



August 14, 2023

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a) and 1329, for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland and Summit, in Butler County, Pennsylvania; Docket Nos. A-2022-3037047 et al.

Joint Petition for Approval of Unanimous Settlement of All Issues

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Joint Petition for Approval of Unanimous Settlement of All Issues. Copies are being served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me if you have any question or concern.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosure

cc: Administrative Law Judge Marta Guhl
Shalea Delvillar
Per Certificate of Service
Elizabeth Rose Triscari, Esq.
Erin Fure, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :
Company under Sections 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. § § 1102(a) :
and 1329, approval of (1) the transfer, by sale, to :
Pennsylvania-American Water Company, of : Docket No. A-2022-3037047 *et al.*
substantially all of the assets, properties and rights :
related to the wastewater collection and treatment :
system owned by the Butler Area Sewer Authority, (2) :
the rights of Pennsylvania-American Water Company to :
begin to offer or furnish wastewater service to the public :
in the City of Butler, and portions of the Borough of East :
Butler, and portions of the Townships of Butler, Center, :
Connoquenessing, Oakland, and Summit, in Butler :
County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of August, 2023 served a true copy of the foregoing **Joint Petition for Approval of Unanimous Settlement of All Issues** upon the parties, listed below and in the manner described below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

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Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl

In re: Application of Pennsylvania-American Water :
Company under Sections 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) :
and 1329, for approval of (1) the transfer, by sale, to :
Pennsylvania-American Water Company, of substantially : Docket Nos. A-2022-3037047
all of the assets, properties and rights related to the : *et al.*
wastewater collection and treatment system owned by the :
Butler Area Sewer Authority, (2) the rights of :
Pennsylvania-American Water Company to begin to offer :
or furnish wastewater service to the public in the City of :
Butler, portions of the Borough of East Butler, and portions :
of the Townships of Butler, Center, Connoquenessing, :
Oakland, Penn and Summit, in Butler County, Pennsylvania:

**JOINT PETITION FOR APPROVAL OF
UNANIMOUS SETTLEMENT OF ALL ISSUES**

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Butler Area Sewer Authority (“BASA”), the Township of Butler (the “Township”) and the City of Butler (the “City”) (singularly, a “Petitioner” and, collectively, the “Joint Petitioners”) hereby join in this

“Joint Petition for Approval of Unanimous Settlement of All Issues” (“Settlement”)¹ and respectfully request that the Honorable Administrative Law Judge Marta Guhl (the “ALJ”) recommend approval of, and the Commission approve, this Settlement without modification.

In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

1. PAWC and the Butler Area Sewer Authority entered into an Asset Purchase Agreement (the “APA”) dated as of October 11, 2022, by which PAWC will purchase the wastewater system currently owned and operated by BASA (the “System”). On February 14, 2023, PAWC filed the instant Application (as amended, the “Application”), asking the Commission to approve the acquisition pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 507, 1102 and 1329. An Amended Application was filed on February 17, 2023.

2. Steven C. Gray, Esq. and Nakea S. Hurdle, Esq. filed Notices of Appearance on February 17, 2023 and March 2, 2023, respectively, on behalf of the Office of Small Business Advocate (“OSBA”). Ms. Hurdle subsequently filed a Withdrawal of Appearance on June 16, 2023.

¹ The only other active parties to this proceeding are Cleveland-Cliffs Steel (“Cleveland-Cliffs”), Center Township (“Center”) and Summit Township (“Summit”), which do not oppose the Settlement.

3. On February 22, 2023, Erika L. McLain, Esq. filed a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement ("I&E"). On May 26, 2023, Ms. McLain withdrew her appearance, and Carrie B. Wright, Esq., filed her Notice of Appearance.

4. On April 12, 2023, Erin L. Gannon, Esq., Harrison W. Breitman, Esq., and Mackenzie C. Battle, Esq. filed Notices of Appearance on behalf of the Office of Consumer Advocate ("OCA"). Ms. Battle withdrew her appearance on July 20, 2023.

5. On March 7, 2023, staff from the Commission's Bureau of Technical Utility Services ("TUS") notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by March 21, 2023). On March 13, 2023, PAWC filed the information requested by TUS. On March 16, 2023, TUS staff notified PAWC that certain information remained missing. PAWC filed the requested information on March 27, 2023.

6. On April 6, 2023, TUS staff notified PAWC that it deemed PAWC's filing deficient because it included a *pro forma* tariff that did not include BASA's Industrial Pretreatment Program ("IPP") pollutant loading rates together with an alternate *pro forma* tariff that included BASA's IPP pollutant loading rates. On April 6, 2023, PAWC responded by filing a Second Amended Appendix A-12, which reflected the changes directed by TUS. PAWC asked that the Commission conditionally accept the Application and provide a due date for protests and notices of intervention.

7. On April 10, 2023, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain service and notice requirements.

The April 10, 2023 Secretarial Letter, however, did not set a due date for protests and notices of intervention. By letter dated April 10, 2023, PAWC asked the Commission to establish such a due date. On April 12, 2023, a Secretarial Letter was issued setting a protest period end date of July 10, 2023. On May 22, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of April 10, 2023.

8. On May 23, 2023, the Commission notified PAWC that it had finally accepted the Application. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* on June 10, 2023, with a protest deadline of July 10, 2023. The Commission issued a Call-in Telephonic Pre-Hearing Conference Notice on May 24, 2023, but that Pre-Hearing Conference was subsequently cancelled. Another Call-in Telephonic Pre-Hearing Conference Notice was issued on June 1, 2023 scheduling a Pre-Hearing Conference for July 11, 2023. The ALJ issued her Prehearing Conference Order for Telephonic Conference on June 27, 2023.

9. John J. Dolan filed a Petition to Intervene on May 20, 2023, which was granted. Cynthia L. Spigelmyer filed a Protest on May 22, 2023. On May 26, 2023, BASA, the City, and the Township (collectively, the “BASA Parties”) filed Petitions to Intervene. Those Petitions were granted. On June 9, 2023, PAWC filed a Petition for Leave to File Supplemental Direct Testimony, which was granted by the ALJ’s Interim Order #1, issued on July 3, 2023. William Rissmiller filed a Protest on June 15, 2023. On June 30, 2023, Center and Summit filed Protests. On July 3, 2023, Cleveland-Cliffs filed a Petition to Intervene, which was subsequently granted. On July 5, 2023, PAWC filed Supplemental Direct Testimony pursuant to Interim Order #1.

10. The Prehearing Conference was held on July 11, 2023. On July 12, 2023, Direct Testimony was filed by the OCA, I&E, the OSBA, Center, and Summit. PAWC filed a Petition for Protective Order on July 14, which was granted by the ALJ by Order issued July 19, 2023.

11. On July 14, 2023, the BASA Parties filed Motions to Strike portions of the Direct Testimony of Center and Summit. Center and Summit filed Answers on July 21, 2023. At the evidentiary hearing on July 28, 2023, the BASA Parties withdrew these motions.

12. Center, Summit, PAWC, and the BASA Parties filed Rebuttal Testimony on July 18, 2023. Telephonic public input hearings were held on the evenings of July 18 and July 19, 2023. On July 20, 2023, the BASA Parties filed a Motion to Strike the Rebuttal Testimony of Center and Summit. On July 26, 2023, Center and Summit filed an Answer to this Motion. At the evidentiary hearing on July 28, 2023, the BASA Parties withdrew this motion.

13. PAWC, the BASA Parties, the OCA, the OSBA, Center and Summit filed Surrebuttal Testimony on July 21, 2023.

14. At the telephonic evidentiary hearing on July 28, 2023, PAWC, the BASA Parties, the OCA, the OSBA, and I&E informed the ALJ that they had reached a settlement. The hearing was delayed to give Center, Summit, and Cleveland-Cliffs an opportunity to review the settlement. When the hearing convened, counsel for Center and Summit indicated that those townships would not oppose the settlement and, at the next meeting of the township supervisors, counsel expected to receive authority to join the settlement. By e-mails of August 3 and August 10, 2023, counsel for Center and Summit notified the ALJ that Center and Summit would not oppose the Settlement. On July 31, 2023, Cleveland-Cliffs advised the ALJ that it would not oppose the Settlement.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Approval of Application

15. The Joint Petitioners agree that the Commission should approve PAWC's acquisition of the wastewater system assets ("System") currently owned by BASA and PAWC's right to begin to offer, render, furnish, or supply wastewater services in the areas served by the System, as well as any other necessary approvals or certificates for the transactions, subject to approval of all of the following conditions and without modification.

B. Tariff

16. The *pro forma* tariff supplement attached to this Settlement, including all rates, miscellaneous fees and charges, rules and regulations regarding conditions of PAWC's wastewater service, shall be permitted to become effective immediately upon closing of the transaction ("Closing").

17. In the first base rate proceeding that includes the BASA wastewater system assets, PAWC will propose to charge cost-of-service based rates for wastewater service to all entities it serves in the System, including but not limited to the VA Hospital, as limited by Paragraph 19(e) below.

C. Rates

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

19. In the first base rate case that includes System assets:

a. PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of BASA's systems.

b. PAWC will provide a separate cost of service study for the BASA system.

c. PAWC will not propose an increase in BASA's base rates if the rates would become effective before the later of: (a) the first anniversary of Closing or (b) January 1, 2025.

d. In PAWC's first base rate case that includes the BASA system assets, if PAWC proposes a different effective date for new rates for BASA customers beyond the effective date of new rates for other customers, PAWC agrees to calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. The Joint Petitioners agree that all rights are reserved with respect to the issue of delayed effective dates of rates in subsequent proceedings. This term should not be construed to limit parties' ability to make recommendations in any future PAWC base rate case to bring customers in systems with delayed effective dates to an appropriate cost of service as though they have paid the tariffed rates without any delay.

e. PAWC will propose to move the System to 1.4x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.

f. PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

g. OCA, I&E, and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Parties expressly recognize the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding

anything to the contrary contained in this Paragraph 19, may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

h. The rate at Closing for System residential wastewater customers with an average usage of 3,212 gallons per month is approximately \$45.50.

i. The current rate for PAWC residential Rate Zone 1 wastewater customers with an average usage of 3,212 gallons per month is approximately \$106.00

D. Industrial Pretreatment Program (“IPP”) Fees

20. The Joint Petitioners acknowledge that IPP fees are miscellaneous fees that may be applied to acquired customers, rather than existing rates that must be adopted by the acquiring utility pursuant to Section 1329(d)(v). IPP fees are intended to cover costs associated with a comprehensive enforcement program to ensure that industrial wastewater is properly pretreated in order to protect the integrity of the System and the environment, and to ensure that the costs are allocated to the cost causers and not other ratepayers. Without imposition of the IPP fees, industrial customers would have no meaningful incentive to pretreat their wastewater. The *pro forma* tariff supplement attached to this Settlement incorporates BASA industrial customers into PAWC’s existing IPP tariff and does not exempt any BASA industrial customers from IPP fees. IPP tariffed fees will be adjusted in the context of future PAWC base rate proceedings. Impacted industrial customers were given notice of the possibility of the imposition of PAWC’s tariffed IPP fees by direct mail notice from PAWC, dated May 10, 2023, and were afforded an opportunity to participate in this proceeding. The imposition of IPP fees is supported by substantial evidence of record.

E. Fair Market Value for Ratemaking Rate Base Purposes

21. Joint Petitioners agree that pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$228,000,000 for ratemaking rate base purposes for the acquired System.

22. The Joint Petitioners agree that PAWC may record the acquisition at the net value of the assets, consistent with generally accepted accounting principles.

23. PAWC and BASA have executed a First Amendment to the Asset Purchase Agreement (“First Amendment”) to reflect a purchase price of \$230,000,000. A copy of the First Amendment is attached. **Attachment 10.** PAWC requests approval of the First Amendment pursuant to 66 Pa. C.S. § 507.

F. Distribution System Improvement Charge

24. PAWC will not include System-related investments in its distribution system improvement charge (“DSIC”) until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC’s filing of an amended wastewater Long-Term Infrastructure Improvement Plan (“Amended LTIIIP”) including the System, which does not re-prioritize other existing commitments in other service areas, (ii) the Commission’s approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC’s filing of a compliance tariff supplement which incorporates the System and all other systems included in the amended LTIIIP into PAWC’s DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIIP.

G. Claims for Allowance for Funds Used During Construction and Deferred Depreciation

25. The Joint Petitioners acknowledge that the Application includes a request that (i) PAWC be permitted to accrue Allowance for Funds Used During Construction (“AFUDC”) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case which includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners’ assent to this term should not be construed to operate as their preapproval of PAWC’s requests.

H. Transaction and Closing Costs

26. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the acquisition of the System. The Joint Petitioners agree that they will not contest these requests in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners’ assent to this term should not be construed to operate as their preapproval of PAWC’s request.

27. The inclusion of outside legal fees, if any, in PAWC’s transaction and closing costs under the Asset Purchase Agreement shall be separately identified in PAWC’s next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

28. Any claim by PAWC to recover transaction and closing costs associated with the transaction will not include costs incurred by BASA.

I. Approval of Section 507 Agreements²

29. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approval for:

a. the Asset Purchase Agreement By and Between Butler Area Sewer Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of October 11, 2022, and the attached First Amendment thereto;

b. Water Pollution Control Agreement for Central Butler County between City of Butler, Township of Butler, Township of Center, Township of Summit, Borough of East Butler, Deshon Area Sanitary Disposal and Sewer Authority, East Butler Borough Sewer Authority, East Butler Borough Sewer Authority, Meridian Water and Sewer Authority, Municipal Water and Sewer Authority of Center Township and Butler Area Sewer Authority dated as of February 20, 1974;

c. Service Agreement between The Township of Oakland and Butler Area Sewer Authority for the Service Area along Route 38 dated March 7, 1994;

d. Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Cupps Road Service Area dated April 3, 1995; and

² The OCA does not join in this paragraph but does not oppose PAWC's request.

e. Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Winterwood Drive Service Area dated December 14, 2005.

J. Cost of Service Studies

30. In the first base rate case that includes the System's assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System.

31. In the first base rate case that includes the System's assets, PAWC will also provide a separate cost of service study for the System consistent with typically filed ratemaking exhibits including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods. In the first PAWC base rate case that includes the BASA system, when PAWC provides customer notice, it shall provide notice to customers in the BASA system consistent with the rates agreed to be proposed in Paragraph 19(e), above.

K. Low Income Program Outreach and Welcome Letter

32. Within the first billing cycle following Closing, PAWC shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC also agrees to automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled

in PAWC's water low income programs, in PAWC's wastewater low-income programs following Closing.

33. The welcome letter will be sent within the first 30 days of Closing and will also include information about payment options (including low-income programs, eligibility requirements, PAWC contact information), free places to pay, and in-person bill payment locations reasonably proximate to the areas served by the BASA system.

34. PAWC will work with community-based organizations with offices local to the areas served by the System for purposes of providing information and enrolling customers in PAWC's customer-assistance programs. PAWC will include this information in the welcome letter referenced in the previous paragraph.

L. Hardship Fund

35. Effective on and after Closing, PAWC will increase eligibility for hardship grants to all PAWC customers including existing customers and newly acquired customers from the BASA System from 200% to 250% of Federal Poverty Income Guidelines ("FPIG"). All parties reserve the right to re-evaluate the appropriate eligibility for hardship grants in a future base rate case filed after five (5) years following Closing.

36. In addition to existing commitments and any commitments made in a future base rate case, PAWC will contribute \$700,000 annually to the Company's hardship grant program for the five (5) years following Closing (\$3,500,000 total). These contributions shall not be recovered in rates. All unspent funds at the end of the program year will be rolled over and added to the budget for the hardship grant program in the following year(s).

M. Easements

37. PAWC and BASA should be required to (1) identify all missing easements including public rights-of-way and other property rights; (2) take any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at Closing; and (3) BASA shall bear all costs and expenses for obtaining and conveying the missing easements and other property rights.

38. Additionally, if for any circumstances beyond BASA's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the Closing, PAWC and BASA may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established as set forth in the APA in which BASA will fund an easement escrow fund in the amount of \$2,000 for each missing easement.

N. Commercial Customer Payment Arrangements

39. At Closing, PAWC will implement a formal program for payment arrangements for commercial customers, including eligibility and payment terms.

O. Other Necessary Approvals

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

P. Standard Settlement Conditions

41. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the

Settlement, any Petitioner may elect to withdraw from the 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 Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

42. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceedings. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

43. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Petitioner's position with respect to any issues raised in these proceedings. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

44. The Joint Petitioners have prepared Proposed Findings of Fact (Attachment 6), Proposed Conclusions of Law (Attachment 7), and Proposed Ordering Paragraphs (Attachment 8). The Joint Petitioners further agree that the facts agreed to in the Proposed Findings of Fact are sufficient to find that the Settlement is in the public interest.

45. Each Petitioner shall prepare a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest.

46. If the ALJ recommends approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Small Business Advocate, the Butler Area Sewer Authority, the Township of Butler, and the City of Butler, by their respective counsel, respectfully request that:

(a) The Honorable Administrative Law Judge Marta Guhl recommend approval of, and the Commission approve, this Joint Petition for Unanimous Settlement of All Issues as submitted, including all terms and conditions thereof, without modification.

(b) The Application filed by PAWC in this matter on February 14, 2023, as amended, and as further amended by the Settlement, be approved.

(c) The Commission issue Certificates of Public Convenience under 66 Pa. C.S. § 1102(a) and 1103(a) evidencing Commission approval of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system (the "System") owned by BASA to PAWC, and (ii) the right of PAWC to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection and treatment system owned by BASA.

(d) The Commission permit PAWC to issue compliance tariff supplements, consistent with the *pro forma* tariff supplement attached to this Settlement, including all rates, rules and regulations regarding conditions of PAWC's wastewater service as revised herein, to become effective immediately upon Closing. The attached *pro forma* tariff supplement incorporates BASA industrial customers into PAWC's existing IPP tariff and does not exempt any BASA industrial customers from IPP fees. IPP tariffed fees will be adjusted in the context of future PAWC base rate proceedings.

(e) The Commission direct PAWC, in the first base rate proceeding that includes the BASA System assets, to charge cost-of-service based rates for wastewater service to all entities it serves in the System, including but not limited to the Veterans Administration Hospital, as limited by Paragraph (f)(5) below.

(f) The Commission direct that, in the first base rate proceeding that includes the BASA System assets:

(1) PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of BASA's System, in accordance with Paragraph (m), below.

(2) PAWC will provide a separate cost of service study for the BASA System, in accordance with Paragraph (n), below.

(3) PAWC will not propose an increase in BASA's rates if the rates would become effective before the later of: (i) the first anniversary of Closing or (ii) January 1, 2025.

(4) In PAWC's first base rate case that includes the BASA system assets, if PAWC proposes a different effective date for new rates for BASA customers beyond the effective date of new rates for other customers, PAWC will calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. The Joint Petitioners reserve all rights with respect to the issue of delayed effective dates of rates in subsequent proceedings. This term should not be construed to limit the Joint Petitioners' ability to make recommendations in any future PAWC base rate case to bring customers in systems with delayed effective dates to an appropriate cost of service as though they have paid the tariffed rates without any delay.

(5) PAWC will propose to move the System to 1.4x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.

(6) PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

(7) OCA, I&E, and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Joint Petitioners expressly recognize the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph (f), may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

(8) The rate at closing for System residential wastewater customers with an average usage of 3,212 gallons per month is approximately \$45.50.

(9) The current rate for PAWC residential Rate Zone 1 wastewater customers with an average usage of 3,212 gallons per month is approximately \$106.00.

(g) The Commission permit PAWC to use \$228,000,000 for ratemaking rate base purposes for the acquired System, pursuant to 66 Pa. C.S. § 1329(c).

(h) The Commission permit PAWC to record the acquisition at the net value of the assets (\$228,000,000), pursuant to 66 Pa. C.S. § 1702 .

