

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Veolia Energy Philadelphia, Inc.,	:	
Thermal North America, Inc., Veolia Energy North	:	
America Holdings, Inc. and AIP Project Franklin	:	A-2019-3012241
Bidco, Inc. to Transfer Control of Veolia Energy	:	
Philadelphia, Inc. from Veolia Energy North	:	
America Holdings, Inc. to AIP Project Franklin	:	
Bidco, Inc.	:	
Request for Approval of Affiliated Interest	:	
Agreement between Veolia Energy Philadelphia,	:	G-2019-3013959
Inc. and Veolia Energy North America LLC	:	
Securities Certificate of Veolia Energy Philadelphia,	:	
Inc. for Authorization of the Assumption of Debt	:	
Associated with Three Loan Facilities in an	:	S-2019-3013938
Aggregate Principal Amount not to Exceed	:	
\$770,000,000	:	

RECOMMENDED DECISION

Before
Eranda Vero
Administrative Law Judge

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I. INTRODUCTION

This decision recommends that the Commission approve the proposed transfer of controlling interest in Veolia Energy Philadelphia, Inc. by the sale of all the stock of Thermal North America, Inc. to AIP Project Franklin Bidco, Inc. This Recommended Decision finds that the Joint Applicants have satisfied their burden of proof and have demonstrated that the proposed transaction, as modified by the Joint Settlement of the parties, is in the public interest.

The Joint Applicants requested that the Joint Settlement filed on November 4, 2019, be approved by the Commission by the December 19, 2019 Public Meeting so that the financial transaction can be completed by the end of this calendar year. (See the cover letter dated November 4, 2019 submitted with the Joint Settlement).

II. HISTORY OF THE PROCEEDING

On August 14, 2019, Veolia Energy Philadelphia, Inc. (“VEPI” or the “Company”), Thermal North America, Inc. (“TNAI”), Veolia Energy North America Holdings, Inc. (“VENAH”) and AIP Project Franklin Bidco Inc. (“AIP”) (collectively, “Joint Applicants”), filed a Joint Application with the Pennsylvania Public Utility Commission (“Commission”) seeking approval to transfer controlling interest in VEPI by the sale of all the stock of TNAI to AIP (the “Joint Application,” “Application” or “Acquisition”). This filing was made pursuant to Sections 1102(a)(3) and 1103 of the Public Utility Code and Section 69.901 of the Commission’s regulations.

Notice of this Joint Application was published in the *Pennsylvania Bulletin* on August 31, 2019 and directed that formal protests and petitions to intervene must be filed with the Commission on or before September 16, 2019. 49 Pa.B. 5904 (August 31, 2019).

On September 16, 2019, a Petition to Intervene was filed by the Presbyterian Medical Center of the University of Pennsylvania Health System, Pennsylvania Hospital of the University of Pennsylvania Health System, and Penn Medicine at Rittenhouse (collectively “UPHS”).

Also, on September 16, 2019, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Protest, Public Statement and Verification with the Commission.

On September 19, 2019, the Thomas Jefferson University (“TJU”) filed a Late-Filed Petition to Intervene in the present matter.

On September 23, 2019, the Commission issued a Prehearing Conference Notice establishing a call-in telephonic prehearing conference for this matter for Monday, October 7, 2019, at 10:00 a.m. and assigning this matter to Administrative Law Judge (“ALJ”) Darlene D. Heep.

A Judge Change Notice and Cancellation/Reschedule Prehearing Conference Notice was issued on September 25, 2019, rescheduling the call-in telephonic prehearing conference in this matter for Tuesday, October 8, 2019, at 10:00 a.m., and reassigning this matter to the undersigned ALJ.

On September 26, 2019, a Prehearing Conference Order was issued providing procedural guidance for the scheduled prehearing conference.

On October 7, 2019, Allison Kaster, Esq., filed a Notice of Appearance on behalf of the Commission’s Bureau of Investigation and Enforcement (“I&E”).

On October 7, 2019, the Joint Applicants also filed their Direct Testimony along with a Petition for Protective Order.

On October 9, 2019, the Joint Applicants’ Motion for a Protective Order was granted and a Protective Order was issued memorializing its terms.

A Prehearing Order dated October 15, 2019, granted UPHS and TJU’s Petitions to Intervene and established the litigation schedule in this matter.

On October 29, 2019, the parties informed the undersigned that they had reached a tentative settlement in this matter and requested a settlement conference in order to address procedural matters relating to the settlement. The Joint Applicants informed me that they were filing: (a) the Corporate Services Agreement seeking approval of it as an Affiliated Interest Agreement pursuant to 66 Pa.C.S. § 2101 *et seq.* and (b) a Securities Certificate Registration seeking Commission approval pursuant to 66 Pa.C.S. § 1901 *et seq.*

The settlement conference was held telephonically on October 30, 2019, wherein the litigation schedule established in the Prehearing Order dated October 15, 2019 was suspended and the evidentiary hearing was rescheduled for November 7, 2019.

On October 30, 2019, the Joint Applicants filed a Request for Approval of Affiliated Interest Agreement seeking approval of a Corporate Services Agreement (“CSA”) between VEPI and Veolia Energy North America LLC, pursuant to 66 Pa.C.S. § 2102 (Docket No. G-2019-3013959). In their filing, the Joint Applicants specified that the CSA will not become effective until after the closing of the indirect transfer of control of VEPI that is the subject of this Application proceeding and requested that the Affiliated Interest Agreement be consolidated with the Application proceeding at Docket No. A-2019-3012241 and reviewed on the same timeframe.

On October 30, 2019, the Joint Applicants also filed a request for Securities Certificate Registration of Veolia Energy Philadelphia, Inc., pursuant to 66 Pa.C.S. § 1901 *et seq.* (Docket No. S-2019-3013938). In their filing, the Joint Applicants requested that the Securities Certificate Registration be consolidated with the Application proceeding at Docket No. A-2019-3012241 and reviewed on the same timeframe as the Application.

On November 4, 2019, the Joint Applicants filed a Motion to Consolidate the Affiliated Interest Agreement at Docket No. G-2019-3013959 and Securities Certificate at Docket No. S-2019-3013938 with the Application proceeding at Docket No. A-2019-3012241.

On Monday, November 4, 2019, the Joint Applicants, I&E, and OSBA (collectively “Settlement Parties”) filed a Joint Petition for Approval of Settlement (“Settlement”) along with their respective Statements in Support of the Joint Petition. Intervenors UPHS and TJU were not signatories to the Joint Petition but submitted Statements of Non-Opposition to it. The Settlement resolves all the issues in the above-captioned proceedings.

The evidentiary hearing was held as scheduled on November 7, 2019. The Joint Applicants moved their Direct Testimony and exhibits into the record and the same were admitted. By Order dated November 7, 2019, the Application at Docket No. A-2019-3012241 was consolidated with the Affiliated Interest Agreement at Docket No. G-2019-3013959 and Securities Certificate at Docket No. S-2019-3013938 for adjudication. The record was closed upon receipt of the hearing transcript on November 15, 2019.

As noted above, the parties request that the joint settlement be approved by the Commission by the December 19, 2019 Public Meeting so that the financial transaction can be completed by the end of the year.

III. FINDINGS OF FACT

The following findings of fact were proposed by the Joint Applicants in Appendix 1 of their Statement in Support are adopted herein.

1. On August 13, 2019, Veolia Energy Philadelphia, Inc. (“VEPI”), Thermal North America, Inc. (“TNAI”), Veolia Energy North America Holdings, Inc. (“VENAH”) and AIP Project Franklin Bidco, Inc. (“AIP”) (hereinafter, collectively the “Joint Applicants”) filed the above-captioned Application seeking a certificate of public convenience under Sections 1102(a)(3) and 1103 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 1102(a)(3), 1103, and all other approvals necessary from the Pennsylvania Public Utility Commission (“Commission”), for a change of control of VEPI due to the transfer and sale of 100% of the shares of capital stock in TNAI to AIP (“Proposed Transaction”) that will result in the change of VEPI’s ultimate corporate parent. (Joint App. Exh. KG-1, p. 1).

2. In addition, the Joint Applicants requested all necessary approvals under Section 2102(a) of the Code, 66 Pa. C.S. § 2102(a), to the extent any such approvals are necessary, to implement any new affiliated interest agreements under which VEPI may receive services from its affiliates, or to modify or revise the 2005 affiliated interest agreement between VEPI and its affiliates. (Joint App. Exh. KG-1, p. 1).

A. The Parties to the Proposed Transaction

3. VEPI is a Pennsylvania corporation organized in 1986. VEPI is a wholly owned subsidiary of TNAI, a Delaware corporation. VEPI is a public utility subject to regulation by the Commission and certificated by the Commission as A-130375 and related folders. VEPI operates the Steam System from the Schuylkill Station in Philadelphia. VEPI currently serves a mix of approximately 162 commercial, institutional, health care and governmental customers; VEPI has no residential customers. VEPI's annual gross operating revenues range between Sixty Million Dollars (\$60,000,000) and Ninety Million Dollars (\$90,000,000). (Joint App. Exh. KG-1, pp. 3-4).

4. VEPI is owned by TNAI. All of the issued and outstanding shares of common stock of TNAI are held by VENA. (Statement 3, p. 4).

5. TNAI owns the capital stock of, and partnership or membership interests in, the entities owning and operating what is now a North American portfolio of 13 district energy systems, including VEPI, two combined heat and power plants and one landfill gas-to-energy plant. (Statement 3, p. 4).

6. VEPI operates two steam producing facilities: the Schuylkill Station, with current permitted boiler capacity of 675 Mlbs per hour, and the Edison Station, with boiler capacity of 618 Mlbs per hour. The nearly century-old steam system in Philadelphia dates back to 1927. The current Schuylkill Station boilers were installed in 1971 and 1997, respectively. The current Edison Station boilers were installed in 1957, 1957, 1968 and 1970, respectively. (Statement 3, pp. 4-5).

7. Since 1998, a significant portion of the steam distributed by the Company to its customers has been produced by the Grays Ferry Cogeneration Partnership or “GFCP”, which is situated on a portion of the Schuylkill Station contiguous to the Company’s principal plant. (Statement 3, p. 5).

