

I. Ratemaking Rate Base

59. The rate base agreed-to in the Settlement is \$9,500,000 for both Systems, with \$4,734,800 of that amount being allocated to water rate base and \$4,765,200 being allocated to wastewater rate base, subject to the condition that Mahoning obtain all non-dedicated assets prior to closing. Joint Petition for Approval of Settlement of All Issues ¶ 16; Appendix C.

60. During discovery, the Joint Petitioners fully examined the potential rate impact of the Transaction on the customers of Mahoning and the current customers of SWPA.

61. In her Direct Testimony, OCA witness Ashley E. Everette stated “The purchase price of \$4,734,800 allocated to water represents an average cost per water customer of \$3,992. The purchase price of \$4,765,200 allocated [to] wastewater represents an average cost per wastewater customer of \$2,941. The average cost per customer for water or wastewater is less than the average rate base per current SWPA customer.” OCA Statement 1 pp. 5-6 (notes omitted).

62. The allocation of \$4,734,800 to water rate base and \$4,765,200 to wastewater rate base in SWPA’s next base rate case will not significantly impact water or wastewater rates.

J. Rate Stabilization Plan

63. The APA between SWPA and Mahoning does not contain a “rate stabilization plan” as defined by 66 Pa. C.S. § 1329(g). SWPA Statement No. 2 pp. 7-8.

K. Distribution System Improvement Charge (“DSIC”), Allowance for Funds Used During Construction, Deferred Depreciation, and Transaction and Closing Costs

64. SWPA is requesting authority to approve the collection of a water DSIC related to the Mahoning System prior to the first base rate case in which the Water System’s plant-in-service is incorporated into rate base. Water Application ¶ 2.

65. SWPA will be making post-acquisition improvements in the Mahoning Systems. As such, SWPA will likely accrue an allowance for funds used during construction. SWPA Statement No. 2 p. 9.

66. SWPA also intends to defer depreciation on non-DSIC-eligible post-acquisition improvements for book and ratemaking purposes. SWPA Statement No. 2 p. 10.

67. Transaction and closing costs that SWPA may seek to recover include the UVE's appraisal fee, the buyer's share of the costs related to the engineer's assessment, and the buyer's closing costs, including reasonable attorney fees. SWPA is unable to determine the exact extent of transaction and closing costs at this time. In its Application, SWPA estimated the anticipated transaction and closing costs as \$1,000,000, to be allocated between the Water System and the Wastewater System. SWPA Statement No. 2 p. 5; Application, Attachment A-12.

L. Rates

68. SWPA will initially begin charging Mahoning's then-current rates as SWPA's base rates within Mahoning's service territory. These rates are contained in the *pro forma* Tariffs attached to the Settlement as Appendix A (Water) and Appendix B (Wastewater).

69. After closing, SWPA may also impose any fee or surcharge permitted by its Commission-approved tariff, including but not limited to tap-in fees, contributions in aid of construction, Distribution System Improvement Charge, with the conditions discussed above, and State Tax Adjustment Surcharge. The rates charged for public fire hydrant service in Mahoning will be the rates for the Bloomsburg district. All other rules and regulations of SWPA's Commission-approved tariff will also be applicable immediately after closing. SWPA Statement No. 1 p. 12.

M. Service Territory

70. SWPA is seeking the right to provide service to the water and wastewater customers currently served by Mahoning in the service area served by Mahoning. SWPA Statement No. 1 p. 17.

71. The Water System service territory is shown in SWPA Exhibit JDH-3 and the Wastewater System service territory is shown in SWPA Exhibit JDH-2.

72. No municipal authority, corporation, partnership or individual other than Mahoning is now furnishing or has corporate or franchise rights to furnish service similar to that to be rendered by SWPA in the Service Area covered by the Applications, and no competitive condition will be created. SWPA Statement No. 1 p. 17.

N. Municipal Agreements

73. As part of the Transaction, certain agreements with municipalities will be assigned to SWPA. Application, Appendices B1 through B-6.

74. The assignment of these contracts to SWPA is reasonable and necessary in order to provide continued service in the Mahoning area. SWPA Statement No. 1 p. 20.