(i) The Commission not permit PAWC to include System-related investments in its distribution system improvement charge (“DSIC”) until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC’s filing of an amended wastewater Long-Term Infrastructure Improvement Plan (“Amended LTIIIP”) including the System, which does not re-prioritize other existing commitments in other service areas, (ii) the Commission’s approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC’s filing of a compliance tariff supplement which incorporates the System and all other systems included in the amended LTIIIP into PAWC’s DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIIP.

(j) The Commission permit PAWC to: (i) accrue Allowance for Funds Used During Construction (“AFUDC”) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case

which includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's requests.

(k) The Commission permit PAWC to claim transaction and closing costs associated with the acquisition of the System in its first base rate case that includes the System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

(1) The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Asset Purchase Agreement shall be separately identified in PAWC's next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

(2) Any claim by PAWC to recover transaction and closing costs associated with the Transaction will not include costs incurred by BASA.

(l) The Commission, pursuant to 66 Pa. C.S. § 507, issue a Certificate of Filing or approvals for the following agreements between PAWC and a municipal corporation:

(1) The Asset Purchase Agreement By and Among Butler Area Sewer Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of October 11, 2022, and the First Amendment thereto;

(2) The Water Pollution Control Agreement for Central Butler County between City of Butler, Township of Butler, Township of Center, Township of Summit, Borough of East Butler, Deshon Area Sanitary Disposal and Sewer Authority, East Butler Borough Sewer

Authority, East Butler Borough Sewer Authority, Meridian Water and Sewer Authority, Municipal Water and Sewer Authority of Center Township and Butler Area Sewer Authority dated as of February 20, 1974;

(3) The Service Agreement between the Township of Oakland and Butler Area Sewer Authority for the Service Area along Route 38 dated March 7, 1994; and

(4) The Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Cupps Road Service Area dated April 3, 1995.

(5) Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Winterwood Drive Service Area dated December 14, 2005.

(m) The Commission direct PAWC, in the first base rate case that includes the System's assets, to submit a cost of service study that removes all costs and revenues associated with the operation of the System.

(n) The Commission also direct PAWC, in the first base rate case that includes the System's assets, to provide a separate cost of service study for the System consistent with typically filed ratemaking exhibits including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

(o) The Commission direct that, when PAWC provides customer notice in its first base rate case that includes the BASA system, PAWC shall provide notice to customers in the BASA system consistent with the rates agreed to be proposed in Ordering Paragraph (f)(5), above.

(p) The Commission direct PAWC, within the first billing cycle following Closing, to include a bill insert to System customers regarding its low income programs and include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC will also automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC's water low income programs, in PAWC's wastewater low-income programs following Closing.

(q) The Commission direct PAWC to send the welcome letter within the first 30 days of closing and to also include information about payment options (including low-income programs, eligibility requirements, and PAWC contact information), free places to pay, and in-person bill payment locations reasonably proximate to the areas served by the BASA system.

(r) The Commission direct PAWC to work with community-based organizations with offices local to the areas served by the System for purposes of providing information and enrolling customers in PAWC's customer-assistance programs. PAWC will include this information in the welcome letter referenced in the previous paragraph.

(s) Effective on and after closing, PAWC will increase eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines ("FPIG") for all existing PAWC customers and all newly acquired customers from the BASA System. All parties reserve the right to re-evaluate the appropriate eligibility for hardship grants in a future base rate case filed after five (5) years following Closing.

(t) The Commission direct PAWC to contribute \$700,000 annually to the Company's hardship grant program for the five (5) years following Closing (\$3,500,000 total), in addition to existing commitments and any commitments made in a future base rate case. These contributions shall not be recovered in rates. All unspent funds at the end of the program year will be rolled over and added to the budget for the hardship grant program in the following year(s).

(u) The Commission require PAWC and BASA to: (1) identify all missing easements including public rights-of-way and other property rights; (2) take any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) BASA shall bear all costs and expenses for obtaining and conveying the missing easements and other property rights.

(v) The Commission permit PAWC and BASA, at their discretion, to close the transaction without the transfer of missing easements and other property rights, if for any circumstances beyond BASA's control, it is unable to transfer all missing easements (including public rights-of-way and other property rights) before or at the closing of the transaction, provided that an escrow account be established as set forth in the APA in which BASA will fund an easement escrow fund in the amount of \$2,000 for each missing easement.

(w) The Commission direct PAWC, at Closing, to implement a formal program for payment arrangements for commercial customers, including eligibility and payment terms.

(x) The Commission issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in the Application in a lawful manner.

[Signatures appear on next page.]



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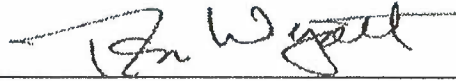
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1. Statement in Support of Pennsylvania-American Water Company
2. Statement in Support of Butler Area Sewer Authority, City of Butler, Township of Butler
3. Statement in Support of the Bureau of Investigation and Enforcement
4. Statement in Support of the Office of Small Business Advocate
5. Statement in Support of the Office of Consumer Advocate.
6. Proposed Findings of Fact
7. Proposed Conclusions of Law
8. Proposed Ordering Paragraphs
9. *Pro Forma* Tariff
10. First Amendment to the APA

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Attachment 1

Statement in Support of

Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl

In re: Application of Pennsylvania-American Water :
Company under Sections 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) :
and 1329, for approval of (1) the transfer, by sale, to :
Pennsylvania-American Water Company, of substantially : Docket Nos. A-2022-3037047
all of the assets, properties and rights related to the : *et al.*
wastewater collection and treatment system owned by the :
Butler Area Sewer Authority, (2) the rights of :
Pennsylvania-American Water Company to begin to offer :
or furnish wastewater service to the public in the City of :
Butler, portions of the Borough of East Butler, and portions :
of the Townships of Butler, Center, Connoquenessing, :
Oakland, Penn and Summit, in Butler County, Pennsylvania :

**STATEMENT OF PENNSYLVANIA-AMERICAN WATER COMPANY
IN SUPPORT OF THE JOINT PETITION FOR APPROVAL
OF UNANIMOUS SETTLEMENT OF ALL ISSUES**

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August 14, 2023

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Pennsylvania-American Water Company (“PAWC” or the “Company”) files this Statement in Support of the Joint Petition for Approval of Unanimous Settlement of All Issues (“Settlement”) entered into by: PAWC; the Butler Area Sewer Authority (“BASA”); the City of Butler (the “City”); the Township of Butler (the “Township”); the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”); the Office of Small Business Advocate (“OSBA”); and the Office of Consumer Advocate (“OCA”) (singularly, a “Petitioner” and collectively, the “Joint Petitioners”).¹ PAWC respectfully requests that the Honorable Administrative Law Judge Marta Guhl (the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

The ALJ’s Briefing Order requires each Statement in Support to contain a summary of the settlement terms. The terms of the Settlement are summarized in the Joint Petition for Settlement, Paragraphs 15 – 46. To limit duplication, this Statement in Support incorporates those paragraphs by reference as if fully set forth herein.

The Briefing Order also requires each Statement in Support to contain reasons why the Settlement should be approved. Section II of this Statement in Support contains the reasons why PAWC believes the Settlement should be approved.

In addition, the Briefing Order requires each Statement in Support to contain a conclusion with requested relief. The Joint Petitioners’ Request for Relief is set forth in Section IV of the Settlement. To limit duplication, that Section is incorporated by reference as if fully set forth herein.

¹ The only other active parties to the case, Cleveland-Cliffs Steel (“Cleveland Cliffs”), Center Township (“Center”) and Summit Township (“Summit”) do not oppose the Settlement.

Finally, the Briefing Order permits the Joint Petitioners to file Joint Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. Joint Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs can be found at Attachments 6-8 of the Settlement.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Introduction

The instant Settlement pertains to the application (the “Application”) filed by PAWC pursuant to Sections 507, 1102(a), 1103 and 1329 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 507, 1102(a), 1103 and 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system (the “System”) owned and operated by BASA (the “Transaction”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

The Joint Petitioners have agreed to a settlement of all issues in this proceeding. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that 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* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

As an initial matter, the fact that the Settlement resolves all issues raised by all parties is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329.

It should be noted that the Joint Petitioners, their counsel and experts have considerable experience in acquisition proceedings. Their knowledge, experience and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the issues. The Joint Petitioners, their counsel and experts fully explored the issues in this case.

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. The Settlement is in the best interest of BASA and its existing customers, PAWC and its existing customers, and the public-at-large. It is in the public interest and, accordingly, should be approved.

B. Approval of the Application

1. PAWC is Legally, Technically and Financially Fit

The Settlement asks that the Commission approve the Application. Settlement ¶ 15. Pursuant to Section 1103 of the Code, 66 Pa. C.S. § 1103, PAWC must demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 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). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness.

South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its technical, legal and financial fitness.

With respect to technical fitness, PAWC is the Commonwealth's largest water and wastewater provider. As of January 31, 2023, PAWC furnished wastewater service to approximately 97,305 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of January 31, 2023, PAWC furnished water service to approximately 679,777 customers in Pennsylvania. PAWC Amended St. No. 1 pp. 15-16. PAWC furnishes service to more than 417 communities in 37 counties, serving a combined population in excess of 2,300,000. PAWC Amended St. No. 1 p. 15.

PAWC employs about 1,150 professionals with expertise in all areas of water and wastewater utility operations. In addition, as a subsidiary of American Water Works Company, Inc. ("American Water"), PAWC has available to it additional highly-trained professionals with expertise in specialized areas. PAWC Amended St. No. 2 p. 19. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. PAWC Amended St. No. 2 p. 11.

PAWC is experienced in water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. In fact, PAWC is often called upon by the Commission to step in and resolve troubled water and wastewater systems. PAWC has demonstrated its ability to improve troubled municipal wastewater systems following acquisition through improving operational efficiencies, fostering a

proactive environmental compliance culture in the local workforce, and investing capital to replace and renew assets. PAWC St. No. 1, pp. 22-23; PAWC St. No. 2 pp. 19-20.

With respect to legal fitness, PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC Amended St. 2 p. 21. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide wastewater service to System customers. PAWC Amended St. No. 1 p. 21.

With respect to financial fitness, PAWC had total assets of approximately \$5.9 billion as of December 31, 2021. In addition, PAWC had a net income of approximately \$228.7 million for the 12 months ending December 31, 2021. PAWC Amended St. No. 1 p. 22. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and equity investments. PAWC St. No. 3 p. 4.

2. The Transaction Affirmatively Promotes the Service, Accommodation, Convenience or Safety of the Public in Some Substantial Way

In addition to demonstrating fitness, PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the System 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). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. The affirmative public benefit test is a "net benefits assessment." Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Cicero v. Pa. Pub. Util Comm'n*, 910 C.D. 2022 (Pa. Cmwlth. 2023). When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group

or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

For the reasons discussed below, the Transaction, as modified by the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large; BASA, the City and the Township; surrounding municipalities; the existing customers of BASA; and the existing customers of PAWC.

a. The Transaction Benefits the Public-at-Large

The Transaction benefits members of the public-at-large (all residents of the Commonwealth, whether or not they are customers of BASA or PAWC) in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a). In part, the Transaction accomplishes this objective because PAWC will provide both water and wastewater services to BASA's customers. PAWC Amended St. No. 1 p. 20. In addition, the Transaction benefits members of the public-at-large by promoting the Legislature's policy goals when it enacted Section 1329, which sought to facilitate the acquisition of municipal and authority-owned wastewater systems by investor-owned utilities for the benefit of the municipal corporation and its residents. PAWC St. No. 1 p. 21.

The Transaction also benefits the public-at-large due to its environmental benefits. The Environmental Rights Amendment, PA. CONST. art. I, § 27, states: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." The Commission must consider environmental impacts when adjudicating cases. *Township of Marple v. Pa. Pub. Util Comm'n*, 319 C.D. 2022 (Pa. Cmwlth. 2023).

The System has a long history of environmental challenges. Most of these environmental challenges relate to sewer system overflows ("SSOs") caused by the high level of inflow and

infiltration (“I/I”) from defects and aging infrastructure in the collection system. PAWC St. No. 2 p. 13. BASA is currently subject to a 2019 Corrective Action Plan (“CAP”) with the Pennsylvania Department of Environmental Protection (“PADEP”). The approved 2019 CAP requires sewer rehabilitation repairs in two subareas of the collection system, the replacement of six sewage pump stations, and a restriction on new sewer connections in these areas. PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

All work on the 2019 CAP was to be completed by June 30, 2024. BASA submitted a revised 2019 CAP to PADEP on October 13, 2020 requesting an extension of the completion date to December 31, 2025. PADEP approved this revised 2019 CAP and deadline on February 22, 2021. BASA submitted a second revision to the 2019 CAP on May 18, 2022, and amended the proposed revision on May 31, 2022. This second revision requested a further extension of the completion deadline to August 31, 2026. PADEP approved this second revision to the 2019 CAP and completion deadline on June 2, 2022. BASA is currently in the design and permitting phases of the projects required under the approved 2019 CAP. PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

By implementing the CAP, BASA uncovered several shortcomings in the System. As a result, it has become evident that a comprehensive overhaul of the aging System is necessary. For example, since 2018, the Authority has conducted 2,601 inspections to address illegal connections and I&I through its Realty Transfer Inspection Program. Nearly forty percent (40%) of these inspections failed and required a replacement lateral. BASA St. No. 1 pp. 6-7.

The BASA System continues to experience SSOs and hydraulic overloading in portions of its collection system. From 2018 through November 10, 2022, the System received forty-six notices of violations from PADEP for illegal SSO discharges. Each of these SSO discharges

resulted in raw sewage being discharged into the environment where it can come into contact with humans, pets, and wildlife, or be detrimental to aquatic life. Raw sewage can contain bacteria, viruses and parasites that are a direct threat to human health and the environment. PAWC St. No. 2 p. 14; PAWC St. No. 2-R p. 6; BASA St. No. 1 p. 4.

If the Transaction is approved, PAWC will assume BASA's responsibilities under the 2019 CAP to rebuild the existing infrastructure in order to eliminate the persistent SSOs. PAWC St. No. 2 p. 16. PAWC has developed a five-year capital plan totaling \$75.8 million that includes the 2019 CAP projects, *as well as* numerous other projects that will: replace the System's aging infrastructure, replace targeted areas of the collection system components known to have unacceptably high I/I and/or SSOs, make process improvements that will yield environmental, safety and security benefits to customers and employees, and improve the efficiency of operations. PAWC St. No. 2 p. 17.

From 2018 through 2021, PAWC has made capital investments in its wastewater systems averaging \$762 per year per customer connection. This is over three times the level of investment made by BASA in its System for the same period, averaging \$226 per year per customer connection. PAWC St. 2 p. 20. BASA's current rates appear to be so low that the System cannot invest in reasonable and prudent maintenance and upkeep. PAWC St. 1-R p. 11. "The five-year capital improvement plan proposed by PAWC includes \$74.8 million in fixed asset replacements, or approximately \$15 million per year. This needed level of investment is *35 times* the level of investment that BASA has averaged in the previous three years." PAWC St. No. 2-R pp. 3-4 (emphasis in original).

In addition, if the Transaction is approved, PAWC will use commercially reasonable efforts to develop a pilot program for a customer-owned damaged wastewater service lateral

replacement program, and then petition the Commission for approval of that pilot program. PAWC St. No. 1 p. 14.

If the Transaction is not approved, BASA would need to significantly increase customers' rates. Even with a significant rate increase, BASA lacks the necessary skillset, expertise, and project experience to complete the large scale, complex projects that are needed to bring the System into compliance. BASA St. No. 1 p. 7. Even if BASA could complete the 2019 CAP on its own, BASA probably would only be able to deliver the projects required by the 2019 CAP due to their large investment of time, resources, and funding, leaving little left over to address the numerous other issues in the System. PAWC St. No. 2 p. 11. BASA has demonstrated a reactive approach to environmental compliance, rather than proactively addressing the underlying problem of lack of regular infrastructure renewal and replacement. PAWC Amended St. No. 2 p. 17.

It appears that BASA's rates have been kept so low that the system could not invest in reasonable and prudent maintenance and upkeep. PAWC St. No. 1-R p. 11. One witness at the public input hearing testified that, in his opinion, the System has been neglected for many years. He testified that rates have remained low at the expense of the maintenance of the System. Transcript ("Tr.") 107.

The record demonstrates that PAWC is better equipped than BASA to address the System's existing environmental challenges and to prevent future challenges as environmental regulations become increasingly strict in the future. The Transaction therefore yields benefits for the public-at-large that differ substantially from the benefits already being provided by the existing system operator.

The record does not demonstrate any significant environmental or other detriments from the Transaction to the public-at-large. Consequently, the net benefits of the Transaction outweigh the net detriments to this stakeholder group.

b. The Transaction Benefits BASA, the City and the Township

The Transaction also benefits BASA (the seller of the System), as well as the City and the Township (the incorporators of BASA). The Transaction accomplishes the will of the municipal officials who worked hard over many months to consider the advantages and disadvantages of BASA's continued ownership of the System. Throughout the sale process, the interests and concerns of the residents and all customers of the System served as the primary focus for officials from BASA, the Township and the City. Those officials determined that the substantial costs that will be necessary in the near future to keep the System up and running efficiently were too great for BASA to handle and will be better addressed by a larger, more experienced public utility. Township St. No. 1 pp. 4-5; City St. No. 1 p. 5. The public was kept apprised of developments throughout the sale process by a thorough public awareness campaign. Township St. No. 1 pp. 6-7; City St. p. 7.

One purpose of selling the System was to engage an industry expert to improve the aging System while maintaining reliable wastewater service and managing the inevitable rate increases due to the necessary investment. City St. No. 1 p. 8; Township St. No 1 p. 9. Another purpose was to provide an opportunity for local economic development as a result of an improved and compliant System. Township St. No. 1 p. 8; City St. No. 1 p. 8. The Transaction achieves these objectives by selling the System to the largest water/wastewater utility in the Commonwealth, who has made a commitment to improve the System and bring it into compliance with environmental laws and regulations.

The primary benefit for BASA is that BASA will use the proceeds of the sale to pay off its existing debt (approximately \$40.6 million), saving thousands of dollars in interest payments. BASA St. No. 1 p. 7. BASA then will be dissolved. City St. No. 1 p. 9.

The Transaction has numerous benefits for the City and the Township. These include:

- The City and the Township will receive the balance of the proceeds of the sale. This influx of cash will give the City and the Township financial flexibility in future years without increasing residents' taxes, and will provide a security blanket to weather emergencies. City St. No. 1 p. 9; Township St. No. 1 p. 9. The infusion of capital from the sale will have a transformative impact on the local economy. Tr. 153.
- The System will become subject to tax. Center St. No. 1 p. 6; PAWC St. No. 1-R p. 10.
- An improved and compliant System will promote economic development, Township St. No. 1 p. 8; City St. No. 1 p. 8, Tr. 181, 189-190, further increasing tax revenues.
- Since PAWC will provide both water and wastewater services, projects can be coordinated, reducing the number of street openings and lessening inconvenience to the public. Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.
- PAWC will retain all active personnel currently employed by BASA in operating the System with substantially similar retirement and health benefits. This was a critical requirement for the Township and the City. City St. No. 1 p. 13; Township St. No. 1 p. 12.
- PAWC will maintain an operations center at BASA's current headquarters for at least ten years, consisting of various managers, customer service representatives, and operators. Township St. No. 1 p. 12; City St. No. 1 p. 13.
- PAWC will award contracts for development projects to local Butler County-based contractors, to the extent it is feasible and at a reasonable cost to ratepayers. Township St. No. 1 p. 12; City St. No. 1 p. 10.

The record does not demonstrate that the Transaction will have any significant detriments for BASA, the City or the Township. Balancing the benefits and the detriments of the Transaction to BASA, the City and the Township, it is clear that the benefits outweigh the detriments for this stakeholder group. While the residents of the City and the Township who are customers of BASA may see an increase in their wastewater rates, a portion of those increases would have occurred even absent the Transaction. To the extent the Transaction causes additional rate increases, those increases are offset by the other benefits that they will experience

as a result of the Transaction, including the mitigation of potential tax increases. *See* Section II.B.2.d, below.

c. The Transaction Benefits Other Municipalities in the Butler Area

Municipalities surrounding the City and the Township, such as Center and Summit, will not receive any of the proceeds from the sale of the System. Nevertheless, they will benefit from the Transaction.² BASA owns property in surrounding municipalities, including Center and Summit. PAWC St. No. 2-R p. 7. Because the Transaction will make the System subject to tax, tax revenues will increase for these municipalities.

