

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Trustees of Conneaut	:	
Lake Park, Inc. and Conneaut Lake Park	:	A-2022-3031711
Water Corporation, Inc., under Section 1102(a)	:	A-2022-3031712
of the Pennsylvania Public Utility Code, 66	:	
Pa.C.S. § 1102(a)	:	

RECOMMENDED DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision recommends that the Commission approve the joint application resulting in the abandonment of water utility service by the Trustees of Conneaut Lake Park, Inc., and the granting of a certificate of public convenience to the Conneaut Lake Park Water Corporation, Inc. This proceeding concerns the Conneaut Lake Water System, a water system that was generally a part of Conneaut Lake Park, which was an over 120-year-old seasonal amusement park adjacent to Conneaut Lake in Crawford County, Pennsylvania. This decision dismisses the protest of the sole protestant, a residential water customer, and finds that the joint applicants have met their burden of proof that granting approval is necessary or proper for the service, accommodation, convenience, or safety of the public.

HISTORY OF THE PROCEEDING

On March 31, 2022, the Trustees of Conneaut Lake Park, Inc. (“Trustees” or “Transferor”) and Conneaut Lake Park Water Corporation, Inc. (“Water Corp.” or “Transferee”) (together “Joint Applicants”) filed a Joint Application with the Pennsylvania Public Utility

Commission (“Commission”) for the issuance of a certificate of public convenience and abandonment concerning the Conneaut Lake Park Water System (“Water System”). The Joint Applicants requested all the following: (a) that the Commission recognize the Order of the Bankruptcy Court requiring the transfer of the Water System, and all rights and responsibilities related thereto, from Trustees to Water Corp.; (b) that the Commission grant of a Certificate of Public Convenience to Water Corp., allowing it to begin to offer, furnish, or supply water service to the public in portions of Summit and Sadsbury Townships, Crawford County, Pennsylvania; (c) that the Commission grant the Joint Application for Abandonment by the Trustees of all water service to the public, the cessation of all rights and obligations of the Trustees as a public utility, and the termination of all regulatory responsibility for operation of the Water System by the Trustees; and (d) that the Commission approve the proposed Tariff of Water Corp. Further, under Section 1103 of the Public Utility Code, 66 Pa.C.S. § 1103(d), Water Corp. also seeks the grant of a temporary Certificate of Public Convenience and Trustees seek a temporary order of Abandonment pending resolution of the Joint Application.

On April 16, 2022, the Joint Application was published in the *Pennsylvania Bulletin* with protests and petitions to intervene due on or before May 2, 2022. *See*, 52 Pa.B. 2335 (Apr. 16, 2022). The Joint Application was also published in the *Meadville Tribune* on April 8 and 15, 2022, also stating the applicable deadline to file protests or intervene. *See*, proofs of publication submitted by Joint Applicants to the Secretary’s Bureau on April 25, 2022.

On April 29, 2022, a timely protest was filed by water customer James S. Tolbert, Jr., who opposes the Joint Application. Mr. Tolbert averred that it would be in the best interests of the public if the Trustees continue to operate and manage the Water System. (*See*, Protest, last page). Mr. Tolbert raised several concerns including the number and length of repairs of leaks; multiple unexplained outages without notice provided to customers; allowing unlicensed personnel to maintain the main and service lines; and financial mismanagement. Mr. Tolbert also objected to raising rates in the proposed Tariff.

On June 9, 2022, this matter was referred to the Office of Administrative Law Judge. As a result, on June 9, 2022, a prehearing conference notice was issued establishing an

initial call-in telephonic prehearing conference for June 29, 2022, at 10:00 a.m., and assigning as the presiding officers, Deputy Chief Administrative Law Judge (DCALJ) Joel H. Cheskis and Administrative Law Judge (ALJ) Gail M. Chiodo. A prehearing order was issued on June 10, 2022, setting forth the rules that would govern the prehearing conference.

Pursuant to the prehearing order, both the Joint Applicants and Mr. Tolbert filed prehearing memoranda.

On June 29, 2022, the prehearing conference convened, as scheduled. Mark J. Shaw, Esquire, appeared on behalf of the Joint Applicants and Mr. Tolbert appeared *pro se*. A discussion was held regarding the appropriate procedure to use for this proceeding that respected both parties' due process rights while moving the case forward in an effective and efficient manner. The parties agreed on a litigation schedule including dates to submit pre-served direct, rebuttal and surrebuttal testimony. The parties were also encouraged to consider settlement discussions and were reminded that Commission policy promotes settlements. 52 Pa. Code § 5.231(a).

On July 1, 2022, a Scheduling Order was issued memorializing the results of the discussion at the prehearing conference, including a litigation schedule culminating in an evidentiary hearing on October 25, 2022.

On October 25, 2022, the hearing was held, as scheduled. Attorney Shaw represented Joint Applicants, and Mr. Tolbert represented himself. The following testimony and exhibits were admitted into the record as follows:

Applicants St. 1 -- Direct Testimony of James J. Becker

Applicants St. 2 -- Direct Testimony of Todd Joseph

Applicants St. 3 -- Direct Testimony of Christopher Greenberg

Applicants Surrebuttal St. 1 -- Surrebuttal Testimony of James J. Becker

Applicants Surrebuttal St. 2 -- Surrebuttal Testimony of Todd Joseph

Tolbert Ex. F -- Cancelled check to Conneaut Lake Water Park Corp., Inc.
Tolbert Ex. G -- Township Supervisor's Statement
Tolbert Ex. H -- Management Agreement

During the hearing, a discussion was held regarding the need for a protective order to govern the treatment of information alleged to be proprietary, particularly information alleged to be confidential security information (CSI). As a result, Mr. Shaw, on behalf of the Joint Applicants, on November 3, 2022, filed a motion for a protective order. On November 9, 2022, a Protective Order was issued.

Also at the conclusion of the hearing, there was a discussion of filing briefs. However, both parties indicated that they did not desire to file briefs and wished to proceed on closing arguments, which request was granted. (Tr. 95). No briefs were filed.

Subsequently, a Judge Change Notice was filed assigning the undersigned as the presiding officer in this proceeding.²

The evidentiary hearing resulted in a 115-page transcript, consisting of pages 30-115.³ The record closed on November 23, 2022, when the undersigned received a copy of hearing transcript.

FINDINGS OF FACT

Parties, Affected Entities

1. The Joint Applicants are the Trustees of Conneaut Lake Park, Inc. and Conneaut Lake Park Water Corporation, Inc.

² Judge Cheskis is no longer serving in the Office of Administrative Law Judge.

³ Pages 1-29 of the transcript concern the prehearing conference held on June 29, 2022.