DISCUSSION

Settlement Terms

In the settlement, the parties agreed to resolve all outstanding issues. The relevant terms of the settlement are as follows, with the original paragraph numbering provided in the settlement:

A. Approval of Applications

14. The Applications shall, subject to the other terms and conditions contained in the settlement, be approved as being in the public interest and the Commission shall issue such Certificates of Public Convenience as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of Mahoning's assets, properties and rights related to its water distribution and wastewater collection Systems to SWPA as provided in the Applications, and (ii) SWPA's right to begin to

offer, render, furnish and supply water and wastewater service in the areas served by Mahoning as indicated in **SWPA Exhibit JDH-2** (wastewater) and **SWPA Exhibit JDH-3** (water), attached to the Rebuttal Testimony of John D. Hollenbach.

B. Tariff

15. The *pro forma* tariff supplements attached hereto as **Appendix A** (water) and **Appendix B** (wastewater), including all rates, rules and regulations regarding conditions of SWPA's water and wastewater service as revised therein, shall be permitted to become effective immediately upon closing on the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

16. Pursuant to 66 Pa. C.S. § 1329, SWPA shall be permitted to use the negotiated purchase price of \$9,500,000 for ratemaking rate base purposes for the acquired assets, with \$4,734,800 of that amount being allocated to water rate base and \$4,765,200 being allocated to wastewater rate base; provided, however, that Commission approval of the Applications shall be conditioned upon Mahoning's acceptance of the dedication of all of the developer facilities listed in **Appendix C**, attached hereto, and transfer of such facilities to SWPA upon closing of the Transaction. The Joint Petitioners acknowledge that, as of the date of execution of the Settlement, Mahoning has accepted the dedication of developer facilities in the dollar amounts identified on **Appendix C**. SWPA and Mahoning agree that closing will not occur until Mahoning has accepted the dedication of the remaining facilities on **Appendix C** and SWPA has filed a letter notification at this docket, including a verification and with copy to the Joint Petitioners, that specifically lists the remaining assets that have been dedicated to the Township and accepted by the Township including the respective dates of dedication for each remaining project.

D. Rates

17. Except as explicitly agreed upon in this Settlement, nothing contained herein or in the Commission's approval of the Applications shall preclude any Joint Petitioner from asserting any position or raising any issue in a future SWPA base rate proceeding.

18. At the time of filing its next base rate case, SWPA shall submit a cost of service study that removes all costs and

revenues associated with the operations of the Systems. SWPA also agrees to provide a separate cost of service study for the Systems at the time of the filing of SWPA's next base rate case. If SWPA files a separate rate increase request for Mahoning,² it agrees that it will provide separate water and wastewater cost of service studies for the Mahoning Systems.

E. Distribution System Improvement Charge

19. Pursuant to 66 Pa. C.S. § 1329, SWPA shall be permitted to collect a water distribution system improvement charge ("DSIC") prior to the first base rate case in which the Mahoning service area plant-in-service is incorporated into rate base; provided, however, that such permission shall be conditioned upon (i) SWPA's filing of an amended water Long-Term Infrastructure Improvement Plan ("Amended Water LTIIIP") which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended Water LTIIIP, as may be modified in the discretion of the Commission, and (iii) SWPA's filing of a compliance tariff supplement which incorporates Mahoning into its existing water DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended Water LTIIIP.

F. Accrual of Allowance for Funds Used During Construction

20. The Applications include a request that SWPA be permitted to accrue Allowance for Funds Used During Construction ("AFUDC") for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Joint Petitioners agree that they will not contest this request in this proceeding, but the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases.

G. Deferral of Depreciation for Post-Acquisition Improvements

21. The Applications include a request that SWPA be permitted to defer depreciation related to post-acquisition

² In the pending SWPA rate case at Docket No. R-2018-3000834, the parties have filed a Joint Petition for Settlement which provides, *inter alia*, that SWPA may propose a rate increase of less than \$1 million to be applied exclusively to customers in the Mahoning service territory in order to move such customers toward the Mahoning system's cost of service. The Joint Petitioners maintain their rights to participate in and contest any ratemaking item or issue relevant to such filing. Mahoning was not a party to the rate case at Docket No. R-2018-3000834 and does not join in this footnote; nor can anything in this Settlement be construed as agreement by Mahoning to any term or condition of the Joint Petition for Settlement at Docket No. R-2018-3000834.

improvements not recovered through the DSIC for book and ratemaking purposes. The Joint Petitioners agree that they will not contest this request in this proceeding, but the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases.

H. Transaction and Closing Costs

22. The Applications include requests that SWPA be permitted to claim transaction and closing costs associated with the Transaction. The Joint Petitioners agree that they will not contest this request in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners assent to this term on the basis that it should not be construed to operate as their preapproval of SWPA's request.