Additionally, having an improved and compliant System will promote economic development in other municipalities in the Butler area. Township St. No. 1 p. 8; City St. No. 1 p. 8. Improved economic development will directly benefit the residents of these communities. It will also have indirect benefits (such as increasing local tax revenues, allowing local governments to keep taxes stable in the future). For example, a portion of the System in Center is currently subject to restrictions on connections. Although BASA received approval for a limited number of taps in this area, if there had been plans for significant new growth and development in these areas of the township, those plans might have been thwarted by the lack of capacity and poor condition of the sewer assets. PAWC St. No. 2-SR p. 3. By improving the condition of the System, the restrictions on connections can be removed and economic growth in the area can improve.

² Center and Summit initially opposed the Transaction, in part, because they would not receive any of the proceeds of the sale. *See, e.g.,* Summit St. No. 1 p. 5. The BASA Parties moved to strike this testimony on the grounds that the Commission lacks jurisdiction over this claim. This motion was withdrawn when the parties reached a unanimous settlement. Center and Summit also initially opposed the Transaction, in part, due to concerns about the rate impacts on BASA's customers in Center and Summit. To the extent that residents of Center and Summit are customers of BASA, the benefits/detriments of the Transaction are discussed in Section II.B.2.d., below.

The record thus demonstrates that the Transaction, as modified by the Settlement, has benefits for other municipalities in the Butler area (such as Center and Summit). The record does not demonstrate that the Transaction, as modified by the Settlement, will have any significant detrimental impacts on other municipalities in the Butler area. Consequently, the record demonstrates that the Transaction's benefits outweigh the costs for this stakeholder group.

d. The Benefits of the Transaction Outweigh the Detriments for BASA's Existing Customers

The Transaction, as modified by the Settlement, has benefits for BASA's existing customers that outweigh the detriments. First, BASA's customers enjoy the same benefits from the Transaction as do other members of the public-at-large. These benefits include, but are not limited to, promoting the right of all Pennsylvanians to a clean environment. As discussed above, the benefits of the Transaction outweigh the detriments for the public-at-large.

Second, if the Transaction is approved, BASA's customers will enjoy many of the same benefits from the Settlement as will other PAWC customers. These benefits are discussed further in Section II.B.2.e., below, but they include:

- PAWC will use a rate base of \$228,000,000 for the System, rather than the initial purchase price of \$231,500,000 or the average of the two fair market value appraisals (\$239,303,632). Settlement ¶ 21.
- PAWC will increase the eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines. Settlement ¶ 35.
- PAWC will contribute \$700,000 annually to the Company's hardship grant program for five years following closing on the Transaction ("Closing"), for a total contribution of \$3,500,000. This contribution will be in addition to any existing commitments, and any commitments made in a future base rate case. Settlement ¶ 36.
- PAWC will implement a formal program for payment arrangements for commercial customers. Settlement ¶ 39.
- The Transaction will cause economies of scale because PAWC's size allows it to (a) procure pipe at 37% below the market index for assets of that type, (b) purchase light duty vehicles at about 13% below dealer invoice for new vehicles; (c) acquire chemicals at approximately 20% below the current market index; and (d) purchase natural gas at about 10% below the market price. In addition, since PAWC is the

water provider in the area, it can use equipment (such as backhoes, emergency generators, and portable pumps) for both water and wastewater operations, whereas Butler had to rent that equipment for its System, as necessary. Tr. 299-300.

Significantly, these benefits of the Transaction, as modified by the Settlement, could not be achieved through litigation. The Commission is a creation of the General Assembly, and only has the authority that the Legislature has given it, explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). The Commission could not order these results in the absence of a settlement. For example, the Commission could not require PAWC to use a rate base for the System that is less than both the purchase price and the average of the two fair market value appraisals. By way of further example, the Commission cannot direct a public utility to make involuntary, nonrecoverable charitable contributions (such as PAWC's hardship fund contributions). *See generally* 66 Pa. C.S. § 319(a)(10) ("Code of ethics") (prohibiting Administrative Law Judges and Commissioners from soliciting charitable contributions).

Third, BASA's existing customers will receive unique benefits from the Transaction, as modified by the Settlement, that are not enjoyed by other stakeholder groups. These include:

- BASA does not currently have any customer assistance programs, but PAWC does. PAWC St. No. 2-SR p. 8. If the Transaction, as modified by the Settlement, is approved, many BASA customers who cannot currently receive assistance will be eligible to do so.
- Following Closing, PAWC will automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC's water low-income programs, in PAWC's wastewater low-income programs. Settlement ¶ 32.
- In the first base rate case in which the System is included, PAWC will propose to move the System to metered rates, which are more fair than flat rates, because customers are billed based on their actual usage. PAWC St. No. 3 p. 7.
- After Closing, most BASA customers will have one provider for both water and wastewater service. This means most BASA customers will receive one bill for both water and wastewater services, providing customers with a more efficient payment process for both services. It is easier for customers to call for service if they only need to call one company for all of their water and sewer needs. It also means less disruption from road cuts and other projects, because PAWC can coordinate water and wastewater projects. Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.

- Wastewater service to BASA’s existing customers will become subject to the regulatory oversight of the Commission. PAWC will be required to provide adequate, efficient, safe and reliable service at just and reasonable rates. BASA has no such regulatory oversight. If a BASA customer is dissatisfied with the service or rates of BASA, the customer currently must seek redress in a court of common pleas. PAWC St. No. 1 p. 18; PAWC St. No. 2 p. 39; PAWC St. No. 2-SR p. 6.
- The OCA, the OSBA, and I&E could serve as ombudsmen for BASA customers. BASA customers currently have no such ombudsman. PAWC St. No. 2 pp. 40-41.
- After Closing, PAWC will conduct outreach activities to existing BASA customers to inform them of PAWC’s customer-assistance programs. Settlement ¶¶ 32-34.

In this litigation, several parties argued that the rate impact of the Transaction would outweigh all the benefits of the Transaction for BASA’s existing customers because, using the methodology mandated by the *Steelton Order*,³ PAWC estimated that rates for BASA customers could increase by 94.4% in the first base rate case in which the System is included in PAWC’s rate base. PAWC St. No. 3 pp. 13-14. Some witnesses made the same argument at the public input hearings. *See, e.g.*, Tr. 75. PAWC disagrees with this conclusion upon weighing the benefits and detriments of the Transaction. Nevertheless, the Settlement clearly tips the scales in favor of approving the Transaction – as demonstrated by the fact that the Settlement is unanimous.

If the Transaction, as modified by the Settlement is approved, there will be no immediate impact on the rates of BASA’s customers; PAWC will adopt BASA’s rates in effect at the time of Closing and residents will not experience another increase for at least one year after Closing. PAWC St. No. 3 p. 11. Moreover, in the first base rate case in which the System is included in PAWC’s rate base, PAWC will propose to move the System to 1.4 times the current System rate or PAWC’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025. Settlement ¶ 19(e). As a

³ *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) (“*Steelton Order*”).

result, the Settlement could reduce the Transaction's rate impact for BASA customers by more than one-half, consistent with the concept of gradualism – noting that actual rates will be set in a future base rate case.

If the Transaction is not approved, in contrast, BASA will likely need to impose a significant, abrupt rate increase to help fund capital projects.⁴ City St. No. 1 p. 9; Township St. No. 1 p. 8. In setting these new rates, BASA would not be subject to Commission oversight to ensure that the rates are just and reasonable. PAWC St. No. 1-R p. 12. Even with a significant rate increase, BASA lacks the necessary skillset, expertise, and project experience to complete the large scale, complex projects that are needed to bring the System into compliance with environmental laws and regulations. BASA St. No. 1 p. 7.

Considering all of the above, if the ALJ and the Commission apply a net benefits assessment – as they must, based on the Commonwealth Court's recent decision in *Cicero, supra* – the benefits of the Transaction, as modified by the Settlement, clearly outweigh the detriments to BASA's existing customers.

e. The Benefits of the Transaction Outweigh the Detriments for PAWC's Existing Customers

The Transaction, as modified by the Settlement, benefits PAWC's existing customers in the same way that it benefits all other members of the public-at-large. These benefits include, but are not limited to, promoting the right of all Pennsylvanians to a clean environment. As discussed above, the benefits of the Transaction outweigh the detriments for the public-at-large.

In addition, the Transaction, as modified by the Settlement, has specific benefits for PAWC's existing wastewater customers. One such benefit is the addition of approximately 14,792 customers. PAWC St. No. 1 p. 16. Expanding PAWC's customer base benefits PAWC's

⁴ One witness at the public input hearing testified that he believed the rate increases would be greater if the System remains with BASA rather than being sold to PAWC. Tr. 108, 110.

existing customers in the long term because it promotes long-term rate stability across the entire PAWC system. Existing customers who require improvements in their area in the future will benefit because the cost of those improvements will be spread among more customers – including the former BASA customers. This benefit will occur for different existing PAWC customers at different times. It may not occur for all existing PAWC customers in the near term, but it will surely happen over the long term. Increasing the total number of PAWC’s customers helps avoid spikes in the cost of service, as can occur in small systems. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base is essential to maintaining reasonable rates for all customers over the long term. PAWC St. 1-SR pp. 14-15.

Consistent with Section 1329, the Application asked the Commission to approve the collection of a Distribution System Improvement Charge (“DSIC”) related to the System before the first base rate case in which the System plant-in-service is incorporated into rate base. Application, ¶¶ 2 and 17. In the Settlement, the Joint Petitioners agreed that PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. Settlement ¶ 24. This provision benefits PAWC’s existing customers by ensuring that they do not have to pay all the costs of improving the System.

PAWC, however, cannot include the System in its DSIC until certain conditions are met. The only condition that has yet to be satisfied is for PAWC to file a compliance tariff incorporating the System into PAWC’s DSIC tariff after Closing. *See also* Section II.F., below. The Settlement contains a deadline for PAWC to file this tariff. Settlement ¶ 25. “Having the acquired customers pay a DSIC is one small way in which PAWC’s existing customers can

receive a short-term benefit from the acquisition – by spreading the costs recovered through the DSIC over a larger customer base.” OCA St. No. 1 p. 26.

In this litigation, several parties initially argued that the rate impact of the Transaction would outweigh all of the benefits of the Transaction for PAWC’s existing customers because PAWC estimated that: (a) rates for PAWC’s existing wastewater customers could increase by 7% in the first base rate case in which the System is included in PAWC’s rate base, and (b) rates for PAWC’s existing water customers could increase by 0.8% in the first base rate case in which the System is included in PAWC’s rate base. PAWC St. No. 3 p. 15. PAWC disagrees with this conclusion upon weighing the benefits and detriments of the Transaction. Nevertheless, the Settlement clearly tips the scales in favor of approving the Transaction – as demonstrated by the fact that the Settlement is unanimous.

In the Settlement, the Petitioners agree that PAWC should use \$228,000,000 as the rate base addition for the System, rather than the initial \$231,500,000 purchase price or the \$239,303,632 average of the two fair market value appraisals. Settlement ¶ 21. This provision will reduce the financial impact of the acquisition on all PAWC customers in future rate cases.

PAWC’s existing customers will also benefit from the expansion of eligibility for PAWC’s low-income customer assistance programs, Settlement ¶ 35, and PAWC’s contribution of \$3,500,000 to its hardship grant program during the first five years after Closing, Settlement ¶ 36. These provisions will allow many additional existing residential customers to receive assistance in paying their utility bills. Similarly, PAWC’s existing commercial customers will benefit from the Settlement provision requiring PAWC to implement a formal program for payment arrangements for commercial customers. Settlement ¶ 39.

The Transaction will have no immediate impact rate impact on PAWC's existing customers. PAWC Amended St. 1 p. 19. Any future rate impact will be determined by the Commission in future rate cases, based on the requirement that rates be just and reasonable. 66 Pa. C.S. § 1301. Additionally, the Transaction will have no impact at all on PAWC's existing water customers unless the Commission finds that it is in the public interest to allocate a portion of the wastewater revenue requirement to the water customer base. 66 Pa. C.S. § 1311(c).

For all of the above reasons, PAWC respectfully submits that the benefits of the Transaction, as modified by the Settlement, outweigh the detriments to this stakeholder group.

f. Conclusion: The Transaction, as Modified by the Settlement, Affirmatively Promotes the Service, Accommodation, Convenience or Safety of the Public in Some Substantial Way

As stated above, the "public benefit test" is a net benefits assessment. The "public benefit test" also requires the Commission to consider the impact of the Transaction on all affected stakeholders. As discussed above, based on the facts of record in this case, the Transaction, as modified by the Settlement, has benefits that outweigh the detriments for each affected stakeholder group. These benefits differ substantially from the benefits already being provided by BASA. Consequently, the ALJ should recommend, and the Commission should find, that the Transaction, as modified by the Settlement, satisfies the "public benefit test."

C. Tariff and Rates

The Application, as modified by the Settlement, is in the public interest because it is consistent with 66 Pa. C.S. § 1329(d)(1)(v), which requires PAWC to charge rates after Closing that are equal to the selling utility's existing rates. BASA St. No. 1 p. 10; PAWC St. No. 3 pp. 8-9. For example, PAWC will assume an agreement that provides for free service to the Veterans Administration Hospital Reservation in Butler (the "VA Hospital"), PAWC St. No. 3 pp. 8-9, immediately after Closing. However, in the first base rate proceeding that includes the System,

PAWC will propose cost-of-service based rates for wastewater service to all entities it serves in the System, including the VA Hospital. Settlement ¶ 17.

This approach is consistent with the Commission's recent decision regarding Aqua Pennsylvania, Inc.'s application to acquire the water system assets of the Borough of Shenandoah, Docket No. A-2022-3034143, at pages 42-43. In that case, the Commission reconciled Section 1329 with Section 1304 (prohibiting discrimination in rates) by approving a settlement provision allowing an acquiring utility to continue the selling utility's practice of not charging certain customers for service, but requiring the acquiring utility to propose a rate for service to those customers in the first base rate case in which that system would be included.

Additionally, the Application, as modified by the Settlement, is in the public interest because the Settlement limits the rate increase that PAWC will propose for BASA customers in the first base rate case in which the System is included. The customer notice that was distributed when the Application was filed with the Commission stated that PAWC estimated that rates for BASA customers could increase by 94.4% in the first base rate case in which the System is included. PAWC St. No. 3 p. 13-14. In contrast, the Settlement provides that, in the first base rate case that includes the System, PAWC will propose to move the System to 1.4 times the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower. Settlement ¶ 19(e). This provision is reasonable and in the public interest because it could reduce the Transaction's rate impact for BASA customers by more than one-half. This provision is also reasonable and in the public interest, considering that rates would increase significantly even in the absence of the Transaction.

The Settlement also includes a number of other provisions regarding the first base rate case in which the System is included. For example, if PAWC proposes a different effective date

for new rates for BASA customers beyond the effective date of new rates for other customers, PAWC will calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. Settlement ¶ 19(d). This provision reflects the OCA’s litigation position, which argued that existing ratepayers should not be required to fund a rate freeze. OCA St. NO. 1 p. 31. This provision provides further proof that the Settlement is reasonable and in the public interest because it represents a carefully balanced compromise of the parties’ respective positions.

In addition, the Settlement permits PAWC to agree to rates other than those proposed for System customers in the context of a settlement of a base rate case. Settlement ¶ 19(f). It also permits any Joint Petitioner to assert any position or raise any issue in a future PAWC base rate proceeding. Further, the Settlement expressly recognizes the Commission’s ultimate authority to set “just and reasonable” rates. *Id.* ¶ 19(g). These provisions are consistent with the Code, consistent with previous Commission decisions in Section 1329 proceedings, and represent a reasonable compromise among the Joint Petitioners. They are in the public interest and should be approved by the Commission.

D. Industrial Pretreatment Program Fees

After Closing, System customers will be subject to PAWC’s prevailing wastewater tariff on file with the Commission with respect to all charges other than base rates (such as capacity reservation fees and reconnection fees) as well as non-rate related terms and conditions of service. PAWC St. No. 3 p. 7.

With respect to fees for the System’s Industrial Pretreatment Program (“IPP”), PAWC’s original *pro forma* tariff proposed that, after Closing, BASA customers would be subject to the IPP charges in PAWC’s prevailing wastewater tariff on file with the Commission because those fees are miscellaneous fees and charges rather than base rates. PAWC St. No. 3-S pp. 3-4.

During its Application Completeness review, staff from the Bureau of Technical Utility Services (“TUS”) insisted that PAWC revise its tariff, *inter alia*, to charge the same IPP fees that BASA charged. PAWC St. No. 3-S p. 3. PAWC explained that pretreatment fees are miscellaneous fees and charges associated with PAWC’s IPP, which recover actual costs incurred by PAWC in treating industrial wastewater. Nevertheless, PAWC provided a revised *pro forma* tariff at Appendix A-12.1 to reflect the changes requested by TUS. This *pro forma* tariff did not supersede PAWC’s original filing. PAWC St. No. 3-S pp. 3-4.

In order to comply with TUS’s demands, so that TUS would find the Application administratively complete, PAWC subsequently filed the Second Amended Appendix A-12. This *pro forma* tariff replaced the originally filed *pro forma* tariff. PAWC St. No. 3-S p. 4. PAWC made clear, however, that it believed the IPP fees contained in the Second Amended Appendix A-12 should not be adopted. PAWC St. No. 3-S p. 1.

In the Settlement, the Joint Petitioners agree that PAWC should be allowed to incorporate BASA industrial customers into PAWC’s existing IPP tariff, consistent with the original *pro forma* tariff. Customers whose bills may increase due to changes in the IPP fees were provided with notice of anticipated bill impacts in this proceeding. Tr. 283. IPP tariffed fees will be adjusted in the context of future PAWC base rate proceedings. Settlement ¶ 20. These provisions are reasonable and in the public interest, and should be adopted, because Section 1329 does not require an acquiring utility to adopt the miscellaneous fees of the selling utility. As the Joint Petitioners agree in Paragraph 20 of the Settlement:

IPP fees are miscellaneous fees that may be applied to acquired customers, rather than existing rates that must be adopted by the acquiring utility pursuant to Section 1329(d)(v). IPP fees are intended to cover costs associated with a comprehensive enforcement program to ensure that industrial wastewater is properly pretreated in order to protect the integrity of the System and the environment, and to ensure that the costs are allocated to the cost causers (not

other ratepayers). Without imposition of the IPP fees, industrial customers would have no meaningful incentive to pretreat their wastewater.

“Rates” apply for water or wastewater service that is provided to the customer. “Rates” generally consist of a fixed charge that covers monthly fixed fees and a volumetric charge, which is based on the amount of the customer’s usage. “Rates” are set based on the Company’s revenue requirement in order to recover fixed costs, expenses, return on equity, interest on debt, taxes, and other costs. Tr. 285; PAWC St. No. 3-S p. 5.

IPP “fees” are not “rates;” they are “fees” for a specific purpose – they recover actual costs incurred by PAWC in treating industrial wastewater through its IPP. PAWC St. No. 3-S pp. 1-2, 3. IPP “fees” are developed based on the cost of service for the particular facilities where PAWC has an IPP. PAWC assesses the total cost of treatment at the wastewater treatment plant and then apportions the costs to the unit processes used to treat conventional sewage pollutants (such as total suspended solids). The surcharge fees are then incorporated into the IPP and apply equally to all permitted industrial users. To the extent that any particular industrial user’s discharge contains levels of these conventional pollutants above that of domestic sewage, the user will be assessed a “fee” for the excess amount of pollutants it actually contributes to the wastewater treatment plant. In this manner, each user is appropriately charged for the additional costs incurred by the plant to treat its higher strength wastewater, and those costs are not borne by the other users of the system. PAWC St. No. 2-S pp. 2-3; Tr. 293.

