**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**HARRISBURG, PENNSYLVANIA 17105-3265**

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| **Joint Application of T.W. Phillips Gas and Oil Company, TWP INC., and LDC Holdings II LLC for approval of a change of control** |  | **Public Meeting held May 19, 2011** |
|  | **2210326-ALJ** |
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|  | **Docket No. A-2010-2210326** |
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**STATEMENT OF COMMISSIONER WAYNE E. GARDNER**

Before us today is the Joint Application of T.W. Phillips Gas and Oil Company (T.W. Phillips), TWP INC., and LDC Holdings II LLC, which is an indirect subsidiary of SteelRiver Infrastructure Fund North America LP. The application seeks the approval of a transfer by sale of 100% of the outstanding common stock of T.W. Phillips to LDC Holdings II. Prior to litigation, the parties involved filed a settlement which resolved all the issues.

 In evaluating any settlement, the Commission must find that it is in the public interest. On its face, the proposed settlement contains many provisions which appear to support this criteria such as the exclusion of transaction and transition costs from rate base, the exclusion of any acquisition premium from rate base, a rate case stay out until January 2014, base rate credits subject to certain conditions, and a detailed ring-fencing policy. Most importantly, the settlement contains a plant investment commitment which requires minimum cumulative capital investments in plant of $36 million for years 2012 through 2014, with a focus on improving safety and reliability with the removal of bare steel and aging infrastructure.

 While I am pleased with the many commitments made, I am concerned that some of these commitments may not support each other and in fact, make them difficult to realize. For example, in evaluating the current finances of T.W. Phillips, I question how the company will meet the plant investment commitment given its commitment for a rate case stay out until January 2014 and other commitments which require capital. The parties aver that the capital needed to make such investments will be provided by internally generated funds, additional debt issuances by T.W. Phillips and contributions of capital by Holdings II, yet the settlement is devoid of any specific financing plan.

 Further, there a couple items in the ring-fencing policy which concern me. One example is the fact that T.W. Phillips’ dividends issued to Holdings II are limited to 100% of retained earnings. I think it more reasonable to limit dividends to 100% of net income, given that retained earnings can include earnings from previous periods. All in all, however, I believe the settlement is in the public interest, and for the foregoing reasons, I am concurring with the majority today but in result only.

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**DATE WAYNE E. GARDNER, COMMISSIONER**