I. Approval of Section 507 Agreements

23. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approvals for the following agreements between SWPA and a municipal corporation:³

(a) Asset Purchase Agreement Between Township of Mahoning and SUEZ Water Pennsylvania Inc., dated April 20, 2018;

(b) Water Service Agreement dated July 9, 2001, between Danville Municipal Authority and Mahoning Township Authority;

(c) Service Agreement dated October 17, 2005 between Valley Township and Mahoning Water Authority;

(d) Connection and Conveyance Agreement dated October 16, 2017 between the Township of Mahoning and Cooper Township Municipal Authority;

(e) Service Agreement dated October 17, 2005 between Valley Township and Mahoning Sewer Authority;

(f) Agreement dated January 20, 1992, between the Borough of Danville, Mahoning Township and Mahoning Township Authority;

³ OCA does not join in this paragraph but does not oppose SWPA's request.

- (g) Agreement dated January 23, 1968 between the Danville Municipal Authority, the Borough of Danville and Mahoning Township Authority, as amended by:
 - (i) an Amendment dated April 27, 1981;
 - (ii) an Amendment dated May 21, 1985;
 - (iii) an Amendment dated January 2012;
 - (iv) an Amendment dated January 18, 2013; and,

- (h) A Settlement Agreement and Release between Mahoning Township, Danville Municipal Authority and the Borough of Danville, dated October 16, 2017.

J. Other Necessary Approvals

24. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in the Applications in a lawful manner.

Settlement at 4-8. The settlement is also conditioned upon the standard settlement conditions. For example, if the Commission modifies the settlement, the parties reserve the right to withdraw from the settlement and proceed with litigation. Id. at 9. If the settlement is recommended for approval without modifications the parties agree to waive the right to file exceptions. Id. at 10.

Finally, in their request for relief, the parties requested in the settlement that the applications be granted subject to the following conditions: (1) that Mahoning shall accept dedication of all of the developer facilities listed in **Appendix C**, attached to the settlement, and transfer such facilities to SWPA upon closing of the Transaction. Closing on the Transaction will not occur until Mahoning has accepted the dedication of the remaining facilities on **Appendix C** and SWPA has filed a letter notification at this docket, including a verification and with copy to the Joint Petitioners, that specifically lists the remaining assets that have been dedicated to the Township and accepted by the Township including the respective dates of dedication for each remaining project; (2) that at the time of filing its next base rate case, SWPA shall submit a cost of service study that removes all costs and revenues associated with the operations of the Systems; (3) that at the time of filing its next base rate case, SWPA shall provide separate water and wastewater cost of service studies for the Systems that identify all costs and revenues associated with the operations of the Systems and the impact of the

Transaction on its proposed rates; and (4) that if SWPA files a separate rate increase request for Mahoning, it agrees that it will provide separate water and wastewater cost of service studies for the Mahoning Systems.

Legal Standard

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service....

66 Pa. C.S. § 1102(a)(3). The acquisition proposed by the joint application falls under Section 1102(a)(3).

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”

According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed transaction would “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, 141, 295 A.2d 825, 828 (1972) (City of York); *see also*, Popowsky v. Pa. Pub. Util. Comm’n, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (when addressing the issue of affirmative public benefits “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 addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.” 66 Pa. C.S. § 1103(a).

Additionally, pursuant to Section 1103 of the Code, Suez must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Mahoning. Seaboard Tank Lines v. Pa. Pub. Util. Comm’n, 502 A. 2d 762, 764 (Pa.Cmwlth. 1985); Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d 240, 243 (Pa.Super. 1958). As a certificated public utility, there is a rebuttable presumption that Suez possesses the requisite fitness. South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992); *see also*, 66 Pa.C.S. § 1329.

With regard to the recently enacted Section 1329 of the Public Utility Code, this section sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. 66 Pa.C.S. § 1329. Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge. Section 1329 also enables a public utility or other acquiring entity’s post-acquisition improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an “acquiring public utility” and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa.C.S. § 1329(d)(1). For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.

Of note, the Commonwealth Court recently addressed Section 1329 in McCloskey v. Pa. Pub. Util. Comm'n., No. 1624 C.D. 2017, __ A.3d __ (Pa. Cmwlth. October 11, 2018) (McCloskey) wherein the Court vacated and remanded a decision of the Commission granting an application for approval of a jurisdictional water company to acquire the wastewater system assets of New Garden Township and the New Garden Sewer Authority. The Court vacated the Commission's decision and directed the Commission to provide notice to all ratepayers pursuant to Section 53.45 of the Commission's regulations pertaining to notice of new tariffs and tariff changes. 52 Pa.Code § 53.45. The Court directed the Commission to receive additional evidence from ratepayers regarding the acquisition and then enter a new order. The Commission has not yet acted in response to the Court's directives.