2. The Protestant is James S. Tolbert, Jr., a residential water customer.

3. Mr. Tolbert has owned a summer residence at 12573 Comstock Street, Conneaut Lake, Pennsylvania, since 1985; prior to that he owned and lived at 12597 Comstock Street. (Tolbert St. 1, Rebuttal of James J. Becker).

4. Mr. Tolbert is retired from a telecommunications company as a field engineering manager, where he was responsible for engineering and financial data analysis. Mr. Tolbert currently serves as President of the Autumn Hills Water Company, a not-for-profit corporation that supplies water to a 100-home subdivision in West Mead Township, Crawford County, Pennsylvania; and from 1988-1998, Mr. Tolbert served as a board member and secretary for the Conneaut Lake Park Homeowners Association. (Tolbert St. 1, Rebuttal of James J. Becker).

5. Water Corp. is a Pennsylvania corporation that was formed as a subsidiary of the Trustees in 2008, to hold the assets of the Conneaut Lake Park Water System, but it was not used for that purpose at the time; it remained dormant as an asset associated with the Water System. (Applicants St. 2, at 2).

6. Mr. Todd Joseph is the owner of Keldon Holdings, LLC (“Keldon”), and of Water Corp. (Applicants St. 2, at 2).

7. Keldon is a Pennsylvania limited liability company that acquired the assets of the Conneaut Lake Park (“Park”) including the Water System pursuant to a sale that was ordered by the United States Bankruptcy Court for the Western District of Pennsylvania in March 2021 at Bankruptcy Docket No. 14-11277-JAD. (Applicants St. 2, at 2; Applicants Ex.10).

8. Water Corp. was transferred to Keldon as part of the 2021 Bankruptcy asset transfer. Subsequently, Keldon decided to use Water Corp. for its original purpose and transferred the water assets and operation to Water Corp. (Applicants St. 2, at 3).

9. Keldon retains ownership to the remainder of the assets of the Park and intends to develop the Park into a profit-making venture. (Applicants St. 2).

10. On February 21, 2002, the Commission first approved the issuance of a Certificate of Public Convenience to the Trustees in its Order entered February 21, 2002 (*February 2002 Order*) at Docket No. A-210096.

11. On September 18, 2003, the Commission, in response to becoming aware of the Trustees providing water service to a variety of commercial customers not previously disclosed during the initial discovery process of the Application subject to the *February 2002 Order*, approved, *inter alia*, an allowable schedule of rates and the issuance of a second Certificate of Public Convenience to the Trustees in its Tentative Order entered September 22, 2003 (*September 2003 Order*) at Docket No. A-210096.

12. As a result of the 2021 Bankruptcy proceeding, the Trustees have no assets, no stream of income or revenue, and no staff; the Trustees have no further interest in the Park. (Applicants St. 1, at 3).

13. Water Corp. is a Pennsylvania corporation that currently is in good standing. (Applicant St. 2, at 1; Applicants Ex. 16).

14. Water Corp. has been operating the Water System since it acquired the assets of the Park including the Water System in March 2021 as a result of the Bankruptcy proceeding. (Applicants St. 2, at 3).

Background

15. The Park was an over 120-year-old fully functional and operational community amusement park. Among the assets of the Park was the public Water System that provided water service for over 100 years, including to a campground, a hotel, the amusement park complex, and certain residential properties. (Applicants St. 1, at 2).

16. Financial issues have plagued the Park’s operations since at least 1995, when the Park was placed into its first bankruptcy. (Applicants St. 1, at 2).

17. Mr. Gary Harris purchased the Park out of the 1995 bankruptcy; but at the time, Mr. Harris was under an ongoing investigation for tax evasion; therefore, in order to shield the Park from legal debts arising from his tax evasion prosecution, Mr. Harris transferred the Park to the newly created Trustee entity.⁴ (Applicants St. 1, at 20).

18. After the Trustees took over in 1997 (the “1997 Trustees”), the financial difficulties continued for the Park. From 1997 forward, for a period of nearly 20 years, the Park did not pay real estate taxes on its properties, resulting in “massive” delinquent tax bills. (Applicants St. 1, at 2).

19. Between 1997 and 2014, the Park experienced two major fires to two of the Park’s major attractions—one consumed the Dreamland Ballroom and another one rendered the Beach Club to ashes. (Applicants St. 1, at 2-3).

20. After the destruction of two of the Park’s major attractions, several buildings on the midway began collapsing. (Applicants St. 1, at 3).

21. As a result of complaints regarding the mismanagement of the Park, the Pennsylvania Attorney General’s Office began investigating the 1997 Trustees for mismanagement and violations of their fiduciary duties. (Applicants St. 1, at 3).

22. In 2014, as part of a consent decree with the Attorney General’s Office, the 1997 Trustees were expelled, and a new Board of Directors was named (the “2014 Trustees”), which assumed control of the Park in that year. (Applicants St. 1, at 3).

⁴ Subsequently, Mr. Harris was convicted in federal court of fraud and tax evasion. (See, Joint Application, at 4, n.3).

23. The 2014 Trustees assumed control to solely operate the Park and deal with related significant financial and legal issues caused by historical mismanagement. The goal of the new Board was to attempt to preserve and save the Park. (Applicants St. 1, at 3).

24. At the same time the 2014 Trustees took over control of the Park, the 2014 Trustees appointed the Economic Progress Alliance of Crawford County (“EPACC”) as Administrator of the Park. (Applicants St. 1, at 3).

25. The EPACC got involved because some members of its Board of Directors and the Executive Director at the time viewed Conneaut Lake Park as a community asset and its survival as a community development project. (Applicants St. 1, at 4).

26. Under its agreement with the 2014 Trustees, EPACC would manage the administrative duties on behalf of the Trustees because the Trustees had no official administrative staff. (Applicants St. 1, at 3; Applicants Ex. 1).

27. The 2014 Trustees relied solely on the revenue generated by the Park to fund operations, having no outside source of revenue. (Applicants St. 1, at 3).

28. In 2014, shortly after the 2014 Trustees and EPACC took over, as a result of the nearly 20-years of unpaid property taxes accruing under the 1997 Trustees, the Commissioners of Crawford County petitioned the Court of Common Pleas to proceed with a sale of the Park’s property at sheriff’s sale as opposed to tax sale to allow the assets to be sold as one instead of pieced into separate parcels. (Applicants St. 1, at 4).

29. The Attorney General’s Office attempted to intervene to stop the sheriff’s sale, but its objections were overruled by the Court. (Applicants St. 1, at 4).

30. Less than 20 hours before the scheduled sheriff’s sale, the 2014 Trustees filed for bankruptcy protection to stay the sale, which was granted. (Applicants St. 1, at 4).

31. After the 2014 filing of bankruptcy protection, the financial challenges continued; lawsuits were filed by the former owner, Mr. Harris; by the operator of the Hotel Conneaut; and lawsuits were filed relating to the insurance proceeds from the fires. At the same time, the Trustees worked on a reorganization plan that allowed the Park to operate while providing a path to repayment of credits, which included over \$1 million dollars in past due property taxes. (Applicants St. 1, at 4-5).

32. Ultimately, the bankruptcy process resulted in a reorganization process. (Applicants St. 1).

33. In 2017, as part of the reorganization process, the 2014 Trustees used part of the insurance proceeds from the fires, and the sale of excess land that was not vital to the Park's operation, to pay off the accrued delinquent taxes. (Applicants St. 1, at 5).

34. In 2017, as part of the Bankruptcy reorganization process, the 2014 Trustees began converting 170 long-term leases to land ownership. (Applicants St. 1, at 5).

35. After the leases were converted to land ownership, the 2014 Trustees continued operation of and improvements to the Park and began exploring improvements to the over 90-year-old Water System. (Applicants St. 1, at 5).

36. In 2020, the Trustees delayed, and then cancelled, the 2020 season for the Park due to the Governor of Pennsylvania's business closure order to combat the spread of COVID-19. (Applicants St. 1, at 7).

37. Without revenue from the Park's operations, the 2014 Trustees were unable to make a series of required quarterly bankruptcy payments. (Applicants St. 1, at 7).

38. As a result of the missed payments, the Bankruptcy Court granted a motion to proceed with public auction of all the Park's assets; and the Commission and the

Pennsylvania Department of Environmental Protection (DEP) were notified of the sale and bid procedures. (Applicants St. 1, at 8).

39. Keldon was the sole bidder of the Park's assets. (Tr. 103).

40. On December 17, 2020, in response to the ordered public auction, the 2014 Trustees entered into a Sales Agreement with Keldon for the sale of all the Park's assets, including the Water System, for a total amount of \$1.2 million. (Applicants St. 1, at 8).

41. By Order dated March 2, 2021 of the United States Bankruptcy Court of the Western District of Pennsylvania, Keldon purchased all of the assets of the Trustees via an Asset Purchase Agreement approved by the Court consistent with its Order. (Docket 14-11277-JAD; Applicant's Joint Ex. 10).

42. On January 26, 2021, the Notice of Bid Procedures, Auction Date and Sale Hearing for the Park was served on the Commission with a deadline of February 17, 2021, for responses and objections. (Applicants St. 1, at 8; Joint Applicants Exs. 6, 7).

43. Prior to the February 17, 2021 deadline, DEP voiced concern regarding the water quality permit transfer and modifications were made. (Applicants St. 1, at 8-9).

44. Prior to the February 17, 2021 deadline, the Commission did not respond or object. (Applicants St. 1, at 8-9).

45. On June 1, 2021, the 2014 Trustees served a motion for a final decree on the Commission, indicating that a hearing would be held on June 25, 2021. (Applicants St. 1 at 9; Applicants Exs. 11, 12).

46. On June 21, 2021, the Bankruptcy Court entered an Order Granting Final Decree and closed the case; no appeal was taken from this Order. (Applicants St. 1, at 10; Applicants Ex. 13).

47. All of the funds received from the sale to Keldon were distributed to the creditors of the Trustees. (Applicants St. 1, at 10).

48. At the time of the 2021 transfer, the 2014 Trustees had been issuing bills for the use of the Water System to approximately 147 properties, the majority of which had been identified as seasonable residential customers. The 2014 Trustees inherited this list and did not verify its accuracy. (Applicants Ex. 10).

Commission Jurisdiction

49. Originally, the Park, in addition to using the Water System for its own purposes, also provided water service to residential users who leased residential dwellings owned by the Park that were located on Park property; in 1981, the Commission reviewed the lease agreements and determined that the Park was not subject to Commission jurisdiction. (Applicants St. 1, at 6-7).

50. In 1999, due to several complaints, the Commission's Bureau of Consumer Services notified the 1997 Trustees by letter dated December 2, 1999, that it must obtain a Certificate of Public Convenience. (Applicants St. 1, at 7).

51. The 1997 Trustees stopped charging the residential users and, instead, asked for voluntary contributions in order to operate and maintain the Water System. (Applicants St. 1, at 7).

52. However, pursuant to the Commission's *February 2002 Order* setting water rates, the Trustees recommended billing customers for water service. (Applicants St. 1, at 7).

53. The Trustees eventually were issued a Certificate of Public Convenience by Commission Order dated September 3, 2003; and a Tariff regulating water rates was issued on June 29, 2009 and has not been modified since. (Applicants St. 1 at 7).

The Water System

54. Mr. Christopher Greenberg owns Keystone Water System, LLC, and has been a licensed DEP certified water and wastewater treatment plant operator since 2003. (Applicants St. 3, at 1).

55. Keystone Water System, LLC sells, installs, and services all types of water treatment and performs all duties associated with water and wastewater treatment plant operations, and currently serves 25 systems across western Pennsylvania (Applicants St. 3, at 1).

56. Mr. Greenberg has been the certified operator of the Water System for over six years; he was originally retained by the Trustees in July 2016 and after the 2021 Bankruptcy Sale, was retained by Water Corp., to continue operating the Water System. (Applicants St. 3, at 2; Applicants Exs. 5, 15).

57. As a licensed certified operator, Mr. Greenberg is responsible for monitoring water systems for compliance with DEP regulations and permitting requirements; this entails regular testing of the system for water safety, monitoring the water system to ensure suitable operation and maintenance of the system, and reporting any action necessary to the water system owner to prevent or eliminate any violation of applicable law or regulation. (Applicants St. 3, at 1).

58. The Water System consists of two wells, a 75,000-gallon elevated steel water tank, and a distribution system comprised of approximately 2.65 miles of cast iron and steel mains. A map of the coverage area and a depiction of the Water System was attached to the Joint Application. (Applicants St. 1, at 5; Applicants Ex. 3).

59. In 2020, the average day and peak day usage was 31,315 gallons per day and 156,081 gallons per day, respectively. (Applicants St. 1, at 5; Applicants Ex. 4).

60. The Water System is permitted through DEP water supply permit at a well supply rate of 300 gallons a minute, which equates to 721,440 gallons a day, and a treatment system flow rate of 200 gallons a minute, which is 288,000 gallons a day. (Applicants St. 1, at 5; Joint Applicants Ex. 5).

61. Nearly all historical records of the Water System have been lost or destroyed due to the Park fires and likely inadequate record keeping by the prior owners of the Water System. (Applicants St. 1, at 6).

62. The loss of historical records resulted in many aspects of the current system being unknown, such as exact valve locations that are not open and obvious which results in an inability to isolate breaks in the water system, resulting in the need to shut off a broader area of the system at times to fix a leak or break in a water main. (Applicants St. 1, at 6).

63. During EPACC's oversight of the Park, it has been able to maintain the operations of the Water System in a manner that complies with the Commission and DEP requirements. (Applicants St. 1, at 6).

64. During EPACC's oversight of the Park, some upgrades were made to the treatment system and water tanks. (Applicants St. 1, at 6).

65. Water Corp. was evaluating a major upgrade to the existing distribution system when COVID-19 hit and "put the brakes on" any improvements due to the lack of funding in 2020. (Applicants St. 1, at 6).

66. The primary issue with the Water System is that if the system is hammered (a rapid change in water pressure causing the pipes to vibrate and shudder) in any

way, it will cause leaks elsewhere in the system; this is why Water Corp. is looking into replacing portions of the distribution system. (Applicants St. 1, at 6).

67. Since the acquisition, the water is tested daily at the entry point and weekly throughout the distribution system; and samples are analyzed by a third-party laboratory at multiple intervals throughout the year. (Applicants St. 2, at 5; Applicants St. 3).

68. Since the acquisition, no testing has indicated poor water quality; water quality has been good, and there have been no water quality or safety issues. (Applicants St. 3, at 3-4).

69. Mr. Greenberg utilizes a flushing program throughout the year to ensure that acceptable water quality is maintained throughout the distribution system at all times. (Applicants St. 3, at 4).

70. In March 2021, as a result of a tree falling onto a fire hydrant, the entire system had to be shut down on an emergency basis to conduct an emergency repair. (“March 2021 incident”). (Applicants St. 3, at 2).

71. The March 2021 incident consisted of a total of eight leaks on the system—seven leaks occurred on Comstock Street, and a section of Comstock Street was isolated for approximately three hours at three different times. (Applicants St. 3, at 2).

72. During the March 2021 incident, Water Corp. notified the affected residents who it was able to make contact with prior to the water being shut off. (Applicants St. 3).

73. Following the March 2021 incident, there were five other leaks; all of those leaks were timely repaired. (Applicants St. 3).

74. Mr. Dale Costa has been a licensed Master Plumber since 1979; he owns DC Contracting, and multiple properties in the Park where he receives water service. (Applicants Surrebuttal St. 4, at 2).

75. Mr. Costa has been hired by Water Corp. to make emergency repairs to the water distribution lines and repair leaks as needed; he does not perform any work on the treatment systems associated with the water service, or operation of the water production system. (Applicants Surrebuttal St. 4, at 2).

76. When Mr. Costa works on emergency leaks, he works until the leak is repaired, even if it is in the middle of the night; once the repair is completed, he turns the system back on. (Applicants Surrebuttal St. 4, at 3).

77. Mr. Costa is not a certified water operator, and none of the work he performs requires him to be a certified water operator. (Applicants Surrebuttal St. 4, at 3; Applicants Surrebuttal St. 3 at 2).

78. None of the leaks and repairs on the Water System are out of the ordinary for a system of the age of the Water System. (Applicants Surrebuttal St. 4, at 4; Applicants St. 3).

Proposed Tariff

79. An initial tariff was filed for the Water System, effective June 29, 2009 at Docket No. A-210096.

80. Under the Tariff, the 1997 Trustees were permitted to charge users per quarter as follows: commercial customers - \$3,853.00; year-round residential customers- \$43.18; and seasonal residential customers- \$21.60. (Applicants St. 1, at 7).

81. Most users are seasonal residential customers. (Applicants St. 1, at 7).

82. The Tariff has not been changed since the 2009 Tariff. (Applicants St. 2, at 7).

83. The Tariff proposed for Water Corp. in this proceeding contains the same rates and terms as the existing Tariff. Water Corp. has not submitted any application seeking a rate increase as part of this proceeding. (Applicants St. 2, at 7).

Post Keldon/Water Corp.'s Acquisition

84. Keldon purchased the assets of the Park free of all liens and claims. Among the assets acquired by Keldon was the Water System, including a water delivery system, water holding tank, conveyance system, purification system, rights to service customers, DEP Public Water Supply Operation Permit No. 2009505-MA-1 and four associated public water supply permits (2084504-T3-MA-1, 2009505, 200905-MA-1, and 20084504 (collectively, the "DEP Permits"). (Applicants St. 1, at 9; Applicants' Ex. 17).

85. Following the Bankruptcy Court Order confirming the sale to Keldon, Water Corp. submitted a request to transfer the DEP Permits. (Applicants Sts. 1, 2).

86. The DEP Permits were successfully transferred from the Trustees to the Water Corp. by DEP approval letter dated August 6, 2021. (Applicants Sts. 1, 2; Applicants Joint Ex. 5).

87. Keldon subsequently transferred the assets of the Water System to Water Corp., an entity also acquired by Keldon as part of the assets of the sale, which had been previously formed solely to own, operate, and improve the Water System. (Applicants St. 2, at 3).

88. Following the sale, the 2014 Trustees entered into a Management Agreement with Keldon and Water Corp. regarding the Water System; under the Management Agreement, the 2014 Trustees retained responsibility to bill customers for

service pursuant to its Certificate of Public Convenience, and Water Corp. is responsible for all aspects of the physical operation of the Water System, including maintenance of the Water System, which the Trustees no longer owned; this agreement expired June 30, 2022. (Applicants St. 2; Applicants Ex. 15).

89. Effective July 1, 2022, the 2014 Trustees entered into a new agreement under which Water Corp. is authorized to issue bills on behalf of the Trustees and collect the funds of those bills to cover the costs of operating the Water System. (Applicants St. 2, at 3).

90. Since acquiring the Water System, Water Corp. has continued to operate and maintain the Water System, using the same certified operator for the Water System as the Trustees. (Applicants St. 2, at 4).

91. Since acquiring the System, Water Corp.'s efforts have been to ensure the continued operation of the water system in a manner that provides safe and reliable water service. (Applicants St. 2, at 5).

92. As Water Corp. continues to stabilize and grow the business aspect of the Park, it is exploring possible upgrades to the water distribution system. (Applicants St. 2, at 5).

93. Any improvement to the water distribution system is not currently feasible under the existing tariff, and Water Corp. hopes to work with the PUC to find a solution. (Applicants St. 2, at 5-6).

94. Water Corp has been able to operate the system in accordance with the Commission's DEP's water system requirements. It has spent over \$130,000 in repairs since taking over the system, is paying its certified operator at least \$25,000 a year and is paying between \$1,000 to \$1,500 a month for utilities. (Applicants St. 2, at 6).

95. Since the 2014 Trustees do not have any funds, if EPACC made the decision to no longer provide voluntary community service to it, the Trustees would be forced to stop participating in any effort to formally abandon the Certificate of Public Convenience. (Applicants St. 1, at 10).

96. Without any assets or revenue stream or any hope of any capitalization in the future, the Trustees do not and will not have the financial capability to have any involvement in the Water System for the Park. (Applicants St. 1, at 10).

97. While the Trustees are still technically the holder of the Certificate of Public Convenience, the Trustees have no further interest in the Park. (Applicants St. 1, at 11).

98. As a result of the Bankruptcy proceeding, the Trustees are left with no assets; Water Corp. owns all assets related to the operation of the Water System, and the current Joint Application is the last “lingering remnant” of the Trustee’s involvement with the Water System. (Applicants St. 2, at 2-3).

DISCUSSION

Burden of Proof and Legal Standards

As the proponent of a rule or order by the Commission, the Joint Applicants bear the burden of proof in this proceeding, pursuant to Section 332(a) of the Public Utility Code (“Code”), 66 Pa.C.S. § 332(a). To meet its burden of proof, the Applicants must establish their case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Section 1102(a)(3) of the Public Utility Code requires a public utility to obtain Commission approval, in the form of a certificate of public convenience ("Certificate"), for the transfer of property used or useful in the public service. 66 Pa.C.S. § 1102(a)(3). Section 1103 of the Code provides that the Commission will only grant a Certificate "if the [C]ommission shall find or determine 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). To ensure that a transaction is in the public interest, the Commission may impose conditions in granting a Certificate that it deems to be just and reasonable. 66 Pa.C.S. § 1103(a).

Additionally, pursuant to Section 1103 of the Code, the Joint Applicants must show that Water Corp. is technically, legally, and financially fit to operate the assets it acquired. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985) (*Seaboard*). *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958). To show legal fitness, Water Corp. must demonstrate that it has obeyed the Code and Commission Regulations and Orders. To show technical fitness, Water Corp. must demonstrate that it has sufficient staff, facilities, and operating skills to provide the proposed service. To show financial fitness, Water Corp. must demonstrate that it has sufficient financial resources to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 611 (1982); *Re Pa.-Am. Water Co. and the Sewer Auth. of the City of Scranton*, A-2016-2537209 (Opinion and Order entered Oct. 19, 2016).

The ultimate issue is whether granting the Certificate is in the public interest that is for the service, accommodation, convenience, or safety of the public. *Seaboard*.

Disposition

This Joint Application presents the unusual situation where the Transferee of the Water System, Water Corp., seeks a Commission Certificate to offer, furnish, or supply water service to the public in portions of Summit and Sadsbury Townships, Crawford County, Pennsylvania, for which it already supplies such service; and the Transferor, the Trustees, seeks Commission approval to abandon or discontinue all water service to the public, and the regulatory responsibility for operation of the Water System, for which it has already, in effect, abandoned.

It is helpful to understand this present situation by a brief review of the history of the Park and the Water System that was presented at the hearing, and the impact of the 2021 bankruptcy proceedings resulting in the current owner of the Water System.⁵ There is no doubt that the record evidence shows that the Park, including the Water System, has a very long history of financial struggles, fiduciary mismanagement, poor record keeping and other managerial mismanagement. Further, additional challenges were created as a result of two major fires to the Park and the onset of COVID-19 which caused a cessation of operations in 2020 as it was emerging from bankruptcy and a reorganization process.

After the Park was purchased out of the first bankruptcy in 1995, the 1997 Trustees were installed to assume control of the Park. Nonetheless, the financial troubles and mismanagement continued for approximately twenty years, eventually resulting in the Pennsylvania Attorney General's Office intervention which led to the expulsion of the 1997 Trustees and the installation of the 2014 Trustees.

However, shortly after the 2014 Trustees assumed control of the Park, due to legal proceedings filed by Crawford County seeking nearly \$1 million in past due taxes, the 2014 Trustees filed for bankruptcy protection. Subsequent lawsuits against the Park followed from various other individuals or entities. However, as the 2014 Trustees worked towards a

⁵ For a more detailed history, *see*, Applicant's St. 1, the testimony of Mr. Becker, Executive Director of the EPACC.

reorganization plan including exploring improvements to the old Water System, COVID-19 hit forcing the closure of the Park for the 2020 season. As the Trustees were unable to make a series of required quarterly bankruptcy payments due to this lost revenue, the Bankruptcy Court ordered a public sale of the property and the Water System.

On March 8, 2021, the Park's assets including the Water System were sold to the sole bidder, Keldon Holdings, LLC, in the Bankruptcy Court-approved proceeding. The Commission was served notice of this proceeding but did not participate in it. Keldon subsequently transferred the assets of the Water System to Water Corp., an entity also acquired as part of the sale, which had been previously formed solely to own, operate, and improve the Water System, but had not actually done so until now.

Therefore, Water Corp., as the bankruptcy purchaser, must meet the criteria for a Commission Certificate, which is the subject of this Joint Application. *Confer, Re G-Four Trucking, Inc.*, 67 Pa. P.U.C. 187 (1988) (“a bankruptcy sale purchaser may not operate pursuant to a reinstated certificate of public convenience unless and until we approve a transfer application filed by the purchaser.”).

Legal Fitness

Turning first to legal fitness, Protestant Mr. Tolbert, argues all the following: (i) that Water Corp. is a not a Pennsylvania corporation that is in good standing; (ii) that Water Corp. is not abiding by its Management Agreement with the Trustees, which provides for the Trustees to bill customers, because he paid his last two bills by check to Water Corp, as evidenced by a copy of his cancelled check; (iii) that Water Corp. permits unlicensed personnel to stop and start the water treatment plant; and (iv) that Water Corp. is in violation of state regulations because it is operating the Water System without a Commission Certificate.⁶

⁶ Tolbert St. 1, Rebuttal of Todd Joseph; Tr. at 106-08.

The record does not support most of Mr. Tolbert's allegations above. First, Water Corp. is a Pennsylvania corporation that is in good standing as evidenced by its current Subsistence Certificate.⁷ Second, Water Corp. is abiding by its most recent Management Agreement with the Trustees, effective July 1, 2022, under which Water Corp. is authorized to issue bills on behalf of the Trustees and collect the funds of those bills to cover the costs of operating the Water System.⁸ Third, the unlicensed operator that Mr. Tolbert is referring to is Mr. Costa, a master plumber who was hired by Water Corp. to perform emergency repairs. While Mr. Costa needs to shut down the Water System occasionally to make repairs, there is no requirement that Mr. Costa needs to be a certified operator to shut down the Water System and turn it back on when he has completed needed repairs.⁹ Further, Water Corp. hired a certified operator, Mr. Greenberg, who knows Mr. Costa, and is aware of the work Mr. Costa does from time to time.¹⁰

However, Mr. Tolbert is correct that Water Corp. is operating the Water System without a Commission Certificate in violation of Section 1103 which is concerning. Although a Certificate exists, and the Trustees hold the Certificate, these actions, no matter how expedient should not be, and are not, encouraged or condoned by the Commission. I note that as part of this Joint Application, Water Corp. requested a grant of a temporary Certificate and Trustees requested a temporary order of abandonment pending resolution of the Joint Application. However, there was no separate application or petition filed pursuant to Section 1103(d) requesting any such temporary Certificates on an expedited basis. The Code at 66 Pa.C.S. § 1103(d) provides:

(d) Temporary authority.-- Except during the threat or existence of a labor dispute, the [C]ommission under such regulations as it shall prescribe may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, and in emergencies grant temporary certificates under this chapter, pending action on permanent certificates; but no

⁷ Applicants Surrebuttal St. 2, at 2; Applicants Ex. 17.

⁸ Applicants Surrebuttal St. 2, at 2; Applicants Ex. 17.

⁹ Applicants Surrebuttal St. 2, at 3; Applicants Surrebuttal St. 3, at 2.

¹⁰ Applicants Surrebuttal St. 3, at 2.

applications shall be denied without right of hearing thereon being tendered to the applicant.

66 Pa.C.S. § 1103(d). Therefore, I recommend that approvals be provided *nunc pro tunc*, rather than under temporary authority.¹¹

Nonetheless, the present *de facto* situation must be recognized and addressed. As a result of the Bankruptcy Sale, the Trustees are left with no assets related to the operation of the Water System with which to manage, repair, operate, or replace the Water System. The Trustees have no stream of income or revenue, and no staff. The Trustees do not have the financial capability to have any involvement in the Water System for the Park.

I also note that by letter dated November 1, 2021, to the Secretary of the Commission, Attorney Shaw explained that the reason for Joint Applicants' delay in submitting the necessary Commission approvals for the abandonment and transfer was that the Joint Applicants were working together to explore the possibility of transferring the water assets to a third-party, either an experienced certificated private water company or a joint municipal authority. Attorney Shaw further represented that while the Joint Applicants' efforts towards securing such a third-party were ongoing, the Joint Applicants would submit periodic reports to keep the Commission apprised of negotiations and that Water Corp. was committed to continuing to operate the system during this process.¹² While these negotiations have not been successful, Water Corp. has been providing continuity of water service through its certified operator.

Further, as asserted by Joint Applicants, if EPACC made the decision to no longer provide voluntary community service, the Trustees would be forced to stop

¹¹ See, e.g., *Joint Application of The Meadows at Watsonstown, LLC (Meadows) and Stone Fortress Commercial LLC (Stone Fortress) for approval, nunc pro tunc, of 1) the right to transfer, by sale, substantially all of the wastewater assets of Meadows; 2) the right of Stone Fortress to begin to offer, render, furnish and supply wastewater service to the public in a portion of Delaware Township, Northumberland County, Pa., and 3) the right of Meadows to abandon wastewater service to the public in Delaware Twsp., Northumberland County, Pa.*, Docket No. A-2021-3024777 (Order entered Aug. 2021 (granting conditional approval of Joint Application, *nunc pro tunc*)).

¹² Tolbert Ex. D.

participating in any effort to formally abandon the Certificate of Public Convenience. While the Trustees are still technically the holder of the Certificate of Public Convenience, the Trustees have no further interest in the Park. The current Joint Application is the last remnant of the Trustees involvement with the Water System.¹³

Technical Fitness

Next, turning to technical fitness, Mr. Tolbert does not allege or argue poor water quality, but takes issue with the number of leaks, lengths of repairs, and the stopping and starting of the system by an unlicensed person. Water Corp. argues that the record evidence refutes these allegations. I find that Water Corp. has met its burden to demonstrate technical fitness.

Initially, I note that Mr. Tolbert stated that he is familiar with Mr. Greenberg as he is also contracted as the certified operator by Autumn Hills Water, where Mr. Tolbert currently serves as president. Specifically, Mr. Tolbert acknowledged that “there is no doubt as to the quality of work he and his team perform.”¹⁴ However, Mr. Tolbert argues that Mr. Greenberg is not aware of all the leaks since Mr. Costa does some emergency repairs when he is called out to do so.¹⁵ I find Mr. Greenberg’s rebuttal testimony credible in which he stated that Mr. Tolbert misunderstood his direct testimony when he gave examples of certain repairs to the Water System that Mr. Greenberg was involved in, but that such examples were not meant to be an all-inclusive list of the repairs made.¹⁶ Further, Mr. Greenberg testified that while water leaks are inevitable given the age of the Water System at issue, the System performs well.¹⁷

¹³ Applicants St. 1 at 10; Applicants St. 2, at 2-3.

¹⁴ Tolbert St. 1.

¹⁵ *Id.*

¹⁶ Applicants Surrebuttal St., 3 at 2.

¹⁷ Applicants St. 3, at 3; Applicants Surrebuttal St., 3 at 2.

Significantly, Mr. Greenberg testified that the Water System provides safe and reliable water service to its customers. He explained that he has been the certified operator of the Water System for over six years, that he was he was originally retained by the Trustees in July 2016 and after the 2021 Bankruptcy Sale, was retained by the current owner, Mr. Joseph via Water Corp., to continue operating the Water System. Mr. Greenberg testified that, since the 2021 acquisition, water is tested daily at the entry point and weekly throughout the distribution system. Mr. Greenberg also explained that finding and repairing a leak can take some time due to lost records. In this regard, Mr. Greenberg explained:

[T]he system performs well and provides safe water to customers consistently and regularly, without major interruptions. Unfortunately, few records of the exact locations of the existing distribution system exist due to previous fires that destroyed records. As a result, finding and repairing a leak can take some time.

Applicants Surrebuttal St. 3, at 3.

Further, Mr. Greenberg testified that since the 2021 acquisition, the operations of the Water System have been maintained in a manner that complies with DEP and Commission requirements. I note that the DEP Permits were successfully transferred from the Trustees to the Water Corp. as indicated by DEP's approval letter dated August 6, 2021. The Water System is permitted through DEP water supply permit at a well supply rate of 300 gallons a minute, which equates to 721,440 gallons a day, and a treatment system flow rate of 200 gallons a minute, which is 288,000 gallons a day. In 2020, the average day and peak day usage was 31,315 gallons per day and 156,081 gallons per day, respectively.¹⁸ Further, some upgrades were made to the treatment system and to water tanks and Water Corp. was evaluating a major upgrade to the existing distribution system when COVID-19 hit and delayed any improvements due to the lack of funding in 2020.¹⁹

¹⁸ Applicants St. 1, at 5; Joint Applicants Ex. 5.

¹⁹ Applicants St. 1, at 6.

Thus, I find that Water Corp. has demonstrated technical fitness to provide the proposed service. Water Corp. has been successfully operating the water system with a certified operator and a DEP-approved water supply permit and during the time of its ownership has been able to provide safe, reliable and compliant water service to those connected to the Water System, which supports granting the Certificate.

Financial Fitness/Proposed Tariff

Next, turning to financial fitness, Mr. Tolbert averred in his complaint that Water Corp. financially mismanages its billing because it does not bill certain users, including the campground users, of the water system that it should. Mr. Tolbert also argued that the Trustees and/or the Water Corp. has not acted in good faith in trying to find a third-party buyer for the Water System such as a utility or local township already certificated by the Commission, because any sale had to include, as a condition, free water to certain customers. However, Mr. Tolbert did not support these allegations with any evidence, and the same were specifically denied by Joint Applicants.²⁰

Further, Mr. Joseph testified that since acquiring the Water System, in order to keep it in compliance with the Commission's and DEP's water system requirements, it has spent over \$130,000 in repairs, is paying its certified operator at least \$25,000 a year and is paying between \$1,000 to \$1,500 a month for utilities.²¹ Mr. Joseph also explained that the water rates have not changed in the past fourteen years, or since the initial tariff became effective in 2009. However, Mr. Joseph explained that the revenues generated under the current tariff are not sufficient to cover current costs, let alone the costs that may be needed to fund any systems upgrades. Mr. Joseph stated that Water Corp. cannot sustain losses indefinitely, and understands that any proposed rate increase needs to be initiated in a separate proceeding at the appropriate time if Water Corp. is granted a Certificate. Mr. Joseph stated

²⁰ Applicants St. 2, at 7.

²¹ Applicants St. 2, at 6.

he hopes to work with the Commission at the appropriate time in a separate proceeding regarding any proposed rate increase.²²

As to Mr. Tolbert's contentions, they were not supported with probative, credible evidence. Mr. Tolbert, as well as any other customer or appropriate party, may participate in any subsequent proposed base rate increase proceeding to present any issues with respect to the certificated utility's management.

Thus, I find that Water Corp. has demonstrated that it has sufficient financial resources to provide the proposed service.

Metering Program

In the Joint Application's Exhibit B, the Water Corp. indicated that there is not sufficient current revenue to support the installation of meters and averred that many of the structures receiving water service are very old with old piping that will present significant costs to the customer to accommodate the installation of a meter. Resultingly, Water Corp. proposes that once it receives its Certificate, obtains a rate increase, and the Water System stabilizes financially, Water Corp. will formulate a plan to install meters. However, public utilities are required to furnish water service, other than fire protection service, exclusively on a metered basis, except that flat rate service may continue to be provided pending implementation of a reasonable metering program or under special circumstances as may be permitted by the Commission for good cause. 52 Pa. Code § 65.7(d).

I note the Commission previously directed the Trustees to file a plan to meter all of its customers in its *February 2002 Order*. Subsequently, the Commission also directed the Trustees to file either a written metering implementation or a statement of justification for exemption from metering its water customers in its *September 2003 Order*.

²² App. St. 2, at 6, 7.

As indicated by Water Corp., it appears there has been no significant actions taken to date to bring the Water System into compliance with the Commission's regulations on metered service.

Considering the unique circumstances involved in the Application, I believe that there is good cause to allow the Water Corp. to continue to provide flat rate service pending its formulation of a reasonable metering program. Therefore, I recommend that the Water Corp. be directed to finalize and submit, with its next base rate case or no later than three years from the issuance of a certificate of public convenience to Water Corp., a proposed metering program that would result in all customers except fire protection customers being metered. Among other things, Water Corp. should be required to provide testimony and supporting data that addresses each of the following regarding the metering program: (1) the numbers and sizes of water meters; (2) estimated investment costs for meters, appurtenances, meter reading devices, software, installation, etc.; (3) estimated annual operating expenses for meter reading, billing, maintenance, depreciation, etc.; (4) the date by which all customers except fire protection customers would be metered; and (5) whether Water Corp.'s proposed revenue requirement includes metering program costs.²³ Requiring the Water Corp. to submit a proposed metering program that includes cost estimates would assist the Commission, the Water Corp. and other interested stakeholders in evaluating universal metering benefits, costs, and timeframes.

Public Interest

Finally, the ultimate issue is whether granting the Certificates is in the public interest, that is for the service, accommodation, convenience, or safety of the public. *Seaboard*. Originally, in his formal Protest, Mr. Tolbert averred that it is in the public interest to have the Trustees continue to operate and manage the Water System. However, in his closing argument, Mr. Tolbert suggested that the Commission should consider forcing a sale of the

²³ See Recommended Ordering Paragraph 8.

Water System to a capable, experienced, certificated third-party water company.²⁴ However, I find these recommendations, the continuance of the unworkable *status quo* or an extended search for a third-party to apply for authority, would not provide any public benefit that would warrant denying the Joint Application.

I find that Joint Applicants have met their burden of proof that approving the Joint Application is in the public interest. The abandonment of service by the Trustees and the transfer of service to Water Corp. is the most viable solution to the issues besetting this troubled Water System, taking into account the interests of the public receiving safe, adequate, continuous and secure utility service.

As discussed above, consideration must be taken of the history of the utility system and the level of service to the public before the initiation of this proceeding. After the expulsion of the 1997 Trustees, the sole purpose of the 2014 Trustees was to save the Park. When that could not be accomplished, they were forced by the Bankruptcy Court to sell the Park including the Water System to the sole bidder, Keldon, which transferred it to Water Corp. Absent the sale, the Water System would effectively have no certified operator. Water Corp. immediately hired the same certified operator used by the 2014 Trustees to operate the Water System. There is no dispute that operator is experienced and well qualified. Overall, since Water Corp.'s ownership, absent emergency repairs, Water Corp. and the certified operator have been able to ensure that the Water System provides continuous, safe, and reliable water service at adequate pressures to its customers and that the water quality has met all requirements of the DEP. There does not appear to have been any impact on the services required to be provided to the public.

With respect to customer rates, due to the age of the Water System, long-term deferred maintenance resulting in a system that is need of significant repairs and upgrades, Water Corp. has indicated that the rates will ultimately need to be increased, in order to achieve sustainability. The current rates have been in place for nearly twenty years. The justification for

²⁴ Tr., at 109.

any increased rate proposal to provide a rate structure that allows for reliable and safe service into the future, along with long past-due repairs to the System, can be addressed in a separate proceeding after the Joint Application is approved. Any concerns, including but not limited to Mr. Tolbert's allegations that free water is being provided to certain customers, can be addressed at the separate rate proceeding.

Keldon retains ownership to the remainder of the assets of the Park and represents that it intends to develop the Park into a profit-making venture. Thus, it would appear that it is in Keldon's best interests to have a Water System that can serve the development that Keldon seeks to achieve, including one that provides safe and reliable water service to its customers.

In the Joint Application's Exhibit B, Section 2 – Map of service area, Water Corp. averred that most of the original records of the Water System were destroyed in a fire many years ago and indicated it had not been able to locate a formal metes and bounds description of the service territory. Consequently, Water Corp. provided a copy of a map that was included in the Joint Application's Exhibit B-3 that depicted the approximate course and distances of the boundaries it believes represent the land area and location of the existing certificate service territory. In the Commission's *February 2002 Order*, the Commission approved the issuance of a Certificate of Public Convenience authorizing the Trustees to furnish water service to the public in portions of Summit and Sadsbury Townships, Crawford County, as described by the metes and bound filed in that instant Application. In compliance to Ordering Paragraph 10 of the *February 2002 Order*, the Trustees filed a confidential map showing the outline of the certificated service territory with the Commission on May 28, 2003. This Joint Application does not contemplate a change to the certificated service territory and, further, no testimony has been entered into the record to support the Commission's consideration of either an abandonment or additions to the service territory. If Water Corp. desires to address any proposed abandonments or additions to its service territory, Water Corp. may file a new application, without prejudice, with the Commission along with supporting documentation and testimony.

In sum, weighing all of the factors discussed above, I find that granting approval of the Joint Application is necessary or proper for the service, accommodation, convenience or safety of the public and in the public interest. Hence, this decision recommends approval of the Joint Application.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 1101-3.

2. As the proponent of a rule or order by the Commission, the Joint Applicants bear the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. To meet its burden of proof, the Joint Applicants must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The Commission's decision must be supported by substantial evidence in the record. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

5. The Public Utility Code requires a public utility to obtain Commission approval, in the form of a Certificate of Public Convenience, for the transfer of property used or useful in the public service. 66 Pa.C.S. § 1102(a)(3).

6. The Commission will only grant a Certificate of Public Convenience if the Commission finds or determines that the granting of a Certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

7. To ensure that a transaction is in the public interest, the Commission may impose conditions in granting a Certificate of Public Convenience that it deems to be just and reasonable. 66 Pa.C.S. § 1103(a).

8. The Joint Applicants must show that Water Corporation is technically, legally, and financially fit to operate the assets it acquired. 66 Pa.C.S. § 1103(a); *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985). *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

9. The Joint Applicants have met their burden of proof that the granting of a Certificate of Public Convenience is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Application of the Trustees of Conneaut Lake Park, Inc. and Conneaut Lake Park Water Corporation, Inc., filed at Docket Nos. A-2022-3031711 and A-2022-3031712, be approved.

2. That a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval, *nunc pro tunc*, of the right of the Trustees of Conneaut Lake Park, Inc. to

transfer certain water system assets to Keldon Holdings, LLC as described in the Joint Application.

3. That a Certificate of Public Convenience shall be issued pursuant to Section 1101 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1101, evidencing Commission approval, *nunc pro tunc*, of the right of Conneaut Lake Park Water Corporation, Inc. to begin to offer, furnish, and supply water service to the public in portions of Summit and Sadsbury Townships, Crawford County, Pennsylvania, as described in the Joint Application.

4. That within ten (10) days following a Final Order entered by the Commission, Conneaut Lake Park Water Corporation, Inc. shall file a tariff with the Secretary's Bureau at Docket Nos. A-2022-3031711 and A-2022-3031712, to become effective on at least one day's notice, consistent with the tariff provided in the Joint Application.

5. That a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(2) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1102(a)(2), evidencing Commission approval of the right of the Trustees of Conneaut Lake Park, Inc., to abandon water service to the public in portions of Summit and Sadsbury Townships, Crawford County, Pennsylvania, as described in the Joint Application.

6. That upon issuance of the Certificate of Public Convenience pursuant to Ordering Paragraph 5, the Trustees of Conneaut Lake Park, Inc. shall return all copies of previously issued Certificates of Public Convenience to the Commission's Secretary's Bureau; be removed from all active utility lists maintained by the Commission's Secretary's Bureau and the Bureau of Administration; and the Trustees of Conneaut Lake Park, Inc.'s tariff shall become null and void and will be removed from the Commission's active files.

7. That, at the time of filing its next base rate case or no later than three years from the issuance of the Certificate of Public Convenience pursuant to Ordering Paragraph 3, Conneaut Lake Park Water Corporation, Inc. shall finalize and submit a proposed metering program that would result in all customers except fire protection customers being metered

and shall provide testimony and supporting data that addresses each of the following regarding the proposed metering program: (1) the numbers and sizes of water meters; (2) estimated investment costs for meters, appurtenances, meter reading devices, software, installation, etc.; (3) estimated annual operating expenses for meter reading, billing, maintenance, depreciation, etc.; (4) the date by which all customers except fire protection customers would be metered; and (5) whether the proposed revenue requirement includes metering program costs.

8. That nothing herein shall be construed as an approval or determination of costs or expenses for the purposes of just or reasonable rates or to exempt the Trustees of Conneaut Lake Park, Inc. or Conneaut Lake Park Water Corporation, Inc. from obtaining all necessary permits, licenses, and approvals from other federal, state, and local government agencies having jurisdiction.

9. That a copy of this Order be served upon the Conneaut Lake Water Corporation, Inc., the Trustees of Conneaut Lake Park, Inc., the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Crawford County Commissioners, the Summit Township Board of Supervisors, the Sadsbury Township Board of Supervisors, the Pennsylvania Department of Revenue's Bureau of Corporate Taxes, the Pennsylvania Department of Environmental Protection - Northwest Regional Office and its Bureau of Regulatory Counsel.

10. That upon the issuance of the Certificates of Public Convenience as outlined in Ordering Paragraphs 2, 3 and 5, the proceedings at Docket Nos. A-2022-3031711 and A-2022-3031712, be closed.

Date: February 15, 2023

_____/s/
Gail M. Chiodo
Administrative Law Judge