8. Among the other TNAI subsidiaries of particular importance to VEPI’s operations is GFCP, which provides a majority of the steam distributed by VEPI and will continue to do so under the existing agreement between VEPI and GFCP that has been approved by the Commission in Orders entered September 12, 1997, and August 28, 1997, at Docket Nos. M-00970932 and G-00970563, respectively. (Statement 3, p. 5).

9. TNAI also owns Philadelphia United Power Company, LLC or “PUPCO”, which operates the GFCP facility, ensuring that both VEPI’s own plant and the GFCP facility are operated in tandem. In addition, since mid-2012, VEPI has had the benefit of two rapid-fire boilers owned by TNAI subsidiary Veolia Energy Efficiency (PA), LLC or “VEEPA”. The operating structure and staffing of VEEPA parallels that which is used to operate the GFCP facility, such that all steam generation and distribution emanating from the Schuylkill Station site are completely integrated. The one significant difference is that the labor for VEEPA is provided directly by VEPI, whereas in the case of GFCP, the labor is provided by VEPI through PUPCO. However, all of the facilities are run as a single, integrated operation by the same personnel. Commission approvals of the transfer of tangible property and lease between VEPI and VEEPA are found at Docket Nos. A-2011-2221891 and G-2010-2193998; Commission approvals of the Operating Services Agreement and Steam Supply Agreement between VEPI and VEEPA are found at G-2010-2193992 and G-2010-2193989. (Statement 3, pp. 5-6).

10. In addition, TNAI also owns Veolia Energy North America, LLC (previously known as ThermalSource, LLC) or “VENA”, a management company that historically provided most of the staffing and back office services to VEPI and PUPCO, enhancing the integrated operation of the steam producing and distribution facilities. An amended Corporate Services Agreement (“CSA”) was approved by the Commission on April 22, 2005, at Docket Number G-00041077. (Statement 3, p. 6).

11. Joint Applicants witness Kevin Genieser described a replacement corporate services agreement reflecting the post-closing entities for which approval is sought in conjunction with approval of the change of control Application. (Statement 1, p. 25; Joint App. Exh. KG-3).

12. On October 30, 2019, the Joint Applicants filed with the Commission the Amended Corporate Services Agreement previously submitted as Joint App. Exh. KG-3, which was Docketed at G-2019- 3013959 and attached to the Settlement as Appendix A.

13. AIP is a newly formed Delaware corporation, incorporated for the sole purpose of serving as a holding company and effecting the Proposed Transaction. Upon the closing of the Proposed Transaction, AIP will hold one hundred percent (100%) of the issued and outstanding shares of TNAI. (Statement 1, pp. 5-6; Joint App. Exh. KG-1, p. 5).

14. MidCo will be a Delaware corporation to be formed prior to the closing of the Proposed Transaction to serve as a holding company. Holdco will hold one hundred percent (100%) of the issued and outstanding shares of Midco. MidCo will hold one hundred percent (100%) of the issued and outstanding shares of AIP. (Statement 1, p. 6; Joint App. Exh. KG-1, p. 5).

15. HoldCo will be a Delaware corporation to be formed prior to the closing of the Proposed Transaction for the sole purpose to serve as a holding company. At the closing of the Proposed Transaction, Aggregator LP will hold one hundred percent (100%) of the issued and outstanding shares of Holdco, and Holdco will hold one hundred percent (100%) of the issued and outstanding shares of Midco. (Statement 1, p. 6; Joint App. Exh. KG-1, p. 5).

16. Aggregator LP will be a Delaware limited partnership to be formed prior to the closing of the Proposed Transaction for the sole purpose to serve as a holding company. Aggregator LP will be comprised of Aggregator GP, LLC (its to-be-formed general partner), and certain limited partners, in each case, as explained below. Aggregator GP LLC will not hold any economic interests in Aggregator LP. (Statement 1, p. 6).

17. Aggregator GP, LLC will be a Delaware limited liability company to be formed prior to the closing of the Proposed Transaction, for the sole purpose to serve as the general partner of Aggregator LP. Aggregator GP, LLC will be owned by the Antin Funds. (Statement 1, p. 7).

18. Either Antin IV Finco Sarl., a Luxembourg Société à Responsabilité Limitée, or another entity wholly owned by the Antin Funds (each such entity, “TopCo”) will own 100% of Aggregator LP as of the closing of the Proposed Transaction. As of the date hereof, each of the Antin Funds holds twenty five percent (25%) of the outstanding interests in TopCo (the “TopCo Split”). The TopCo Split may change between the date hereof and the date of closing of the Proposed Transaction, due to current fundraising for the Antin Funds as discussed below. It is anticipated that TopCo will cease to be part of the post-closing structure within twelve (12) months of the closing of the Proposed Transaction. (Statement 1, p. 7).

19. Each of Antin Infrastructure Partners IV-A SCSp (“Fund A”), Antin Infrastructure Partners IV-B SCSp (“Fund B”) and Antin Infrastructure Partners IV-C SCSp (“Fund C”) is a société en commandite spéciale formed in Luxembourg. Antin Infrastructure Partners IV FPCI (“Fund D” and collectively with Fund A, Fund B and Fund C, the “Antin Funds”) is a Fonds Professionnel de Capital Investissement formed in France. Together with the anticipated investment by TNAI management, and as further described in additional detail below, the Antin Funds will indirectly own one hundred percent (100%) of the economic interests in Aggregator LP at the closing of the Proposed Transaction. (Statement 1, pp. 7-8).

20. All of the limited partners in each of the Antin Funds are passive investors. There are no investors that hold more than twenty percent (20%) interest in any of the Antin Funds and no investors are expected to hold more than ten percent (10%) across all Antin Funds. (Statement 1, p. 8).

21. Antin is a leading independent private equity firm focused on infrastructure investments. Founded in 2007, the firm invests solely in infrastructure, with a focus on brownfield infrastructure assets across the energy and environment, telecommunication,

transport and social sectors. Antin has successfully raised and fully invested a first fund (“Fund I”) of €1.1 billion (approximately equivalent to \$1.2 billion at today’s exchange rates), a second fund (“Fund II”) of €2.0 billion (approximately equivalent to \$2.2 billion at today’s exchange rates), and a third fund (“Fund III”) of €3.6 billion (approximately equivalent to \$4.0 billion at today’s exchange rates). Nine investments were completed by Fund I, six investments completed by Fund II and eight investments made by Fund III. Antin is well advanced in raising its fourth fund (“Fund IV”) with a target size of €5.5 billion (approximately equivalent to \$6.1 billion at today’s exchange rates) and has raised sufficient funds to date to complete the Proposed Transaction. (Statement 1, p. 8).

22. Given its increasing attention on the North American market, Antin opened an office in New York in 2018. Antin completed its first U.S. transaction in 2018 with the acquisition of FirstLight Fiber, a major fiber-optic network provider operating in six Northeastern U.S. states. The Proposed Transaction will constitute Antin’s second U.S. transaction. The New York-based team is leading Antin’s investments in the U.S., including the Proposed Transaction. (Statement 1, p. 9).

23. Antin’s ownership is dispersed. The only entities or individuals that hold more than twenty percent (20%) interest in Antin are Alain Rauscher and Mark Crosbie, the two founding partners of Antin. No individuals or entities, other than Mr. Rauscher and Mr. Crosbie, hold more than ten percent (10%) interest of the interests in Antin. As the manager or management company of each of the Antin Funds, as applicable, Antin is ultimately responsible for the ownership decisions made by each of the Antin Funds. (Statement 1, p. 9).

24. As noted in the Application, in order to further incentivize and align the interests of the TNAI management team and Antin, the TNAI management team and Antin are in discussions concerning (i) a possible investment in Aggregator LP by the management team and (ii) the issuance of possible equity incentives (i.e. profits interests) to the TNAI management team. Such discussions are ongoing. In any event, no member of the TNAI management team will own in excess of twenty percent (20%) of the economic interests in Aggregator LP. Such

investment would occur at or after the closing of the Proposed Transaction. (Statement 1, pp. 9-10).

B. Description of the Proposed Transaction

25. Veolia and AIP entered into a Purchase and Sale Agreement (the “Purchase Agreement”), pursuant to which 100% of the shares of capital stock of TNAI will be sold to AIP, pending certain regulatory approvals and the satisfaction of other conditions precedent. (Statement 1, p. 10; Joint App. Exh. 1, p. 8; *see also* HIGHLY CONFIDENTIAL Joint App. Exh. KG-2).

26. The Proposed Transaction will be funded by approximately 50% debt and approximately 50% equity provided by Antin. (Statement 2 (REVISED), pp. 3, 4).

27. Antin will provide the equity to fund approximately 50% of the Proposed Transaction. (Statement 2 (REVISED), p. 3).

28. For the debt component, Antin has obtained a fully underwritten portfolio-level financing package from a syndicate of 7 large international banks: Bank of Montreal, BNP Paribas, Crédit Agricole, Corporate and Investment Bank, MUFG Bank, Ltd, Natixis, New York Branch, Société Générale, and Sumitomo Mitsui Banking Corporation. (Statement 2 (REVISED), p. 3).

29. The financing consists of three loan facilities: (1) \$625 million senior secured acquisition term loan facility. This facility will be used to fund approximately 50% of the Proposed Transaction; (2) \$65 million senior secured revolving credit facility. This facility will primarily be used to issue letters of credit to certain fuel suppliers and gas transportation providers and provide for other working capital requirements of the various entities of the group; (3) \$80 million senior secured capex facility. This facility will be available to fund future investments, capital expenditures, and acquisitions for the various entities of the group. (Statement 2 (REVISED), pp. 3-4).

30. AIP (or successor entity) will be the Borrower under the facilities, with funding for VEPI and the various subsidiary guarantors from the committed portfolio-level facilities via permitted intracompany loans, for example to undertake investment projects and working capital requirements / credit support obligations, if necessary. Each facility will have an interest rate based on LIBOR, which is adjustable over time. (Statement 2 (REVISED), p. 4).

31. Each facility will be secured on a pari-passu basis with first-priority security interests in all tangible and intangible assets and personal property of TNAI and all subsidiary guarantors (including mortgages over material real property), in each case, subject to customary exclusions. The subsidiary guarantors of the facility will be all material subsidiaries of Thermal North America, Inc., including VEPI, and the lenders will also benefit from a first-priority pledge of the equity interests in each such subsidiary guarantor. (Statement 2 (REVISED), p. 4).