Suez also seeks approval of an asset purchase agreement (APA) and other connected agreements pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. § 507. Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

Finally, with regard to the legal standard applied in this case, the parties 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 v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id., *citing*, 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). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm’n v. MXenergy Electric Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

It is against this legal backdrop that the settlement will be viewed.

Public Interest Analysis

As noted above, it is the policy of the Commission to promote settlements. 52 Pa. Code § 5.231(a). The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See*, Lancaster, Warner, *supra*. In the settlement, the parties did not state why the settlement is in the public interest. As discussed further below, however, the parties submitted statements in support of the settlement, articulating their individual arguments and reasons why approving the settlement without modification is appropriate and in the public interest.

Suez

In its statement in support of the settlement, Suez noted that, with regard to the approvals sought under Section 1102 of the Public Utility Code, although no party challenged Suez's fitness, the company introduced extensive evidence demonstrating its technical, financial and legal fitness. Suez Statement in Support at 4. Suez noted it has significant water operations and a good history of regulatory compliance. Id. at 5. Suez added that it has the financial stability and wherewithal to acquire the Systems and operate them in the public interest. Id.

With regard to the public benefit, Suez noted that the settlement is in the public interest because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater companies. Id. at 6. Suez then identified various reasons why it believes the settlement benefits Mahoning, Mahoning's existing customers and Suez's existing customers. Id. at 6-7. For example, with regard to Mahoning, Suez noted that the settlement has the following specific benefits:

- Mahoning voluntarily entered into the Asset Purchase Agreement (APA) in order to get out of the utility business and receive the purchase price of \$9,500,000, which it will use for public purposes.
- The Systems will become taxable property.
- Suez will offer continued employment to the existing employee of Mahoning, subject to Suez's standard drug testing.

Id. at 6. Suez concluded that, "in short, as modified by the terms and conditions in the settlement, the transaction has affirmative public benefits of a substantial nature for every impacted group." Id. at 8.

Finally with regard to the Section 1102 approvals, Suez noted that the settlement is in the public interest because the Company will submit two cost of service studies in its next base rate case. Id.

With regard to the approvals required under Section 1329, Suez noted that the settlement is in the public interest because Suez and Mahoning used the procedure set forth in Section 1329 for the Transaction and the parties to the settlement agreed that the Commission should allow Suez to use the negotiated purchase price of \$9,500,000 for ratemaking rate base purposes. Id. at 8-9. Suez noted that this was agreed to after the parties fully examined the potential rate impact of the Transaction on customers. Id. at 9. Suez added that the settlement follows the intent behind Section 1329 by, among other things, allowing Mahoning to monetize its asset for maximum value. Id. at 9-10.

Suez added that the provisions of the settlement regarding the approvals required under Section 1329 are also in the public interest because the settlement will ensure that Suez will charge rates after closing that are equal to Mahoning's existing rates. Id. at 10. Suez noted that the settlement includes conditions to ensure that Suez's long-term infrastructure improvement plan (LTIIP) will not re-prioritize existing commitments in other service areas and is consistent with the Final Implementation Order regarding Act 11 of 2012. Id. at 11. Next Suez noted that the settlement is in the public interest because of three issues that the OCA and I&E agree not to contest in this proceeding but reserve their rights to contest in future rate cases. Those issues are 1) Suez's request regarding accrual of allowance for funds used during construction (AFUDC) on post-acquisition improvements that are not included in the distribution system improvement charge (DSIC), Id. at 11-12; 2) Suez's request to defer depreciation on post-acquisition improvements that are not included in DSIC, Id. at 12; and 3) Suez's request to include in its next base rate case the transaction and closing costs incurred in this proceeding. Id.

Finally, with regard to the approvals sought in the application required under Section 507 of the Public Utility Code, Suez noted that the settlement is in the public interest because neither OCA nor I&E object to the Commission's approval of the asset purchase agreement or several water and wastewater agreements between Mahoning and area municipalities, which Suez will assume at closing. Id. at 13. Suez noted that approval of these agreements is necessary for the Company to continue to provide service to all customers presently served by the systems. Id.

