

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua Pennsylvania, Inc.	:	
and Aqua Pennsylvania Wastewater, Inc.	:	A-2021-3026774
For Approval of Intercompany Restructuring	:	A-2021-3026775

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision grants a joint petition for approval of settlement regarding applications for intercompany restructuring because it is proper for the service of the public. Certificate(s) of public convenience will be issued for the proposed restructuring as there will be a transfer of control, stock and voting rights from a water utility's parent company to a newly created holding company.

HISTORY OF THE PROCEEDING

Aqua Pennsylvania, Inc. (Aqua PA) is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA is a wholly-owned direct subsidiary of Essential Utilities, Inc. (Essential). Aqua Pennsylvania Wastewater, Inc. (Aqua PA Wastewater) is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA Wastewater is a wholly-owned subsidiary of Aqua PA. Aqua PA is a "public utility" as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102. Aqua PA furnishes water service to approximately 446,000 water customer accounts, and wastewater

service, through Aqua PA Wastewater, to approximately 45,000 wastewater customer accounts throughout Pennsylvania.

On June 23, 2021, Aqua PA and Aqua PA Wastewater filed a Joint Application requesting the Pennsylvania Public Utility Commission (Commission) approve the proposed intercompany restructuring (Joint Application or Proposed Restructuring). As proposed, Essential will create a new intermediate holding company, Aqua Water Holdings, Inc. (Water Holdings), which will become the 100% shareholder of Aqua PA. In turn, Water Holdings will be 100% directly owned by Essential. The applications were docketed at A-2021-3026774 (water) and A-2021-3026775 (wastewater).

On June 25, 2021, the Commission issued a Secretarial Letter acknowledging receipt of the Joint Application and directing the Company to publish public notice of the Joint Application. On July 10, 2021, Notice of the Joint Application was published in the *Pennsylvania Bulletin*, indicating that formal protests and petitions to intervene must be filed with the Commission on or before July 26, 2021. On July 13, 2021, Aqua PA requested a waiver of the Commission's regulation at 52 Pa. Code § 3.501(f), requiring service of an Application for Certificate of Public Convenience on various entities.

On July 21, 2021, the Commission issued a Secretarial letter granting Aqua PA's request for waiver of 52 Pa. Code § 3.501(f). On July 26, 2021, the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) filed Notices of Appearance and Formal Protests. The OSBA also filed a Notice of Intervention, Public Statement, and Verification. Also on July 26, 2021, Aqua PA filed Proof of Publication of the Joint Application.

On August 11, 2021, a Hearing Notice scheduling a telephonic Prehearing Conference for August 30, 2021, and a Prehearing Conference Order, were issued. Also on August 11, 2021, The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. On August 30, 2021, the prehearing conference was held as scheduled

and a Procedural Order was issued establishing a litigation schedule and modifying the discovery rules. An evidentiary hearing was scheduled for November 9, 2021.

On September 7, 2021, Aqua PA served its Direct Testimony. On October 7, 2021, OCA and OSBA served letters indicating that they would not be serving Direct Testimony. I&E also did not submit Direct Testimony. On October 26, 2021, Aqua PA and OSBA served letters indicating that they would not be serving Rebuttal Testimony. No Party served rebuttal testimony.

As a result of settlement discussions, Aqua PA, Aqua PA Wastewater, and OCA (Joint Petitioners) reached a complete settlement in principle. On November 2, 2021, Aqua PA informed the presiding officer that the parties had reached a Settlement and requested that the hearing be canceled. On November 2, 2021, a Hearing Cancellation Notice was issued, cancelling the evidentiary hearing scheduled for November 9, 2021. On November 3, 2021, the presiding officer issued an Interim Order, giving parties leave to file a Joint Stipulation for Admission of Evidence, a Joint Petition for Settlement, and Statements in Support on or before December 14, 2021. On December 14, 2021, a Joint Stipulation for Admission of Evidence, Joint Petition for Settlement with Aqua PA's, Aqua PA Wastewater's and OCA's Statements in Support, and OSBA's and I&E's Letters of Non-Opposition, were filed. The Joint Petitioners agree that the Settlement should be approved, as being in the public interest.