In previous Section 1329 acquisitions, PAWC adopted the IPP “fees” that were charged by the seller. Until PAWC’s most recent base rate case, PAWC did not have one set of IPP “fees” that applied across its system; IPP “fees” were specific to each area. Those “fees,” however, were consolidated across the PAWC system in its most recent base rate case. The

Company's position is that IPP "fees" are miscellaneous fees, rather than "rates" under Section 1329. Tr. 281.

E. Fair Market Value for Ratemaking Rate Base Purposes

PAWC and BASA agreed to use the procedure set forth in Section 1329 for the Transaction. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-approved utility valuation expert ("UVE"). The ratemaking rate base of the selling utility is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs' appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case.

In this case, the purchase price (\$231,500,000) is lower than the average of the two UVE appraisals ($\$246,178,265 + \$232,429,000/2 = \$239,303,632$).⁵ Nevertheless, the Settlement provides that PAWC will use \$228,000,000 for ratemaking rate base purposes for the acquired system. Settlement ¶ 21. The Joint Petitioners fully and thoroughly evaluated the UVEs' appraisals through discovery, testimony, and exhibits. The agreed-upon ratemaking rate base of \$228,000,000 is a compromise that is supported by substantial record evidence. This compromise is in the public interest because it results in lower rates in the future for all PAWC customers, including but not limited to BASA's current customers.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 207 A.3d 290 (Pa. 2019)

⁵ PAWC and BASA have agreed to reduce the purchase price for the System to \$230,000,000. Settlement ¶ 23.

(“*New Garden*”). Even considering the rate impact of the Transaction, the Transaction has an affirmative public benefit of a substantial nature. *See*, Section II.A.2., *supra*.

Furthermore, approving the Transaction, as modified by the Settlement, is in the public interest because it furthers the legislative intent behind Section 1329. First, the Settlement allows a municipal authority desiring to monetize an asset for fair market value to do so. Second, by establishing a rate base for the System that is greater than what would have been allowed using traditional ratemaking principles, PAWC is willing to enter into the Transaction at the purchase price at which BASA is willing to sell. Section 1329 would be ineffective if a willing seller would be unable to find a willing buyer. Finally, the Settlement allows the parties to the Transaction to obtain the necessary Commission approval in a timely manner – while protecting the existing customers of the acquiring public utility. The Joint Petitioners’ negotiated result is in the public interest and should be approved by the ALJ and the Commission.

F. DSIC

Consistent with Section 1329, the Application requested permission for PAWC to collect a DSIC prior to the first base rate case in which the System’s plant-in-service is incorporated into PAWC’s rate base. Application ¶¶ 2, 17, 42. The Commission has already approved an amended wastewater Long Term Infrastructure Improvement Plan (“LTIIP”) for PAWC that includes the System. *Petition of Pennsylvania-American Water Company – Wastewater Division for Approval of its Second Long-Term Infrastructure Improvement Plan*, Docket No. P-2023-3038874 (Opinion and Order entered June 15, 2023).

The Transaction, as modified by the Settlement, is in the public interest because the Settlement includes consumer safeguards. First, the Settlement prohibits PAWC from including System-related investments in its DSIC until it collects the DSIC from System customers. Settlement ¶ 24. This protects existing PAWC customers from fully funding System-related

improvements; BASA customers will need to help pay for those improvements. Second, the Settlement prohibits PAWC from collecting a DSIC from System customers until PAWC files a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff. *Id.* Third, the Settlement establishes a deadline for PAWC to file that compliance tariff supplement. Settlement ¶ 24. The Transaction, as modified by the DSIC provisions in the Settlement, is reasonable and in the public interest. Therefore, it should be approved.

G. Claims for Allowance for Funds Used During Construction (“AFUDC”) and Deferred Depreciation

Section 1329(f)(1) of the Code, 66 Pa. C.S. § 1329(f)(1), permits an acquiring public utility to accrue AFUDC on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following events: the asset has been in service for a period of four years, or the asset is included in the acquiring utility's next base rate case. In the Application, PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 4. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 25.

Similarly, Section 1329(f)(2) of the Code, 66 Pa. C.S. § 1329(f)(2), permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application ¶ 17, PAWC requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 25. These provisions are reasonable and in the public interest, and should be approved.

H. Transaction and Closing Costs

Section 1329(d)(1)(iv) of the Code, 66 Pa. C.S. § 1329(d)(1)(iv), permits an acquiring public utility to include, in its next base rate case, a claim for the transaction and closing costs incurred for the acquisition. In *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) p. 14, the Commission stated that there will be no Commission preapproval of the reasonableness of recovery of these costs in a Section 1329 proceeding. Out of an abundance of caution, the Settlement acknowledges that PAWC may, in the first base rate case that includes the System, include the transaction and closing costs incurred in this proceeding. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time.

The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 26. In addition, the Settlement makes clear that any claim by PAWC to recover transaction and closing costs will not include costs incurred by BASA and requires that any claim for outside legal fees shall be separately identified in PAWC's next base rate case. Settlement ¶¶ 27 and 28. These provisions are reasonable and in the public interest, and should be approved.

I. Section 507 Approvals

Section 507 of the Code, 66 Pa. C.S. § 507, requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariffed rates) be filed with the Commission at least thirty days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract.

In this proceeding, PAWC seeks Commission approval, pursuant to Section 507, of: (i) the APA and a *pro forma* First Amendment thereto (which reduces the purchase price of the System to \$230,000,000); (ii) the Water Pollution Control Agreement for Central Butler County between City of Butler, Township of Butler, Township of Center, Township of Summit, Borough of East Butler, Deshon Area Sanitary Disposal and Sewer Authority, East Butler Borough Sewer Authority, East Butler Borough Sewer Authority, Meridian Water and Sewer Authority, Municipal Water and Sewer Authority of Center Township and Butler Area Sewer Authority dated as of February 20, 1974; (iii) the Service Agreement between The Township of Oakland and Butler Area Sewer Authority for the Service Area along Route 38 dated March 7, 1994; (iv) the Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Cupps Road Service Area dated April 3, 1995; and (v) the Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Winterwood Drive Service Area dated December 14, 2005.

These agreements are necessary to allow PAWC to provide service to the service territory currently served by the System. Consequently, the approval of these agreements, is reasonable and in the public interest.

J. Cost of Service Studies

In the interest of resolving this case, and based on the unique circumstances of this proceeding, PAWC will submit, in the first base rate case that includes the System: (a) a cost of service study that removes all costs and revenues associated with the operation of the System; and (b) a cost of service study for the System (containing typical ratemaking exhibits). Settlement ¶¶ 30 and 31. These provisions are similar to provisions included in several other settlements of Section 1329 proceedings involving PAWC. They are reasonable and in the public interest, and should be approved.

K. Low Income Program Outreach and Welcome Letter

The Transaction is in the public interest, in part, because BASA does not offer customer assistance programs, but PAWC does. PAWC St. No. 2-SR p. 8. The Transaction, as modified by the Settlement, is in the public interest because the Settlement requires PAWC to send a bill insert and a welcome letter to BASA customers, informing them of PAWC's low-income customer assistance programs. At a minimum, PAWC is to provide a description of the available low income programs, the eligibility requirements for participating in the programs, and PAWC's contact information. PAWC also agrees that, after Closing, it will automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC's water low income programs, in PAWC's wastewater low-income programs. Settlement ¶¶ 32-33. These provisions of the Settlement are in the public interest because they may increase participation in PAWC's customer assistance programs, compared to what would have been the case without these provisions.

L. Hardship Fund

PAWC has a Hardship Fund, H2O Help to Others, which currently is funded by \$750,000 of shareholder contributions annually. The H2O Help to Others program provides grants to low-income water and wastewater customers. PAWC St. No. 3-SR p. 4.

In the Settlement, PAWC agrees to increase eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines. Settlement ¶ 35. In addition, PAWC agrees to contribute \$700,000 annually to PAWC's hardship grant program for five years (for a total contribution of \$3,500,000). All unspent funds at the end of the program year will be rolled over and added to the budget for the hardship grant program in the following year(s). These contributions are in addition to any existing commitments, and any commitments made in a future base rate case. These contributions will not be recovered in rates. Settlement, ¶ 36.

These provisions are reasonable and in the public interest because they will make assistance available to many additional low-income customers who need help paying their water and wastewater bills.

M. Easements

The Settlement is in the public interest because it ensures that PAWC's ratepayers will not pay twice to acquire property rights necessary to operate the System. It generally prohibits Closing unless and until BASA has: (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at Closing; and (3) borne all costs and expenses for obtaining and conveying the missing easements and other property rights. An exception is provided for circumstances beyond BASA's control where it is unable to transfer all missing easements and other property rights before or at Closing. In that circumstance, PAWC and BASA may, at their discretion, Close on the Transaction without the transfer of missing easements and other property rights, provided that an escrow account is established as set forth in the APA. In the APA, BASA agreed to fund an escrow fund in the amount of \$2,000 for each missing easement. Settlement ¶¶ 37-38. These provisions are reasonable and in the public interest because they are similar to provisions in previous Section 1329 settlements that have been approved by the Commission.

N. Commercial Customer Payment Arrangements

PAWC does not currently have a formal program for payment arrangements for commercial customers. The Settlement would require PAWC to create such a program. Settlement ¶ 39. This provision is reasonable and in the public interest because it will provide assistance to non-residential customers, similar to what is offered to residential customers, who

need additional time to pay their utility bills. This provision is intended to help small businesses that are struggling financially stay in business.

O. Standard Settlement Conditions

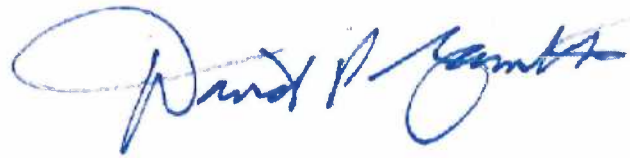
The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation. In such event, the Settlement shall be void and of no effect. The Joint Petitioners acknowledge and agree that the Settlement, if approved, will have the same force and effect as if the Joint Petitioners had fully litigated this proceeding. Settlement ¶ 41.

This provision is standard in settlements in Commission proceedings. It protects all of the Joint Petitioners by allowing them to withdraw from the Settlement if the Commission modifies the Settlement in a way they find unacceptable. This provision makes parties to a Commission proceeding more willing to settle than they otherwise might be. It is therefore in the public interest and should be approved.

III. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, discovery responses, evidence that was entered into the record, and extensive settlement negotiations. A fair and reasonable compromise has been achieved in this case. PAWC fully supports the Settlement and urges the ALJ and the Commission to approve it without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judge Marta Guhl recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification, and enter an order consistent with the Settlement and the specific paragraphs set forth in its "Request for Relief."



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August 14, 2023

Attachment 2

Statement in Support of

Butler Area Sewer Authority, City of Butler, Township of Butler

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge Marta Guhl, Presiding

In re: Application of Pennsylvania-American Water :
Company under Section 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), : Docket No. A-2022-3037047
for approval of (1) the transfer, by sale, of substantially :
all of the assets, properties and rights related to its :
wastewater collection and treatment system owned by :
the Butler Area Sewer Authority, and (2) the rights of :
Pennsylvania-American Water Company to begin to :
offer or furnish wastewater service to the public in the :
City of Butler, portions of East Butler, and portions of :
the Townships of Butler, Center, Connequenessing, :
Oakland and Summit, in Butler County, Pennsylvania ;

**JOINT STATEMENT OF THE BUTLER AREA SEWER AUTHORITY, THE
TOWNSHIP OF BUTLER, AND THE CITY OF BUTLER IN SUPPORT OF THE JOINT
PETITION FOR APPROVAL OF UNANIMOUS SETTLEMENT OF ALL ISSUES**

TO ADMINISTRATIVE LAW JUDGE GUHL:

The Butler Area Sewer Authority (“BASA” or the “Authority”), the Township of Butler (the “Township”), and the City of Butler (the “City”) (collectively referred to herein as the “Butler Parties,” unless individually identified), by and through their attorneys, jointly submit this statement in support of the Joint Petition for Approval of Unanimous Settlement of All Issues (“Settlement”) submitted to the Public Utility Commission (“Commission”) by Pennsylvania-American Water Company (“Pennsylvania-American”) on behalf of Pennsylvania-American, BASA, the Township, the City, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and the Bureau of Investigation and Enforcement (“I&E”) of the Commission, (collectively, the “Joint Petitioners”).

I. Introduction

This proceeding concerns Pennsylvania-American’s application for approval to acquire

BASA's wastewater collection and treatment system (the "System") pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (the "Proposed Transaction"). On August 14, 2023, the Joint Petitioners filed the Settlement proposing a resolution of all issues in this proceeding. The Butler Parties support the Settlement and, therefore, respectfully request that Administrative Law Judge Marta Guhl recommend approval of, and the Commission approve, the Proposed Transaction and Settlement without modification.

II. Settlement – Legal Principles

Pursuant to 52 Pa. Code § 5.231(a), it is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement. The Commission has further stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." 52 Pa. Code § 69.401. For example, settlements lessen the time and expense of litigating a case and, therefore, directly benefit all interested parties.

As such, where all active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement is in the public interest. *See, e.g., Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). Further, the Pennsylvania Supreme Court has explained that in the context of a utility merger, the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. *See City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972).

Here, the Settlement proposes the resolution of all issues in this proceeding, and the Joint

Petitioners all agree that it is in the public interest. As stated above, Commission approval of the Joint Petition will not only minimize litigation and administrative burden of all parties but will also further the public interest by allowing the Proposed Transaction to move forward thereby fostering the Commission's stated goal of regionalizing wastewater systems within the Commonwealth.

The Butler Parties support the Settlement and, therefore, respectfully request that Administrative Law Judge Marta Guhl recommend approval of, and that the Commission approve, the Proposed Transaction and Settlement without modification.

III. Section 1102/1103 Standards

Pennsylvania-American is seeking a Certificate of Public Convenience from the Commission to acquire property used or useful in public service, as required under 66 Pa.C.S. § 1102(a)(1) and 1102(a)(3). The Commission will issue a Certificate of Public Convenience pursuant to Section 1102 when the Commission finds 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).

The Pennsylvania courts have interpreted this provision to require a showing that the Proposed Transaction will "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." *See, e.g., City of York v. Pennsylvania Pub. Util. Comm'n*, 295 A.2d 285, 828 (1972) (quoting 66 Pa.C.S. § 1103). More specifically, the Pennsylvania Supreme Court explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to

make fact-based determinations (including predicted ones informed by expert judgment) concerning certification matters. *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1055–1056 (Pa. 2007).

Here, Pennsylvania-American not only has the requisite technical, legal and financial fitness to own and operate the System and serve the acquired customers, but this particular Proposed Transaction will affirmatively benefit the Butler community in numerous ways as set forth in more detail below.

A. Pennsylvania-American’s Fitness to Provide Wastewater Service

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). Here, it is undisputed that Pennsylvania-American has the requisite technical, financial and legal fitness to own and operate the System.

To show legal fitness, Pennsylvania-American must demonstrate that it has obeyed the Code, and Commission Regulations and Orders. *Re Perry Hassman*, 55 PA PUC 661 (1982). Here, Pennsylvania-American is a public utility operating under certificates of public convenience granted by the Commission with a good compliance history. PAWC Statement No. 1, Direct Testimony of Scott Fogelsanger, p. 21. Additionally, there are no pending legal proceedings that would suggest that Pennsylvania-American is not legally fit to provide safe and adequate service. *Id.* Thus, Pennsylvania-American clearly satisfies the criteria for legal fitness. *Id.*

To show financial fitness, Pennsylvania-American must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Here, Pennsylvania-

American – a subsidiary of American Water Works Company, Inc. – is the largest water and wastewater provider in Pennsylvania with a demonstrated history of financial stability. PAWC Statement No. 1, p. 22; *see also* PAWC Statement No. 3, Direct Testimony of Ashley Everette, pp. 3-5 (discussing Pennsylvania-American’s financial fitness to provide high quality wastewater service and implementing capital improvement plans). More specifically, Pennsylvania-American has total assets of \$5.9 billion and annual revenues of \$769 million in 2021. PAWC Statement No. 3, p. 3. Due to its strong operating and financial performances, Pennsylvania-American has access to capital to support its acquisition of the System, including the ongoing operating and investment commitments required to operate the System and serve the public. *Id.* at pp. 3-4. For example, Pennsylvania-American has a \$400 million line of credit, long-term debt financing at favorable interest rates and payment terms, and may obtain additional equity investments all through American Water Capital Corp. *Id.* at p. 4. As such, Pennsylvania-American satisfies this criterion as well.

Finally, to show technical/managerial fitness, Pennsylvania-American must have sufficient staff, facilities and operating skills to provide the proposed service. *See Hassman, supra.* Again, Pennsylvania-American easily satisfies this standard here. As the largest investor-owned water and wastewater utility in the Commonwealth, Pennsylvania-American will seamlessly integrate the operation of the System into its current operations. *See* PAWC Statement No. 1, pp. 22-23.

As stated above, there is no dispute that Pennsylvania-American is technically, legally, and financially fit to provide wastewater service in the Commonwealth; nonetheless, the Application makes it clear that Pennsylvania-American has the requisite technical, legal, and financial fitness to own and operate the System, and provide quality service to its existing

customers and the acquired BASA customers.

B. Substantial Affirmative Public Benefits of the Proposed Transaction

As set forth above, Pennsylvania-American is legally, technically, and financially fit to purchase the System and serve BASA customers – and that is undisputed. However, this particular Proposed Transaction also offers several affirmative public benefits to the System, the acquired BASA customers, and the Butler community at large.

i. Benefits to the System from the Proposed Transaction

One primary reason the Authority explored a sale of the System is the compliance issues posed by System’s age outlined in the Authority’s current Corrective Action Plan with the Pennsylvania Department of Environmental Protection (the “CAP”), and the necessary investment to bring the System into compliance. *See generally*, BASA Statement No. 1, Direct Testimony of Duane McKee, pp. 6-7 (discussing the various compliance issues in detail).

For example, only three percent (3%) of sewer lines in the System are under ten (10) years old, whereas forty-six percent (46%) of the Authority’s sewer lines are between twenty-five (25) and thirty-four (34) years old, thirty-one percent (31%) are between thirty-five (35) and eighty-five (85) years old, and twenty percent (20%) are more than eighty-five (85) years old. *See id.* at p. 6. Moreover, since implementation of the CAP in 2018, BASA conducted 2,601 inspections of the sewer laterals to address inflow and infiltration and illegal connections to the System, and nearly forty (40%) of the sewer laterals failed inspection – requiring a replacement lateral, which could cost an individual BASA customer up to \$8,500. *See* BASA Statement No. 1, pp. 6-7, 9; *see also* PAWC Statement No. 2, p. 25. However, as part of the Proposed Transaction, Pennsylvania-American committed to including the BASA System and the damaged sewer and/or aging laterals in its first petition to the Commission in connection with its

Damaged Wastewater Service Lateral pilot program. *See id*; PAWC Statement No. 2, pp. 24-26 (detailing Pennsylvania-American's plan with BASA's damaged wastewater service laterals).

While BASA has worked to provide safe and cost-efficient service to the public, the Authority recognized that it does not have the financial or technical ability to implement the comprehensive overhaul of the aging System, or the capital investment required to bring the System into compliance without significant rate increase to its customers. *See* BASA Statement No. 1, pp. 7-10. Even with the substantial rate increase, the Authority lacks the project experience and large workforce to complete the large scale, complex projects necessary to improve the system. *See* BASA Statement No. 1, p. 7; *see also* PAWC Statement No. 2-R, pp. 3-4 (explaining that BASA's average capital delivery performance over the last three (3) years has been limited to approximately \$430,000 per year, and the necessary level of investment is thirty-five times BASA's recent average, *i.e.*, \$15 million per year). For example, Pennsylvania-American currently employs 1,105 professionals with expertise in all areas of water and wastewater utility operations as opposed to BASA which currently employs thirty-three (33) full-time employees. *See* BASA Statement No. 1, p. 7; PAWC Statement No. 2, pp. 18-20.

These are just a few examples of the affirmative public benefits that BASA customers will enjoy should the Commission approve the Proposed Transaction. Since executing the Asset Purchase Agreement ("APA"), it has been clear to the Authority that its customers will benefit *substantially* from Pennsylvania-American – an experienced public utility with a track record of successfully addressing PADEP compliance orders requiring substantial capital investments – implementing the \$75 million comprehensive capital improvement plan over the next five (5) years. *See* PAWC Statement No. 2, pp. 16-20 (detailing Pennsylvania-American's expertise with implementation of capital improvement plans to bring systems into compliance). Thus, this

Proposed Transaction and Settlement should be approved without modification.

ii. Benefits to the Butler community

In addition to the several operational benefits to the System detailed above, the Proposed Transaction will also provide substantial affirmative public benefits to the entire Butler community.

In addition to purchasing BASA's wastewater assets, Pennsylvania-American agreed to: (1) retain all active personnel – both union and non-union – employed by the Authority with substantially similar pay, retirement and health benefits, (2) award contracts for development projects to local, Butler County-based contractors, to the extent it is feasible and commercially reasonable, and (3) maintain an operations center at BASA's current headquarters (for at least ten years) consisting of various managers, customer service representatives, and operators. *See* BASA Statement No. 2, Direct Testimony of Paul F. Sybert, pp. 8-9; *see also* PAWC Statement No. 1, p. 14. These were crucial benefits negotiated by the Authority as the BASA team worked hard to provide safe, reliable and cost-efficient service to our community throughout the years, and the sale of the System thus should not adversely impact any employees and local independent contractors that made the years of quality service possible.

Furthermore, the Butler community at large will greatly benefit from this Proposed Transaction. With an improved and compliant System (that Pennsylvania-American is better situated to provide), businesses will be more encouraged to open in the greater Butler area and achieve both the Township and the City's goal of a community that is a destination for business, industry, culture, and the arts. *See* City of Butler Statement No. 1, Direct Testimony of Mayor Robert A. Dandoy, pp. 8-14 (summarizing numerous anticipated benefits to the Butler

Community from the sale of the System); Township of Butler Statement No. 1, Direct Testimony of Dave Zarnick, pp. 7-13 (same).

While neither of the incorporating municipalities of BASA have reached any final decisions regarding the use of sale proceeds after the Authority's debt is paid off and the Authority is dissolved, there are numerous potential projects and redevelopment opportunities that the respective municipalities' leadership identified in their testimony that would otherwise require tax increases or placing the municipalities in a risky financial position. *See generally* City of Butler Statement No. 1, pp. 11-12 (discussing potential redevelopment opportunities for the proceeds); Township of Butler Statement No. 1, pp. 10-11 (same). The influx of cash will not only provide the respective leadership in the City and the Township with great flexibility in spending, but it also provides significant liquidity and a greater security blanket to allow the municipalities to weather any sort of emergency they may face – something that cannot be taken for granted with the cost of living continuously increasing due to inflation and other economic changes. In the event that these funds can be allocated elsewhere, they would help allow for redevelopment opportunities that may otherwise not be attainable absent significant tax increases to the public.

iii. Conclusion

As illustrated above, there is no dispute that Pennsylvania-American has the requisite technical, legal, and financial fitness to own and operate the System and that the Proposed Transaction will provide a substantial public benefit to the System, the acquired BASA customers, and the Butler community at large. Similarly, the Settlement negotiated by the Joint Petitioners provides additional benefits to those already set forth in Pennsylvania-America's Application and summarized above. The substantial affirmative public benefits from the

Settlement will be discussed in section C below. Accordingly, the Butler Parties respectfully submit that the Proposed Transaction and Settlement should be approved without modification.

C. Additional Substantial Affirmative Public Benefits from the Settlement

Prior to the Evidentiary Hearing scheduled for Pennsylvania-American's Application, the Joint Petitioners negotiated a Settlement that provides even more substantial affirmative benefits. The Joint Petitioners agreed on terms and conditions related to Pennsylvania-American's first base rate case, a hardship grant program, and payment arrangements for commercial customers that will all provide an affirmative public benefit that would not exist otherwise.

i. Rates

Pursuant to the express terms of the APA, Pennsylvania-American committed to imposing a rate-freeze at \$45.50 per EDU for the acquired BASA customers' rates for at last one (1) year after closing. *See* Appendix A-24-a, APA, Section 7.04(a), attached with Pennsylvania-American's Application. However, as part of the Settlement, the Joint Petitioners further negotiated that Pennsylvania-American "will propose to move the System to 1.4x the current System rate or Pennsylvania-American's proposed Rate Zone 1 system-average wastewater rates, *whichever is lower*, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025." *See* Settlement, ¶ 19(e) (emphasis added).

While rate increases were inevitable regardless of ownership of the System given the necessary capital improvement, Pennsylvania-American's commitment regarding the first base rate case ensures that the acquired BASA customers are not subject to significant rate shock immediately upon closing and further "capped" by the express terms of the Settlement. Further, as set forth below, the Settlement provides additional assistance for the BASA customers that may qualify for low-income assistance (in addition to the low-income assistance program that

Pennsylvania-American already has in place for all of its customers) via contributions to its hardship program and creation of a payment arrangement program for commercial customers.

ii. Hardship Grant Program

Pennsylvania-American has a Hardship Grant Program that provides one-time assistance grants to its residential customers that may be applied directly to their utility bills. In connection with this Settlement, Pennsylvania-American committed to contribute \$700,000 annually to the hardship grant program for the five (5) years following Closing (\$3,500,000 total) that cannot be recovered in rates. *See id.* ¶ 36. More significantly, Pennsylvania-American also agreed to increase eligibility for the one-time grants to all Pennsylvania-American customers (both existing customers and newly acquired BASA customers) from 200% to 250% of Federal Poverty Income Guidelines. *See id.* ¶ 35. These particular provisions of the Settlement provide additional assistance to the acquired BASA customers to help counteract any prospective rate increase.

iii. Commercial Customer Payment Arrangement

Commercial customers are not eligible for Pennsylvania-American's Hardship Grant Program. Nonetheless, Pennsylvania-American committed to implementing a formal program for payment arrangements for commercial customers, including eligibility and payment terms. *See id.* ¶ 39. The novel establishment of such a program for Pennsylvania-American's existing commercial customers and acquired BASA commercial customers will provide long-lasting substantial affirmative public benefits.

IV. Conclusion

As set forth in this Statement, Pennsylvania-American not only has the requisite technical, legal and financial fitness to own and operate the system and serve the acquired

customers, but this particular Proposed Transaction and the Joint Petitioners' Settlement provides numerous substantial affirmative benefits to the Butler communities in accordance with the requirements of the Public Utility Code. As a result, the Butler Parties respectfully submit that the Commission approve the Settlement without modification.

Respectfully submitted,



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of Butler, and the City of Butler*

Date: August 14, 2023

Attachment 3

**Statement in Support of
the Bureau of Investigation and Enforcement**

Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. § § 1102(a) and 1329, for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, and portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland, and Summit, in Butler County, Pennsylvania

Docket No.: A-2022-3037047

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Carrie B. Wright, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Bureau of Investigation and Enforcement (“I&E”) of

the Pennsylvania Public Utility Commission (“Commission”), the Butler Area Sewer Authority (“BASA”), the Township of Butler (the “Township”) and the City of Butler (the “City”) (collectively, the “Joint Petitioners”)

INTRODUCTION

A. Procedural History

On February 14, 2023, Pennsylvania-American Water Company filed with the Pennsylvania Public Utility Commission (“Commission”) its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), related to its acquisition of the Butler Area Sewer Authority wastewater system assets.

By way of a Secretarial Letter of May 23, 2023, the Commission informed PAWC that its Application was accepted for filing. The Secretarial Letter stated that the Commission would publish notice of the Application in the June 10, 2023 edition of the *Pennsylvania Bulletin*. Thereafter, PAWC’s Application was assigned to the Office of Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission’s consideration.

A telephonic Prehearing Conference was held on July 11, 2023; at 10:00 a.m., before ALJ Guhl. During the hearing, the parties and ALJ Guhl established a litigation schedule and the procedures that would apply to this case. Telephonic public input hearings were held on the evenings of July 18 and July 19, 2023. The evidentiary hearing was held as scheduled on July 28, 2023. At the evidentiary hearing on July 28, 2023, PAWC advised Judge Guhl that the majority of the Parties had achieved an agreement in principle to settle all issues in the proceeding.

I&E now submits this Statement in Support of Settlement and avers that the Settlement meets the requisite standards for approval and that it is in the public interest for the reasons explained below.

II. SETTLEMENT TERMS

It is the policy of the Commission to encourage settlements.¹ For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that subject to all of the Settlement's terms and conditions, PAWC's Application satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the settlement terms be approved by the ALJ and the Commission without modification.

A. APPROVAL OF THE APPLICATION AND ACQUISITION

1. Legal Standards

(i) Section 1102 Approval

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by

¹ 52 Pa. Code § 5.231.

public utilities or their affiliated interests.² The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103³ of the Code. A Certificate of Public Convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”⁴ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁵ Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from BASA.⁶ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”⁷ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.⁸

(ii) Legal Standard for Section 1329 Approval

² 66 Pa. C.S. § 1102(a).

³ 66 Pa. C.S. § 1103.

⁴ 66 Pa. C.S. § 1103(a).

⁵ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁶ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmmw. 1985);
Warminster Twp. Mun. Auth. v. Pa. PUC, 138 A.2d 240, 243 (Pa. Super. 1958).

⁷ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

⁸ 66 Pa. C.S. § 1103(a).

Section 1329 of the Public Utility Code is a newly enacted statute which prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”⁹

(iii) Legal Standard for Section 507 Approval

PAWC’s request to assume enumerated municipal contracts currently held by BASA is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.

⁹ 66 Pa. C.S. § 1329 (d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

2. Conclusion

Subject to all of terms and conditions of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). PAWC's Application requests permission for it to acquire substantially all BASA assets, properties and rights related to its water system and to obtain the Certificates of Public Convenience necessary for it to begin to offer water service to the public in the Service Area. The record supports the findings that PAWC is technically, legally, and financially fit to acquire BASA, and no party has refuted those claims in the record.

Additionally, BASA's Application will provide affirmative public benefits. The affirmative public benefits are set forth in PAWC's direct testimony, and include such things as: BASA customers will be guaranteed a minimum one-year rate freeze that would take effect upon Closing until the later of the one-year anniversary of the Closing or January 1, 2025; low-income BASA customers will have access to PAWC's grant programs that will help them pay bills; and PAWC will secure the funding for and execute a major capital program that will help BASA's system comply with current Pennsylvania Department of Environmental Protection ("DEP")-mandated 18 Corrective Action Plan, and address other deficiencies within BASA's.¹⁰

Further the goal of regionalizing water systems, benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits will be achieved. Importantly, through the Settlement, the value of the public

¹⁰ PAWC St. No. 1, p. 8.

benefits will be better realized because the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those who will become PAWC's ratepayers through this transaction. The Settlement will also ensure that PAWC's ratepayers receive the benefit of the bargain that PAWC negotiated without being subject to protracted and expensive litigation. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

B. Tariff

Pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff supplement, which is attached to the Settlement as Exhibit A, shall be permitted to become effective immediately upon closing of the transaction. Accordingly, the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of PAWC's service, and I&E submits that this full and accurate disclosure of rates is in the public interest.

C. Rates

The Settlement also provides that PAWC will propose to move BASA's rates to BASA's cost of service in the first base rate case that includes the Authority assets unless such increase is more than 1.4 times current rates and provided that PAWC will not be obligated to propose BASA rates in excess of PAWC's proposed Rate Zone 1 system-average rates. This term is in the public interest because a goal of ratemaking is to charge customers rates equal to the cost to serve those customers. Here, PAWC is proposing to move BASA customers' rates to its cost of service but will not increase the Authority's

rates more than 1.4 times the current rates which insulates those customers from rate shock. Furthermore, it preserves the rights of I&E, OCA and OSBA to address PAWC's rate proposals fully, and to make other rate proposals.

D. Ratemaking Rate Base

Per the Settlement PAWC will be permitted to use \$228,000,000 for the ratemaking rate base of the acquired assets. Ultimately, through use of both the formal and informal discovery process and its extensive investigation, I&E was able to determine that this proposed value of, comported with the valuation standards and requirements of Section 1329. As a result, I&E avers that approval of \$228 million for the ratemaking rate base is both warranted and in the public interest. Further, this \$228 million is lower than the purchase price of \$230,000,000 agreed to by PAWC and BASA.

E. Cost of Service Study

Pursuant to the Settlement, at the time of its next base rate case that includes BASA's water system assets, PAWC has agreed to provide a cost of service study that removes all costs and revenues associated with the operations of the BASA system. At the same time, PAWC also agrees to provide a separate cost of service study for the BASA system. I&E fully supports this term which is consistent with protecting the public interest.

I&E submits that the cost of service study will protect PAWC, its customers, the parties to this proceeding and the Commission. Specifically, the results of the cost of service study that PAWC has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service

study will benefit PAWC's ratepayers as well, because if PAWC's Application is approved, PAWC's existing customers will bear the rate impact. However, without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing PAWC customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised.

F. Distribution System Improvement Charge ("DSIC") and Long-Term Infrastructure Improvement Plan ("LTIIP")

Per the Settlement, PAWC will not include System-related investments in its distribution system improvement charge ("DSIC") until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIP") including the System, which does not re-prioritize other existing commitments.

I&E's investigation yielded no concerns regarding PAWC's request for approval to collect a DSIC as permitted under Section 1329. Nonetheless, I&E reserves the right to address these issues in future proceedings, including base rate, LTIIP, and distribution system improvement charge proceedings, when additional information and facts are available and when these issues are ripe for review. While I&E still reserves its rights, I&E nevertheless agrees that this term serves the public interest because it allows acquired BASA customers to benefit from improved water infrastructure, promoting safer and more reliable service. Therefore, I&E opines that this term is in the public interest.

G. AFUDC and Deferral of Depreciation and Transaction Costs

Through the Settlement, the Joint Petitioners acknowledge that any claims that PAWC may make to accrue allowance for funds used during construction (“AFUDC”) and deferred depreciation for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case which includes BASA’s assets. Importantly, the Joint Petitioners agree that they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it recognizes the potential for PAWC to invoke portions of Section 1329 related to post-acquisition projects,¹¹ it also empowers parties to review PAWC’s proposed treatment of those projects in a future base rate case. Preserving the ability to litigate any of PAWC’s proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

H. Welcome Letter and Low-Income Program Outreach

Pursuant to the Settlement, PAWC has agreed that as part of its Welcome Letter to newly acquired BASA customers, it will include information about the available low income programs, eligibility requirements for participation in the programs, and PAWC’s contact information. PAWC also agrees to automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC’s water low income programs, in PAWC’s wastewater low-income programs following Closing.

¹¹ 66 Pa. C.S. §1329(f).

I&E fully supports this term because ensuring that acquired customers are fully informed about the programs offered by their new provider is prudent and in the public interest. Accordingly, I&E supports PAWC's settlement commitment to ensure that acquired customers will have a clear understanding of low income programs available to them.

I. Hardship Contribution

I&E took no position on this issue in testimony. However, I&E supports the settlement as a whole as being in the public interest.

J. Easements and Other Property Rights

I&E supports this term as necessary to protect the public interest in two ways. First, it is important to note that the public interest would be harmed if PAWC paid a purchase price that assumed that all rights necessary to operate BASA would be transferred, and at BASA's cost, and such action did not occur. To protect against this possibility, I&E fully supports the protection measure of the escrow account that would be imposed upon BASA to ensure that any right not transferred at closing must be financially accounted for via payment to the escrow account. Additionally, the public interest is protected because this term provides an additional layer of accountability that would not exist if PAWC and BASA would ever mutually decide to waive the applicable sections of the Asset Purchase Agreement that bind it to deliver good and marketable title to all real property necessary for the operation of the acquired system. Accordingly, this term of the Joint Petition is in the public interest and it should be approved without modification.

K. Transaction and Closing Costs

I&E submits that PAWC's commitment to separately identify any legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between PAWC and BASA is consistent with ensuring that PAWC will only be permitted to recover prudently incurred costs from ratepayers. These terms are in the public interest because they protect ratepayers from paying unwarranted costs and promote rate affordability. Through this term, the public interest is protected because I&E has preserved its ability to challenge the permissibility of any claims that PAWC may make legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.


V. CONCLUSION

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation if the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any

additional matters, that may be proposed by the ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judge Marta Guhl and, thereafter, the Commission, approve the terms and conditions contained in the foregoing Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



Carrie B. Wright

Prosecutor

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Dated: August 14, 2023

Attachment 4

**Statement in Support of
the Office of Small Business Advocate**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) and 1329, approval of (1) the transfer, by sale, to Pennsylvania American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, and portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland, and Summit, in Butler County, Pennsylvania :

Docket No. A-2022-3037047

**STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF
UNANIMOUS SETTLEMENT OF ALL ISSUES**

Introduction

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed a notice of intervention in response to the *Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) and 1329, for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company,*

of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Butler Area Sewer Authority, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland, Penn and Summit, in Butler County, Pennsylvania that was filed with the Pennsylvania Public Utility Commission (“Commission”) on February 14, 2023, by the Pennsylvania-American Water Company (“PAWC”).

The OSBA actively participated in the negotiations that led to the proposed settlement and is a signatory to the Joint Petition for Approval of Unanimous Settlement of All Issues (“*Joint Petition*”). The OSBA submits this statement in support of the *Joint Petition*.

The Joint Petition

The *Joint Petition* sets forth a comprehensive list of issues that were resolved through the negotiation process. The following issues were of particular significance to the OSBA when it concluded that the *Joint Petition* was in the best interests of PAWC’s small business customers.

Limitations on the Initial Rate Increase

If approved by the Commission, the *Joint Petition* is projected to result in wastewater service rate increases to the Butler Area Sewer Authority (“BASA”) customers that will exceed 90 percent when fully incorporated into BASA customer rates. The OSBA, throughout this proceeding, has expressed concerns that such an increase constitutes the definition of “rate shock” for BASA’s customers.

Nevertheless, the OSBA fully acknowledges that PAWC and BASA have followed all the requirements of 66 Pa. C.S. § 1329 to the letter. The OSBA is curious, however, whether the Pennsylvania Legislature contemplated such significant increases when it was drafting Section 1329, or whether this is an example of the “law of unintended consequences.”

Regardless, to mitigate the rate increase to BASA's customers in PAWC's first rate case (after the acquisition is complete), the OSBA insisted that the rate increase be limited to 1.40 times the system average increase. *Joint Petition*, Paragraph 19.e. This, of course, will only provide temporary relief to BASA's customers, but it will serve to mitigate the initial impact of that 90+ percent rate increase.

Consequently, the OSBA submits that the 1.40 times limitation is a just and reasonable addition to the *Joint Petition*.

Payment Plan for PAWC's Small Business Customers

As the Commission is well aware, the COVID-19 Pandemic caused many Pennsylvania Small Businesses to close. Many Small Businesses that survived the Pandemic did so, as grandma used to say, by the skin of their teeth.

In the post-Pandemic era, Pennsylvania Small Business have suffered two additional impacts to their daily operation. First, there have been wide-spread supply chain shortages for everything from computer chips to eggs. Second, the rise in inflation since January 2021 has negatively impacted small businesses in a variety of ways.

In response to all these issues facing Pennsylvania's Small Businesses, the OSBA requested that PAWC establish a formal payment program for its commercial customers. PAWC agreed to the OSBA request. *Joint Petition*, Paragraph 39. The OSBA realizes that such a program typically only involves low-income residential ratepayers. However, in light of the Pandemic, supply chain problems, and high inflation, the OSBA respectfully submits that such a payment program is appropriate and timely.

Consequently, the OSBA submits that the commercial payment program is a just and reasonable addition to the *Joint Petition*.

Conclusion

Therefore, for the reasons set forth in the *Joint Petition*, as well as the additional factors that are set forth in this statement, the OSBA supports the proposed *Joint Petition* and respectfully requests that the Administrative Law Judge and the Commission approve the *Joint Petition* in its entirety.

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Office of Small Business Advocate
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Harrisburg, PA 17101

Dated: August 14, 2023

Attachment 5

**Statement in Support of
the Office of Consumer Advocate**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American Water :
Company Pursuant to Sections 507, 1102, and 1329 of :
the Public Utility Code for Approval of its Acquisition : Docket No. A-2021-3024681
of the Wastewater Collection and Treatment System :
Assets owned by the BASA Sewer Authority and :
Operated by the BASA :

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF
UNANIMOUS SETTLEMENT OF ALL ISSUES

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Unanimous Settlement of All Issues (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

I. INTRODUCTION

On February 14, 2023, Pennsylvania-American Water Company (PAWC or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the Butler Area Sewer Authority (BASA or Butler) wastewater collection and treatment system, the right of PAWC to provide

wastewater service in portions of Butler County, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code.

On February 17, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Public Statement. On February 22, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Notice of Appearance, Protest, and Public Statement on April 11, 2023.

By Secretarial Letter dated April 10, 2023, the Commission conditionally accepted the Application. The Commission required that individual notice be provided to PAWC's existing water and wastewater customers, that PAWC ensure concurrent notice is given to all current BASA wastewater customers, and that newspaper notice in the BASA area be provided. On May 23, 2023, the Commission accepted the Application by Secretarial Letter. On June 27, 2023, a Prehearing Conference Order was issued scheduling a telephonic prehearing conference on Tuesday, July 11, 2023 and directing the parties to submit prehearing conference memoranda by 12:00 p.m. on July 7, 2023.

On May 23, 2023, the Commission accepted the Application by Secretarial Letter. Three customers filed formal Protests to the Application in May and June 2023. Additional customers filed Comments to the Application. A telephonic prehearing conference was held on July 11, 2023 before Administrative Law Judge (ALJ) Marta Guhl, at which time a litigation schedule and discovery modifications were adopted. Public input hearings were held on July 18, 2023 and July 19, 2023. A Joint Petition for Settlement was filed on August 14, 2023.

II. THE SETTLEMENT IS A REASONABLE ALTERNATIVE TO LITIGATION

A. Approval of the Application (§ 15)

The OCA submits that at the time the settlement was reached, the terms and conditions of the proposed Settlement provide a reasonable resolution of the issues raised by the OCA in its

testimony as opposed to litigation before the Commission given the constraints presented by Section 1329, including an adjusted ratemaking rate base to be incorporated into the acquiring utility's revenue requirement, the rate impact for existing PAWC customers and the acquired customers, the application of the Distribution System Improvement Charge (DSIC), post-acquisition improvements, transaction and closing costs, and PAWC's outreach and assistance to low income customers and expansion of its hardship fund eligibility to 250% of poverty and its increase of more than \$3 million over 5 years in shareholder contributions to its hardship fund. Each of these issues are discussed below.

B. Tariff (¶¶ 16-17)

PAWC submitted a *pro forma* tariff with the application, which includes all rates, rules, and regulations regarding conditions of PAWC's wastewater service and requested that the tariffs become immediately effective upon closing of the transaction. That tariff provided that BASA customers would be subject to the Industrial Pretreatment Program (IPP) fees in PAWC's prevailing wastewater tariff on file with the Commission. PAWC later submitted an amended *pro forma* tariff that eliminated IPP fees for the BASA system.

The OCA supports charging IPP fees to industrial customers in the BASA system, for the reasons stated in PAWC witness Hufton's testimony. *See* OCA St. 1 at 25. As Mr. Hufton explained, the customers who cause the treatment costs and failed to properly treat their industrial wastewater should be required to pay for the treatment. Otherwise, the costs will be charged to other ratepayers who receive service from the sewage treatment plant but who do not necessarily contribute pollutants. PAWC St. 2S at 3. Consistent with the OCA's recommendation, the revised *pro forma* tariff attached to the Settlement applies the IPP fees to BASA customers. Thus, the OCA supports Paragraph 16 of the Settlement, which provides that the revised tariff should be permitted to become effective immediately upon closing of the transaction.

Paragraph 17 of the proposed Settlement provides that, in the first base rate proceeding that includes the BASA wastewater system assets, PAWC will propose to charge cost-of-service based rates for wastewater service to all entities it serves in the System, including but not limited to the Veterans' Administration Hospital (VA Hospital). Settlement ¶ 17. This provision serves two purposes. Broadly, it ensures that rates for customers in the BASA system will be moved toward paying their cost of service. At current rates, under PAWC ownership, the BASA system will cause an annual revenue deficiency of roughly \$18 million. PAWC St. 3, Exh. AEE-1 at 4; OCA St. 1 at 8. Existing PAWC wastewater and water customers will subsidize any revenue deficiency that is not paid by customers in the BASA system. PAWC's commitment to propose to charge cost of service-based rates, subject to the limitations discussed in the next section, helps to mitigate the potential level of subsidy by PAWC's other water and wastewater customers. OCA St. 1 at 14-18, 31.

Paragraph 17 of the proposed Settlement also addresses the OCA's specific concern regarding free service. In direct testimony, OCA witness DeAngelo opposed PAWC's proposal to continue BASA's practice of providing free service to the VA Hospital as free water service is not generally permitted under the Public Utility Code, and the failure to charge cost-based rates to this large customer puts other PAWC ratepayers at risk to subsidize the cost of serving the VA Hospital. *See* OCA St. 1 at 23-25. PAWC estimated that it will forego \$108,108 per year at current BASA rates, by not charging the VA Hospital for service. Moreover, while receiving free service, that customer will not contribute revenues through the Distribution System Improvement Charge. *Id.*

During the litigation of this proceeding, the Commission entered an Order in *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2022-3034143, Order at 39-45 (July 13,

2023) (*Shenandoah*) where it addressed the free service issue in applications filed under Section 1329. OCA St. 1SR at 10. The Commission determined that the Sections 1329 and 1304 of the Public Utility Code should be read to allow free water service to an entity to continue where the free service is temporary and rates for service will be proposed, and ultimately adopted, in the buyer's next base rate proceeding. *Shenandoah* at 39-45.

Consistent with that Order, the OCA recommended that the Commission should condition approval of the application on the requirement that free service is temporary until cost-based rates are set in the next base rate case. OCA St. 1SR at 10. Paragraph 17 addresses the OCA's recommendation and, in conjunction with other provisions of the Settlement, ensures that free service is temporary. Requiring PAWC to propose to move the VA Hospital toward paying its cost of service in the next base rate case helps to limit the risk to other PAWC ratepayers for how long and how much they will subsidize the cost for serving the VA Hospital. OCA St. 1 at 24-25.

C. Cost of Service Studies and Rates (¶¶ 18-19, 30-31)

In this proceeding, the OCA identified the need for PAWC to provide – in the first base rate case in which it includes BASA's assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of the BASA wastewater system, as well as a separate cost of service study for the BASA system. OCA St. 1 at 27-28; OCA St. 1SR at 21. These studies will provide information to establish rates that reflect the costs for the BASA system. The Settlement adopts the OCA's recommendation. Paragraphs 19(a) and 30 provide that, in its first base rate case in which PAWC includes the BASA's assets in rate base, PAWC will submit a wastewater cost of service study that removes all costs and revenues associated with BASA's system. Paragraphs 19(b) and 31 provide that the Company will also provide a separate cost of service study for the System consistent with typically filed ratemaking exhibits including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof

of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

Paragraph 19(c) of the proposed Settlement recognizes that PAWC committed, as a term of the Asset Purchase Agreement, that it would not propose an increase in BASA's base rates if the rates would become effective before the later of: (a) the first anniversary of Closing or (b) January 1, 2025. Settlement ¶ 19(c). The OCA raised a concern that delaying rate increases for customers in the BASA system would put PAWC's existing wastewater and water customers at risk to subsidize the revenue requirement needed to keep rates lower than the new rates established for those systems in the base rate case. OCA St. 1 at 16. Settlement Paragraphs 18 and 19(d) mitigate this risk by reserving all parties' rights regarding rate recommendations in future PAWC proceedings and, specifically, the right to challenge a proposal to delay the effective date of new rates for the BASA system. Further, if new rates are delayed beyond the effective date of new rates for other customers, PAWC will calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. As such, PAWC will forego any lost revenue attributable to the rate freeze for the BASA system rather than recovering it from other PAWC customers. To provide additional assurance that the rate freeze will not impact future recommendations to move customers in the BASA system to an appropriate cost of service, the Settlement sets forth the parties' agreement that those customers will be treated as though they have paid the tariffed rates without any delay.

Toward the same end, Paragraph 19(e) provides that, in the first rate case in which PAWC includes BASA's wastewater system assets in rate base, PAWC will propose to move BASA's wastewater system assets to 1.4x the current BASA wastewater rate or PAWC's proposed Rate

Zone 1 system-average wastewater rates, whichever is lower.¹ Settlement ¶ 19(e). Paragraph 31 of the Settlement requires PAWC to provide notice to customers in the BASA system of the proposed increase under Paragraph 19(e). This ensures that those customers will receive appropriate notice so the Commission can exercise its discretion in setting rates for the BASA system.

Taken together, these Settlement terms will provide a means for the parties to use the cost of service data to set rates for BASA customers that reflect the cost of service under PAWC ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other water and wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the BASA service area to lessen the rate increases for these customers and gradually increase rates towards cost of service. OCA St. 1 at 31.

D. Ratemaking Rate Base (¶¶ 21-23)

Based on appraisals presented by PAWC and BASA (\$246,114,043 and \$232,429,000), respectively), PAWC sought a ratemaking rate base of \$231,500,000 for the BASA System, which was the price PAWC originally agreed to pay for the System. OCA St. 2 at 13. As such, the ratemaking rate base proposed by PAWC was less than the average of the UVE fair market value appraisals. OCA St. 2 at 13-14. The OCA recommended that \$222,505,000 be used for ratemaking rate base based on its recommended adjustments to the UVE valuation results. OCA St. 1SR at 20; OCA St. 2 at 9.

In settlement, the parties agree that for ratemaking purposes, the ratemaking rate base pursuant to Section 1329 will be \$228,000,000. Settlement ¶ 21. The proposed ratemaking rate

¹ The current rate at Closing for System residential wastewater customers with an average usage of 3,212 gallons per month is approximately \$45.50. Settlement ¶ 19(h). The current average PAWC rate for a residential wastewater customer using 3,212 gallons per month in Zone 1 is \$106, or 2.3x higher. Settlement ¶ 19(i).

base is \$3.5 million less than requested in the Company's filing and represents an amount which, in the OCA's view, would be within the range of likely outcomes in the event of full litigation of the case. This provides some mitigation of the rate impact of the transaction for existing PAWC customers and the acquired BASA customers by reducing overall costs.

E. Distribution System Improvement Charge (¶ 24)

The parties to the proposed Settlement agreed that PAWC will not include BASA system-related investments in its Distribution System Improvement Charge (DSIC) until PAWC collects a DSIC from customers in the BASA system. Settlement ¶ 24. This responds to a concern raised by OCA witness DeAngelo by ensuring that existing PAWC customers will not fund DSIC-eligible improvements in the BASA system until those customers are contributing to DSIC revenue. OCA St. 1 at 26-27. The settlement also addresses the OCA's concern about when the DSIC will be applied to customers in the BASA system. *Id.* at 26-27. OCA witness DeAngelo noted that PAWC has already filed and received approval of an amended LTIP that includes the BASA system. *Id.* Settlement Paragraph 24 adopts the OCA's recommendation by setting a deadline for PAWC to apply the DSIC to the BASA system. Having the acquired customers pay a DSIC is one small way in which PAWC's existing customers can receive a short-term benefit from the acquisition – by spreading the costs recovered through the DSIC over a larger customer base. By requiring that the Amended LTIP not re-prioritize other existing commitments in other service areas, this provision also helps to ensure that projects and expenditures already planned for existing PAWC wastewater customers will not be given less priority as a result of the BASA acquisition.

F. Allowance for Funds Used During Construction (AFUDC) and Deferred Depreciation (¶ 25)

Under the terms of the settlement, the Joint Petitioners acknowledge that the Application includes a request that (i) PAWC be permitted to accrue Allowance for Funds Used During

Construction (AFUDC) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Settlement ¶ 25. This Settlement term adopts the OCA's recommendations that (1) any AFUDC should be addressed in PAWC's *first* base rate case that includes the BASA system and (2) there will be no preapproval of PAWC's requests in this proceeding. OCA St. 1 at 26-27. Paragraph 25 preserves all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims.

G. Transaction and Closing Costs (¶¶ 26-28)

Paragraph 26 reflects the agreement between the Joint Petitioners that PAWC be permitted to claim transaction and closing costs associated with the transaction but reserves the parties' rights to litigate their positions fully in future rate cases when this issue is ripe for review. Settlement ¶ 26. Paragraph 27 notes that the inclusion of outside legal fees in PAWC's transaction and closing costs under the APA between PAWC and BASA shall be separately identified in PAWC's next base rate case, and that amounts expended by PAWC on behalf of BASA, will be separately identified. Moreover, the Settlement explicitly states that the Joint Petitioners' assent to these terms should not be construed to operate as their preapproval of PAWC's request. Settlement ¶¶ 26-27. Moreover, the Settlement specifies that any claim by PAWC to recover transaction and closing costs associated with the transaction will not include costs incurred by BASA. Settlement ¶ 28. This adopts the recommendation of OCA witness DeAngelo. OCA St. 1 at 5, 32. As she noted, Section 1329 does not allow transaction and closing costs incurred by the *selling* utility to be included in the acquiring utility's ratemaking rate base. As such, the OCA submits that this provision is in the public interest as it provides for a full review of the transaction and closing costs

in future rate cases and ensures that the transaction will not include transaction and closing costs incurred by BASA.

H. Approval of Section 507 and Bulk Service Agreements (¶ 29)

Under Paragraph 29 of the Settlement, PAWC's request for approval of Section 507 agreements is permitted. Settlement ¶ 29. The OCA does not join in this provision but, in furtherance of settlement, does not oppose PAWC's request.

I. Low Income Program Outreach and Welcome Letter (¶¶ 32-34)

OCA witness DeAngelo raised a concern that, unless BASA customers know about and enroll, the existence of PAWC's low-income programs will not provide a benefit. OCA St. 1 at 22. She recommended that PAWC should provide a letter to the acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and PAWC's contact information. *Id.* The letter should be sent within 30 days after closing so that eligible customers can benefit from the program as soon as possible and before rates are increased. Also, PAWC should include the same information regarding low-income programs in bills sent to BASA customers within 90 days after closing. *Id.*

The Settlement reflects PAWC's agreement to the OCA recommendation. Settlement ¶¶ 32, 33. As PAWC already provides water service in the Butler area, the Settlement also reflects its agreement to automatically enroll any customers enrolled in the low-income discount for their water service in the discount for wastewater service at the time of Closing. Settlement ¶ 32. PAWC will also work with community-based organizations with offices local to the areas served by the System for purposes of providing information and enrolling customers in its customer assistance programs. Settlement ¶ 34. Automatic enrollment, local outreach, and timely information about the availability of PAWC's low-income programs will benefit some customers in the BASA system.

J. Hardship Fund (¶¶ 35-36)

Under the Settlement, effective on and after closing, PAWC will increase eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines (FPIG) for all PAWC customers. Settlement ¶ 35. All parties reserved the right to re-evaluate the appropriate eligibility for hardship grants in a future rate case filed after five years following Closing. *Id.* In testimony, the OCA identified that PAWC's bill discount program is limited to customers at or below 150% of the FPIG. Therefore, the bill discount is not likely to offset the projected rate increase caused by the BASA acquisition. Also, the bill discount program does not help customers who are above 150% of FPIG. Expanding eligibility means that hardship grants will be available to more PAWC customers who face economic difficulty resulting from the rate increases that will result due to PAWC's ownership of the BASA system.

The OCA made a companion recommendation that, if the proposed acquisition is approved, it should be conditioned on the requirement that PAWC make an additional annual contribution of \$500,000 to the hardship fund annually for five years following closing.² OCA St. 1 at 22. OCA witness DeAngelo further recommended that these contributions should not be recovered in rates and all unspent funds at the end of the program year should be rolled over and added to the budget for the hardship grant program in the following year(s). OCA St. 1 at 23. The Settlement provides more than was requested by the OCA in that, in addition to existing commitments and any commitments made in a future base rate case, PAWC will contribute \$700,000 annually to the Company's hardship grant program for the five years following closing (\$3,500,000 total). Settlement ¶ 36. These contributions will not be recovered in rates. *Id.* All unspent funds from the

² The Company currently contributes \$750,000 annually to its hardship fund. PAWC St. 3R at 13.

program will be rolled over and added to the budget for the hardship grant program in the following year(s). *Id.*

Making hardship grants available to more PAWC customers, and increasing funding for the grants, will provide a concrete and actual benefit to PAWC's existing and acquired customers that will provide a small offset to the rate increases that will result from this acquisition.

K. Commercial Customer Payment Arrangement (¶ 39)

In Paragraph 39 of the Settlement, PAWC agreed to implement a formal program for payment arrangements for commercial customers, including eligibility and payment terms. While the OCA did not present testimony on the need for payment arrangements for customers in the commercial rate class, the OCA recognizes the need for assistance for these customers and fully supports this provision as providing a benefit for the commercial rate class. Furthermore, to the extent that allowing commercial payment arrangements reduces uncollectible expenses, the benefits from this program will inure to all ratepayers on the system.

L. Other Necessary Approvals (¶40)

The Settlement acknowledges that the Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transaction contemplated in the Application in a lawful manner.

IV. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement should be approved.

Respectfully Submitted,



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4870-7017-3558

Attachment 6

Joint Proposed Findings of Fact

Attachment 6

Proposed Findings of Fact

The Parties

1. Pennsylvania-American Water Company (“PAWC”), a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. As of January 31, 2023, PAWC furnished wastewater service to approximately 97,305 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of January 31, 2023, PAWC furnished water service to approximately 679,777 customers in Pennsylvania. PAWC St. No. 1 pp. 15-16.

2. The Butler Area Sewer Authority (“BASA”) is a municipal authority created pursuant to the Municipality Authorities Act of 1945 by the City of Butler (the “City”) and the Township of Butler (the “Township”). BASA St. No. 1 p. 2.

3. The City is a third-class city incorporated in 1918. The City has a population of approximately 13,000. City St. No. 1 p. 1.

4. The Township is a township of the first-class with a population of approximately 17,000. Township St. No. 1 p. 3.

5. The Bureau of Investigation and Enforcement (“I&E”) serves as the prosecutory bureau for the Pennsylvania Public Utility Commission (“Commission”) for purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code (“Code”) and Commission Regulations and Orders.

I&E St. No. 1 p. 1; *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).

6. The Office of Small Business Advocate (“OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

7. The Office of Consumer Advocate (“OCA”) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

8. Center Township (“Center”) is a township in Butler County, Pennsylvania. Center is a customer of BASA. Center St. No. 1 p. 1.

9. Summit Township (“Summit”) is a township in Butler County, Pennsylvania. Summit St. No. 1 p. 1.

10. Cleveland-Cliffs Steel is a large industrial customer of PAWC. Cleveland-Cliffs Steel Petition to Intervene p. 2.

BASA’s Wastewater System

11. BASA owns and operates a wastewater system (“the System”), consisting of 224 miles of interceptor sewers, eight miles of force mains, twenty-three pump stations, seven flow equalization tanks, and a wastewater treatment plant (“WWTP”) that has a design and permitted average daily flow capacity of 10.0 million gallons per day (“MGD”) and a rated maximum flow capacity of 28.0 MGD. BASA also owns nearly 6,500 manholes. BASA St. No. 1 p. 3.

12. The System is a regional sewage service provider, providing sewage treatment for eight municipalities. PAWC St. No. 2 p. 13. The System serves all of the City of Butler, and portions of the Township, Center, Summit, Connoquenessing Township, East Butler Borough

and Oakland Township, all in Butler County, Pennsylvania. The System's service area comprises approximately 30 square miles and closely matches the service area of the PAWC Butler water system. PAWC St. No. 2 pp. 3-4; BASA St. 1 pp. 2-3.

13. The System's collection network is a sanitary-only system; there are no combined sewers in the System. PAWC St. No. 2 pp. 2-3.

14. As of December 31, 2022, the System furnished wastewater service to approximately 14,792 customers. PAWC St. No. 1 p. 16 There are no bulk service agreements with any contributing municipalities. PAWC St. No. 2 pp. 3-4.

15. BASA has an industrial pretreatment program ("IPP") approved by the United States Environmental Protection Agency ("USEPA"). BASA currently has permits with one Categorical Industrial User ("CIU"), three Significant Non-Categorical Industrial Users ("SNIUs"), and three Non-Significant Industrial Users that discharge, or may discharge, process wastewater into the sewer system. PAWC St. No. 1 p. 5.

The Sale Process

16. The Township, the City, and the Authority's Board Members worked together to weigh the pros and cons of BASA's continued ownership of the System. Township St. No. 1 pp. 4-5; City St. No. 1 p. 5.

17. PAWC and BASA entered into an exploratory process through the execution of a confidentiality agreement in December 2021 to determine if, in the view of those parties, an acquisition would be in the best interest of all stakeholders. After approximately ten months, deal terms were presented and negotiated in principle in September 2022. PAWC St. No. 1 pp. 9-10.

18. Prior to signing a purchase agreement, BASA conducted a public awareness campaign. The City and the Township requested and considered public input on the sale of the System. Before signing the asset purchase agreement (“APA”) with PAWC, the City and the Township hosted open houses to provide the public with an opportunity to speak directly with representatives from BASA, the City, the Township, and PAWC regarding any concerns or thoughts about the sale. Local and regional media covered the announcement of PAWC’s offer and ran stories about the open houses. BASA also created a website with resources for customers pertaining to the sale including the reasons BASA reviewed the offer, the impact the sale will have on the community, and links to several pertinent documents related to the sale (such as the APA). Township St. No. 1 pp. 6-7; City St. p. 7.

19. In October 2022, the Township, the City and BASA voted unanimously to authorize all actions related to the execution and performance of the APA. Township St. No. 1 pp. 6-7; City St. p. 7.

The Asset Purchase Agreement

20. The APA sets forth the terms and conditions pursuant to which BASA will sell, and PAWC will purchase, the System (the “Transaction”). PAWC St. No. 1 pp. 10-11.

21. The consideration for the purchase of the System is \$231,500,000, subject to certain adjustments. The First Amendment to the APA will reduce that purchase price to \$230,000,000. *Pro Forma* First Amendment to the APA, Attachment 11.

22. PAWC gave BASA a \$3,000,000 Letter of Credit on October 11, 2022, but this was subsequently returned by BASA. PAWC St. No. 1 p. 12; OCA St. No. 1 p. 27.

23. Two escrow accounts will be established at closing of the Transaction (“Closing”): (i) \$9,200,000 will be placed into an Indemnity Escrow Fund to pay for BASA’s

post-Closing obligations, and (ii) an amount to be determined will be placed in an Easement Escrow Fund for all of the easements that are missing as of Closing. PAWC St. No. 1 p. 12. As of the Closing Date, BASA will fund the Easement Escrow Fund in the amount of \$2,000 for each missing easement. PAWC St. No. 1 p. 13.

24. In the APA, PAWC agreed to: (a) maintain an operations center at BASA's headquarters for at least ten years after Closing, consisting of managers, customer service representatives and operators; (b) offer employment to eligible BASA employees following the Closing, subject to certain conditions; and (c) use commercially reasonable efforts to develop a pilot program for a customer-owned damaged wastewater service lateral replacement program, and then petition the Commission for approval of that pilot program. PAWC St. No. 1 p. 14.

25. In the APA, PAWC committed to adopt, upon Closing, BASA's monthly base rates. These rates are currently \$43.00 per month per equivalent dwelling unit ("EDU"), but will be increased to \$45.50 per month per EDU prior to Closing. BASA St. No. 1 p. 10. System customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to all rates other than base rates (such as capacity reservation fees, reconnection fees and IPP charges) as well as non-rate related terms and conditions of service. PAWC St. No. 3 p. 7.

26. In the APA, PAWC agreed that it will not propose to increase BASA's base rates until the later to occur of: (i) the first anniversary of Closing, or (ii) January 1, 2025. However, PAWC may apply a Distribution System Improvement Charge ("DSIC") and/or State Tax Adjustment Surcharge, if approved by the Commission. PAWC St. No. 3 p. 7.

27. In the APA, PAWC agreed that, in the first base rate case following Closing, PAWC will propose to move BASA to metered rates. PAWC St. No. 3 p. 7.

28. In the APA, PAWC agreed to assume an agreement that provides for free service to the Veterans Administration Hospital Reservation in Butler (the “VA Hospital”). BASA has not entered into any other agreements for free service. PAWC St. No. 3 pp. 8-9.

29. Closing will occur after the receipt of all applicable governmental approvals, including approvals from the Commission, and after all applicable conditions have been met (or waived) by the parties. Upon Closing, PAWC will take ownership of the System and begin rendering wastewater services to BASA’s current customers and BASA will permanently discontinue furnishing wastewater service to the public. PAWC St. No. 1 pp. 10-11.

The Application

30. The Application seeks to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the System and the ratemaking rate base of its assets. PAWC St. No. 1 p. 3.

31. As required by Section 1329, PAWC’s Application included a *pro forma* tariff. This tariff proposed that BASA customers be subject to the IPP charges in PAWC’s prevailing wastewater tariff on file with the Commission. PAWC St. No. 3-S pp. 3-4.

32. The Application proposed a ratemaking rate base of \$231,500,000. OCA St. 2 at 11.

33. During the Application Completeness review, TUS insisted that PAWC revise its tariff, *inter alia*, to reflect “a \$0.00 BOD5 surcharge, a \$0.00 SS surcharge for all customers except PAWC.” PAWC St. No. 3-S p. 3. Although PAWC explained that pretreatment fees are miscellaneous fees and charges associated with PAWC’s IPP that recover actual costs incurred by PAWC in treating industrial wastewater, PAWC provided a revised *pro forma* tariff at

Appendix A-12.1 to reflect the changes requested by TUS. This *pro forma* tariff did not supersede PAWC's original filing. PAWC St. No. 3-S pp. 3-4.

34. In order to comply with TUS's demands, so that TUS would find the Application administratively complete, PAWC filed the Second Amended Appendix A-12, which replaced the originally filed *pro forma* tariff with the version that was previously provided as Appendix A-12.1. PAWC St. No. 3-S p. 4. PAWC subsequently clarified its position that the modifications to page 90 of Tariff Wastewater PA P.U.C. No. 16 should be excluded from the proposed *pro forma* tariff. PAWC St. No. 3-S p. 1.

The Engineers' Assessment and the Utility Valuation Expert Appraisals

35. As required by Section 1329, PAWC and BASA jointly retained the services of Herbert, Rowland, & Grubic, Inc. to complete an engineers' assessment of the System. PAWC Exhibit SDF-2, Appendix A-15-a.

36. PAWC's utility valuation expert ("UVE") appraisal, the "Fair Market Appraisal Report of Butler Area Sewer Authority's (PA) Wastewater Collection System and Treatment System, as of October 11, 2022," was performed by Jerome C. Weinert, Principal and Director of Weinert Appraisal and Depreciation Services, LLC ("WAD Consultants"). WAD Consultants is a registered Utility Valuation Expert with the Commission. PAWC's UVE testified that this appraisal was completed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") (2020-2021 Edition) (the Appraisal Foundation extended the applicability of the 2020-2021 Edition until December 31, 2023). PAWC St. No. 4 p. 1.

37. PAWC's UVE appraised the System as follows (PAWC St. No. 4 p. 3):

Appraisal Approach	Value Indicator	Weight	Wtd Value Indicator
Cost	\$ 240,895,239	50%	120,447,620
Income	\$ 259,277,679	40%	103,711,072
Market	\$ 220,195,730	10%	22,019,573
Appraisal Conclusion			\$ 246,178,265

38. BASA’s UVE appraisal, “Butler Area Sewer Authority Wastewater System Assets Fair Market Value Appraisal at January 19, 2023,” was completed by Harold Walker III of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”). BASA St. 3 p. 1. Gannett Fleming is a UVE registered with the Commission. BASA’s UVE testified that this appraisal was completed in accordance with USPAP. BASA St. No. 3 pp. 4, 12.

39. BASA’s UVE appraised the System as follows (BASA St. No. 3 p. 13):

Approach	Indicated Value	Weight	Weighted Value
Cost Approach	254,729,592	33.33%	\$84,901,373
Market Approach	178,105,462	33.34%	59,380,361
Income Approach	264,469,512	33.33%	88,147,688
		100%	\$232,429,422
Conclusion			\$232,429,000

PAWC’s Legal Fitness

40. PAWC is a Commission-regulated public utility with a good compliance history. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to customers on BASA’s System. PAWC St. No. 1 p. 21.

41. PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC has the resources, skills, and expertise to respond to ever-increasing environmental standards for the treatment of wastewater and to manage the

long-term infrastructure renewal and replacement needs inherent in wastewater systems. PAWC St. No. 2 p. 21.

PAWC's Financial Fitness

42. PAWC had total assets of \$5.9 billion and annual revenues of \$769 million for 2021. For 2021, PAWC had operating income of approximately \$342 million and net income of approximately \$229 million. These operating results produced cash flows from operations of approximately \$438 million. PAWC St. No. 1 p. 22; PAWC St. No. 3 p. 3.

43. PAWC has liquidity through a \$400 million line of credit through American Water Capital Corp. ("AWCC"), a wholly owned subsidiary of American Water Works Company, Inc. ("American Water"). PAWC St. No. 1 p. 6.

44. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority ("PENNVEST") and the Pennsylvania Economic Development Financing Authority ("PEDFA"). PAWC St. No. 1 p. 6.

45. PAWC may obtain additional equity investments through American Water based on its strong operating performance. PAWC St. No. 3 p. 4.

46. PAWC does not anticipate that the acquisition of the System will have a negative impact on PAWC's cash flows, credit ratings or access to capital and, therefore, will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. No. 3 p. 5.

PAWC's Technical Fitness

47. PAWC currently employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting, and customer service. As a subsidiary of American Water, PAWC also has available to it additional resources of highly trained professionals who have expertise in various specialized areas. PAWC St. No. 2 p. 19.

48. PAWC is experienced in water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. PAWC St. No. 1, pp. 22-23; PAWC St. No. 2 pp. 19-20.

49. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure; thereby minimizing customer disruption caused by infrastructure failure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$470 million to \$600 million per year for the next five years. PAWC St. No. 2 p. 12.

Post-Closing Operation of the System

50. After Closing, the System will be incorporated as an operating district into PAWC's Northwest Area operations. BASA's existing staff will provide the day-to-day operational services, with management oversight provided by PAWC's Northwest Area management team. This same management team oversees the PAWC Butler water system. PAWC St. No. 2 pp. 8-9

51. After Closing, PAWC will assume BASA’s responsibilities under the 2019 CAP to rebuild the existing infrastructure in order to eliminate persistent sanitary sewer overflows (“SSOs”). PAWC St. No. 2 p. 16.

Post-Closing Operation of the IPP

52. All permitted IPP users are located within the certificated service territory being proposed by PAWC for this Transaction. After Closing, PAWC will assume BASA’s responsibility to implement IPP services to BASA’s current IPP customers and any future IPP customers requesting service in the certificated service area. Upon Closing, PAWC will incorporate the BASA system into the IPP Rules and Regulations of its PUC-approved tariff for implementation. PAWC St. No. 2 pp. 5, 26.

Customer Notice

53. PAWC provided notice of the acquisition to existing PAWC water and wastewater customers as well as to BASA’s wastewater customers. These notices contained a non-binding estimate of the potential rate impact of the acquisition. PAWC St. No. 3 p. 12.

54. The notices were prepared in accordance with the *Steelton Order*.¹ This Order approved a Settlement in which PAWC agreed to the form and calculation of the notices for future Section 1329 acquisition proceedings (“Settlement”). PAWC St. No. 3 p. 12. The calculation was updated to include revenues from all systems that were included in the Company’s 2022 base rate case. PAWC St. No. 3 p. 13.

¹ *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) (“*Steelton Order*”).

55. The notice estimated that: (a) rates for BASA customers would increase by 94.4% in the first base rate case in which the System is included in PAWC's rate base; (b) rates for PAWC's existing wastewater customers would increase by 7.0% in that case, and (c) rates for PAWC's existing water customers would increase by 0.8% in that case. PAWC St. No. 3 pp. 13-18.

56. The amounts included in the customer notices are not proposed rates. Any future rate changes for BASA customers will be proposed in the context of a base rate case and will be subject to review by the Commission, as well as other interested parties. PAWC St. 3-R p. 13.

Affirmative Benefits

Introduction – General Benefits and Detriments of the Transaction

57. PADEP has prohibited new connections on portions of the System. BASA was allowed to request a limited number of new sewer connections be permitted within these sewer service areas upon the PADEP's approval of the CAP. BASA has applied for and received PADEP approval of a limited number of taps each year that it has been under the CAP. City St. No. 1 p. 10; Township St. No. 1 pp. 9-10; PAWC St. No. 2-SR pp. 2-3, 6-7.

58. After Closing, most BASA customers will have one provider for both water and wastewater service. This means most BASA customers will receive one bill for both water and wastewater services, providing customers with a more efficient payment process for both services. Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.

59. PAWC is subject to the jurisdiction of the Commission, requiring PAWC to provide adequate, efficient, safe and reliable service at just and reasonable rates. PAWC St. No. 1 p. 18; PAWC St. No. 2 p. 39; PAWC St. No. 2-SR p. 6.

60. BASA customers currently have no ombudsman. After Closing, the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Bureau of Investigation and Enforcement would act as ombudsman for customers. PAWC St. No. 2 pp. 40-41.

Financial Benefits and Detriments of the Transaction

Financial Impacts on BASA, the City, and the Township

61. BASA has approximately \$40.6 million in debt. BASA St. No. 1 p. 7. All of this will be paid off with the proceeds of the sale and BASA will be dissolved at or after Closing. City St. No. 1 p. 9.

62. The City and the Township, as the incorporators of BASA, will receive the balance of the proceeds of the sale. City St. No. 1 p. 9; Township St. No. 1 p. 9.

Financial Impacts on BASA Customers

63. All BASA customers will continue to be billed on a monthly basis. PAWC St. No. 1 p. 13.

64. If the Transaction is approved, there will be no immediate impact on the rates of BASA's customers because PAWC will adopt BASA's rates in effect at the time of Closing and residents will not experience another increase for at least one year after Closing. PAWC St. No. 3 p. 11.

65. BASA does not have a low-income customer assistance program, but PAWC does. PAWC St. No. 2-SR p. 8. After Closing, qualified low-income BASA customers will have access to PAWC's customer assistance programs to help pay their bills. City St. No. 1 p. 9, Township St. No. 1 p. 13.

66. Because PAWC is already the water provider in the Butler area, any customers enrolled in the low income discount for their water service will be automatically enrolled in the discount for wastewater service at the time of Closing. PAWC St. No. 3 p. 19.

67. PAWC's bill discount program is limited to 150% of the Federal Poverty Income Guidelines ("FPIG"). PAWC St. No. 3 p. 17.

68. PAWC has a Hardship Fund, H2O Help to Others, which is funded by \$750,000 of shareholder contributions annually. The H2O Help to Others program provides grants to low-income water and wastewater customers. PAWC St. No. 3-SR p. 4.

69. Because PAWC's bill discount program will not help BASA customers who are above 150% of FPIG, the OCA recommended that, as a condition of approval of the transaction, PAWC should make an annual contribution of \$500,000 to the hardship fund annually for five years following closing. OCA St. 1 p. 22-23; OCA St. 1-SR p. 8-9. The OCA recommended those contributions should not be recovered in rates and all unspent funds at the end of the program year should be rolled over and added to the budget for the hardship program in the following year(s). *Id.*

Financial Impacts on PAWC's Existing Customers

70. There will be no immediate rate impact on PAWC's existing customers. PAWC St. No. 1 p. 20.

71. The OCA also recommended additional contributions to the hardship fund because PAWC's bill discount program will not be available to help existing PAWC wastewater and water customers who are above 150% of FPIG. OCA St. 1 p. 22-23; OCA St. 1-SR p. 8-9.

Environmental Benefits and Detriments of the Transaction

Existing Environmental Compliance Challenges of the BASA System

72. On February 20, 2001, BASA and PADEP entered into a Consent Order and Agreement (the “2001 Agreement”) to resolve violations of the Clean Streams Law and the Sewage Facilities Act. The 2001 Agreement included, among other things, a requirement for BASA to fully implement a CAP executed on March 20, 2001 and revised on April 23, 2001 (as amended, the “2001 CAP”), to eliminate the discharges caused by hydraulic overload conditions. PAWC St. No. 2 pp. 13-14.

73. On December 31, 2005, BASA informed PADEP that it had not completed all of the tasks under the 2001 CAP, as required under the 2001 Agreement. BASA requested an extension of time to complete all of the tasks set forth in the 2001 CAP. On February 9, 2006, PADEP informed BASA that, because it had not completed with all of the tasks under the 2001 CAP, as amended, BASA was in violation of the 2001 Agreement and owed stipulated penalties under the 2001 Agreement. On April 27, 2006, BASA paid all outstanding stipulated civil penalties owed under the 2001 Agreement. PAWC St. No. 2 p. 14.

74. On October 13, 2006, BASA and PADEP entered into a second Consent Order and Agreement (the “2006 Agreement”) to resolve SSOs in the collection system, hydraulic overloading at the treatment plant, and failure to submit a NPDES permit renewal application by the regulatory deadline. The 2006 Agreement required BASA and the contributing municipalities to perform an Act 537 Official Plan Revision Special Study that addresses each municipality’s current and future sewage needs to be served by the BASA WWTP. BASA and the contributing municipalities were also required to agree to a prohibition on issuing new customer connections to the System. BASA also was required to eliminate collection system

SSOs by completing the Deshon Sewer Rehabilitation Project. BASA and the contributing municipalities fulfilled the obligations in the 2006 Agreement and PADEP terminated the agreement on October 16, 2013. PAWC St. No. 2 pp. 14-15.

75. From 2018 through November 10, 2022, the System received forty-six notices of violations from PADEP for illegal SSO discharges. Each of these SSO discharges resulted in raw sewage being discharged into the environment. PAWC St. No. 2 p. 14; PAWC St. No. 2-R p. 6; BASA St. No. 1 p. 4.

76. On February 15, 2019, BASA submitted a CAP to address pump station SSOs in two portions of its collection system. The 2019 CAP was revised on March 11, 2019 and ultimately approved by PADEP on March 26, 2019. The approved 2019 CAP requires sewer rehabilitation repairs in the two subareas of the collection system, replacement of six sewage pump stations, and restrictions on new sewer connections in these areas. PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

77. All work on the 2019 CAP was to be completed by June 30, 2024. BASA submitted a revised 2019 CAP to PADEP on October 13, 2020 requesting an extension of the completion date to December 31, 2025. PADEP approved this revised 2019 CAP and deadline on February 22, 2021. BASA submitted a second revision to the 2019 CAP on May 18, 2022, and amended the proposed revision on May 31, 2022. This second revision requested a further extension of the completion deadline to August 31, 2026. PADEP approved this second revision to the 2019 CAP and completion deadline on June 2, 2022. BASA is currently in the design and permitting phases of the projects required under the approved 2019 CAP. PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

78. Since 2018, the Authority has conducted 2,601 inspections to address illegal connections and I&I through its Realty Transfer Inspection Program. Nearly forty percent (40%) of these inspections failed and required a replacement lateral. BASA St. No. 1 pp. 6-7.

79. PAWC has developed a five-year capital plan totaling \$75.8 million that includes the 2019 CAP projects. PAWC St. No. 2 p. 17.

Benefits and Detriments Relating to Customer Service

80. PAWC provides customer information and education programs that will be available to BASA's current customers through brochures, bill inserts, and educational videos posted on PAWC's website. PAWC provides customers with access to a wide range of topics, including information on preventing sewer overflows, preventing frozen pipes, detecting and fixing silent toilet leaks, properly disposing of unused pharmaceuticals to keep them out of the wastewater system, conserving water, and obtaining Fire Department Grants. PAWC St. No. 2 p. 36.

81. PAWC offers payment arrangements and budget billing to residential customers who qualify for the programs. PAWC St. No. 2 p. 37.

82. PAWC's customers enjoy benefits from the low-income household water assistance program ("LIHWAP"). From January through October 2022, nearly 13,000 LIHWAP grants have been processed by DHS for PAWC customers, providing over \$7.4 million in assistance. PAWC St. No. 2 p. 37.

Attachment 7

Joint Proposed Conclusions of Law

Attachment 7

Proposed Conclusions of Law

1. The Commission has jurisdiction over the subject matter of, and the parties to, these application proceedings. 66 Pa. C.S. §§ 1102, 1103 and 1329.

2. Pennsylvania-American Water Company (PAWC”) has the burden of proof in these proceedings. 66 Pa. C.S § 332(a).

3. Commission policy promotes settlements. 52 Pa. Code § 5.231.

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

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

6. 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) (“Procedure to obtain certificates of public convenience”).

7. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1).

8. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

9. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). PAWC has demonstrated that it is technically, financially and legally fit.

10. The fitness of a currently certificated public utility is presumed. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

11. An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

12. The affirmative public benefit test is a “net benefits assessment.” This requires a showing that on net the public is better off because of the transaction than it would have been in the absence of the transaction. *Cicero v. Pa. Pub. Util. Comm’n*, 910 C.D. 2022 (Pa. Cmwlth. 2023). Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Id.*¹

¹ BASA, the Township and the City do not join in this paragraph and note that the case cited remains subject to further appellate review.

13. The Commission must consider environmental impacts when adjudicating cases. *Township of Marple v. Pa. Pub. Util Comm'n*, 319 C.D. 2022 (Pa. Cmwlth. 2023) (citing the Environmental Rights Amendment, PA. CONST. art. I, § 27).

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

15. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the parties or the fair market value of the selling utility. 66 Pa. C.S. § 1329(c)(2). For purposes of Settlement, the parties have agreed that \$228,000,000 is the amount to be utilized for the ratemaking rate base.

16. “Fair market value” is defined as “the average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g).

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

18. IPP fees are miscellaneous fees that may be applied to acquired customers, rather than existing rates that must be adopted by the acquiring utility pursuant to Section 1329(d)(v). IPP fees are intended to cover costs associated with a comprehensive enforcement program to ensure that industrial wastewater is properly pretreated in order to protect the integrity of the System and the environment, and to ensure that the costs are allocated to the cost causers and not other ratepayers.

19. Section 1304 (relating to discrimination in rates) and Section 1329 of the Public Utility Code, 66 Pa. C.S. §§ 1304 and 1329, should be read together and that adoption of a temporary \$0 rate for wastewater service to comply with Section 1329(d)(v) is reasonable and permissible only until rates are established in the buyer's first base rate case including the acquired system assets. *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2022-3034143 (Order entered July 13, 2023) pp. 39-45.

20. During the period that the *pro forma* tariff supplement is in effect, an acquiring public utility may collect a DSIC, as approved by the Commission. 66 Pa. C.S. § 1329(d)(4).

21. A wastewater utility must submit a long-term infrastructure improvement plan to, and receive approval from, the Commission prior to collecting a DSIC. Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (*Final Implementation Order* entered August 2, 2012).

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

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

24. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa. C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

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

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

Attachment 8

Joint Proposed Ordering Paragraphs

Attachment 8

Proposed Ordering Paragraphs

1. That the Honorable Administrative Law Judge Marta Guhl recommend approval of, and the Commission approve, the Joint Petition for Unanimous Settlement of All Issues as submitted, including all terms and conditions thereof, without modification.

2. That the Application filed by PAWC in this matter on February 14, 2023, as amended, and as further amended by the Settlement, be approved.

3. That the Commission issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system (the “System”) owned by BASA to PAWC, and (ii) the right of PAWC to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection and treatment system owned by BASA.

4. That the Commission permit PAWC to issue compliance tariff supplements, consistent with the *pro forma* tariff supplement attached to this Settlement, including all rates, rules and regulations regarding conditions of PAWC’s wastewater service as revised herein, to become effective immediately upon Closing. The attached *pro forma* tariff supplement incorporates BASA industrial customers into PAWC’s existing IPP tariff and does not exempt any BASA industrial customers from IPP fees. IPP tariffed fees will be adjusted in the context of future PAWC base rate proceedings.

5. That the Commission direct PAWC, in the first base rate proceeding that includes the BASA System assets, to charge cost-of-service based rates for wastewater service to all entities

it serves in the System, including but not limited to the Veterans Administration Hospital, as limited by Paragraph (6)(e) below.

6. That the Commission direct that, in the first base rate proceeding that includes the BASA System assets:

(a) PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of BASA's System, in accordance with Paragraph (13), below.

(b) PAWC will provide a separate cost of service study for the BASA System, in accordance with Paragraph (14), below.

(c) PAWC will not propose an increase in BASA's rates if the rates would become effective before the later of: (i) the first anniversary of Closing or (ii) January 1, 2025.

(d) In PAWC's first base rate case that includes the BASA system assets, if PAWC proposes a different effective date for new rates for BASA customers beyond the effective date of new rates for other customers, PAWC will calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. The Joint Petitioners reserve all rights with respect to the issue of delayed effective dates of rates in subsequent proceedings. This term should not be construed to limit the Joint Petitioners' ability to make recommendations in any future PAWC base rate case to bring customers in systems with delayed effective dates to an appropriate cost of service as though they have paid the tariffed rates without any delay.

(e) PAWC will propose to move the System to 1.4x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.

(f) PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

(g) OCA, I&E, and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Joint Petitioners expressly recognize the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph (6), may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

(h) The rate at closing for System residential wastewater customers with an average usage of 3,212 gallons per month is approximately \$45.50.

(i) The current rate for PAWC residential Rate Zone 1 wastewater customers with an average usage of 3,212 gallons per month is approximately \$106.00.

7. That the Commission permit PAWC to use \$228,000,000 for ratemaking rate base purposes for the acquired System, pursuant to 66 Pa. C.S. § 1329(c).

8. That the Commission permit PAWC to record the acquisition at the net value of the assets (\$228,000,000), pursuant to 66 Pa. C.S. § 1702.

9. That the Commission not permit PAWC to include System-related investments in its distribution system improvement charge ("DSIC") until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") including the System, which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which

incorporates the System and all other systems included in the amended LTIP into PAWC's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIP.

10. That the Commission permit PAWC to: (i) accrue Allowance for Funds Used During Construction ("AFUDC") for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's requests.

11. That the Commission permit PAWC to claim transaction and closing costs associated with the acquisition of the System in its first base rate case that includes the System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

(a) The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Asset Purchase Agreement shall be separately identified in PAWC's next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

(b) Any claim by PAWC to recover transaction and closing costs associated with the Transaction will not include costs incurred by BASA.

12. That the Commission, pursuant to 66 Pa. C.S. § 507, issue a Certificate of Filing or approvals for the following agreements between PAWC and a municipal corporation:

(a) The Asset Purchase Agreement By and Among Butler Area Sewer Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of October 11, 2022, and the First Amendment thereto;

(b) The Water Pollution Control Agreement for Central Butler County between City of Butler, Township of Butler, Township of Center, Township of Summit, Borough of East Butler, Deshon Area Sanitary Disposal and Sewer Authority, East Butler Borough Sewer Authority, East Butler Borough Sewer Authority, Meridian Water and Sewer Authority, Municipal Water and Sewer Authority of Center Township and Butler Area Sewer Authority dated as of February 20, 1974;

(c) The Service Agreement between the Township of Oakland and Butler Area Sewer Authority for the Service Area along Route 38 dated March 7, 1994;

(d) The Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Cupps Road Service Area dated April 3, 1995; and,

(e) The Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Winterwood Drive Service Area dated December 14, 2005.

13. That the Commission direct PAWC, in the first base rate case that includes the System's assets, to submit a cost of service study that removes all costs and revenues associated with the operation of the System.

14. That the Commission also direct PAWC, in the first base rate case that includes the System's assets, to provide a separate cost of service study for the System consistent with typically filed ratemaking exhibits including, but not limited to, the following: Rate Base (Measures of

Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

15. That the Commission direct that, when PAWC provides customer notice in its first base rate case that includes the BASA system, PAWC shall provide notice to customers in the BASA system consistent with the rates agreed to be proposed in Ordering Paragraph (6)(e), above.

16. That the Commission direct PAWC, within the first billing cycle following Closing, to include a bill insert to System customers regarding its low income programs and include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC will also automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC's water low income programs, in PAWC's wastewater low-income programs following Closing.

17. That the Commission direct PAWC to send the welcome letter within the first 30 days of closing and to also include information about payment options (including low-income programs, eligibility requirements, and PAWC contact information), free places to pay, and in-person bill payment locations reasonably proximate to the areas served by the BASA system.

18. That the Commission direct PAWC to work with community-based organizations with offices local to the areas served by the System for purposes of providing information and enrolling customers in PAWC's customer-assistance programs. PAWC will include this information in the welcome letter referenced in the previous paragraph.

19. Effective on and after closing, PAWC will increase eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines (“FPIG”) for all existing PAWC customers and all newly acquired customers from the BASA system. All parties reserve the right to re-evaluate the appropriate eligibility for hardship grants in a future base rate case filed after five (5) years following Closing.

20. That the Commission approve PAWC’s contribution of \$700,000 annually to the Company’s hardship grant program for the five (5) years following Closing (\$3,500,000 total), in addition to existing commitments and any commitments made in a future base rate case. These contributions shall not be recovered in rates. All unspent funds at the end of the program year will be rolled over and added to the budget for the hardship grant program in the following year(s).

21. That the Commission require PAWC and BASA to: (1) identify all missing easements including public rights-of-way and other property rights; (2) take any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) BASA shall bear all costs and expenses for obtaining and conveying the missing easements and other property rights.

22. That the Commission permit PAWC and BASA, at their discretion, to close the transaction without the transfer of missing easements and other property rights, if for any circumstances beyond BASA’s control, it is unable to transfer all missing easements (including public rights-of-way and other property rights) before or at the closing of the transaction, provided that an escrow account be established as set forth in the APA in which BASA will fund an easement escrow fund in the amount of \$2,000 for each missing easement.

23. That the Commission direct PAWC, at Closing, to implement a formal program for payment arrangements for commercial customers, including eligibility and payment terms.

24. That the Commission issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in the Application in a lawful manner.

Attachment 9

Pro Forma Tariff

**PENNSYLVANIA-AMERICAN WATER COMPANYS
Wastewater Division
(hereinafter referred to as the "Company")
D/B/A
Pennsylvania American Water**

RATES, RULES AND REGULATIONS

GOVERNING THE FURNISHINGS OF

WASTEWATER COLLECTION AND DISPOSAL SERVICE

IN CERTAIN MUNICIPALITIES AND TERRITORIES LOCATED IN:

ADAMS COUNTY, ALLEGHENY COUNTY, BEAVER COUNTY, BERKS COUNTY,
BUTLER COUNTY, CHESTER COUNTY, CLARION COUNTY, CUMBERLAND COUNTY, (C)
LACKAWANNA COUNTY, LUZERNE COUNTY, MCKEAN COUNTY,
MONROE COUNTY, MONTGOMERY COUNTY, NORTHUMBERLAND COUNTY,
PIKE COUNTY, WASHINGTON COUNTY AND YORK COUNTY
ALL IN THE COMMONWEALTH OF PENNSYLVANIA

Issued:

Effective:

Issued by:
Justin Ladner, President
Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055

<https://www.amwater.com/paaw/>

NOTICE

**This Tariff authorizes Pennsylvania American Water Company to furnish wastewater services to the public in the City of Butler, portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland and Summit, all in Butler County, Pennsylvania.
(Refer to pages 2, 4, 9, 11.12.)**

PENNSYLVANIA-AMERICAN WATER COMPANY

LIST OF CHANGES

This Tariff supplement authorizes Pennsylvania American Water Company – Wastewater Division to begin to offer or furnish wastewater services to the public in the City of Butler, portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland and Summit, all in Butler County, Pennsylvania, as ordered by the Pennsylvania Public Utility Commission at Docket No. A-2022-3037047 entered XXXXXX.

Issued:

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PENNSYLVANIA-AMERICAN WATER COMPANY

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PENNSYLVANIA-AMERICAN WATER COMPANY

TERRITORIES SERVED (CONT'D)

**(By State Region and Company Wastewater System District)
(All territories are subject to Rate Zone 1 unless otherwise noted)**

Southeastern Pennsylvania

Coatesville District

Chester County. The City of Coatesville, the Borough of Parkesburg and portions of the Borough of South Coatesville and portions of the Townships of Caln, East Fallowfield, Highland, Sadsbury, Valley (portions – Rate Zone 5), West Caln and West Sadsbury.

Exeter Sewer District

Berks County. Portions of the Townships of Exeter, Alsace and Lower Alsace (and related points of bulk service interconnection).

Royersford District – Rate Zone 9

Montgomery County. Royersford Borough and portions of Upper Providence Township.

Upper Pottsgrove District

Montgomery County. Portions of Upper Pottsgrove Township.
Berks County. A portion of Douglass Township.

Western Pennsylvania

Butler District – Rate Zone XX

Butler County. City of Butler, portions of the Borough of East Butler, and portions of the Townships of Butler, Center, Connoquenessing, Oakland and Summit. (C)

Clarion District

Clarion County. Clarion Borough and portions of the Townships of Clarion and Monroe.

Claysville District

Washington County. Claysville Borough and portions of the Townships of Donegal.

Kane District – Rate Zone 4

McKean County. Kane Borough and portions of Wetmore Township.

Koppel District

Beaver County. Koppel Borough.

McKeesport District – Rate Zone 6

Allegheny County. The City of McKeesport, the City of Duquesne, Port Vue Borough, the Borough of Dravosburg, and a portion of West Mifflin Borough (and related points of bulk service interconnection).

Paint-Elk District

Clarion County. Shipperville Borough and portions of the Townships of Elk and Paint.

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SCHEDULE OF RATES

RATE ZONE XX – METERED AND UNMETERED

(C)

APPLICABILITY

The rates as set forth below will apply in the service territory formerly served by the Butler Area Sewer Authority served under this tariff for service rendered on and after the Effective Date shown at the bottom of this page.

AVAILABILITY

The rates under this schedule are available to all customers classes.

UNMETERED CHARGES

This charge is a flat rate fee for customers previously billed a flat rate by the Butler Area Sewer Authority.

Flat rate per month, per EDU: \$45.50

Special Rate for Multi-Family Dwelling Units

Flat Rate per month, per EDU

For the first 25 Units or any part thereof	\$45.50
For the next 25 Units or any part thereof	\$44.60
For the next 25 Units or any part thereof	\$43.70
For the next 25 Units or any part thereof	\$42.80
For the next 25 Units or any part thereof	\$41.90
For the next 25 Units or any part thereof	\$41.00
For all Units over 150 or any part thereof	\$40.10

Special Rate for VA Hospital

Flat Rate per month, per EDU
\$0.00

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Issued:

Effective Date:

Attachment 10

First Amendment to the Asset Purchase Agreement

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment") is made as of the 8th day of August 2023, by and between the Butler Area Sewer Authority, a municipal authority, organized under the Pennsylvania Municipality Authorities Act (the "Seller"), and Pennsylvania-American Water Company (the "Buyer"), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania.

RECITALS

A. Seller and Buyer are parties to a certain Asset Purchase Agreement dated as of October 11, 2022 (the "Asset Purchase Agreement").

B. Seller and Buyer wish to amend the Asset Purchase Agreement in order to update the Purchase Price.

NOW, THEREFORE, in consideration of the recitals and the covenants, warranties, representations, and agreements herein contained, and intending to be legally bound hereby, Buyer and Seller hereto agree as follows.

1. **Recitals.** The Recitals set forth above are incorporated herein by reference as if set forth in full.

2. **Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Asset Purchase Agreement.

3. **Amendment.** Seller and Buyer hereby agree, subject to the Pennsylvania Public Utility Commission approval, without modification, of the "Joint Petition for Approval of Unanimous Settlement of All Issues" filed on August 14, 2023 at Docket Nos. A-2022-3037047 *et al.*, to amend Section 3.03 of the Asset Purchase Agreement as follows:

"Section 3.03. **Purchase Price and Adjustments to Purchase Price**

The Purchase Price for the Acquired Assets shall be Two Hundred Thirty Million Dollars (\$230,000,000)(the "Purchase Price"). The Purchase Price shall be adjusted as follows:

(a) **Final Billing:** The Buyer is entitled to all customer billings with respect to sanitary wastewater customers services for the period on or after the Closing Effective Time, and the Seller is entitled to all such billings prior to the Closing Effective Time. The Parties shall cooperate to calculate an agreed upon

proration of billing amounts and to credit the Purchase Price for the appropriate Party on the Closing Date. To the extent that either Party collects billings that are attributable to service provided by the other Party, the Party holding the other Party's billing collections shall pay such amount to the other Party."

4. **Ratification and Confirmation of Terms.** As specifically modified by this Amendment, the Asset Purchase Agreement and all covenants, agreements, terms and conditions hereof are and shall remain in full force and effect and are hereby in all respects adopted, ratified and confirmed.

5. **Amendments; Waivers.** The Parties may amend this Amendment only by the Parties' written agreement that identifies itself as an amendment to the Asset Purchase Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Amendment or the Asset Purchase Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Amendment or the Asset Purchase Agreement will operate as a waiver of such right. No single or partial exercise of any such right precludes any other or further exercise of such right or the exercise of any other right.

6. **Integration.** The Asset Purchase Agreement and this Amendment constitute the entire agreement by, between, and among Buyer and Seller with respect to matters set forth therein and herein, and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between Buyer and Seller. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Amendment, or that induced any Party to enter into this Amendment or on which reliance is placed by any Party, except as specifically set forth in this Amendment. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Amendment, (ii) the provisions and language of this Amendment have been fully negotiated and (iii) no provision of this Amendment shall be construed in favor of any Party or against any Party by reason of such provision of this Amendment having been drafted on behalf of one Party rather than the other Party.

7. **Counterparts.** This Amendment may be executed in any number of counterparts which, taken together, is one and the same agreement. This Amendment becomes effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Amendment, a Party may send a copy of its executed counterpart to the other Party by facsimile or email transmission. Such Party is deemed to have executed and delivered this Amendment on the date it sent such facsimile or email transmission. In such event, such Party shall promptly deliver to the other Party an original counterpart of this Amendment executed by such Party.


8. **Governing Law; Jurisdiction.** This Amendment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The Parties

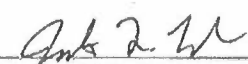
irrevocably agree and consent to the jurisdiction of the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Butler County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Amendment. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Western District of Pennsylvania and the Court of Common Pleas of Butler County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth in this Amendment shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AMENDMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AMENDMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN WITNESS WHEREOF, intending to be legally bound, Buyer and Seller hereto have duly executed this Amendment on the date specified above.

BUTLER AREA SEWER AUTHORITY


PENNSYLVANIA-AMERICAN
WATER COMPANY

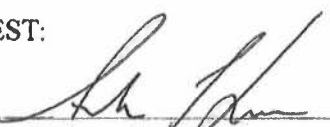
By: 
Printed: Duane E. McKee
Its: Executive Director

By: 
Printed: Justin L. Ladner
Its: President

ATTEST:

ATTEST:

By: 
Name: Lance R. Calvert
Its: Secretary

By: 
Name: Andrew L. Swope
Its: VP, General Counsel and Secretary