32. As all of TNAI's subsidiaries, including VEPI, will act as subsidiary guarantors under these facilities, VEPI filed a Securities Certificate Registration with the Commission on October 30, 2019, which was docketed at S-2019-3013938 and is attached to the Settlement as Appendix B.

33. As established by Pennsylvania law, any lender of any debt of VEPI or its parent companies or assign thereof shall be subject to the full authority and jurisdiction of the Pennsylvania Public Utility Code in the event that the lender (or their assign) asserts any right of ownership, operation or control over the collateralized assets or operations of VEPI. (Settlement ¶ 24).

34. While the obligations related to the Transaction remain outstanding, VEPI shall promptly submit to I&E copies of any quarterly compliance certificates that its owners will be providing to their lenders as a requirement of any debt that will be secured by VEPI, so as to report any material communications with the lenders concerning individual debt facilities or securities issued in connection with the Transaction, including but not limited to communications regarding financial covenants. (Settlement ¶ 25).

35. While the purchase price for the Proposed Transaction includes goodwill, any goodwill will remain at the TNAI level and would not be pushed down to the individual operating companies, including VEPI. Importantly, goodwill will not be recorded as a component of VEPI's rate base, and VEPI will not seek recovery of any goodwill associated with the Proposed Transaction from ratepayers. (Statement 2 (REVISED), pp. 5-6; *see also* Settlement ¶ 29).

36. Antin has raised sufficient funds to finance the purchase price of the Proposed Transaction. (Statement 2 (REVISED), pp. 6).

37. While the Antin Funds have raised sufficient funding to finance the purchase price, the goal of the Antin Funds is to create a diversified portfolio consisting of an estimated 8-12 investments in total, inclusive of the Proposed Transaction. The Proposed Transaction constitutes the first of these investments made by Fund IV. The additional fundraising for Fund IV will be only for these additional investments and no additional fundraising is necessary to finance the Proposed Transaction. (Statement 2 (REVISED), pp. 6-7).

38. Immediately following Closing of the Proposed Transaction, Antin expects that AIP will merge into TNAI, with TNAI being the surviving entity (the "Post-Closing Merger"). After completion of the Post-Closing Merger, Midco shall hold one hundred percent (100%) of the issued and outstanding shares of TNAI, Holdco shall hold one hundred percent (100%) of the issued and outstanding shares of Midco, Aggregator shall hold one hundred percent (100%) of the issued and outstanding shares of Holdco and the Antin Funds, as managed by Antin, shall hold indirectly one hundred percent (100%) of the economic interests in Aggregator LP. Additionally, as discussed above, it is anticipated that TopCo will cease to be part of the post-closing structure within twelve (12) months of closing of the Proposed Transaction. Therefore, the ultimate, indirect parent of VEPI will become the Antin Funds, as managed by Antin. (Statement 1, pp. 10-11; Joint App. Exh. KG-1, pp. 8, 34-37).

39. A number of other entities owned by TNAI will be indirectly acquired by AIP. More specifically, TNAI owns the capital stock of, and partnership or membership interests in several entities that support VEPI's operations – *i.e.* GFPC, PUPCO, VEEPA, and VENA – all of which will be acquired by AIP pursuant to the Proposed Transaction. (Statement 1, p. 11; *see also* Joint App. Exh. KG-1, pp. 34-37).

40. The ultimate, indirect parent of VEPI will become the Antin Funds, as indirectly passive limited partners in Aggregator LP. The Antin Funds will also be the direct parent of Aggregator GP, LLC, and will thus exhibit indirect ultimate control of VEPI through such ownership. (Statement 1, p. 12).

41. Antin is the manager for each of Fund A, Fund B and Fund C. Antin is the management company of Fund D. (Statement 1, p. 8).

42. The direct ownership of VEPI will not change as a result of the Proposed Transaction. (Statement 1, p. 12; *see also* Joint App. Exh. KG-1, pp. 34-37).

43. Antin has not finally decided on its initial post-closing corporate structure and is contemplating two potential, initial structures. (Statement 1, p. 12; *see also* Joint App. Exh. KG-1, pp. 34-37).

44. The Joint Applicants requested approval of both potential ownership structures. VEPI will make a compliance filing with the Commission indicating which structure was used within 30 days following closing of the Proposed Transaction. (Joint App. Exh. KG-1, p. 9).

C. The Technical, Financial, and Legal Fitness of Antin Funds, as Managed by Antin

45. No material changes in the management and employees of VEPI are expected as a result of the Proposed Transaction. (Statement 1, p. 14). AIP and TNAI commit to maintain at least the current staffing level for the Philadelphia steam operations, including VEPI,

for the next two years, subject to temporary vacancies caused by terminations for willful misconduct, voluntary departures or retirements. (Settlement ¶ 35).

46. Key TNAI employees, will remain with and continue to work for TNAI and its subsidiaries, including VEPI. (Statement 1, p. 14).

47. The current senior management team and employees of VENA (who are expected to accept similar roles at TNAI and its subsidiaries) currently devote their time and efforts across all of VENA's activities in North America, not only to TNAI. (Statement 1, p. 14).

48. Immediately upon closing of the Proposed Transaction, the senior management team will be dedicated solely to TNAI and its subsidiaries, including a greater focus on VEPI's operations. The retention of these senior managers and employees demonstrates that Antin's technical expertise will supplement the technical expertise that exists today at VENA, and demonstrates that Antin will is technically fit to own and operate VEPI. (Statement 1, p. 14).

49. AIP will ensure that TNAI's executive operational management possess significant steam utility experience, will ensure changes to leadership do not present public safety, reliability, or customer service risks, and will develop succession plans to ensure that any replacements are qualified and knowledgeable. (Settlement ¶ 34).

50. Antin also has significant experience investing in and owning long-lived infrastructure assets. (Statement 1, pp. 15-16).

51. Antin can draw upon its experience and knowledge with district energy, to contribute its own knowledge and expertise with the knowledge and expertise that will remain in place at VEPI. Antin's portfolio includes IDEX, an integrated operator of energy infrastructure assets, operating 41 district heating and cooling networks (including the Paris La Defense network), 13 energy-from-waste facilities, and a large portfolio of energy service contracts for a wide variety of counterparties across France. (Statement 1, p. 16).

52. Antin and its investors utilize focused long-term, responsible investment strategies that improve the operations, infrastructure and services of the companies they invest in, resulting in significant and sustainable success. (*See* Statement 1, pp. 16-17).

53. Antin Funds investors (including, without limitation, pension funds and other institutional investors) are interested in stable returns over the long-term, and Antin generally maintains ownership in portfolio companies for an extended period of time. Antin has a world-wide investor base characterized by long-term, blue-chip institutional investors. In addition, Antin is an investment manager and management company that has substantial experience in investing in and managing long-lived infrastructure assets. (Statement 2 (REVISED), pp. 7-8).

54. In July 2019, Antin achieved an “A+” rating – the highest possible score – in the “Infrastructure” module of the UN PRI Assessment Report, as well as an “A” rating in the “Strategy and Governance” module, which demonstrates Antin’s strong commitment to responsible investment. (Statement 2 (REVISED), p. 8).

55. In 2018, Antin directed €631 million in capital expenditures spend across its current portfolio. Since the firm’s inception, Antin has overseen approximately €4 billion in capital expenditures spend across 23 investments. (Statement 2 (REVISED), p. 8).¹

56. VEPI’s operations will be funded on a day-to-day basis primarily with its own operating cashflows. AIP (or successor entity) will be the Borrower under the credit facilities. Funding for VEPI will be available from these committed portfolio-level facilities via permitted intracompany loans, for example to undertake investment projects and working capital requirements and credit support obligations, if necessary. VEPI will benefit from the credit strengths of the entire TNAI portfolio, as evident in the interest rate of the facilities. (Statement 2 (REVISED), p. 9).

¹ The Joint Applicants’ Direct Testimony of Douglas Tully does not provide the converted dollar amounts for these euro figures. See Statement 2 (REVISED) at 8.

57. No transaction costs associated with the Proposed Transaction will be included in any future rate filing by VEPI. (Statement 2 (REVISED), p. 9; *see also* Settlement ¶ 30).

58. Any termination fees incurred if the acquisition is not consummated shall be borne by the shareholders of the selling and buying companies and will not be recovered from VEPI ratepayers. (Settlement ¶ 31).

59. AIP and TNAI commit that no Transition costs (incremental costs incurred to facilitate integration of companies) shall be included in VEPI's cost of service in any rate case. (Settlement ¶ 32).

60. AIP and TNAI will track and account for Transition costs for the Proposed Transaction in sufficient detail to permit parties to review and verify no such costs have been included in cost of service for VEPI. (Settlement ¶ 33).

61. No acquisition premiums or acquisition costs from the Proposed Transaction will be included in future rate filings of VEPI. (Statement 2 (REVISED), p. 9).

62. The 5-year capital spending plan for Philadelphia operations as a whole—including the regulated assets of VEPI and the unregulated business units of GFCP, PUPCO, VEEPA, and VENA—is projected to be approximately \$10 million annually. These expenditures are projected to be made pursuant to Antin's ownership and management of VEPI, and these projections would represent a more substantial commitment to maintaining, upgrading, and optimizing the regulated assets and unregulated business units involved in Philadelphia operations, as compared to the status quo. (Statement 2 (REVISED), p. 10).

63. The Antin Funds, as managed by Antin, are legally fit to own VEPI. (Joint App. Exh. KG-1, p. 14).

D. Public Benefits of the Proposed Transaction, as Conditioned by the Settlement

64. The Settlement Parties agree that the Commission should approve the Proposed Transaction, as conditioned by this Settlement. The Settlement Parties further agree that the Commission should grant all authority and approvals necessary to lawfully effect the Proposed Transaction, as conditioned by this Settlement, as described below. (Settlement ¶ 20).

65. The Joint Applicants demonstrated that numerous affirmative public benefits will result from the Proposed Transaction. (*See* Statement 1, pp. 18-23).

66. The current management and employee base of both VEPI, and TNAI as parent, are expected to remain in place and have a renewed and dedicated focus on VEPI. This greater focus will improve the managerial efficiency of TNAI (and as a result, VEPI), and constitutes an affirmative benefit of the Proposed Transaction. (Statement 1, pp. 18-19).

67. Antin's management of VEPI will bring a demonstrated track-record in successful ownership of long-lived infrastructure assets, including district energy assets. (Statement 1, pp. 19-20).