For the reasons discussed below, the Joint Stipulation for Admission of Evidence will be approved, written direct testimony of Essential's Senior Vice President, Finance and Treasurer, Stan F. Szczygiel, his accompanying exhibit, and his verification will be admitted into the record, and the Settlement will be approved in its entirety without modification because it is in the public interest, is supported by substantial evidence, and is proper for the service of the public.

FINDINGS OF FACT

1. Essential Utilities, Inc. is a domestic corporation registered in Pennsylvania in 1968. Aqua PA St. 1 at 3.
2. Stan F. Szczygiel is Senior Vice President, Finance and Treasurer at Essential. Aqua PA St. 1 at 1.
3. Essential is a natural gas, water and wastewater utility holding company that currently provides service through its operating subsidiaries in Pennsylvania, Ohio, North Carolina, Illinois, Texas, New Jersey, Indiana, Virginia, West Virginia, and Kentucky. Aqua PA St. 1 at 3.
4. Essential is the highest entity in the corporate structure governing Aqua Pennsylvania Water, Inc. and Aqua Pennsylvania Wastewater, Inc. Appendix A to Aqua PA Exhibit 1.
5. Aqua PA and Aqua PA Wastewater are corporations duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA St. 1 at 3.
6. Aqua PA is a wholly-owned direct subsidiary of Essential, and Aqua PA Wastewater is a wholly-owned subsidiary of Aqua PA. Aqua PA St. 1 at 3-4.
7. Aqua PA is a public utility that furnishes water service to approximately 446,000 water customer accounts and wastewater service, through Aqua PA Wastewater, to approximately 45,000 wastewater customer accounts throughout Pennsylvania. Aqua PA St. 1 at 3.
8. Aqua PA's existing service territory, including the service territory of Aqua PA Wastewater, includes all or portions of the following Pennsylvania counties: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clarion, Clearfield, Columbia, Crawford, Cumberland,

Delaware, Forest, Juniata, Lackawanna, Lawrence, Lehigh, Luzerne, McKean, Mercer, Montgomery, Monroe, Northampton, Northumberland, Pike, Schuylkill, Snyder, Susquehanna, Venango, Warren, Wayne, and Wyoming. Aqua PA St. 1 at 3.

9. Through the Proposed Restructuring, Essential will form one new Pennsylvania holding company, Aqua Water Holdings, Inc. Aqua PA St. 1 at 4.

10. Upon approval of the Commission and other relevant state utility commissions, Essential intends to contribute all of the interests it holds in all of its direct, wholly-owned water utility subsidiaries, including its shares in Aqua PA, to Water Holdings. Aqua PA St. 1 at 4-5.

11. Under the proposed corporate structure, Water Holdings will be a direct corporate subsidiary of Essential and the direct corporate parent of Aqua PA, along with other non-jurisdictional water utilities with operations outside of Pennsylvania. Aqua PA St. 1 at 4-5.

12. Aqua PA will retain 100% ownership of Aqua PA Wastewater. Appendix B to Aqua PA Exhibit 1.

13. Following approval of the Proposed Restructuring, all of Essential's water and wastewater operations will be corporate subsidiaries of Water Holdings; however, non-regulated operational entities will remain direct subsidiaries of Essential. Aqua PA St. 1 at 4-5.

14. The creation of Water Holdings will not affect the corporate ownership of natural gas operations. Aqua PA St. 1 at 4-5.

15. The Proposed Restructuring will enable Essential to align its umbrella of legal entities in a more rational way following Essential's expansion last year from a water and wastewater holding company to a natural gas, water and wastewater holding company. Aqua PA St. 1 at 5.

16. By Final Order entered January 24, 2020, at Docket No. A-2018-3006061, *et. al*, the Commission approved the transfer of indirect ownership of Peoples Natural Gas Company LLC and Peoples Gas Company LLC (collectively, the “Peoples Companies”) to Aqua America, Inc., now Essential. Aqua PA St. 1 at 5.