In general, Suez also recognized the parties' ability to work cooperatively and in good faith to resolve this complex matter within the 6-month deadline as evidence that the settlement is in the public interest. Id. at 3, 13-14.

Mahoning Township

In its statement in support, Mahoning noted that the settlement is in the public interest and should be approved without modification because of the commitments of Suez, including investment in the Systems to ensure safe and efficient operations that provide reliable service at a reasonable cost. Mahoning Township Statement in Support at 2. Mahoning also noted Suez's commitment to maintain current rates. Id. Mahoning also found the purchase price to be an accurate and reasonable reflection of the fair market value of the Systems. Id. at 3.

Mahoning also noted that the settlement is in the public interest because it allows the Township to be removed from the water and wastewater industry and that having Suez operate the systems should result in enhanced water and wastewater systems at lower operating costs. Id.

Finally, Mahoning noted that the revenue received from the sale will be used for the benefit of the public and allow the Township to provide much needed municipal services to the current users of the water and wastewater systems without the need to increase taxes or other funding sources. Id. at 3-4. This will have a positive impact on the entire community. Id. at 4.

I&E

In its statement in support, I&E noted that the settlement is in the public interest and should be approved without modification because, in part, there are compromises evident throughout the settlement. I&E Statement in Support at 5. I&E provided extensive discussion in its statement in support regarding each of the issues addressed by the settlement, noting its position on each issue and how the settlement addresses each issue. Id. at 5-15. For each issue,

I&E generally noted that the resolution of the particular issue is in the public interest because it was fully vetted during the settlement negotiations and provides regulatory certainty. Id.

More generally, I&E also stated in its statement in support that the settlement satisfies the public interest standard because all issues raised in testimony have been satisfactorily resolved through discovery and discussions with the Company and because “the settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences.” Id. at 15. I&E added that line by line identification of the ultimate resolution of the disputed issues beyond those presented in the settlement is not necessary as I&E represents that the settlement maintains the proper balance of the interest of the parties and that “I&E is satisfied that no further action is necessary and considers its investigation of this Section 1329 acquisition proceeding complete.” Id.

Finally, I&E noted that resolution of this filing by settlement rather than litigation avoids the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense and regulatory uncertainty. Id. at 16. I&E noted the substantial efforts involved in litigation. Id. I&E concluded by requesting that the terms and conditions of the settlement be approved. Id. at 17.

OCA

In its statement in support, the OCA noted that the settlement is in the public interest and should be approved without modification because, with regard to the ratemaking rate base, the settlement provides that the approval of the applications shall be conditioned upon various conditions, including Mahoning’s acceptance of the dedication of all of the developed facilities listed in Appendix C attached to the settlement. OCA Statement in Support at 3-4.

With regard to the rates charged to customers, the OCA noted that it is satisfied that the proposed pro forma tariff supplement attached to the settlement as Appendix A reflects water rates that are the same as the current charges and that the wastewater rates attached to the

settlement as Appendix B represent a reasonable approach to the issues the OCA identified with the wastewater tariff. Id. at 4-5.

The OCA also noted in its statement in support of the settlement the provision of the settlement that requires Suez to provide separate water and wastewater cost of service studies for the Mahoning systems if it files a separate rate increase request for those systems. Id. at 5.

With regard to the DSIC, the OCA noted that the settlement allows Suez to apply the water DSIC to customers in the Mahoning Township service area prior to the first base rate case in which the system's water plant in service is incorporated into rate base if certain conditions are met, including that Suez will revise its LTIP to include Mahoning Township and related water projects before it begins charging the DSIC to those customers. Id. The OCA noted that this settlement term allows for Mahoning Township customers to begin contributing up to 7.5% of their total water bill toward water DSIC-eligible capital projects and helps to ensure that DSIC investment is not shifted away from Suez's existing water service areas during the amended LTIP Period. Id.

Finally, the OCA also noted that it has reserved its right to litigate claims in future cases regarding issues involving the accrual of AFUDC, deferral of depreciation for post-acquisition improvements and Suez claiming transaction and closing costs associated with this transaction. Id. at 6. The OCA added that it neither joins nor opposes the provisions in the settlement regarding approval of the Section 507 agreements. Id.

The OCA concluded its statement in support of the settlement by noting that the terms and conditions of the settlement should be approved.

Disposition

The joint petition for settlement should be approved in its entirety without modification because it is in the public interest. This settlement complies with the relevant sections of the Public Utility Code regarding acquisitions of water and wastewater assets,

properties and rights and is consistent with Commission regulations promoting settlements. Furthermore, the settlement is supported by substantial evidence.