68. Antin's management of VEPI will lead to improvements to VEPI's operations and service. (Statement 1, p. 20).

69. Antin intends to implement initiatives and make capital expenditures to improve the safety, reliability, and quality of VEPI's service. Antin's projected level of investment in Philadelphia operations (both the regulated operations of VEPI and the other non-regulated assets and business units) is double existing levels. (Statement 1, pp. 21-22; Statement 3, pp. 9-10).

70. AIP, through TNAI, commits to invest an average of \$10 million per year for the 5 years following closing on the Proposed Transaction in capital expenditures to TNAI's Philadelphia operations, including VEPI, which is regulated by the Commission, and its assets

that are not regulated by the Commission, which include but are not limited to Grays Ferry Cogeneration Partnership, Veolia Energy Efficiency (PA), LLC and Philadelphia United Power Company, LLC. (Settlement ¶ 36).

71. Less than 18% of the projected levels of investment in the Philadelphia based operations will be eligible for inclusion in rate base. (Statement 3, p. 10).

72. Anticipated improvements to Grays Ferry Cogeneration Partnership (“GFCP”) would benefit the service provided to VEPI ratepayers, without increasing rates. (Statement 3, pp. 10-11).

73. Antin’s management of VEPI will result in operational commitments and improvements with respect to environmental, social and governance (“ESG”) matters. (Statement 1, pp. 22-23).

74. Under the terms of the Settlement, VEPI agrees not to file a tariff supplement prior to April 1, 2021, which would constitute a rate increase under Section 1308(d) of the Public Utility Code. (Settlement ¶ 21).

75. TNAI and AIP and their parent companies will continue to maintain reasonable accounting controls to govern any transactions by VEPI with affiliates and that any charges are consistent with Commission requirements. (Settlement ¶ 22).

E. The Penn Estates Criteria for Investment Fund Ownership

76. The Antin Funds, as managed by Antin, will allow VEPI to retain sufficient earnings to address its system needs. (Statement 1, p. 23; *see also* Joint App. Exh. KG-1, pp. 20-21).

77. Antin will continue to comply with all applicable corporate governance requirements following closing of the Proposed Transaction. (Statement 1, pp. 23-24; *see also* Joint App. Exh. KG-1, p. 21).

78. Antin and its investors utilize focused long-term, responsible investment strategies that improve the operations, infrastructure and services of portfolio entities over the term of their ownership, so that the condition of portfolio entities ultimately aligns with longer-term ownership. Its funds each have a ten-year investment term, which term can be twice extended by one year. (Statement 1, p. 24).

79. The Joint Applicants committed that, pursuant to Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§ 1101 *et seq.*, no future change in control of VEPI will occur without prior Commission approval. (Joint App. Exh. KG-1, p. 21).

80. Antin has significant experience investing in, managing and owning long-lived infrastructure assets, including steam heat and district energy assets. (Statement 1, pp. 24-25; *see also* Joint App. Exh. KG-1, pp. 21-22).

81. The Proposed Transaction is not expected to adversely affect VEPI's community presence. (Statement 1, p. 25; *see also* Joint App. Exh. KG-1, p. 22).

82. The contemplated ownership structure is anticipated to require an amendment to the existing Commission-approved Corporate Services Agreement applicable to VEPI, which is necessary to essentially update the parties to that agreement. (Statement 1, p. 25; Joint App. Exh. KG-3; Settlement, Appendix A).

83. VEPI shall file the executed Amended Corporate Services Agreement with the Secretary of the Commission within thirty (30) days of closing.

84. VEPI will continue to comply with the requirements of Chapter 21 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2101 *et seq.* (regarding affiliated interest

agreements). (Statement 1, p. 25; *see also* Joint App. Exh. KG-1, pp. 22-23; *see also* Settlement ¶ 28).

85. VEPI is a corporation in Pennsylvania and is subject to federal, state and local income taxes and will be subject to income tax after closing on the Proposed Transaction. Interest may be deductible for tax purposes, but such deductions are subject to limitations and are not expected to have a material impact on the calculation of income tax liabilities. (Statement 1, p. 26; *see also* Joint App. Exh. KG-1, p. 23).

86. Antin, AIP, and VEPI will have experts on staff to ensure that they comply with applicable laws and regulations regarding corporate structure and transparency. As a long-term investor, Antin values an increased focus on ESG matters. Antin is committed under its Responsible Investment Policy 2019 to seeking appropriate disclosure on ESG issues by the entities in which it invests. In addition, Antin has an industry-recognized reputation as a value-added manager and reliable partner and values the establishment and maintenance of trusting relationships with all stakeholders. Consistent with this reputation, accountability is one of the four pillars underpinning Antin's investment philosophy and management culture. (Statement 1, p. 26; *see also* Joint App. Exh. KG-1, pp. 23-24).

87. Antin and the Antin Funds are financially sound. Antin has a world-wide investor base characterized by long-term, blue-chip institutional investors. They are also fully capable of providing VEPI the capital and support necessary to maintain and enhance the level of service and customer satisfaction provided by VEPI. (Statement 1, pp. 26-27; *see generally* Statement 2 (REVISED)).

IV. THE SETTLEMENT

The essential terms of the Settlement are found in Part III, Paragraphs 20-36. In Part IV, Paragraphs 37-40, the Joint Petitioners identify public benefits expected to result from approval of the Settlement. Additionally, the conditions of the Settlement are specified in Part

V, Paragraphs 41-47. Parts III through V of the Settlement, Paragraphs 20-47 are set forth fully below.

III. TERMS AND CONDITIONS

20. The Settlement Parties agree that the Commission should find and determine that the Proposed Transaction, as conditioned by this Settlement, is in the public interest. The Settlement Parties further agree that the Commission should grant all authority and approvals necessary to lawfully effect the Proposed Transaction, as conditioned by this Settlement, as described below.

21. VEPI agrees not to file a tariff supplement prior to April 1, 2021, which would constitute a rate increase under Section 1308(d) of the Public Utility Code. If there is any change in federal, state or local law or regulation or Commission order resulting in a change in fundamental regulatory policy materially affecting VEPI's costs, revenue or rates, this agreement shall not prevent VEPI from filing a tariff supplement or supplements limited to a direct response to such particular change or changes.

22. Conditioned upon the Commission's adoption of the terms of this Joint Petition for Settlement without modification, the Commission shall issue certificates of public convenience evidencing approval of the indirect change in control of VEPI by reason of sale to AIP of 100% of the stock of TNAI, which holds and will continue to hold 100% of the stock of VEPI.

23. TNAI and AIP and their parent companies will continue to maintain reasonable accounting controls to govern any transactions by VEPI with affiliates and that any charges are consistent with Commission requirements.

24. As established by Pennsylvania law, any lender of any debt of VEPI or its parent companies or assign thereof shall be subject to the full authority and jurisdiction of the Pennsylvania Public Utility Code in the event that the lender (or their assign) asserts any right of ownership, operation or control over the collateralized assets or operations of VEPI.

25. When the obligations related to the Transaction remain outstanding, VEPI shall promptly submit to I&E copies of any quarterly compliance certificates that its owners will be providing to their lenders as a requirement of any debt that will be secured by VEPI, so as to report any material communications with the

lenders concerning individual debt facilities or securities issued in connection with the Transaction, including but not limited to communications regarding financial covenants.

26. The proposed amended Corporate Services Agreement in the form attached as Joint Applicants' Exhibit KG-3 and filed at Docket No. G-2019-3013959 shall be approved by the Commission as an affiliated interest agreement pursuant to 66 Pa.C.S. §§2101 *et seq.*²

27. The Securities Certificate Registration contemplated in Joint Applicants St. 2 and filed at Docket No. S-2019-3013938 shall be approved by the Commission pursuant to 66 Pa.C.S. §§ 1901 *et seq.*

28. VEPI agrees to seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code.

29. VEPI commits that no equity or debt issued to finance goodwill will be included in ratemaking capital structure of VEPI. Any goodwill resulting from this transaction on the balance sheet of any of the Joint Applicants shall be excluded from VEPI's ratemaking capital structure.

30. VEPI will not claim in any future rate proceedings any acquisition costs to complete the acquisition. Such costs shall be borne by TNAI or its shareholders. All acquisition costs recorded on TNAI's books shall be tracked to facilitate verification that none of the costs are being directly or indirectly included in cost of service for VEPI.

31. Any termination fees incurred if the acquisition is not consummated shall be borne by the shareholders of the selling and buying companies and will not be recovered from VEPI ratepayers.

32. AIP and TNAI commit that no Transition costs (incremental costs incurred to facilitate integration of companies) shall be included in VEPI's cost of service in any rate case.

33. AIP and TNAI will track and account for Transition costs in sufficient detail to permit parties to review and verify no such costs have been included in cost of service for VEPI.

² Within 30 days of closing, VEPI will file the executed CSA with the Secretary.

34. AIP will ensure that TNAI's executive operational management possess significant steam utility experience, will ensure changes to leadership do not present public safety, reliability, or customer service risks, and will develop succession plans to ensure that any replacements are qualified and knowledgeable.

35. AIP and TNAI commit to maintain at least the current staffing level for the Philadelphia steam operations, including VEPI, for the next two years, subject to temporary vacancies caused by terminations for willful misconduct, voluntary departures or retirements.

36. AIP, through TNAI, commits to invest an average of \$10 million per year for the 5 years following closing on the Proposed Transaction in capital expenditures to TNAI's Philadelphia operations, including VEPI, which is regulated by the Commission, and its assets that are not regulated by the Commission, which include but are not limited to Grays Ferry Cogeneration Partnership, Veolia Energy Efficiency (PA), LLC and Philadelphia United Power Company, LLC.

IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST

37. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See id.* § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

38. The Settlement resolves all issues in the instant proceeding and, if approved, will lessen the time and expense the parties and the Commission must expend on this complex proceeding.

39. The Settlement is consistent with the Commission's policies promoting negotiated settlements. The Settlement Parties after a number of meetings, discussions, both formal and informal discovery and extensive negotiations. The Settlement terms and conditions constitute a carefully developed package representing reasonable negotiated compromises on the issues addressed herein.

Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*see* 52 Pa. Code §§ 5.231, 69.391, 69.401).

40. The Settlement Parties will present their reasons why the Joint Petition for Settlement is in the public interest in their Statements in Support of Settlement, attached hereto as Appendices C through E.