17. Prior to the acquisition of the Peoples Companies on or about March 16, 2020, Essential held a great majority of its utility and non-utility companies as first-tier subsidiaries of Essential (then Aqua America, Inc.). Aqua PA St. 1 at 5.

18. Following the acquisition of the Peoples Companies in the Aqua Acquisition Proceeding, Essential concluded that a more rational corporate structure would be to hold natural gas and water/wastewater operating companies as lower tier subsidiaries, with separate natural gas and water/wastewater holding companies between the operating utilities and Essential. Aqua PA St. 1 at 5.

19. The Peoples Companies and Essential already are functionally separated, as the operating utilities on the natural gas side are separated from Essential through a series of intermediate holding companies, which were acquired as a result of the approved acquisition. Aqua PA St. 1 at 5.

20. The Proposed Restructuring is a technical change in control of Aqua PA by the insertion of Water Holdings between Aqua PA and its parent corporation, Essential Aqua PA. Aqua PA St. 1 at 4-5.

21. Water Holdings will not issue debt to Aqua PA. Aqua PA St. 1 at 9.

22. The Proposed Restructuring will not have any effect on the management and operations of Aqua PA. Aqua PA St. 1 at 6-9.

23. The Proposed Restructuring will not result in a change to Aqua PA's rate base, nor will it pass any costs associated with it onto customers of Aqua PA. Aqua PA St. 1 at 6-9.

DISCUSSION

Legal Standards

The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa.C.S. §§ 1102, 1103. 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). Section 1102(a) of the Public Utility Code permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. 66 Pa.C.S. § 1102(a).

As interpreted under the Commission's Policy Statement regarding utility stock transfers or other voting interest of a utility's parent, Commission approval of the Proposed Restructuring under Section 1102(a)(3) of the Public Utility Code is jurisdictional regardless of the remoteness of the transaction if the effect of the transaction is to change the control of a utility. 66 Pa.C.S. § 1102(a)(3); 52 Pa. Code § 69.901; *Joint Application of Commonwealth Tel. Co., et al.*, A-310800-F.0006 (Opinion and Order entered October 22, 1993). A transaction resulting in a change of the *de facto* controlling interest in a utility or its parent, regardless of the tier in the corporate organization, constitutes a change of control of the utility and is jurisdictional under 66 Pa.C.S. Section 1102(a)(3). 52 Pa. Code § 69.901; *Joint Application of Paging Network of Pittsburgh, Inc.*, A-330013.0005 (Opinion and Order entered October 22, 1993).

Section 1102(a) of the 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). When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the 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.” 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).

In general, the Pennsylvania Supreme Court has determined that 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*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*); see also, *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*) (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”).

However, in the instant case, rather than a merger/acquisition, Aqua PA and Aqua Wastewater PA seek approval of an internal restructuring in which Essential, the current parent company of Aqua PA, will create a new intermediate holding company, Water Holdings, which will become the 100% shareholder of Aqua PA. In turn, Water Holdings will be 100% directly owned by Essential. Essential plans to contribute all of the interests it holds in all of its direct, wholly owned water utility subsidiaries, including Aqua PA, to Water Holdings

The Commonwealth Court in an unreported decision affirmed the Commission's decision that a certificate of public convenience was necessary pursuant to Section 1102(a)(3) for the restructuring proposed by the Energy Conservation Council in the Application. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16 (PPL Commonwealth Court Order). However, the Court distinguished the standard of review between the issuance of a certificate of public convenience when there is a merger of two or more public utilities versus when there is an internal restructuring of a utility, as is the case here. *Id.* at slip. Op. 22. The Court remanded the PPL Electric Utilities Corporation (PPL) case back to the Commission so that the Commission could "formulate the specific criteria or factors to be used in assessing whether [PPL's] proposed internal restructuring is 'proper' for servicing the public with electricity and deserving of a [certificate of public convenience]." *Id.* at 24.

Specifically, the Commonwealth Court held:

In *Elite Industries, Inc.*, our Supreme Court reviewed section 1103(a) of the Code and concluded that this Court erred in determining that an applicant for a CPC to operate a limousine service had to prove "public necessity" or "public need." 832 A.2d at 430-31. The Supreme Court found that we erroneously "focused only on competition," *Lloyd*, 17 A.3d at 434, or lower prices to consumers. *See City of York*, 295 A.2d at 829. Quite simply, this mode of analysis does not fit the facts of this case and has no place in the calculus for determining whether Utility has met the statutory requirements for a CPC. Our Supreme Court has cautioned that its decisions must be read against their specific facts because "decisional law generally develops incrementally, within the confines of the circumstances of cases as they come before the Court." *Scampane v. Highland Park Care Center, LLC*, 57 A.3d 582, 604 (Pa. 2012). We follow that lead here and conclude that the "substantial" and "affirmative public benefit" test developed in *City of York* and *Popowsky* is circumscribed to utilities' applications for a merger, consolidation, or the like, specifically where two separate public utilities propose to combine. This analysis, however, is ill suited and unworkable for internal reorganizations such as the one in this case, where a parent creates subsidiaries that are set up as holding companies and only one public utility is moved downward in the parental vertical chain. In this situation, a less demanding evidentiary burden is warranted—one that does not

mandate an appraisal of the effects on competition in the marketplace, yet is consistent with the plain language of the statute, and pays due consideration to the public. Therefore, the Court concludes that, contrary to the Commission's understanding, the Commission was not bound to apply the test enunciated in *City of York* and *Popowsky*, and we reverse the Commission on this point. In *Elite Industries, Inc.*, our Supreme Court reviewed section 1103(a) of the Code and concluded that this Court erred in determining that an applicant for a CPC to operate a limousine service had to prove “public necessity” or “public need.” 832 A.2d at 430-31. The Supreme Court found that we erroneously “focused only on the word ‘necessary’ rather than on the phrase ‘necessary or proper.’” *Id.* at 431. “However,” said the Supreme Court, “the conjunction ‘or’ must be given its ordinarily disjunctive meaning unless such a construction would lead to an absurd result.” *Id.* Heeding this advice, we believe the Commission can conduct a disjunctive analysis in this case and that, for purposes of section 1103(a), Utility need only establish—and the Commission need only find—that granting a CPC would be “proper for the service . . . of the public.” 66 Pa.C.S. §1103(a). As a general guide, the customary dictionary definition of “proper” is being “adapted or appropriate to the purpose or circumstances; fit; suitable.” *Vodvarka v Grasmeyer*, 675 N.W.2d 847, 853 (Mich. Ct. App. 2003) (quoting Random House College Dictionary 1061 (rev. ed. 1979)). Nonetheless, we leave it to the sound discretion of the Commission to formulate the specific criteria or factors to be used in assessing whether Utility's proposed internal restructuring is “proper” for servicing the public with electricity and deserving of a CPC. See *Elite Industries, Inc.*, 832 A.2d at 432. Accordingly, we remand to the Commission to undertake this inquiry and determine whether Utility is entitled to a CPC pursuant to the above-mentioned standard.^[1]

Id. at 32-33.

¹ “Ostensibly, the [Concurring and Dissenting Opinion] CDO wants to import a revised version of the ‘affirmative public benefit standard’ that our Supreme Court has developed in the context of merger acquisitions to this case. According to the CDO, ‘Utility met its burden of showing a substantial affirmative public benefit by establishing the financial advantages’ that would inure to PPL. [sic] Corporation, specifically, ‘a stronger company, ease of access to money markets, improved administrative efficiencies, and tax benefits.’ (CDO, slip op. at 13, 15.). Respectfully, we believe that there is no ‘public’ in the CDO’s ‘affirmative public benefit’ analysis—only the strengthening of a corporate entity and the potential pavement of its way toward monopolistic power in its most archaic and oppressive form.” *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n*, Docket No. 624 C.D. 2019, FN 10.

On remand, The Commission approved a settlement of the original application filed by PPL and issued a Certificate of Public Convenience to PPL evidencing approval of the Intercompany Restructuring at Docket No. A-2017-2629534. *Application of PPL Elec. Utils. Corp. for Approval of Intercompany Restructuring*, A-2017-2629534 (Opinion and Order entered August 11, 2021). The Commission neither amended an existing policy statement nor issued a new policy statement to Section 69.901 (relating to Utility stock transfer under 66 Pa.C.S. 1102(a)(3)). Although the settlement in the PPL case did not “formulate the specific criteria or factors to be used in assessing whether [PPL’s] proposed internal restructuring is ‘proper,’” as the Commonwealth Court directed, the parties agreed that the settlement would not be cited as precedent in other cases, effectively leaving the issue of specific criteria or factors to be used in assessing whether an internal restructuring is “proper” for another day. PPL offered reasons in support of its application including: tax and finance reasons, cash flow management, increasing cash contributions to fund capital projects, lower cost of capital, and other financial ramifications that Commission found to be in the public interest when it approved the settlement. *Id.* at 20.

In the instant case, there is 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 approved 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 foster, promote and serve the public interest. *Id.*, (citing, *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)) (*Warner*); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); see also, *Pa. Pub. Util. Comm’n v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). 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 Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

Joint Petition for Settlement

The Joint Petitioners agree to resolve this matter and to seek Commission approval for the matters settled in the Settlement. The relevant terms of the Settlement are as follows – the relevant paragraph number and heading is listed as it appears in the original Settlement filed with the Commission on December 14, 2021:

A. EFFECTS ON RATEPAYERS

25. All costs associated with the Joint Application and Proposed Restructuring will be borne by Essential, and not the customers of Aqua PA.

26. No annual operating costs of Water Holdings will be charged to Aqua PA or its customers.

B. EFFECTS ON AQUA PA

27. Essential will retain ultimate control over Aqua PA following the Proposed Restructuring.

28. There will be no change to Aqua PA’s tax liabilities or its deferred tax balances as a result of the Proposed Restructuring.

29. Aqua PA will not incur additional rate base as a result of the restructuring.

30. The ring-fencing procedures that Aqua PA currently uses will remain in place following the Proposed Restructuring. Those ring-fencing procedures can be found at Paragraph 48 in the *Joint Petition for Approval of Non-Unanimous Complete Settlement Among Most Parties*, approved by Final Order entered January 24, 2020, at Docket No. A-2018-3006061, et. al. and are as follows:

Aqua America² commits to appropriate ring-fencing protections to the extent applicable to Aqua America's structure, and that are no less protective of the ring-fencing protections currently in effect for Aqua PA and the Peoples Companies. The current ring fencing includes, but is not limited to the following:

- a) Aqua PA and the Peoples Companies ("Utility Subsidiaries") maintaining their status as corporate subsidiaries with their own corporate officers;
- b) each of the Utility Subsidiaries issuing their own sets of financial statements pursuant to Commission requirements;
- c) all transactions among the Utility Subsidiaries and their corporate affiliates (including Aqua America) taking place pursuant to the terms of a Commission-approved affiliated agreement to avoid cross subsidization;
- d) each Utility Subsidiary (and PNG) maintaining the capability to issue its own long-term debt (with such debt issues subject to Commission approval if required);
- e) the maintenance of maximum debt levels in the capital structure for the Utility Subsidiaries as specified in Paragraphs 51 and 52;
- f) no lending by the Utility Subsidiaries to corporate affiliates for a term in excess of one year; and
- g) no pledging or encumbering the assets of the Utility Subsidiaries or the provision of loan guarantees for the benefit of corporate affiliates.

Statements In Support of Joint Application

Aqua PA Water, Aqua PA Wastewater and OCA agree in their Joint Petition for Settlement that the restructuring is necessary or proper for the service, accommodation, convenience or safety of the public. *See* Petition at 6. Additionally, OCA stated in its Statement in Support that the restructuring will not result in a change to Aqua PA's rate base, nor would the Proposed Restructuring pass any costs associated with it onto customers of Aqua PA. OCA believes the Settlement provides additional conditions that are in the public interest and should be adopted as part of the approval of the proposed intercompany restructuring. OCA contends the Settlement meets the standard set forth pursuant to Section 1103 and it should be approved as

² Following Aqua America, Inc's acquisition of certain natural gas assets, Aqua America, Inc. changed its corporate name to Essential. Essential is the overarching corporate parent of Aqua PA.

in the public interest. OCA states that there will be no financial impact upon ratepayers through transactional or operation costs, additional tax liabilities, or through rate base costs.

OSBA filed a Letter of Non-Opposition to the Joint Petition for Settlement. OSBA did not identify any aspect of Aqua PA's Proposed Restructuring that was unjust or unreasonable to Aqua PA's small business customers. I&E also filed a Letter of Non-Opposition.

Aqua PA and Aqua PA Wastewater stated in their Joint Statement in Support of the Settlement that the Proposed Restructuring will implement a desired rational corporate structure for the water and wastewater utility segment of Essential and will have no substantive effects on the operations of Aqua PA or upon Aqua PA's customers. Aqua PA states that the Settlement is proper for the service, accommodation, convenience or safety of the public as a new Pennsylvania holding company, Aqua Water Holdings, Inc., between Aqua PA and its current direct parent, Essential, will not substantively change Aqua PA's operations, but will allow Essential to "align its legal entities in a more rational structure following Essential's expansion from a water and wastewater holding company to a natural gas, water and wastewater holding company." Joint Application at Paragraph 17.

Disposition

I find that although Essential owns a holding company separating itself from the Peoples Companies, which are regulated natural gas utilities, there is no comparable intermediate holding company structure between Essential and its regulated entities providing water and wastewater service. I agree with the Parties that the Proposed Restructuring would make Essential's corporate structure more consistent across its regulated entity portfolio and perhaps reduce market confusion over Essential's umbrella of regulated and nonregulated entities. There will be a functional separation between Essential's ownership, direct or indirect, of gas related entities and of its water related entities and this will provide clarity to management and employees with respect to their individual roles. Joint Application Paragraph 17; Aqua PA Direct St. No. 1 at 9.

It is proper service that Water Holdings does not extend credit or give loans to Aqua PA to operate. Aqua PA Direct St. No. 1 at 9. It is also proper service that none of the costs associated with the Proposed Restructuring expenses be passed through to the customers of Aqua PA. Aqua PA St. No. 1 at 8. Customer service from Aqua PA will not be negatively affected by the Proposed Restructuring. Aqua PA St. No. 1 at 9. There will be no change to Aqua PA's tax liabilities as a result of the Proposed Restructuring including no effect on Aqua PA's deferred tax balances. Aqua PA St. No. 1, p. 7. This provision is reflected in the Joint Settlement at Paragraph No. 31. These factors contribute to a finding of proper service.

Water Holdings will be a new entity obtaining controlling interest in stock by owning all of the shares of Aqua PA and possessing a controlling interest. Water Holdings will then be the immediate parent company with direct and/or indirect authority to manage, direct or oversee, and ultimately govern the management and policies of Aqua PA. Although the restructuring may not be a necessity, it is proper service within the meaning of Section 1102(a)(3) for the reasons outlined above. The Commonwealth Court held that the Commission was not bound to apply the substantial affirmative public benefit test enunciated in *City of York* and *Popowsky*, which requires the demonstration of a substantial, affirmative public benefit standard required for the issuance of a certificate of public convenience in cases such as the instant one involving Sections 1102 of the Code. Concerns and dangers associated with anticompetitive behavior are not present in the instant case, or at least not present to a degree that is reasonably comparable to those that could occur in the situation of a merger. Holding companies have traditionally been created for internal structural advantages, namely in order to receive shelter from legal liability, obtain tax benefits and facilitate strategic corporate finance objectives. PPL Commonwealth Court Order at 22. These internal structural advantages do not necessarily constitute improper service.

CONCLUSION

In conclusion, the Proposed Restructuring Joint Application will be approved and certificate(s) of public convenience be issued for intercompany restructuring pursuant to Section 1102(a)(3) of the Code. 66 Pa.C.S. § 1102(a)(3). The granting of the Joint Application is proper

for the service of the public and certificate(s) of public convenience should be issued evidencing the Commission's approval. As the Joint Petition reflects the consensus of the Parties, resolves the issues necessary for the ultimate resolution of the present proceeding, and serves the public interest, the Joint Petition for Settlement is approved without modification.

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.
2. 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).
3. Section 1102(a) of the Public Utility Code permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. 66 Pa.C.S. § 1102(a).
4. Commission approval of the Proposed Restructuring is required under Section 1102(a)(3) of the Public Utility Code, as interpreted under the Commission's Policy Statement regarding utility stock transfers or other voting interest of a utility's parent is jurisdictional regardless of the remoteness of the transaction if the effect of the transaction is to change the control of a utility. 66 Pa.C.S. § 1102(a)(3); 52 Pa. Code § 69.901; *Joint Application of Commonwealth Tel. Co., et al.*, A-310800-F.0006 (Opinion and Order entered October 22, 1993).
5. A transaction resulting in a change of the *de facto* controlling interest in a utility or its parent, regardless of the tier in the corporate organization, constitutes a change of control of the utility and is jurisdictional under 66 Pa.C.S. Section 1102(a)(3). 52 Pa. Code § 69.901; *Joint Application of Paging Network of Pittsburgh, Inc.*, A-330013.0005 (Opinion and Order entered October 22, 1993).

6. The Commission is not bound to apply the substantial affirmative public benefit test and may formulate the specific criteria or factors to be used in assessing whether a utility's proposed internal restructuring is "proper" for servicing the public and deserving of a certificate of public convenience. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16, 24.

7. The Proposed Restructuring is a technical change in control of Aqua PA by the insertion of Water Holdings between Aqua PA and its parent corporation, Essential Aqua PA and this change is proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. Section 1102(a)(3); 52 Pa. Code § 69.901, *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16, 24.

8. The Proposed Restructuring will not have any effect on the management and operations of Aqua PA and is proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. Section 1102(a)(3); 52 Pa. Code § 69.901.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Stipulation for the Admission of Evidence agreed to by all the Settling Parties and submitted on December 14, 2021, at Docket Nos. A-2021-3026774 and A-2021-3026775 is approved.

2. That Aqua PA Statement No. 1 – Direct Testimony of Stan F. Szczygiel, and Aqua PA Exhibit No. 1 are admitted into the record at Docket Nos. A-2021-3026774 and A-2021-3026775.

3. That the verification for Aqua PA's testimony and exhibit as attached to the Joint Stipulation for Admission of Evidence filed on December 14, 2021, is admitted into the record at Docket Nos. A-2021-3026774 and A-2021-3026775.

4. That the Joint Application for Approval of Intercompany Restructuring filed by Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater Inc. at Docket Nos. A-2021-3026774 and A-2021-3026775 is hereby approved, as clarified by the terms and conditions of the Settlement set forth and referenced in the body of this Initial Decision.

5. That the Settlement among Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater Inc., and the Office of Consumer Advocate at Docket Nos. A-2021-3026774 and A-2021-3026775 is hereby approved and adopted.

6. That Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., shall comply with the terms and conditions of the Settlement as though each term and condition stated therein had been subject of an individual ordering paragraph.

7. That Certificate(s) of Public Convenience be issued to Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. evidencing the Commission's approval of the Intercompany Restructuring at Docket Nos. A-2021-3026774 and A-2021-3026775.

8. That after issuance of certificate(s) of public convenience regarding the approval of the Proposed Restructuring, the Commission's proceeding at Docket Nos. A-2021-3026774 and A-2021-3026775 be marked closed.

Dated: January 31, 2022

/s/
Elizabeth H. Barnes
Administrative Law Judge