It is in the public interest that Suez be permitted to use the negotiated price of \$9,500,000 for ratemaking rate base purposes for the acquired assets, with \$4,734,800 of that amount being allocated to water rate base and \$4,765,200 being allocated to wastewater rate base. As several of the parties noted, this provision of the settlement was fully analyzed and vetted by the parties and determined to be reasonable. This is particularly true in light of the testimony of OCA witness Everette who examined the average cost per customer for both systems and determined that such costs would not significantly impact water or wastewater rates. These provisions of the settlement are consistent with Section 1329.

The settlement is also in the public interest because Suez has agreed to submit a cost of service study at the time of filing its next base rate case that removes all costs and revenues associated with the operation of the Systems. Furthermore, if Suez files a separate rate increase request for Mahoning it will provide separate water and wastewater cost of service studies for the Mahoning systems. These provisions of the settlement will help ensure that all customers are being charged just and reasonable rates.

With regard to the provisions of the settlement pertaining to the DSIC, this provision is in the public interest because, as the OCA noted, it will help to ensure that DSIC investment is not shifted away from the Company's existing water service areas during the amended LTIIP period.

The settlement also briefly addresses various issues, as noted above, including: AFUDC, depreciation for post-acquisition improvements, transaction and closing costs and approval of various agreements under Section 507 of the Public Utility Code. 66 Pa.C.S. § 507. The parties only agreed not to contest those requests in this proceeding but reserved their rights to litigate their positions fully in future rate cases, with the exception of the Section 507 agreements where there is no reservation rights in future proceedings. However, to the extent that such agreements were made to effectuate the overall settlement and remove any

disagreement that would otherwise prevent a settlement of this matter, they too are in the public interest and should be adopted without modification.

All of these individual factors of the settlement support approving the settlement as being in the public interest.

Furthermore, the settlement should be approved as being in the public interest because the settlement will save the parties from expending substantial time and expense involved with further litigation. Although the parties exchanged discovery and extensive pre-served testimony, additional costs could have included lengthy hearings, briefs, exceptions and possible appeals. Avoiding such expenditures minimizes the costs that might ultimately be passed on to the ratepayers, and also conserves the resources of all other parties involved in these proceedings and Commission resources as well.

In addition, the settlement should be approved as being in the public interest because the parties have engaged in extensive discovery and other litigation-related efforts in order to properly investigate and resolve the issues presented, much of which was admitted into the record via stipulation. These efforts demonstrate that the initial filings and the responses to the filings have been thoroughly vetted and considered by all concerned parties. The settlement is also the result of extensive and fruitful negotiations between all the parties and represents what each party believes to be a fair and reasonable compromise. This is of particular note as the parties in this matter have diverse and competing interests but were able to reach a settlement on all issues. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point in the proceeding.

The settlement is in the public interest because it is supported by substantial evidence. On appeal, decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. As noted above, the parties stipulated to the admission of the pre-served testimony in this proceeding. That pre-served testimony supports adopting the settlement.

Also, the settlement is in the public interest and should be approved without modification because it satisfies the various goals of the General Assembly in enacting Section 1329. As the Commission noted in the Tentative Implementation Order entered July 21, 2016 at Docket Number M-2016-2543193, there are a number of water and wastewater systems owned by municipal corporations or authorities throughout the Commonwealth where sale to an investor-owned public utility can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. As the Commission further noted in the subsequent Tentative Supplemental Implementation Order entered September 20, 2018 at the same docket:

The development of water and wastewater service throughout the Commonwealth over the years has led to the creation of large numbers of geographically dispersed water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to a larger, well-capitalized and well-run regulated public utility or entity can be prudent because it can facilitate necessary infrastructure improvements and access to capital markets, and, ultimately, it can ensure the long-term provision of safe reliable service to customers at reasonable rates.

Id. at 4.

Prior to the enactment of Section 1329, the valuation of utility property discouraged such acquisitions because the value of the property was defined as the original cost of construction less accumulated depreciation rather than the acquisition cost. As a result, systems that are greatly depreciated or constructed using grants or contributions in aid of construction could have valuations so low that sales of the systems would be less advantageous or could cause financial hardships to the municipal corporations and authorities. Section 1329 mitigates the risk that a utility will not be able to fully recover its investment when water and wastewater assets are acquired from a municipality or authority. The settlement filed in this docket is consistent with that goal by helping to ensure the provision of safe and reliable utility service and just and reasonable rates.