V. PROCEDURAL CONDITIONS OF SETTLEMENT

41. The Joint Petition for Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification.

42. If the ALJ recommends that the Commission approve the Settlement without modification, the Settlement Parties will waive their respect rights to file exceptions and reply exceptions to such Recommended Decision. The Settlement Parties further request that the Commission establish an exceptions period of seven (7) days.

43. If the Commission approves the Settlement without modification, the Settlement Parties waive their respective rights to file or seek rehearing, reconsideration, etc. or file an appeal or otherwise object to or challenge the approved Settlement in any manner or before any court or administrative agency. If the Commission modifies the Joint Petition for Settlement, any Settlement Party may elect to withdraw from the Joint Petition for Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission, and served upon all Parties within five (5) business days after the entry of an Order modifying the Settlement.

44. This Settlement is proposed by the Settlement Parties to this Joint Petition for Settlement to settle and forever resolve all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Settlement Parties reserve their respective procedural rights. The Joint Petition for Settlement is made without any admission against, or prejudice to, any position that any Settlement Party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

45. The Settlement Parties acknowledge that the Joint Petition for Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. The Settlement Parties agree that the Joint Petition for Settlement shall not constitute or be cited as precedent in any other proceeding, except to the extent required to implement the Joint Petition for Settlement.

46. The Settlement Parties agree to support this Joint Petition for Settlement in any Statements in Support, briefs and other filings, including exceptions and replies to exceptions, that they may elect to file in this proceeding.

47. The Joint Petition for Settlement may only be amended by a written document duly agreed to and executed by the Settlement Parties.

V. DISCUSSION

A. Legal Standards

Initially, it is important to note that Commission policy promotes settlements. See 52 Pa.Code § 5.231. Settlements lessen the time and expense that parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. See 52 Pa.Code § 69.401. However, in order to accept a settlement, the Commission must first evaluate whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991).

The public interest is best served by ensuring that the underlying transaction complies with applicable law. Therefore, the discussion turns to the applicable law and evaluation of the transaction.

Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), provides, in pertinent part, that the Commission's prior approval, evidenced by a certificate of public convenience, is required:

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 devise 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.

The Commission issued a Statement of Policy on October 22, 1994, to establish guidance regarding the circumstances under which a transfer of voting interest constitutes a change in de facto control of the utility, which provides, in pertinent part, as follows:

(1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, regardless of the tier.

(2) For purposes of this section, a controlling interest is an interest, held by a person or group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the transaction. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.

52 Pa.Code § 69.901 ("Policy Statement")³. Thus, Commission approval is required for any transaction that creates or eliminates a controlling interest and results in a different entity becoming the largest voting interest in a public utility company. The determination of the

³ A statement of policy is neither a rule nor precedent, but merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications, and a policy statement does not establish a binding norm or obligation. *Department of Environmental Resources v. Rushton Mining Company*, 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991).

interests involved in a transaction considers all tiers of interest in the utility or parent of the utility and, thus, both direct and indirect ownership interests in a utility are considered under the Commission's Policy Statement.

Under Sections 1102 and 1103, applicants must demonstrate that the party to whom the assets and service obligations are being transferred is legally, technically, and financially fit. *Seaboard Tank Lines*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958).

The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa.C.S. § 1103(a). This standard requires the Commission to find that the Proposed Transaction will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The "substantial public interest" standard is satisfied by a preponderance of the evidence standard and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007). Further, the substantial public benefit test does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, at 617-18, 937 A.2d at 1061.

This Transaction requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience. 66 Pa.C.S. § 1102(a)(3). Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable. 66 Pa.C.S. § 1103(a). However, the Commission has refrained from exercising the power to impose conditions when the proposed Transaction provides affirmative public benefits unless the record indicates service deficiencies or infrastructure deterioration to the point of impairing the technical, managerial, or financial fitness of the merging companies. *Joint Application of SBC Communications, Inc. and AT&T*

Corp. Together with its Certificated Pennsylvania Subsidiaries for Approval of Merger, Docket Nos. A-311163F0006, A-310213F0008, A-310258F0005 (Opinion and Order entered October 6, 2005).

In addition to the public benefit test, the Commission also considers the following ten public interest factors when determining whether to grant a certificate of public convenience: (1) capital to be allocated to ongoing operating and maintenance expenses; (2) corporate governance/Sarbanes-Oxley compliance; (3) the expected term of ownership; (4) experience as an owner and an operator of utilities; (5) the community presence; (6) the nature and objectives of the various affiliated relationships involved; (7) the fees paid to and services performed by affiliates; (8) limits on use of leverage and other capital structure protections; (9) transparency on corporate structure issues; and (10) creditworthiness. *See Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania and Utilities, Inc. -- Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket Nos. A-210072F0003, et al., 2006 Pa. PUC LEXIS 88, 252 P.U.R.4th 131 (October 2, 2006). The Transaction here, as modified by the Settlement, must satisfy these ten public interest considerations.

B. Analysis

1) The Settlement is in the Public Interest

The Settlement Parties assert that the Settlement was achieved after a comprehensive investigation of the Joint Applicants' proposals set forth in the Application. The Joint Applicants spent considerable time, both pre- and post-filing, meeting with customers, I&E and OSBA to explain their business plans and how customers would be protected. (Joint Applicants' Statement in Support at 3-4). In addition to providing informal discovery responses, the Joint Applicants responded to formal discovery requests and filed direct testimony. Further, the Joint Petitioners engaged in settlement discussions and negotiations, which ultimately led to the Settlement. (*Id* at 4).

The Settlement reflects a carefully balanced approach to the interests of the respective parties in this proceeding, some of which overlap. Antin has taken a proactive approach through this proceeding, to get to know these customers, hear their potential concerns, and initiate discussions to resolve these concerns, as the new potential owner. There is a healthy respect between this public utility and its customers who comprise some of the major private and public institutions in the City of Philadelphia. (Joint Applicants' Statement in Support at 4). This encompasses VEPI's understanding of the business needs of its customers and the customers' appreciation for how infrastructure improvements benefit all system users. The fact that the Settlement is unopposed, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of these Parties and the active role they have taken in this proceeding and numerous VEPI regulatory filings. (*Id* at 4-5).

Moreover, the Settlement resolves all issues in the instant proceeding and, if approved, will lessen the time and expense the parties and the Commission must expend on this complex proceeding. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*see*, 52 Pa. Code §§ 5.231, 69.391, 69.401).

For these reasons and the more specific reasons set forth below, the undersigned ALJ concludes that the Settlement as a whole is just, reasonable, and in the public interest.

2) Public Benefits of the Proposed Transaction

Veolia Energy Philadelphia, Inc. ("VEPI") owns and operates the district steam system serving portions of Center City Philadelphia and West Philadelphia, Pennsylvania ("Steam System"). Thermal North America, Inc. ("TNAI"), which owns all of the capital stock of VEPI, is owned by Veolia Energy North America Holdings, Inc. ("Veolia").

Veolia and its corporate parents up to and including Veolia Environment are divesting their entire ownership of district energy systems in North America (including VEPI) other than those that are entirely campus situated, to concentrate on their other business lines.

These assets include district energy systems, cogeneration and landfill gas-to-energy plants selling energy products, including steam, hot and chilled water and electricity across ten cities (Grand Rapids, Michigan; Hickory, Wisconsin; Kansas City, Missouri; Oklahoma City, Oklahoma; Tulsa, Oklahoma; Atlanta, Georgia; Baltimore, Maryland; Philadelphia, Pennsylvania; Trenton, New Jersey; and Boston/Cambridge, Massachusetts).

As part of this divestiture, Veolia entered into a Purchase and Sale Agreement dated as of July 31, 2019, (the “Purchase Agreement”), pursuant to which 100% of the shares of capital stock of TNAI will be sold to AIP Project Franklin Bidco, Inc. (“AIP”) (the “Proposed Transaction”). The result of the Proposed Transaction is an indirect change in control of VEPI to AIP, which will be managed by Antin Infrastructure Partners S.A.S (“Antin”), a leading independent private equity firm that invests solely in infrastructure, with a focus on brownfield infrastructure assets across the energy and environment, telecommunication, transport and social sectors.

The Joint Applicants assert that the Proposed Transaction, as conditioned by the Settlement, provides substantial, affirmative public benefits. Specifically, the Proposed Transaction: 1) provides no immediate impact on rates; 2) improves management focus and stability in operational management and personnel; 3) provides a strategic initiative for improvements to VEPI’s operations and service; 4) improves VEPI’s access to capital; 5) optimizes VEPI’s existing infrastructure; and 6) ensures that investments in Grays Ferry cogeneration partnership benefit VEPI without burdening the Company’s ratepayers.

a) No Immediate Impact on Rates

The Proposed Transaction will have no immediate impact on rates as the Proposed Transaction does not require any changes to VEPI’s existing Commission-approved tariffs at this time. Moreover, pursuant to the Settlement, VEPI agrees not to file a tariff supplement prior to April 1, 2021, which would constitute a rate increase under Section 1308(d) of the Public Utility Code. (Settlement at ¶ 21). This commitment by VEPI constitutes an

affirmative benefit because it will lock-in existing rates for customers for an extended period of time.

The Settlement also adds various other protections to ensure that the change in ownership does not adversely impact ratepayers. Specifically, VEPI commits that no equity or debt issued to finance goodwill for this transaction will be included in ratemaking capital structure of VEPI. Any goodwill resulting from this transaction on the balance sheet of any of the Joint Applicants shall be excluded from VEPI's ratemaking capital structure. (Settlement at ¶ 29).

In addition, VEPI will not claim in any future rate proceedings any acquisition costs to complete this acquisition. Such costs shall be borne by TNAI or its shareholders. All acquisition costs for this transaction recorded on TNAI's books shall be tracked to facilitate verification that none of the costs are being directly or indirectly included in cost of service for VEPI. (Settlement at ¶ 30). Furthermore, any termination fees incurred if the acquisition is not consummated shall be borne by the shareholders of the selling and buying companies and will not be recovered from VEPI ratepayers. (Settlement at ¶ 31).

AIP and TNAI also commit that no Transition costs for this transaction (incremental costs incurred to facilitate integration of companies) shall be included in VEPI's cost of service in any rate case. (Settlement at ¶ 32). Lastly, AIP and TNAI will track and account for Transition costs for this transaction in sufficient detail to permit parties to review and verify no such costs have been included in cost of service for VEPI. (Settlement at ¶ 33).

The undersigned ALJ concludes that the combination of the stay-out provision until April 2, 2021 with the protections from acquisition costs is in the public interest as it ensures that the change in ownership does not adversely impact ratepayers.

b) Improvements in Management Focus and Stability in Operational Management and Personnel

Many of the current most-senior members of the Veolia North America, Inc. (“VENA”) management team including, at the time of the execution of the transaction documents, the chief executive officer, the chief operations officer, the general counsel and the head of finance of the group managing VEPI (collectively the “Executive Team”) are expected to transition with the transaction and accept similar roles at TNAI and its subsidiaries. Prior to the transaction, the Executive Team devoted their time and efforts across all of VENA’s activities in North America, not only to TNAI. (Statement No. 1 at 14-15; Joint Applicants Exhibits WD-4 and DT-1. Immediately upon closing of the Proposed Transaction, the Executive Team and many other senior managers from VENA will be dedicated solely to TNAI and its subsidiaries, including a greater focus on VEPI’s operations. The increased focus of the senior management team upon VEPI’s operations constitutes a clear affirmative public benefit. (Joint Applicants’ Statement in Support at 7).

In addition, Antin expects that key TNAI employees, as set forth in Schedule 1.1(e) of the Purchase Agreement, will remain with and continue to work for TNAI and its subsidiaries, including VEPI. The retention of these senior managers and employees demonstrates that Antin’s technical expertise, in owning and operating other district energy assets in Europe and the substantial track record of its employees will supplement the technical expertise that exists at today and will be maintained by retaining current employees, and demonstrates that Antin is technically fit to own and operate VEPI. (Joint Applicants’ Statement in Support at 8; Statement No. 1 at 14-15). Further, AIP and TNAI commit in the Settlement to maintaining current staffing levels for the Philadelphia steam operations, including VEPI, for [at least] the next two years, and to ensuring that operational management possess significant steam utility experience. (Settlement at ¶¶ 34, 35). Upon review of these commitments, the undersigned ALJ concludes that the Proposed Transaction is in the public interest because it will help ensure that VEPI’s customers continue to receive excellent service and interact with the same employees and operational management (or operational management with significant steam utility experience) in the future.

c) Strategic Initiative for Improvements to VEPI's Operations and Service

Antin's management of VEPI will lead to improvements to VEPI's operations and service. Antin's plan for TNAI and VEPI includes a strategy to: (A) optimize and increase efficiency on the existing system; (B) densify the existing network by adding new customers; and (C) investigate further value-enhancing investments to the network. This plan will benefit the public because all aspects of Antin's strategy are underpinned by a central theme of ensuring safe and reliable service for the customers of VEPI. Under Antin's management, implementation of this strategy is expected to increase reliability, increase efficiency, and reduce the carbon footprint of VEPI's customers. (Joint Applicants' Statement in Support at 8; Statement No. 1 at 19-20). The undersigned ALJ concludes that this plan constitutes an affirmative public benefit because of its expected positive impacts upon the service provided to VEPI's customers.

d) Improvements to VEPI's Access to Capital

The undersigned ALJ concludes that another substantial benefit of the Transaction, as modified by the Settlement, is Antin's improvements to VEPI's access to capital. In particular, Antin will provide access to capital for VEPI to ensure safe and reliable service and support projects to upgrade, optimize, and grow the network. (Joint Applicants' Statement in Support at 9; Statement No. 1 at 18). The contemplated financing structure for the Proposed Transaction will include committed credit facilities of \$80 Million to fund future capital investments into TNAI and its subsidiaries, including VEPI, and \$65 Million to be used primarily to issue letters of credit to certain fuel suppliers and gas transportation providers and provide for other working capital requirements. The \$80 Million and \$65 Million credit facilities will be undrawn at closing, but immediately available to fund future capital investments and normal operating expenses. (Joint Applicants' Statement in Support at 9; Statement No. 1 at 20-22; Statement No. 2 (Revised 10/17/019) at 7).

e) Optimizing VEPI's Existing Infrastructure

Antin's strategy includes investigating and implementing various capital projects to optimize and increase efficiency of the entire TNAI portfolio, including VEPI as well as TNAI's other operations in Philadelphia. (Statement No. 1 at 21-22; Statement No. 3 at 9; Joint Applicants Exhibits WD-2 and WD-3 (annotated working list of anticipated capital projects that reflect improvements in system reliability and/or betterments of the district system and breakdown of associated anticipated costs). These proposed capital expenditures represent a more substantial commitment to maintaining, upgrading, and optimizing the regulated assets and non-regulated business units involved in Philadelphia operations, as compared to the status quo. (*Id.*). Specifically, as noted in paragraph 36 of the Settlement, AIP, through TNAI, commits to invest an average of \$10 million per year for the 5 years following closing on the Proposed Transaction in capital expenditures to TNAI's Philadelphia operations, including VEPI, which is regulated by the Commission, and its assets that are not regulated by the Commission, which include but are not limited to Grays Ferry Cogeneration Partnership, Veolia Energy Efficiency (PA), LLC and Philadelphia United Power Company, LLC. By investigating and implementing in certain of these capital projects, the Joint Applicants expect to improve the service provided to VEPI's customers beyond current levels.

f) Investments in Grays Ferry Cogeneration Partnership Will Benefit VEPI without Burdening VEPI's Ratepayers

Another substantial affirmative benefit of the Proposed Transaction will be derived from the Grays Ferry Cogeneration Partnership ("Grays Ferry")— a non-VEPI, non-Commission-regulated entity. (Interrogatory Responses at OSBA-2). Grays Ferry provides a majority of the steam distributed by VEPI and will continue to do so under the existing agreement between VEPI and Grays Ferry that has been approved by the Commission in Orders entered September 12, 1997, and August 28, 1997, at Docket Nos. M-00970932 and G-00970563, respectively. (Statement No. 3 at 5). Investments in Grays Ferry will not be reflected in VEPI's rate base and do not directly impact VEPI's customers, except to the extent that more efficient steam-producing facilities may reduce the cost of steam that flows through the Steam Cost Rate found in VEPI's tariff. (Statement No. 3 at 8-9). Importantly, because these

investments will not be reflected in VEPI's rate base, these investments represent significant capital improvements that will improve the service provided to VEPI's customers and will not be funded by customers through recovery of VEPI's rate base. (Joint Applicants' Statement in Support at 10).

Accordingly, the undersigned ALJ concludes that the Proposed Transaction, as modified by the Settlement, provides substantial public benefits by providing customers with rate stability and guaranteed synergy savings. In addition, its provisions benefit the public by improving VEPI's operations through enhanced access to capital and its commitment to increased infrastructure investment and replacement.

3) The Penn Estates Criteria

In addition to the public benefit test, the Commission also considers the following ten public interest factors when determining whether to grant a certificate of public convenience: (1) capital to be allocated to ongoing operating and maintenance expenses; (2) corporate governance/Sarbanes-Oxley compliance; (3) the expected term of ownership; (4) experience as an owner and an operator of utilities; (5) the community presence; (6) the nature and objectives of the various affiliated relationships involved; (7) the fees paid to and services performed by affiliates; (8) limits on use of leverage and other capital structure protections; (9) transparency on corporate structure issues; and (10) creditworthiness. *See Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania and Utilities, Inc. -- Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket Nos. A-210072F0003, et al., 2006 Pa. PUC LEXIS 88, 252 P.U.R.4th 131 (October 2, 2006). The Transaction here, as modified by the Settlement, must satisfy these ten public interest considerations.

With regard to the first factor, Antin will provide access to capital for VEPI and implement various capital projects to optimize and increase efficiency of the entire TNAI portfolio, including VEPI as well as TNAI's other operations in Philadelphia. (Joint Applicants' Statement in Support at 11; Statement No. 1 at 18-22; Joint Applicants Exhibit KG-1 at 20-21;

Statement No. 2 (Revised 10/17/019) at 7-16; Statement No. 3 at 9-22; Joint Applicants Exhibits WD-2 and WD-3 (annotated working list of anticipated capital projects that reflect improvements in system reliability and/or betterments of the district system and breakdown of associated anticipated costs)). The Joint Applicants assert that the anticipated CapEx spend over the next 5 years is literally double what has been invested in the regulated and non-regulated steam operations in Philadelphia historically. (Joint Applicants Exhibit WD-4). However, less than 18% of those anticipated capital expenditures would even be eligible for base rate treatment at a future time. (Statement 3 at 10). The portion that would be eligible for rate base treatment is entirely in line with historical expenditures for the regulated entity, VEPI.

Further, the Settlement also provides for the registration of a Securities Certificate. (Settlement ¶ 27; Settlement, Appendix B; Statement No. 2 (Revised 10/17/019) at 4-5). On October 30, 2019, the Joint Applicants filed a Securities Certificate Registration with the Commission, pursuant to Section 1901(c) of the Public Utility Code, and requested that the registration of the securities certificate be consolidated with the Acquisition proceeding and that review and approval thereof occur in the same timeframe.⁴ *See* Docket No. S-2019-3013938. Accordingly, Joint Applicants request that the Securities Certificate Registration contemplated in Statement No. 2 and filed at Docket No. S-2019-3013938 be approved by the Commission pursuant to 66 Pa.C.S. §§ 1901 *et seq.*

As described in the Securities Certificate Registration, AIP will obtain certain loan facilities, which are governed by the same debt documents that will facilitate the Proposed Transaction. (Settlement, Appendix B, ¶ 6 (describing and defining each of the “Facilities”). VEPI, as well as all other material subsidiaries of TNAI, are subsidiary guarantors under the Facilities. As such, TNAI’s subsidiaries, including VEPI, will be contingently liable for the repayment of AIP’s obligations in connection with each of the Facilities; however, VEPI will not directly incur debt in connection with the Facilities. (Settlement, Appendix B, ¶ 8).

⁴ In addition, on November 4, 2019, Joint Applications filed a motion to consolidate both the Securities Certificate Registration filing and the Amended Corporate Services Agreement (referenced below) in accordance with Administrative Law Judge Vero’s directive during the October 30, 2019 telephonic settlement conference, which was granted by Order dated November 7, 2019.

The Securities Certificate explains and provides support for the registration thereof and demonstrates that the contemplated Facilities serve a public utility purpose. In addition, the Settlement ensures that the assertion of any right of operation, operation or control over the collateralized assets or operations of VEPI shall be subject to Commission oversight. (Settlement ¶ 24). The Settlement also establishes reporting requirements that will keep I&E informed of any material communications by AIP to the lenders concerning the debt facilities. (Settlement ¶ 25). These provisions provide reasonable and appropriate protections.

With regard to the second factor, Antin maintains a group compliance program centered on formalized policies and procedures overseen by the Chief Compliance Officer. Specific areas covered by the program include a Code of Ethics, anti-money laundering, gifts and corporate hospitality, anti-bribery and corruption, conflicts of interest, personal account trading and political contributions. Antin's compliance program further involves the implementation and maintenance of systems and controls related to identified risks, the oversight of portfolio operations, investments and divestments, asset valuation, capital ratios and investor reporting. (Statement No. 1 at 23:21-24:7; Statement No. 1, Joint Applicants Exhibit KG-1 at 21).

The third factor is the expected term of ownership. Antin and its investors utilize focused long-term, responsible investment strategies that improve the operations, infrastructure and services of portfolio entities over the term of their ownership, so that the condition of portfolio entities ultimately aligns with longer-term ownership. (Statement No. 1 at 24; Joint Applicants Exhibit KG-1 at 21).

With respect to the fourth factor, Antin has substantial, prior experience in owning and operating other district energy assets. Antin's portfolio includes IDEX, an integrated operator of energy infrastructure assets, operating 41 district heating and cooling networks (including the Paris La Defense network), 13 energy-from-waste facilities, and a large portfolio of energy service contracts for a wide variety of counterparties across France. In addition to IDEX, Antin has reviewed many district energy opportunities in North America and Europe and has a strong understanding of the key macro trends impacting the sector, the implicit business risk profile of these assets, and what is required as an owner to successfully operate and

grow them. (Statement No. 1 at 16-17). The Antin team, along with its in-house legal counsel and tax, finance, performance improvement and environmental, social and governance (“ESG”) specialists and broader adviser network, will all work seamlessly to support and supplement VEPI’s management team in order to improve VEPI’s operations, and strive to improve the safety, reliability and quality of VEPI’s service for customers. (Statement No. 1 at 14-17, 24-25; Joint Applicants Exhibit KG-1 at 15-18, 21-22).

With respect to the fifth factor, VEPI’s commitment to community services and activities is not expected to change as a result of the Proposed Transaction. VEPI fully anticipates that it and its assigned employees will continue to support charitable and civic activities similar to those it supported in the past. (Statement No. 1 at 25; Joint Applicants Exhibit KG-1 at 22). Thus, the Joint Applicants have established that a community presence (the fifth factor) will be maintained post-closing. (Joint Applicant Statement in Support at 14).

The sixth factor examines the nature and objectives of the various affiliated relationships involved. The contemplated ownership structure requires an amendment to the existing Commission-approved Corporate Services Agreement applicable to VEPI that was approved by the Commission on April 22, 2005 at Docket Number G-00041077. The amendment is necessary to essentially update the parties to the CSA as a result of the Proposed Transaction. A copy of the contemplated amendment to the Corporate Services Agreement is set forth in Joint Applicants Exhibit KG-3 and a redline version showing the proposed amendments is attached hereto as Joint Applicants Exhibit KG-4. (Statement No. 1 at 25; Joint Applicants Exhibit KG-1 at 22-23).

On October 30, 2019, the Joint Applicants filed the CSA with the Commission, pursuant to Section 2102 of the Public Utility Code, and requested that review and approval of the CSA be consolidated with the Acquisition proceeding.⁵ The CSA filed by the Joint Applicants is the same CSA that was attached to the Joint Applicants’ testimony as Joint Applicants Exhibit KG-3. *See* Docket No. G-2019-3013959. The CSA will not become

⁵ *See, supra*, n.3.

effective until after the closing of the indirect transfer of control of VEPI and is substantially similar to the corporate services agreement that was approved by the Commission on April 22, 2005 at Docket Number G-00041077. The Settlement provides for the approval of the CSA⁶. (Settlement at ¶ 26). Accordingly, Joint Applicants request approval for the CSA in the form attached as Joint Applicants' Exhibit KG-3 and filed at Docket No. G-2019-3013959.

The seventh factor to be examined is the fees paid and service performed by affiliates. Under AIP's ownership and Antin's management, VEPI will continue to comply with the requirements of Chapter 21 of the Code, 66 Pa. C.S. § 2101 *et seq.* (regarding affiliated interest agreements). (Statement No. 1, Joint Applicants Exhibit KG-1 at 23).

The eighth factor examines the limits on the use of leverage and other capital structure protections. VEPI is a corporation in Pennsylvania and is subject to federal, state and local income taxes and will be subject to income tax after closing on the Proposed Transaction. Interest may be deductible for tax purposes but such deductions are subject to limitations and are not expected to have a material impact on the calculation of income tax liabilities. (Statement No. 1 at 25-26; Joint Applicants Exhibit KG-1 at 23).

The Settlement satisfies the ninth factor which requires transparency on corporate structure issues. The Proposed Transaction will not negatively affect transparency on corporate structure. Antin, AIP, and VEPI will have experts on staff to ensure that they comply with applicable laws and regulations regarding corporate structure and transparency. As a long-term investor, Antin values an increased focus on ESG matters. Antin is committed under its Responsible Investment Policy 2019 to seeking appropriate disclosure on ESG issues by the entities in which it invests. In addition, Antin has an industry-recognized reputation as a value-added manager and reliable partner and values the establishment and maintenance of trusting relationships with all stakeholders. Consistent with this reputation, accountability is one of the four pillars underpinning Antin's investment philosophy and management culture. (Statement No. 1 at 26; Joint Applicants Exhibit KG-1 at 23).

⁶ Within 30 days of closing, VEPI will file the executed CSA with the Secretary.

The tenth and final factor is creditworthiness. Antin and Antin Funds are financially sound. (See discussion section B(4)(a) below). Antin will continue to support VEPI to enable the Company to continue providing a high level of service to its customers, and supporting improvements to service where appropriate. (Joint Applicants’ Statement in Support at 16). In addition, Antin has a diversified investment base that comprises blue-chip institutions such as pension funds, sovereign wealth funds, insurance companies, asset managers and banks. (See generally, Statement No. 2 (Revised 10/17/019); Joint Applicants Exhibit KG-1 at 13-14, 24).

After reviewing the record evidence, the undersigned ALJ concludes that the Joint Applicants have proved that the Proposed Transaction, as conditioned by the Settlement, is in the public interest in light of the factors set forth by the Commission for consideration in *Penn Estates* for investment fund control of Pennsylvania public utilities.

4) AIP Project Franklin Bidco, Inc., as Managed by Antin, is Financially, Legally and Technically Fit

a) Financial Fitness

In their Direct Testimony, the Joint Applicants present that Antin Funds, as managed by Antin, are financially fit. (See generally, Statement No. 2 (Revised 10/17/019); Statement No. 2 at 7-8, 8-9; Joint Applicants Exhibit KG-1 at 13-14).

Antin Fund investors (including, without limitation, pension funds and other institutional investors) are interested in stable returns over the long-term, and Antin generally maintains ownership in portfolio companies for an extended period of time. Antin has a world-wide investor base characterized by long-term, blue-chip institutional investors. In addition, Antin is an investment manager and management company that has substantial experience in investing in and managing long-lived infrastructure assets. (Statement 2 (REVISED) at 7-8).

In July 2019, Antin achieved an “A+” rating – the highest possible score – in the “Infrastructure” module of the UN PRI Assessment Report, as well as an “A” rating in the

“Strategy and Governance” module, which demonstrates Antin’s strong commitment to responsible investment. (Statement 2 (REVISED) at 8). In 2018, Antin directed €631 million in capital expenditures spend across its current portfolio. Since the firm’s inception, Antin has overseen approximately €4 billion in capital expenditures spend across 23 investments. (Statement 2 (REVISED) at 8)⁷.

VEPI’s operations will be funded on a day-to-day basis primarily with its own operating cashflows. AIP (or successor entity) will be the Borrower under the credit facilities. Funding for VEPI will be available from these committed portfolio-level facilities via permitted intracompany loans, for example to undertake investment projects and working capital requirements and credit support obligations, if necessary. VEPI will benefit from the credit strengths of the entire TNAI portfolio, as evident in the interest rate of the facilities. (Statement 2 (REVISED) at 9).

No transaction costs associated with the Proposed Transaction will be included in any future rate filing by VEPI. (Statement 2 (REVISED) at 9; *see also* Settlement ¶¶ 30, 32). AIP and TNAI will track and account for Transition costs for the Proposed Transaction in sufficient detail to permit parties to review and verify no such costs have been included in cost of service for VEPI. (Settlement ¶ 33). Any termination fees incurred if the acquisition is not consummated shall be borne by the shareholders of the selling and buying companies and will not be recovered from VEPI ratepayers. (Settlement ¶ 31).

The 5-year capital spending plan for Philadelphia operations as a whole—including the regulated assets of VEPI and the unregulated business units of GFCP, PUPCO, VEEPA, and VENA—is projected to be approximately \$10 million annually. These expenditures are projected to be made pursuant to Antin’s ownership and management of VEPI, and these projections would represent a more substantial commitment to maintaining, upgrading, and optimizing the regulated assets and unregulated business units involved in Philadelphia operations, as compared to the status quo. (Statement 2 (REVISED) at 10).

⁷ The Joint Applicants’ Direct Testimony of Douglas Tully provided these figures in euros without supplying converted dollar amounts.

In its Protest, the OSBA raised concerns regarding the Antin Funds ongoing fundraising activities, and whether it had raised sufficient funding to fund the purchase price of the Proposed Transaction. As explained in the Joint Applicants Direct Testimony, the Antin Funds have raised sufficient funding to finance the entire purchase price. However, the goal of the Antin Funds is to create a diversified portfolio consisting of an estimated 8-12 investments in total, inclusive of the Proposed Transaction. The Proposed Transaction constitutes the first of these investments made by Fund IV. The additional fundraising for Fund IV will be only for these additional investments and no additional fundraising is necessary to finance the Proposed Transaction. (Statement No. 2 at 6-7). As such, the Joint Applicants have fully addressed OSBA's concerns regarding Antin Fund's financing of the Proposed Transaction.

b) Legal Fitness

No party challenged Antin's legal fitness. In their Direct Testimony, the Joint Applicants pointed out that Antin is in substantial compliance with all applicable and material federal and state laws, and has never been prosecuted, indicted or investigated for criminal activity in this country or in any other country. (Statement 1, Joint Applicants Exhibit KG-1 at 14).

Antin and its subsidiaries have engaged numerous outside law firms to handle various specialized matters, including on-going compliance with government regulations, rules and orders. Additionally, Antin has access to an internal team of experts and legal counsel responsible for ensuring compliance with all applicable laws. As such Antin is found to be legally fit to own and operate VEPI through its management of the Antin Funds.

c) Technical Fitness

No party challenged Antin's technical fitness or asserted that the operational management of VEPI would be inadequate. Pursuant to the Proposed Transaction, VEPI will remain technically fit to own and operate its public utility assets in the public interest. Antin expects that there will not be any material changes in the management and employees of VEPI as

a result of the Proposed Transaction. (Statement No. 1 at 14; Joint Applicants Exhibit KG-1 at 15-18). In addition, Antin expects that key TNAI employees, as set forth in Schedule 1.1(e) of the Purchase Agreement, will remain with and continue to work for TNAI and its subsidiaries, including VEPI. Antin has offered increased compensation packages to retain and incentivize these employees. *Id.*

VEPI will continue to have the same technical expertise to provide service in the public interest. VEPI has a long record of providing adequate, efficient, safe and reasonable service and facilities to its customers at just and reasonable rates. *Id.*

The current senior management team and employees of VENA (who are expected to accept similar roles at TNAI and its subsidiaries) currently devote their time and efforts across all of VENA's activities in North America, not only to TNAI. *Id.* Immediately upon closing of the Proposed Transaction, the senior management team will be dedicated solely to TNAI and its subsidiaries, including a greater focus on VEPI's operations. The retention of these senior managers and employees demonstrates that Antin's technical expertise will supplement the technical expertise that exists today at VENA and demonstrates that Antin is technically fit to own and operate VEPI. (Statement No. 1 at 15; Joint Applicants Exhibit KG-1 at 15-18).

In addition to VEPI, the Joint Applicant's Direct Testimony states that Antin itself is technically fit. Founded in 2007, Antin has over eleven years of history owning and operating infrastructure assets across multiple sectors and geographies. (Statement No. 1 at 15). Antin has made 23 investments to-date, including five energy and environment assets. (Statement No. 1 at 15-16; Joint Applicants Exhibit KG-1 at 15-18).

Antin's portfolio includes IDEX, an integrated operator of energy infrastructure assets, operating 41 district heating and cooling networks (including the Paris La Defense network), 13 energy from-waste facilities, and a large portfolio of energy service contracts for a wide variety of counterparties across France. (Statement No. 1 at 16-17; Joint Applicants Exhibit KG-1 at 15-18). In addition to IDEX, Antin has reviewed many district energy opportunities in North America and Europe and has a strong understanding of the key macro

trends impacting the sector, the implicit business risk profile of these assets, and what is required as an owner to successfully operate and grow them. *Id.* According to the Joint Applicant's Direct Testimony, Antin can draw upon its experience and knowledge with district energy, to contribute its own knowledge and expertise with the knowledge and expertise that will remain in place at VEPI. (Statement No. 1 at 16-17; Joint Applicants Exhibit KG-1 at 15-18). As such, the undersigned ALJ concludes that Antin is technically fit to own and operate VEPI through its management of the Antin Funds.

VI. CONCLUSION

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See*, 52 Pa.Code § 5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the parties' positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). In their supporting statements, the Signatory Parties conclude, after extensive discovery, exchanging and reviewing written testimony and numerous exhibits, and conducting lengthy settlement discussions, that this Settlement resolves those contested issues of interest to them in this case. The Signatory Parties declare this Settlement is in the public interest and it should be approved for the reasons expressed in the foregoing sections of this decision.

Accordingly, the undersigned ALJ concludes that the Proposed Transaction, as conditioned by the Settlement, meets the requirements for Commission approval because (i) it will provide substantial affirmative public benefits, (ii) it satisfies the *Penn Estates* factors, and

(iii) AIP, as ultimately managed by Antin, is financially, legally, and technically fit. Therefore, this decision recommends that the Commission approve the Joint Settlement.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 1102, 1103.

2. The Joint Applicants bear the burden of proving that they are entitled to the relief sought in this application proceeding. 66 Pa. C.S. § 332(a).

3. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

5. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008).

6. Under Sections 1102 and 1103, the Joint Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally and financially fit. *Seaboard Tank Lines*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).

7. The Joint Applicants have demonstrated by a preponderance of the evidence that the Antin Funds, as managed by Antin, are technically, legally and financially fit to

assume control of the VEPI. *Seaboard Tank Lines*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958).

8. Under Section 1102(a)(3) of the Code, 66 Pa. C.S. § 1102(a)(3), the Commission's prior approval, evidenced by a certificate of public convenience, is required:

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.

9. The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a).

10. The Joint Applicants have demonstrated that the Proposed Transaction, as conditioned by the Settlement, will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

11. The Joint Applicants have satisfied the "affirmative public benefits" standard set forth in *City of York* by a preponderance of the evidence. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

12. The Joint Applicants have satisfied the following ten additional public interest factors, the so-called "*Penn Estates* criteria": (a) capital to be allocated to ongoing operating and maintenance expenses; (b) corporate governance/Sarbanes-Oxley compliance; (c) expected term of ownership; (d) experience as an owner and operator of utilities; (e) community presence; (f) nature and objectives of the various affiliated relationships involved; (g) fees paid to and services performed by affiliates; (h) limits on use of leverage and other capital structure

protections; (i) transparency on corporate structure issues; and (j) creditworthiness. *Application of Penn Estates Utilities, Inc.*, Docket Nos. A-210072F0003, *et al.* (Order entered Oct. 2, 2006).

13. Section 1901 of the Public Utility Code states that “every public utility, before it shall issue or assume securities, shall file with the commission and receive from it, notice of registration of a document to be known as a securities certificate.” 66 Pa. C.S. § 1901(a).

14. The Securities Certificate attached as Appendix B to the Settlement and filed at Docket No. S-2019-3013938 on October 30, 2019, constitutes an “assumption of securities,” as that term is defined in Section 1901(c) of the Public Utility Code, 66 Pa. C.S. §§ 1901(c), because the subsidiaries of TNAI, including VEPI, will act as guarantors for the repayment for the securities described therein.

15. The Joint Applicants have demonstrated that the amount, the character, and the purpose of the assumption of securities by TNAI and its subsidiaries, including VEPI, contemplated by the Securities Certificate, is necessary or proper for the present and probable future capital needs of VEPI. 66 Pa. C.S. § 1903(a). Therefore, the Securities Certificate should be registered consistent with Chapter 19 of the Public Utility Code, 66 Pa. C.S. §§ 1901, *et seq.*, and any additional approvals that may be necessary under Chapter 21 of the Public Utility Code, 66 Pa. C.S. §§ 2101 *et seq.*, to evidence its registration should be granted.

16. Under Chapter 21 of the Public Utility Code, the Amended Corporate Services Agreement attached as Appendix A to the Settlement and filed at Docket No. G-2019-3013959 on October 30, 2019 constitutes an affiliated interest agreement. 66 Pa. C.S. §§ 2101 *et seq.*

17. The Joint Applicants have demonstrated that the Amended Corporate Services Agreement “is reasonable and consistent with the public interest.” 66 Pa. C.S. § 2101(b). Therefore, the Amended Corporate Services Agreement should be approved. *See id.*

18. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that 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. *See* 52 Pa. Code § 69.401.

19. The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, 2013 Pa. PUC LEXIS 789, 310 P.U.R.4th 58 (Opinion and Order entered Dec. 5, 2013). In order to approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Windstream Pennsylvania, LLC*, Docket No. M-2012-2227108, 2012 Pa. PUC LEXIS 1535 (Opinion and Order entered Sept. 27, 2012); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assoc.*, Docket No. R-881147, 74 Pa. PUC 767 (Opinion entered July 22, 1991).

20. Based on the record developed in this proceeding and a thorough review of the positions of the parties, the Proposed Transaction, as modified by the Settlement, is in the public interest.

VIII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Application of Veolia Energy Philadelphia, Inc., Thermal North America, Inc., Veolia Energy North America Holdings, Inc. and AIP Project Franklin Bidco, Inc. for Approval of Indirect Transfer of Control of Veolia Energy Philadelphia, Inc. from Veolia

Energy North America Holdings, Inc. to AIP Project Franklin Bidco., Inc., be approved subject to the terms and conditions of the Joint Petition for Approval of Settlement.

2. That the Joint Petition for Approval of Settlement entered into and filed by the Joint Applicants, the Bureau of Investigation and Enforcement and the Office of Small Business Advocate, including all terms and conditions contained therein, be approved and adopted consistent with the discussion herein.

3. That AIP Project Franklin Bidco., Inc. may purchase all of the stock of Thermal North America, Inc., as contemplated in Purchase and Sale Agreement, the Application and associated Exhibits, and the Joint Petition for Approval of Settlement, and that a certificate of public convenience be issued evidencing such right.

4. That the Amended Corporate Services Agreement attached to the Joint Petition for Approval of Settlement as Appendix A, and filed at Docket No. G-2019-3013959, be approved under Sections 2101 *et seq.* of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 2101 *et seq.*

5. That Veolia Energy Philadelphia, Inc. shall file the executed Amended Corporate Services Agreement with the Secretary of the Commission within thirty (30) days of closing.

6. That the Securities Certificate attached to the Joint Petition for Approval of Settlement as Appendix B, and filed by Veolia Energy Philadelphia, Inc. at Docket No. S-2019-3013938, under Sections 1901 *et seq.* of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 1901 *et seq.* is hereby registered with and approved by the Commission, and any additional approvals that may be necessary under Chapter 21 of the Public Utility Code, 66 Pa. C.S. §§ 2101 *et seq.*, to evidence its registration be granted.

7. That any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the transaction contemplated in this Application be granted.

8. That all protests and petitions to intervene filed in this proceeding have been resolved pursuant to the terms of the Joint Petition for Settlement and are hereby dismissed.

9. That the records at Docket Nos. A-2019-3012241, G-2019-3013959, and S-2019-3013938 are hereby marked closed.

Date: November 25, 2019

/s/
Eranda Vero
Administrative Law Judge