There are also public interest benefits in Mahoning Township removing itself from the business of providing utility service and, instead, monetizing assets that the Township believes it could use for better purposes. To the extent that Mahoning Township believes that entering into this transaction is in the best interest of the township residents, then so too is approving this settlement in the public interest.

Finally, with regard to the recent decision of the Commonwealth Court in McCloskey, *supra*, wherein the Court remanded a decision back to the Commission so that certain notice to the applicant's customers could be provided, it is noted that this decision was issued shortly before the settlement in this case was submitted. The parties did not address the decision in the settlement. The parties are advised to address the impact of that decision on the settlement following the issuance of this Recommended Decision in light of the procedural posture of that case at the time (i.e., whether the Commission has acted in response to the decision of the Commonwealth Court). The Commission can then determine the appropriate action in response to the Commonwealth Court decision with regard to this settlement, if any. Otherwise, the decision in McCloskey does not change the determination that the settlement in this case should be approved in its entirety without modification because it is in the public interest.

As a result, the settlement will be recommended for approval without modification because it is in the public interest, consistent with the Public Utility Code and supported by substantial evidence.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. §§ 1102, 1103, 1329.
2. Commission policy promotes settlement. *See* 52 Pa. Code § 5.231.

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

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

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).

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 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. Cmwlt. 1985); Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n, 138 A.2d 240, 243 (Pa. Super. 1958).

9. 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. Cmwlt. 1992).

10. Financial fitness means that the applicant should possess the financial resources to provide the proposed service. Re Perry Hassman, 55 Pa. PUC 661 (1982).

11. Technical fitness means that the applicant should have sufficient staff, facilities and operating skills to provide the proposed service. Re Perry Hassman, 55 Pa. PUC 661 (1982); Merz White Ways Tours v. Pa. Pub. Util. Comm'n, 201 A.2d 446 (Pa. Super. 1964).

12. Legal fitness means that the applicant has a propensity to obey the Code and the Commission's regulations. Re Perry Hassman, 55 Pa. PUC 661 (1982).

13. 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).

14. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

15. For an acquisition in which a selling utility and an acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the application is to contain a tariff equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. 66 Pa. C.S. § 1329(d)(1)(v).

16. A rate stabilization plan is defined as "A plan that will hold rates constant or phase rates in over a period of time after the next base rate case." 66 Pa. C.S. § 1329(g).

17. Section 1329 permits an acquiring public utility's post-acquisition improvements, which are not included in a distribution system improvement charge, to accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier. 66 Pa. C.S. § 1329(f)(1).

18. Section 1329 permits an acquiring public utility to defer depreciation on post-acquisition improvements, which are not included in a distribution system improvement charge. 66 Pa. C.S. § 1329(f)(2).

19. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa. C.S. § 1329(d)(2).

20. Transaction and closing costs include the utility valuation expert's appraisal fee, the buyer's share of the costs related to the engineer's assessment, and the buyer's closing costs, including reasonable attorney fees. These costs are properly reviewed in SWPA's next base rate case that follows the acquisition, and they will be subject to the preponderance of evidence standard in that review. The Commission will not approve these costs during the 1329 proceeding. Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

21. A contract between a municipality and a public utility (other than a contract to furnish service at regular tariff rates) must be filed with the Commission at least 30 days before the effective date of the contract. The Commission may approve it by issuing a certificate of filing or institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. 66 Pa. C.S. § 507.

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

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Stipulation for Admission of Evidence submitted in this proceeding on November 5, 2018 be granted, and the testimony and exhibits referenced therein be admitted to the record in this matter.

2. That the Joint Petition for Approval of Settlement of All Issues, filed by SUEZ Water Pennsylvania Inc., the Township of Mahoning, the Office of Consumer Advocate, and the Bureau of Investigation and Enforcement (together, Joint Petitioners) on November 5, 2018 at Docket Nos. A-2018-3003517 and A-2018-3003519, including all terms and conditions thereof, is approved without modification.

3. That the Applications filed by SUEZ Water Pennsylvania Inc. on July 20, 2018 are granted, subject to the following conditions:

(1) That the Township of Mahoning shall accept dedication of all of the developer facilities listed in **Appendix C**, attached to the Settlement, and transfer such facilities to SUEZ Water Pennsylvania Inc. upon closing of the Transaction. Closing on the Transaction shall not occur until the Township of Mahoning has accepted the dedication of the remaining facilities on **Appendix C** and SUEZ Water Pennsylvania Inc. has filed a letter notification at these dockets, including a verification and with copy to the Joint Petitioners, that specifically lists the remaining assets that have been dedicated to the Township of Mahoning and accepted by the Township of Mahoning including the respective dates of dedication for each remaining project.

(2) That at the time of filing its next base rate case, SUEZ Water Pennsylvania Inc. shall submit a cost of service study that removes all costs and revenues

associated with the operations of the Water System and Wastewater System (together, the Systems).

(3) That at the time of filing its next base rate case, SUEZ Water Pennsylvania Inc. shall provide separate water and wastewater cost of service studies for the Systems that identify all costs and revenues associated with the operations of the Systems and the impact of the Transaction on its proposed rates.

(4) That if SUEZ Water Pennsylvania Inc. files a separate rate increase request for Mahoning, it agrees that it will provide separate water and wastewater cost of service studies for the Mahoning Systems.

4. That the Commission's Secretary's Bureau shall issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of:

(1) the transfer to SUEZ Water Pennsylvania Inc., by sale, of substantially all of the assets, properties and rights of Mahoning, related to (a) Mahoning's water distribution system and (b) Mahoning's wastewater collection and conveyance system; and,

(2) SUEZ Water Pennsylvania Inc.'s right to begin to offer, render, furnish and supply water and wastewater service in the areas served by Mahoning as indicated in **SWPA Exhibit JDH-2** (wastewater) and **SWPA Exhibit JDH-3** (water), attached to the Rebuttal Testimony of John D. Hollenbach.

5. That SUEZ Water Pennsylvania Inc., upon closing of the Transaction, shall issue compliance tariff supplements, consistent with the *pro forma* tariff supplements attached to the Settlement as **Appendix A** (water) and **Appendix B** (wastewater), to be effective on the date of issuance.

6. That the Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$9,500,000 for ratemaking rate base purposes for the acquired assets, with

\$4,734,800 of that amount being allocated to water rate base and \$4,765,200 being allocated to wastewater rate base.

7. That, pursuant to 66 Pa. C.S. § 1329(d), SUEZ Water Pennsylvania Inc. may collect a distribution system improvement charge related to the water system prior to the first base rate case in which the Mahoning service area plant-in-service is incorporated into rate base, subject to the following conditions:

(1) that SUEZ Water Pennsylvania Inc. files an amended water long-term infrastructure improvement plan incorporating the Mahoning area, which does not re-prioritize other existing commitments in other service areas;

(2) that the Commission approves the amended water long-term infrastructure improvement plan incorporating the Mahoning area, as may be modified in the discretion of the Commission; and,

(3) that SUEZ Water Pennsylvania Inc. files a compliance tariff supplement which incorporates Mahoning into its existing water DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the amended water long-term infrastructure improvement plan.

8. That SUEZ Water Pennsylvania Inc., pursuant to 66 Pa. C.S. § 1329, may accrue an allowance for funds used during construction for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of SUEZ Water Pennsylvania Inc.'s request.

9. That SUEZ Water Pennsylvania Inc. may defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Joint Petitioners reserve their rights to litigate

their positions fully in future rate cases when this issue is ripe for review and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of SUEZ Water Pennsylvania Inc.'s request.

10. That, pursuant to 66 Pa. C.S. § 1329(d)(iv), SUEZ Water Pennsylvania Inc. may include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Mahoning water and wastewater systems. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of SUEZ Water Pennsylvania Inc.'s request.

11. That the Commission's Secretary's Bureau shall issue Certificates of Filing or approvals for the following agreements between SUEZ Water Pennsylvania Inc. and a municipal corporation:

- (1) Asset Purchase Agreement Between Township of Mahoning and SUEZ Water Pennsylvania Inc., dated April 20, 2018;
- (2) Water Service Agreement dated July 9, 2001, between Danville Municipal Authority and Mahoning Township Authority;
- (3) Service Agreement dated October 17, 2005 between Valley Township and Mahoning Water Authority;
- (4) Connection and Conveyance Agreement dated October 16, 2017 between the Township of Mahoning and Cooper Township Municipal Authority;
- (5) Service Agreement dated October 17, 2005 between Valley Township and Mahoning Sewer Authority;
- (6) Agreement dated January 20, 1992, between the Borough of Danville, Mahoning Township and Mahoning Township Authority;
- (7) Agreement dated January 23, 1968 between the Danville Municipal Authority, the Borough of Danville and Mahoning Township Authority, as amended by:

