



October 12, 2018

VIA HAND DELIVERY

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company; Docket No. I-2016-2526085

Joint Petition for Approval of Settlement of All Issues

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original of the Joint Petition for Approval of Settlement of All Issues ("Settlement") between Pennsylvania-American Water Company ("PAWC"), Delaware Sewer Company ("DSC"), the Pennsylvania Public Utility Commission's Bureau of Investigation & Enforcement ("I&E") and the Office of Consumer Advocate ("OCA") (hereinafter collectively referred to as the "Joint Petitioners"). By the Settlement, the Joint Petitioners resolve in full the above-referenced Section 529 proceeding. Please note, however, that Appendix K, the Statement in Support of I&E, will be provided separately.

Please note that this filing is the public version of the Settlement. Appendix A contains a Schedule that contains confidential customer information. That information is redacted in the attached version, but an unredacted CONFIDENTIAL version is being filed in a separate envelope, which the parties ask to be filed in a non-public folder.

Also enclosed is the letter of Non-Opposition to Settlement of Aqua Pennsylvania Wastewater, Inc. ("Aqua").

Copies of the Settlement are being served on the Presiding Officer, Administrative Law Judge Steven K. Haas, and on all parties, as indicated on the enclosed Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please direct them to me.

Sincerely,

COZEN O'CONNOR



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

DPZ/kmg
Enclosure

cc: Honorable Steven K. Haas
Per Certificate of Service
Susan Simms Marsh, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Delaware Sewer Company for an :
Investigation into Whether the Public Utility : Docket No. I-2016-2526085
Commission Should Order a Capable Public :
Utility to Acquire Delaware Sewer Company :

CERTIFICATE OF SERVICE

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

VIA E-MAIL AND FIRST CLASS MAIL:


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DATED: October 12, 2018



David P. Zambito, Esquire
Counsel for
Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Steven K. Haas

Investigation Instituted per Section 529 into Whether :
the Commission Shall Order a Capable Public : Docket No. I-2016-2526085
Utility to Acquire Delaware Sewer Company :
:

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

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”), Delaware Sewer Company (“DSC”), the Office of Consumer Advocate (“OCA”), and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“PUC” or “Commission”) (singularly, a “Joint Petitioner” and collectively, the “Joint Petitioners”) hereby join in this Joint Petition for Approval of Settlement of All Issues (“Settlement”) and respectfully request that the Honorable Administrative Law Judge Steven K. Haas (the “ALJ”) recommend approval of, and the PUC approve, this Settlement without modification.¹

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

¹ The other party to this Section 529 proceeding, Aqua Pennsylvania Wastewater, Inc. (“Aqua”), does not oppose the Settlement. The Joint Petitioners, together with Aqua, are referred to herein as the “Parties.”

II. BACKGROUND

1. On February 6, 2014, DSC filed a Petition asking the Commission to open an investigation, pursuant to Section 529 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 529, into whether the Commission should order a capable public utility to acquire its wastewater system. By Order entered January 28, 2016, the Commission granted that request. *Petition of Delaware Sewer Company for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa. C.S. § 529*, Docket No. P-2014-2404341 (Order entered January 28, 2016).

2. On March 29, 2016, the OCA filed a Motion to Join PAWC in the Section 529 investigation proceeding, arguing that PAWC is an indispensable party. PAWC opposed that motion, arguing it was premature at that stage of the proceeding. There was never a formal resolution of the motion.

3. By Secretarial Letter dated June 7, 2017, PAWC was notified that I&E had identified it as a proximate public utility providing the same type of service as DSC. The Secretarial Letter established June 30, 2017 as the deadline for filing a petition to intervene or other responsive pleading.

4. On June 30, 2017, PAWC filed a Petition to Intervene. Also on June 30, 2017, Aqua filed a Petition to Intervene.

5. In addition, on June 30, 2017, PAWC filed a Petition to Amend the Order Entered January 28, 2016 (“Petition”). That Petition argued that the Order should be amended to (i) clarify the scope of the instant proceeding and the potential remedies that can be ordered, and (ii) require that additional notice be published in the *Pennsylvania Bulletin* to ensure due process to DSC’s customers. I&E filed correspondence on July 10, 2017, indicating that it would not be

filing a response to the Petition. On that same day, DSC filed an Answer opposing the Petition. The OCA also filed an Answer opposing the Petition on July 10, 2017.

6. A prehearing conference was held in this matter on August 14, 2017. Thereafter, the ALJ issued an Order Re Procedural Schedule and a Corrected Order Re Procedural Schedule. Among other things, the Order Re Procedural Schedule stated that the ALJ would take judicial notice of the record in the proceeding at P-2014-2404341.

7. In accordance with that procedural schedule:

a. On October 27, 2017, I&E submitted Direct Testimony.

b. On December 1, 2017, DSC, OCA and PAWC each submitted Direct Testimony, and Aqua submitted correspondence indicating that it would not be filing Direct Testimony.

c. On January 5, 2018, DSC, OCA and PAWC each submitted Rebuttal Testimony, and Aqua submitted correspondence indicating that it would not be filing Rebuttal Testimony.

d. On February 9, 2018, I&E, OCA and PAWC each submitted Surrebuttal Testimony.

8. On February 13, 2018, the ALJ held a status conference call with all of the Parties to this proceeding. At that time, the Joint Petitioners advised the ALJ that they had reached an agreement in principle to resolve this proceeding. The Joint Petitioners requested that this matter be stayed for 120 days so they could pursue further negotiations to resolve all issues in this proceeding.

9. On February 14, 2018, the ALJ issued an Order Re Stay of Litigation Schedule granting the requested stay. As a result, the hearing scheduled for February 15-16, 2018 was cancelled.

10. On June 11, 2018, counsel for PAWC advised the ALJ that, although the parties had made significant progress in their negotiations, PAWC and DSC had not yet executed an Asset Purchase Agreement. PAWC requested a 30-day extension of the stay of the litigation schedule.

11. By Order dated June 13, 2018, the ALJ granted a 60-day extension of the litigation schedule.

12. On August 13, 2018, counsel for PAWC notified the ALJ that PAWC and DSC had not yet executed an Asset Purchase Agreement. PAWC requested a further 30-day extension of the litigation schedule.

13. On August 20, 2018, counsel for DSC notified the ALJ that DSC opposed the request for a further extension of the litigation schedule.

14. On September 12, 2018, counsel for PAWC advised the ALJ that PAWC and DSC had executed an Asset Purchase Agreement, and requested an extension of the stay of the litigation schedule for twenty days so the parties could submit a joint petition for settlement.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. The Transaction

16. This proceeding is an investigation pursuant to 66 Pa. C.S. § 529 (Power of commission to order acquisition of small water and sewer utilities). In order to resolve this matter, PAWC has agreed to acquire substantially all of DSC's wastewater system (the "System"), together with approximately 140 acres of land, owned by Forest City Partnership, LLC ("Forest City"), that will be used and useful in the provision of wastewater service to the public in the entirety of DSC's existing certificated service territory (together, the "Transaction"). The Transaction, however, is subject to the condition that, prior to closing on the Transaction (the "Closing"), PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from the Commission, the Pennsylvania Department of Environmental Protection ("DEP") and Delaware Township, Pike County, Pennsylvania (the "Township")).

17. Consequently, consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Paragraph 19 below, the Joint Petitioners request that the Commission direct PAWC to:

a. Purchase substantially all of the wastewater system assets of DSC pursuant to the Asset Purchase Agreement ("the "APA") dated August 31, 2018, between DSC and PAWC, attached hereto as **Appendix A** (Schedule 6.1(g) is **CONFIDENTIAL** and is being filed under seal); and,

b. Purchase approximately 140 acres of land, to be used and useful in the provision of wastewater service to the public in the entirety of DSC's existing certificated service territory (the "Requested Territory"), pursuant to the Land Transfer Agreement (the "LTA")

dated August 31, 2018, between PAWC and Forest City (the LTA is attached hereto as **Appendix B**).

18. The Joint Petitioners request that the Commission direct PAWC to notify the Commission, OCA and I&E upon Closing on the Transaction. Upon receipt of the notice of closing, consistent with 66 Pa. C.S. § 529(d) and subject to the condition set forth in Paragraph 19 below, the Secretary's Bureau should be directed to issue certificates of public convenience evidencing Commission approval of:

- a. PAWC's acquisition of substantially all of the wastewater system assets of DSC;
 - b. PAWC's acquisition of approximately 140 acres of land from Forest City;
 - c. PAWC's right to begin providing wastewater service to the public in the Requested Territory, shown in Attachment 1 to **Appendix C**;
 - d. DSC's sale of substantially all of its wastewater system assets to PAWC;
- and,
- e. DSC's abandonment of the provision of wastewater service to the public in Pennsylvania.

19. Pursuant to the condition contained in Section 8.1(e) of the APA, prior to closing on the Transaction, PAWC shall receive all necessary governmental approvals.

20. Consistent with 66 Pa. C.S. § 529(e), the Joint Petitioners specifically request a Commission determination that the purchase prices contained in the APA and the LTA are reasonable.

21. The Joint Petitioners expressly acknowledge that PAWC's acquisition of DSC is the result of the above-captioned investigation pursuant to 66 Pa. C.S. § 529. As a result, the

Joint Petitioners request that the Commission determine that a depreciated original cost study will not be required for the assets to be acquired from DSC and Forest City because the purchase price for those assets is reasonable.

B. Plan for Improvements

22. Consistent with 66 Pa. C.S. § 529(j), attached hereto as **Appendix C** is a plan, including a timetable, for bringing the System into compliance with applicable statutory and regulatory standards (“Plan for Improvements”).

23. PAWC will serve a copy of the Settlement, including the Plan for Improvements, upon DEP and the Township, and will notify them of the opportunity to submit comments to the Commission on the Plan for Improvements within 60 days of service. *Cf.* 66 Pa. C.S. § 529(l)(3) (regarding DEP objections to Plan for Improvements). Should DEP or the Township file comments, the Joint Petitioners request that the ALJ permit the Joint Petitioners to file a response within a reasonable period of time.

24. The Joint Petitioners request that the ALJ recommend the approval of, and the Commission approve, the Plan for Improvements and allow the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service. The Joint Petitioners further request that the ALJ and the Commission treat the Plan for Improvements as a petition for modification of PAWC’s Long Term Infrastructure Improvement Plan (“LTIIP”), as approved by the Commission at Docket No. P-2017-2585707.

25. The Joint Petitioners expressly acknowledge that (i) additional upgrades beyond those provided for in the Plan for Improvements may be necessary in the future, (ii) such

upgrades shall not require an amendment of the Plan for Improvements, and (iii) rate recovery for such upgrades, absent Commission approval of an amendment to the Plan for Improvements, shall be treated in accordance with traditional ratemaking principles.

C. Rates

26. Consistent with 66 Pa. C.S. § 529(f), the Joint Petitioners request that the Commission permit PAWC to charge a separate tariffed rate to DSC customers. Attached hereto as **Appendix D** is a *pro forma* tariff supplement that incorporates DSC's rates and the Requested Territory into PAWC's existing wastewater tariff. The *pro forma* tariff supplement establishes initial rates in the Requested Territory equal to the rates currently charged by DSC, together with all other fees and surcharges permitted by PAWC's current wastewater tariff, including but not limited to, capacity reservation fees. The tariff supplement will be filed within 10 days of the Closing as a matter of compliance, and will be permitted to become effective as of the date of the Closing.

27. The Joint Petitioners request that, until PAWC's first post-Closing base rate case, PAWC be afforded deferred accounting treatment for accounting purposes for extraordinary incremental operations and maintenance expenses associated with the provision of service in the Requested Territory. An example of an extraordinary incremental operations and maintenance expense would be costs incurred by PAWC in the event that the Department of Environmental Protection would require PAWC to catch and haul the sewage from the System until improvements are made. By April 1 of each year, PAWC will provide the OCA and I&E with a report listing all deferred extraordinary incremental operations and maintenance expenses incurred during the prior calendar year. This reporting obligation will cease when PAWC files

its first base rate case that incorporates DSC. The OCA and I&E agree to this paragraph only to the extent that PAWC does not have to file a separate petition for the establishment of this deferred account for accounting purposes. The OCA and I&E do not agree to recovery of any deferred incremental operations and maintenance expenses associated with the provision of service in the Requested Territory or waive any arguments that it may have in any future filing related to any deferred amounts that PAWC would claim in its first post-Closing base rate case.

D. Other Necessary Approvals

28. The Joint Petitioners request that the Commission issue any other certificates or approvals as may be appropriate, customary or necessary under the Code to consummate the Transaction in a lawful manner.

E. Future PAWC Rate Proceedings

29. Nothing contained in this Joint Petition, or in the Commission's approval of the Settlement, shall preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding, provided however that:

a. The Joint Petitioners will not contest PAWC's rate base claim of the full purchase price for the assets of DSC (currently estimated to be approximately \$61,700, as may be adjusted at the Closing ("Purchase Price")).

b. The Joint Petitioners will not contest PAWC's rate base claim of the full purchase price of the land purchased by PAWC from Forest City (\$420,000), which land is or may be necessary for PAWC to provide wastewater service to the entirety of the Requested Territory. To the extent that the land or a portion thereof is not currently used and useful in

providing service to DSC customers, such non-used and useful property will be treated as land held for future use. The parties agree that PAWC's Plan for Improvement is a three-phase plan and that the full amount of the land will not be used for Phase I or Phase II. See **Appendix C**. As land becomes used and useful in Phases I, II and III of the Plan for Improvements in **Appendix C**, the parties agree that the used and useful portion may be included in rate base in a base rate proceeding.

c. The Joint Petitioners will not contest PAWC's right to rate recovery of all transaction and transition expenses relating to the acquisition of the wastewater system assets and service rights of DSC, but may contest the reasonableness and prudence of the amounts of the claimed expenses.

d. The Joint Petitioners will not contest PAWC's right to a return on and of upgrades to the wastewater system formerly owned and operated by DSC, including upgrades necessary to serve portions of the Requested Territory that were not previously served by DSC, as described in the Plan for Improvements (as may be amended, following appropriate due process to the Joint Petitioners, DEP and Delaware Township, and approval by the Commission). The Joint Petitioners may contest the reasonableness and prudence of the amounts claimed.

e. The Joint Petitioners will not contest that DSC is a small, nonviable wastewater system as defined by 66 Pa. C.S. § 1327(a) (relating to acquisition cost greater than depreciated original cost) and 52 Pa. Code § 69.711 (relating to small nonviable water and wastewater systems – statement of policy) but may rebut or otherwise contest any acquisition incentives claimed by PAWC.

g. The Joint Petitioners will not contest that PAWC's use of 66 Pa. C.S. § 1311(c) (relating to segregation of property) to allocate a portion of its wastewater revenue

requirement for the Requested Territory to its combined water and wastewater customer base is in the public interest, but may contest the reasonableness of PAWC's proposed allocation amount.

F. Termination of Other Proceedings

30. The Settlement is a comprehensive resolution of proceedings involving DSC:

a. The Joint Petitioners acknowledge that I&E has filed a formal complaint against DSC at Docket No. C-2017-2587178 (the "Complaint"). I&E shall move to withdraw the Complaint and DSC shall not object. I&E's withdrawal of the Complaint shall be without prejudice to refiling; provided, however, I&E shall not refile the Complaint after Closing.

b. The Joint Petitioners acknowledge that PAWC has filed a Petition to Amend the Order entered January 28, 2016 in Docket No. P-2014-2404341 ("Petition to Amend"), which remains pending. PAWC shall request a stay of the Petition to Amend pending final disposition of this investigation proceeding. The Petition to Amend shall be deemed moot upon final disposition of this investigation proceeding.

c. The Joint Petitioners acknowledge that both the OCA and DSC have filed appeals in the Commonwealth Court of Pennsylvania² challenging the Commission's Order entered July 30, 2015, regarding DSC's 2014 Rate Case. Within ten days following PAWC's filing of the notice of the Closing, as required by Paragraph 18, *supra*, OCA and DSC shall each file to withdraw and discontinue their respective appeal

² DSC's appeal was filed at Docket No. 1561 C.D. 2015. The OCA's appeal was filed at Docket No. 1705 C.D. 2015.

G. Limitations on Future Actions

31. I&E acknowledges that 66 Pa. C.S. § 529(l) provides for certain limits on enforcement actions by state agencies following Commission approval of the Plan for Improvements and the acquisition of a small wastewater company pursuant to Section 529. I&E acknowledges that this provision will apply to PAWC's acquisition of DSC beginning on the date of the Closing.

32. No Joint Petitioner will seek a rate refund or civil penalty from PAWC after Closing for rates charged or actions taken by DSC prior to Closing.

H. Standard Settlement Conditions

33. 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 Joint 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 Parties 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.

34. The Settlement is proposed by the Joint Petitioners to settle all issues in the instant investigation proceeding. 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 Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

I. Record Supporting the Settlement

36. The Joint Petitioners have prepared a Joint Stipulation for Admission of Evidence, which will be submitted to the ALJ contemporaneously with the Settlement.

37. The Joint Petitioners have jointly prepared Proposed Findings of Fact (**Appendix E**), Proposed Conclusions of Law (attached as **Appendix F**), and Proposed Ordering Paragraphs (attached as **Appendix G**). These Appendices represent items that the Parties agree to and believe are sufficient to support the approval of the Settlement.

38. Each Joint Petitioner has prepared a Statement in Support of Settlement (attached as **Appendices H-K**) setting forth the bases upon which the Joint Petitioner believes the Settlement to be in the public interest.

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

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, and Delaware Sewer Company, by their respective counsel, respectfully request that:

1. The Honorable Steven K. Haas recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.

2. Consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Paragraph 7 below, the Commission order PAWC to:

a. Purchase substantially all of the wastewater system assets of DSC pursuant to the Asset Purchase Agreement dated August 31, 2018, between DSC and PAWC; and

b. Purchase approximately 140 acres of land, to be used and useful in the provision of wastewater service to the public in the entirety of DSC's existing certificated service territory from Forest City Partnership, LLC, pursuant to the Land Transfer Agreement dated August 31, 2018, between PAWC and Forest City.

3. The Commission order PAWC to notify the Commission upon closing on the transaction described in Ordering Paragraph No. 2.

4. Upon receipt of the notice of closing and consistent with 66 Pa. C.S. § 529(d), the Commission direct the Secretary's Bureau to issue certificates of public convenience evidencing Commission approval of:

a. PAWC's acquisition of substantially all of the wastewater system assets of DSC;

- b. PAWC's acquisition of approximately 140 acres of land from Forest City;
- c. PAWC's right to begin providing wastewater service to the public in the

Requested Territory, shown in Attachment 1 to **Appendix C**.

- d. DSC's sale of substantially all of its wastewater system assets to PAWC.
- e. DSC's abandonment of the provision of wastewater service to the public

in Pennsylvania.

5. Pursuant to the condition contained in Section 8.1(e) of the APA, prior to Closing on the Transaction, PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from DEP and the Township).

6. Pursuant to 66 Pa. C.S. § 529(e), the Commission determine that the purchase prices contained in the Asset Purchase Agreement and the Land Transfer Agreement are reasonable.

7. The Commission determine that a depreciated original cost study will not be required for the acquired assets of Delaware Sewer Company in PAWC's next base rate case because the purchase price is reasonable and otherwise reflects the fair market value of the assets.

8. The Commission approve the Plan for Improvements attached hereto as **Appendix C**, consistent with 66 Pa. C.S. §529(j). It is further requested that the Commission approve the Plan for Improvements as a Petition for Modification of PAWC's Long Term Infrastructure Improvement Plan, pursuant to 52 Pa. Code § 121.5(a).

9. The Commission permit PAWC to include, in its next base rate case, a claim for transaction and transition costs related to the acquisition of DSC's wastewater system, including the purchase of land from Forest City pursuant to the LTA.

10. Consistent with 66 Pa. C.S. § 529(f), the Commission permit PAWC to charge a separate tariffed rate to DSC customers.

11. The Commission permit PAWC, within ten (10) days following closing of the Transaction, to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached hereto as **Appendix D**, to be effective as of the date of Closing.

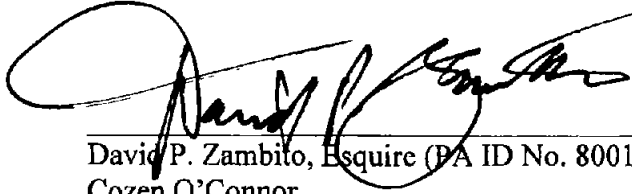
12. The Commission afford PAWC deferred accounting treatment for ratemaking purposes for incremental operations and maintenance expenses associated with the provision of service in the Requested Territory.

13. The Commission issue any other certificates or approvals appropriate, customary or necessary under the Code to carry out the Transaction in a lawful manner.

14. Upon issuance of the certificates of public convenience described in Ordering Paragraph No. 4, and the filing of the compliance tariff described in Ordering Paragraph No. 11, the Commission's Secretary's Bureau close the above-referenced Section 529 investigation proceeding.

[Signatures appear on next page.]

Respectfully submitted,

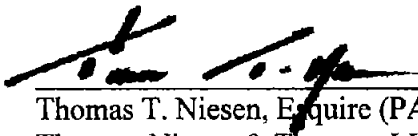


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Date: 10-12-2018

Counsel for *Delaware Sewer Company*

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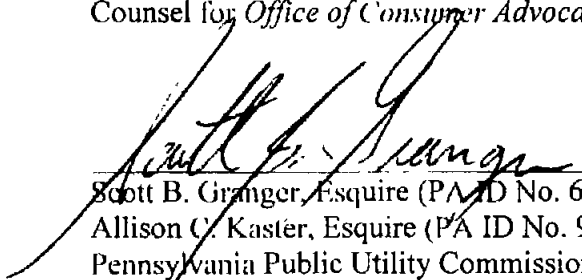
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Counsel for *Bureau of Investigation and Enforcement*

Date: _____

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akaster@pa.gov

Counsel for *Bureau of Investigation and Enforcement*

Date: _____

Date: Oct. 12, 2018

List of Appendices:

- A. Asset Purchase Agreement
- B. Land Transfer Agreement
- C. Plan for Improvements
- D. *Pro Forma* Tariff Supplement
- E. Proposed Findings of Fact
- F. Proposed Conclusions of Law
- G. Proposed Ordering Paragraphs
- H. Statement in Support of Pennsylvania-American Water Company
- I. Statement in Support of Delaware Sewer Company
- J. Statement in Support of the Office of Consumer Advocate
- K. Statement in Support of the Bureau of Investigation and Enforcement

A

APPENDIX A
ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT
BETWEEN
DELAWARE SEWER COMPANY
AND
PENNSYLVANIA-AMERICAN WATER COMPANY

AUGUST 31, 2018

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE Agreement (“**Agreement**”), dated as of the ___ day of August, 2018 by and between Delaware Sewer Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having a mailing address of 118 Armstrong Road, Pittston, Pennsylvania 18640 (“**Seller**”), and Pennsylvania-American Water Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of 800 W. Hersheypark Drive, Hershey, Pennsylvania 17033 (“**PAWC**”)

RECITALS

A Seller is a Pennsylvania public utility and owns, maintains and operates a wastewater system in Delaware Township, Pike County, Pennsylvania, (the “**System**”) subject to the jurisdiction of the Pennsylvania Public Utility Commission (“**PUC**”) under the Pennsylvania Public Utility Code (“**Code**”);

B PAWC is a regulated public utility that furnishes water and wastewater services to the public in various counties throughout Pennsylvania, as reflected in PAWC’s duly filed and effective tariff, as may be amended from time to time upon application by the Company and/or as ordered by the Pennsylvania Public Utility Commission (“**Tariff**”);

C This Agreement is part of a settlement (“**Settlement**”) between PAWC, the Seller, and other parties, of a proceeding before the PUC at Docket No I-2016-2526085, involving an investigation pursuant to Section 529 of the Code, 66 Pa. C.S. Section 529,

D Seller desires to sell, and PAWC desires to purchase the System, as well as substantially all assets, properties and rights of Seller owned and used in connection with the System, upon the terms and conditions set forth herein, and

E PAWC is this same day entering into a Land Transfer Agreement (“**Land Transfer Agreement**”) with Forest City Partnership, LLC (“**FCP**”), by which PAWC will acquire approximately 140 acres of land that will be used and useful in the provision of wastewater service to the public in Seller’s existing PUC-certificated service territory

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

ARTICLE 1

THE TRANSACTION

1.1 Sale and Purchase of Assets. Subject to the terms, representations and conditions set forth in this Agreement, PAWC shall purchase from Seller, and Seller shall sell, assign, transfer, grant, convey and deliver to PAWC at Closing (hereinafter defined), the Assets. The term “**Assets**” means all of the assets, properties and rights of Seller (whether tangible, intangible, real, personal or mixed) that are held or used in connection with the System. The Assets shall be sold free and clear of all mortgages, liens, pledges, security interests, charges, claims, restrictions and encumbrances of any and all nature (collectively, the “**Encumbrances**”)

1.2 Assets Further Defined

The Assets shall, without limitation to the definition stated above, include the following

- (a) the Assigned Contracts (as defined in **Section 5.1(c)**);
- (b) all interests in real estate (excepting streets), mains, pipes, pipelines, manholes, facilities, meters, tanks, storage facilities, valves, pumping stations, wastewater treatment plant, wastewater collection system, structures, improvements, fixtures, rights-of-way, rights, uses, franchises, licenses and easements owned by Seller and relating to the System, or in which Seller has an interest, and all hereditaments, tenements and appurtenances belonging, appertaining or relating thereto,
- (c) all machinery, equipment, tools, keys and locks, leasehold improvements, goods, and other tangible personal property relating to the System owned by Seller, or in which Seller has an interest,
- (d) all rights of Seller under any written or oral contract, easement, license, agreement, lease, plan, instrument, registration, permit, certificate, or other authorization or approval of any nature, or other document, commitment, arrangement, undertaking, practice or authorization, relating to the System;
- (e) all rights and choses in action of Seller arising out of occurrences before or after the Closing relating to the Assets, including any rights of Seller under any warranties or insurance claims related to the Assets; and
- (f) all information, files, records, data, plans, contracts and recorded knowledge relating to the Assets, including customer and supplier lists and property records, related to the foregoing.

1.3 Retained Liabilities

(a) Except as explicitly provided in **Section 1.3(b)** below, PAWC shall not assume and shall not be liable for any liabilities or obligations of Seller of any nature whatsoever (including any obligations related to the Assets or operation of the System), whether express or implied, fixed or contingent, known or unknown at the time of Closing. Except as explicitly provided in **Section 1.3(b)** below, all of Seller's liabilities and obligations, whether incurred in connection with the operation of the System, ownership of the Assets or otherwise, shall remain the sole responsibility of, and shall be retained, paid, performed and discharged solely by Seller. Without limiting the foregoing, Seller shall be and shall remain liable for all obligations and liabilities relating to (i) any employees of Seller (including those who worked on the System) and any employee benefits related to Seller's employees (including any pension benefits), (ii) all taxes on the business of Seller, (iii) accounts payable of the Seller, and (iv) failure to comply with any Environmental Laws or any Permits for the Assets or operation of the System on or before the Closing Date.

(b) Following the Closing, PAWC shall assume only those contractual liabilities arising after the Closing Date under the Assigned Contracts (specifically excluding any liability under the Assigned Contracts arising out of or relating to a breach or other circumstances that occurred on or prior to the Closing Date).

1.4 Excluded Assets Notwithstanding anything to the contrary contained in this Agreement, the Assets shall not include any of the following.

(a) Any and all connecting facilities from the Seller's wastewater supply lines or mains at the curb-line or edge-of-road that are within the customer's property and owned by the customer (the "**Customer Sewer Laterals**"),

(b) Any and all piping and fixtures internal to each individual customer's structure (whether residential, commercial, industrial or other types);

(c) Any and all storm water system facilities located on, in, within, or under the real property, including easements, that are a part of the Assets and any and all storm water system facilities that are connected to the System and located within the public right-of-way;

(d) Seller's cash on hand on the date of Closing and Seller's accounts receivable related to the System for services rendered through the close of business on the Closing Date;

(e) the specific assets, properties and rights of Seller set forth on **Schedule 1.4**

1.5 Accounts Receivable Accounts receivable for wastewater services related to the System rendered through the close of business on the Closing Date shall be excluded assets as per Section 1.4, and accounts receivable for wastewater services related to the System rendered thereafter shall belong to PAWC.

ARTICLE 2

PURCHASE PRICE

2.1 Purchase Price for the Assets Subject to the terms and conditions of this Agreement, the purchase price (the "**Purchase Price**") for the Assets shall be \$61,700 and shall be payable directly to Seller on the Closing Date by wire transfer or by corporate check, at the Seller's discretion.

2.2 Purchase Price Adjustments Any payments made in advance by Seller's wastewater customers for post-Closing service will be apportioned at Closing. PAWC shall receive a credit toward the Purchase Price in **Section 2.1** (starting with credit toward the Cash Payment) at Closing for the prorated amount of such advance payments for the period of the payment that is intended to follow Closing.

ARTICLE 3

THE CLOSING

3.1 Closing Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Assets ("**Closing**") shall take place at the offices of PAWC located at 800 W Hersheypark Drive, Hershey, Pennsylvania, or such other mutually agreed upon location, within thirty (30) days following the date on which all of the conditions set forth in Article 8 of this Agreement have been met (or waived). The date of the Closing is referred to herein as the "**Closing Date**"

3.2 Deliveries and Proceedings at Closing

(a) Subject to the terms and conditions of this Agreement, at the Closing, Seller shall deliver or cause to be delivered to PAWC:

- (i) Bills of Sale and instruments of assignment duly executed by Seller as necessary to transfer all of the Assets to PAWC, including an assignment of contracts agreement covering the assignment and assumption of the Assigned Contracts in substantially the form of **Exhibit A** (“**Assignment of Contracts Agreement**”);
- (ii) A copy of each Permit, license, land-right and other necessary authority for the operation of the System and the Assets, in each case validly issued in the name of the Seller, and showing in full force and effect,
- (iii) Easements (via assignments or grants) all in a form reasonably satisfactory to PAWC, for any and all collection system mains (whether gravity or force), pump stations and related appurtenances, as well as any effluent disposal mains and related appurtenances located outside any public right-of ways, as shall be necessary and effective to transfer and assign to, vest in, and provide PAWC with, access to and use of, the entire System (including easements that PAWC reasonably requires to maintain, repair, and replace any Assets or related facilities located outside of any parcels to be conveyed and/or publically dedicated roadways);
- (iv) The consents to transfer all Assigned Contracts, leases, intellectual property, Permits and other Assets requiring such consents to be transferred to PAWC;
- (v) All written consents (of third parties or otherwise) and governmental approvals necessary to ensure that the PAWC will continue to have the same full rights with respect to the Assets that Seller had immediately prior to the Closing,
- (vi) Evidence satisfactory to PAWC of the transfer of all utilities with respect to the System from Seller to PAWC in accordance with **Section 6.1(b)** below,
- (vii) One or more Special Warranty Deeds of conveyance of the real estate and easements to PAWC, duly executed and acknowledged by Seller and in recordable form, each sufficient to convey the title and rights of access to the Assets,
- (viii) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by PAWC, each in form and substance reasonably satisfactory to PAWC;
- (ix) Certified copies of all resolutions (“**Resolutions**”) duly adopted by the Seller authorizing the execution, delivery and performance of this Agreement and all related agreements and the transactions contemplated hereby and thereby,
- (x) As applicable, a payoff letter from each lender (whether institutional or otherwise) from which Seller has incurred indebtedness or borrowed money that is outstanding, and a release of all Encumbrances relating to the Assets (along with Form UCC3 Financing Statements effectuating a termination of all outstanding financing statements covering the Assets) executed, filed and/or recorded by the holder of or parties to each such Encumbrance, if any, in each case in substance and form reasonably satisfactory to PAWC and its counsel,

- (xi) The certificates and other documents required to be delivered by Seller under this Agreement as set forth in **Section 8.1** hereof,
- (xii) The Opinion of Seller's counsel as set forth in **Section 8.1(f)** hereof,
- (xiii) All such other agreements, documents and instruments of conveyance required by this Agreement or as shall, in the reasonable opinion of PAWC and its counsel, be necessary to transfer the Assets to PAWC in accordance with this Agreement, and where necessary, in recordable form, and,
- (xiv) Water Quality Management Permit from PA DEP.

(b) Subject to the terms and conditions of this Agreement, at the Closing, PAWC shall deliver or cause to be delivered to Seller.

- (i) The Purchase Price,
- (ii) Certified copies of the resolutions duly adopted by the PAWC's Board of Directors authorizing the execution, delivery and performance of this Agreement; and
- (iii) The certificates and other documents required to be delivered by PAWC under this Agreement as set forth in **Section 8.2** hereof

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Seller's Representations Except for the representations and warranties expressly set forth in this Agreement, Seller is not making any representation or warranty respecting the System or the Assets of any kind or nature whatsoever, oral or written, express or implied (including but not limited to, any relating to financial condition, results of operations, assets or liabilities of Seller respecting the System or the Assets or future prospects), and disclaims any such representations and warranties. PAWC EXPRESSLY ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO INSPECT THE ASSETS AND TITLE THERETO AND THAT EXCEPT TO THE EXTENT OF THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT PAWC IS RELYING ON ITS OWN INVESTIGATION AND ACQUIRING THE ASSETS "AS IS", "WHERE IS" AND WITH ANY AND ALL FAULTS. Seller hereby represents and warrants to PAWC as follows

(a) Organization; Legal Authority. The Seller is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania, and Seller has the full power and lawful authority to own, lease and operate the Assets and the System as currently conducted, and to transfer to PAWC the rights, title and interest in and to the Assets

(b) Assets Ownership Seller has clear, good, and marketable right and title to, or a valid leasehold interest in, all of the assets, property and facilities comprising the Assets, free and clear of all Encumbrances. **Schedule 4.1(b)** denotes all Assets that are subject to a leasehold interest (i.e., not owned by Seller) None of the Assets are leased or on loan by Seller to any third party The Assets constitute all of the assets, property and facilities that, together with the rights granted or conveyed under the transaction documents, are necessary for the operation of the System, the business thereof, and the Assets as conducted as of the date hereof. Upon

the Closing, PAWC shall continue to be vested with good title or a valid leasehold interest in the System and all of the Assets

(c) Due Authorization; Valid and Binding; No Encumbrances Seller has the full power and lawful authority to enter into this Agreement and all related agreements and to consummate and perform the transactions contemplated hereby and thereby. Seller has duly and validly authorized the execution and delivery of this Agreement (which has been duly executed and delivered) and all related documents and agreements to which Seller is a party by all necessary proceedings, and this Agreement and all related documents and agreements constitute the valid and binding obligations of Seller enforceable against it in accordance with its terms. To Seller's knowledge, other than the approval of the Pennsylvania Public Utility Commission, no filings or registrations with, notifications to, or authorizations, consents or approvals of, a governmental authority or third party are required to be obtained or made by Seller in connection with the execution, delivery or performance by Seller of this Agreement, all related agreements, or the consummation by Seller of the transactions contemplated herein or therein. Neither the contemplated transactions, nor this Agreement will result in the creation of any Encumbrance against any of the Assets

(d) Current Operations. Seller has all requisite power and authority and all agreements, contracts, commitments, leases, certificates, licenses, Permits, regulatory authorizations and other instruments required to conduct the operations of the System as it has been and is now being conducted and to own and operate the Assets

(e) No Approvals or Violations. Except for the approval of the Pennsylvania Public Utility Commission, this Agreement does not require, to Seller's knowledge, any further approvals of any other party, does not violate any law, ordinance or regulation, does not conflict with any order or decree, and does not conflict with or result in a breach of any contract, lease or Permit to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected. The execution and delivery of this Agreement and all related documents and agreements, and the consummation of the transactions contemplated hereby and thereby, do not violate, conflict with or result in the breach of any term, condition or provision of Seller's articles of incorporation, bylaws or other governing documents, or any instrument, contract, lease, agreement, Permit, certificate or other document to which Seller is a party or is otherwise bound or affected, or by which the Assets may be bound or affected

(f) Accounts Receivable. All accounts receivable being retained by Seller under **Section 1.5** (whether billed or unbilled) (collectively, the "**Retained Accounts Receivable**"), are valid, genuine and existing and arose (or will have arisen on or prior to Closing) from bona fide sales of products or services actually made in the ordinary course of business on or prior to the Closing Date. All products and services with regard to the Retained Accounts Receivable have been provided by Seller (and no further obligations exist), and no offset, agreement for deduction, free goods, discount or deferred price or quantity adjustment has been made with respect to any Retained Accounts Receivable (or with respect to PAWC's accounts receivable for the period after Closing)

(g) Free Service; Customer List; Prepayments. Except as otherwise disclosed on Schedule 4.1(h), Seller has not entered into any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties. To the extent any such agreements or understandings exist, they will be terminated by Seller as of the Closing Date. The data contained in the customer records provided to PAWC under Section 6.1(f) is true and accurate in all material respects. Seller has not received payments made in advance by any third party (including Seller's wastewater customers) for future service (including service after the Closing) with regard to the System or the Assets.

(h) Undisclosed Liabilities. Except as set forth in **Schedule 4.1(i)**, there are no material liabilities or obligations of Seller, either accrued, absolute, liquidated or unliquidated, contingent or otherwise, relating to the Assets that would be required to be set forth on a balance sheet prepared under GAAP other than liabilities incurred in the ordinary course. There is no basis for any claim against Seller, the System or any of the Assets for any such liability or obligation, and there is no basis for any such liability or obligation to become the liability or obligation of PAWC from and after the Closing.

(i) Contracts. **Schedule 4.1(k)** contains a true, complete and accurate list of all agreements (including all verbal agreements), contracts, leases (including any leasehold interests constituting part of the Assets as described in **Section 4.1(b)**), licenses, commitments, arrangements and instruments related to the Assets to which Seller is a party or the Assets are otherwise subject or bound, along with all amendments and addenda related thereto (collectively, the “**Contracts**”). **Schedule 4.1(k)** also identifies with an asterisk any Contract which requires consent to, or prohibits, assignment of the Contract. All Contracts are in full force and effect and are valid and enforceable in accordance with their terms, and the parties thereto are in material compliance with the provisions thereof, and there exists no event or condition which with the giving of notice or lapse of time, or both, would constitute a default thereunder. Seller has received, or will receive prior to the Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** as requiring consent to the assignment, or otherwise complied with Seller’s obligations under **Section 6.1(b)** hereof. Seller has delivered to PAWC correct and complete copies of the Contracts as well as copies of the requisite assignments for each of the Assigned Contracts which effectuates the transfer of the Assigned Contracts to PAWC as of the Closing Date. Except as disclosed on **Schedule 4.1(k)(i)**, Seller is not a party to any contract or subject to any arrangement for future payment of refunds under any extension agreement, customer deposit agreement or similar arrangement (including any prepaid tap fee) with respect to the Assets or the System.

(j) Adequacy of Property Rights; Real Property and Easements.

(i) Seller possesses all property rights necessary to operate the Assets, and Seller owns and has good and marketable title to the real property, free and clear of all options, leases, covenants, conditions, easements, agreements, claims, and other encumbrances of every kind, and there exists no restriction on the use or transfer of such property. As it relates to the Assets, **Schedule 4.1(l)(j)** contains a complete and accurate list of the real property owned by Seller and a complete and accurate list of each lease of real property to which Seller is a party (as the lessor, lessee or otherwise). Seller’s current use and occupancy of the real property and its operation of the System thereon does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such real property. All leases, licenses, rights of way, and easements related in any manner to the assets and properties comprising the Assets and all other instruments, documents and agreements pursuant to which Seller has obtained the right to use any real property in connection with the Assets are in good standing, valid and effective in accordance with their respective terms, and with respect thereto, there is no existing material default or event that could constitute a material default. The real property is properly classified under applicable zoning laws, ordinances, and regulations for the current and continued operation of the System on the real property. No proceeding that could adversely affect the zoning classification of the real property is pending or threatened. At and after the Closing, PAWC shall have the right to maintain and use the real property, including the space, facilities and appurtenances outside of building lines,

whether on, over or under the ground, and to conduct such activities thereon as maintained, used or conducted by Seller on the date hereof, and such right is not subject to revocation. Seller has made available to PAWC copies of all title reports, surveys, title policies and appraisals relating to the real property.

- (ii) Set forth on **Schedule 4.1(l)(ii)** is a true, correct and complete list of all easements and rights of way relating to the real property and the Assets. Seller and PAWC shall update **Schedule 4.1(l)(ii)** between the date of this Agreement and the Closing Date to include easements and rights-of-way discovered or obtained in accordance with **Section 6.2**. All of such easements and rights of way are valid and will be transferred to PAWC. Seller has not received any notice of violation of any easements, covenants, restrictions or similar instruments and, to Seller's knowledge, there is no basis for the issuance of any such notice or the taking of any action for such violation
- (iii) All improvements located on, and the use presently being made of, the real property comply with all applicable zoning and building codes, ordinances and regulations and all applicable fire, environmental, occupational safety and health standards and similar standards established by applicable law, and the same use thereof by PAWC following Closing will not result in any violation of any such code, ordinance, regulation or standard. No improvements encroach on any land that is not included in the real property or on any easements affecting such real property, or violate any building lines or set-back lines, and there are no encroachments onto the real property, or any portion thereof, that would interfere with the use or occupancy of such real property or the continued operation of the System as currently conducted
- (iv) There are no outstanding options, rights of first refusal or rights of first offer to purchase any of the real property or any portion thereof or interest therein, except as otherwise set forth on **Schedule 4.1(l)(iv)**
- (v) There is no unpaid tax, levy or assessment against the real property (except for encumbrances relating to assessments not yet due and payable), nor is there pending or threatened any condemnation proceeding against the real property or any portion thereof. **Schedule 4.1(l)(v)** contains a list of all impending taxes, levies and assessments that are due and owing after the Closing Date

(k) Litigation Except as disclosed on **Schedule 4.1(m)**, there is no action, suit, claim or litigation, arbitration, proceeding, judgment, injunction, audit or legal, administrative or governmental investigation pending (including any citations, notices, summons or orders), and none are known to be threatened against, pertaining to or affecting the System or any of the Assets (including any such actions, litigation and other claims against Seller) before any court, arbitrator or governmental authority (including any governmental agency board or instrumentality), nor is there any order, writ, injunction or decree of any court, arbitrator or governmental authority, in existence against, pertaining to or affecting the Seller (including its commissioners, directors or officers), the System or any of the Assets. Except as noted in **Schedule 4.1(m)**, all matters disclosed in **Schedule 4.1(m)** are fully covered by Seller's insurance. Except as disclosed on **Schedule 4.1(m)**, there are no known laws, ordinances, regulations or official orders now in effect or pending that could reasonably be expected to have a material adverse effect on the System or the ownership, condition or operation of the System or the Assets. There are no actions, suits, claims, proceedings or investigations pending or, to the knowledge of the Seller, threatened against the Seller, and the Seller is not subject to any

outstanding judgment, order or decree of any court or governmental body, which would in either case, reasonably be expected to prevent or materially interfere with or delay the Seller's ability to perform its obligations under this Agreement.

(l) Tax Matters

- (i) Seller has timely and properly filed all tax returns that it was required to file. All such tax returns were complete and correct in all material respects and were prepared in compliance with all applicable laws. All taxes owed by Seller have been paid. Seller is not the beneficiary of any extensions of time within which to file any tax return. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any tax.
- (ii) Seller has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, supplier, vendor, creditor, or other third party. Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.
- (iii) There are no audits or examinations of any tax returns pending or threatened that relate to Seller's operation of the System or the Assets. Seller is not a party to any action or proceeding by any governmental authority for the assessment or collection of taxes relating to the operation of the System, nor has such event been asserted or threatened. There is no waiver or tolling of any statute of limitations in effect with respect to any tax returns relating to Seller's operation of the System or the Assets.

(m) No Material Adverse Conditions; Insurance. There are no facts, circumstances or conditions existing or threatened that would have, or would be reasonably be expected to have, a material adverse effect on the condition, properties, assets, indebtedness, liabilities, commitments, operations or prospects of the System or the Assets. Seller maintains and has maintained appropriate insurance necessary for the full protection of all of the Assets, the System, and all related operations, products and services. All such policies are in full force and effect and Seller will use commercially reasonable efforts to cause such policies to be outstanding and in full force and effect as of Closing and immediately following the execution of this Agreement. There are no pending claims or proceedings arising out of, based upon or with respect to any of such policies of insurance and, to Seller's knowledge, no basis for any such claims or proceedings exists. Seller is not in default with respect to any provisions contained in any such insurance policies, and no insurance provider is in default with respect to such insurance policies.

(n) Compliance with Law. Except as disclosed on **Schedule 4.1(p)**, Seller is and has been in material compliance with all laws, ordinances, and governmental rules and regulations, whether civil or criminal, of any federal, state, local or foreign governmental authority applicable to the operation of the System and the Assets, including Environmental Laws (defined below) and employee labor, pension and benefits laws, to which Seller, the System or the Assets are subject, and has not failed to obtain, or to adhere to the requirements of, any certificate, license, Permit or other governmental authorization necessary for the operation of the System and the Assets, nor has Seller committed any violation of law or any provision of its governing documents applicable to the System or the Assets. Except as disclosed on **Schedule 4.1(p)**, Seller has not received, and has no reason to believe that it will receive, notice of any violation of law.

(o) Adequacy of Permits Set forth in **Schedule 4.1(q)** is a complete and correct list of all permits, licenses, registrations, approvals and other authorizations (collectively, the “**Permits**”) used by Seller in the continuing operation of the System and for the Assets. Such Permits constitute all those necessary for the continuing operation of the System and for the Assets, and are all valid and subsisting and in full force and effect. No fact or circumstance exists that is reasonably likely to cause any such Permit to be revoked or materially altered subsequent to the execution of this Agreement and to the Closing Date, and neither the execution of this Agreement, nor the Closing do or will constitute or result in a default under or violation of any such Permit. Seller likewise has obtained and continues to possess all Permits required under, by or pursuant to Environmental Laws (defined below), has filed such timely and complete renewal applications as may be required prior to the Closing Date, and also has complied with all reporting and record keeping requirements under Environmental Laws (defined below)

(p) Environmental Matters

- (i) To Seller’s knowledge and except as disclosed on Schedule 4.1(r), there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans pertaining or relating to the Assets or the System that may materially impede or prevent compliance with Environmental Laws, and Seller is, and at all times has been, in full compliance with and has not been, and is not in violation of or liable under any applicable Environmental Law. To Seller’s knowledge, except as disclosed on Schedule 4.1(r), Seller has no basis to expect, nor has it received any actual or threatened order, notice or other communication from any governmental authority or other person of any actual or potential violation or failure to comply with any Environmental Law or of any actual or threatened obligation to undertake or bear the cost of any environmental, health and safety liabilities with respect to real property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest or with respect to the real property or any other real property at or to which hazardous materials were generated, manufactured, refined, transferred, imported, used or processed by Seller or any other person for whose conduct it is or may be held responsible, or from which hazardous materials have been transported, treated, stored, handled, transferred, disposed, recycled or received
- (ii) To Seller’s knowledge, except as disclosed on Schedule 4.1(r), there are no pending or threatened claims, encumbrances or other restrictions of any nature, resulting from any environmental, health and safety liabilities or arising under or pursuant to any Environmental Law with respect to or affecting the Seller’s real property or any other properties and assets (whether real, personal or mixed) in which Seller has or had an interest. Neither Seller nor, to Seller’s knowledge, any other Person for whose conduct it is or may be held to be responsible has any material environmental, health and safety liabilities with respect to the Seller’s real property or with respect to any other properties and assets (whether real, personal or mixed) in which Seller (or any predecessor) has or has had an interest or, to Seller’s knowledge, at any property geologically or hydrologically adjoining the real property or any such other property or assets
- (iii) To Seller’s knowledge, there are no hazardous materials, except those used in connection with the ordinary course operation of the System in accordance with all Environmental Laws, present on or in the environment at the real property or at any

geologically or hydrologically adjoining property, including any hazardous materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent and deposited or located in land, water, sumps or any other part of the real property or such adjoining property or incorporated into any structure therein or thereon. Neither Seller, nor, to Seller's knowledge, any other person for whose conduct it is or may be held to be responsible has permitted or conducted, or is aware of, any hazardous activity conducted with respect to the real property or any other properties or assets (whether real, personal or mixed) in which Seller has or has had an interest except in material compliance with all applicable Environmental Laws. To Seller's knowledge, there has been no release or threat of release, of any hazardous materials at or from the real property or from or by any other properties and assets (whether real, personal or mixed) in which Seller has or has had an interest (e.g., other properties that may impact or affect the Assets or the System), or any geologically or hydrologically adjoining property, whether by Seller or, to Seller's knowledge, any other person

- (iv) To Seller's knowledge, except as set forth in **Schedule 4.1(r)(iv)**, none of the following exists at the System or on the real property that is part of the Assets: (1) underground storage tanks, (2) asbestos-containing material in any form; (3) materials or equipment containing polychlorinated biphenyl, (4) groundwater monitoring wells, or (5) landfills, surface impoundments, or disposal areas
- (v) Seller has delivered to PAWC true and complete copies and results of any reports, studies, analyses, tests or monitoring possessed or initiated by Seller pertaining to hazardous materials or hazardous activities in, on or under the real property, or concerning compliance by Seller with Environmental Laws, said reports, studies, analyses, tests and monitoring to include without limitation, any and all Phase I environmental reports now or hereafter in the possession or control of Seller
- (vi) Compliance with Decrees Except as disclosed on Schedule 4.1(r), Seller has been and is in compliance with all orders, decrees, judgments and notices issued against the Seller under or in connection with all Environmental Laws
- (vii) As used in this Agreement, the term "**Environmental Laws**" shall include all federal, state, and local environmental laws and regulations, including but not limited to the Clean Water Act ("**CWA**"), also known as the Federal Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act ("**SDWA**"), 42 U.S.C. §§ 300 (f) et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 ("**SARA**") Any reference to a legislative act or regulation shall be deemed to include all amendments thereto and all regulations, orders, decrees, judgments, opinions, directives or notices issued thereunder

(q) Brokers Seller has not employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders' fees or any similar other fees or commissions in connection with the transactions contemplated by this Agreement for which the PAWC has or could have any liability

(r) Customer Advances Set forth in **Schedule 4.1(t)** is a complete and accurate list of all unexpired customer advances for construction held by Seller as of the date of this Agreement and extension deposit agreements (or similar agreements) to which Seller is a party (each an “**Extension Deposit Agreement**”), and which contain unexpired obligations of Seller to provide for the payment of periodic refunds to parties making advances for the construction of facilities for wastewater service. All records of Seller relating to each Extension Deposit Agreement are complete and accurate in all material respects and, together with the relevant Extension Deposit Agreement, represents all the information reasonably required to determine Seller’s obligations to each party to the Extension Deposit Agreements, and there are no disputes or disagreements with any party to an Extension Deposit Agreement relating to the amount due under that agreement or the method of calculating that amount. **Schedule 4.1(t)** may be updated at Closing only with the mutual consent of the parties.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF PAWC

5.1 PAWC’s Representations PAWC hereby represents and warrants to Seller as follows.

(a) Organization. PAWC is a corporation duly organized, validly existing and subsisting under the laws of the Commonwealth of Pennsylvania.

(b) Due Authorization, Valid and Binding. PAWC has the full power and lawful authority to execute this Agreement and, following approval by its Board of Directors, to consummate and perform the transactions contemplated hereby, and PAWC has duly and validly authorized the execution of this Agreement by all necessary proceedings. This Agreement constitutes the valid and binding obligations of PAWC.

(c) Assigned Contracts. PAWC has disclosed on **Schedule 5.1(c)** those Contracts (including Extension Deposit Agreements) which PAWC has agreed to assume (“**Assigned Contracts**”), subject to receiving all necessary consents to assignment in accordance with the terms of **Section 8.1(g)**. PAWC may update **Schedule 5.1(c)** between the date hereof and up to twenty (20) days before Closing to include any of the Contracts.

(d) Financial Wherewithal. PAWC has sufficient funds on hand to pay the amounts due pursuant to this Agreement.

(e) Absence of Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of the PAWC, threatened against the PAWC, and the PAWC is not subject to any outstanding judgment, order or decree of any court or governmental body, which would in either case, reasonably be expected to prevent or materially interfere with or delay the PAWC’s ability to perform its obligations under this Agreement.

(f) Brokers. The PAWC has not employed any investment banker, broker or finder or incurred any liability for any investment banking fees, brokerage fees, commissions or finders’ fees or any similar other fees or commissions in connection with the transactions contemplated by this Agreement for which the Seller has or could have any liability.

(g) Limited Representations. Except for the representations and warranties expressly set forth in this Agreement, Seller is not making any representation or warranty respecting the System or the Assets of

any kind or nature whatsoever, oral or written, express or implied (including but not limited to, any relating to financial condition, results of operations, assets or liabilities of Seller respecting the System or the Assets or future prospects), and disclaims any such representations and warranties. PAWC EXPRESSLY ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO INSPECT THE ASSETS AND TITLE THERETO AND THAT EXCEPT TO THE EXTENT OF THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT PAWC IS RELYING ON ITS OWN INVESTIGATION AND ACQUIRING THE ASSETS "AS IS", "WHERE IS" AND WITH ANY AND ALL FAULTS.

ARTICLE 6

COVENANTS

6.1 Covenants of Seller. From and after the date of this Agreement, Seller covenants and agrees that:

(a) Conduct of Business. Between the date of this Agreement and the Closing Date, Seller shall carry on the operation of the System, the business and the Assets in the ordinary course of business and in compliance with law, not introduce any materially new method of management or operation, use reasonable best efforts to preserve the System, the business and the Assets, conserve the goodwill and relationships of its customers, suppliers, governmental authorities and others having business relations with it, maintain in full force and effect all policies of insurance now in effect for the benefit of Seller, maintain supplies at a level that is sufficient to operate the System in accordance with past practice and maintain the Assets in substantially the condition currently existing, normal wear and tear excepted. Without limiting the foregoing, until the Closing Date, Seller shall not sell, lease, dispose, retire, distribute or encumber any of the Assets, or construct, purchase or acquire any new assets, properties or rights relating to the System or Assets, or enter into a commitment or contract to do any of the foregoing (other than the purchase and use of supplies and maintenance of the System and the Assets in the ordinary course of business), without the prior written consent of PAWC.

(b) Contracts and Commitments. Except for normal and usual commitments for the purchase of materials and supplies consistent with past practice, no contract or commitment shall be entered into by or on behalf of Seller relating to the System or the Assets that would place an Encumbrance thereon or materially affect the operation of the System, the business or the Assets after Closing, except for those commitments approved or ratified in writing by PAWC. Seller shall obtain, prior to Closing, the written consent of each party to the Assigned Contracts designated on **Schedule 4.1(k)** as requiring consent to the assignment. Notwithstanding any other provision of this Agreement, to the extent that any consent necessary for the assignment from Seller to PAWC of the Assigned Contracts is not obtained, or cannot be obtained, prior to the Closing Date, Seller shall secure an arrangement reasonably satisfactory to PAWC intended to provide for PAWC following the Closing all of the material benefits of Seller under such Assigned Contracts; provided, that nothing in this **Section 6.1(b)** shall constitute a waiver of the condition set forth in **Section 8.1(g)**, and provided, further, that PAWC shall not be obligated to assume, and shall not be liable under, any Assigned Contract for which Seller has not obtained all necessary consents, or otherwise secured an alternative arrangement satisfactory to PAWC (in its sole discretion) as provided above. Seller shall transfer all of the utilities used or necessary for the System from Seller to PAWC effective as of the Closing Date, and Seller shall be responsible to pay all bills and fees for these utilities for the period prior to and including the Closing Date. PAWC shall provide any necessary information reasonably required by Seller to effectuate this transfer.

(c) Release of Encumbrances. Seller shall take all action necessary to cause the release, cancellation and discharge of any and all Encumbrances, so that as of the Closing Date, the Assets will be free and clear of any and all such Encumbrances. Seller also agrees not to create any new Encumbrances on the System or Assets from and after the date of this Agreement without the prior written consent of PAWC.

(d) Material Events and Circumstance. Seller shall promptly inform PAWC in writing of any specific event or circumstance of which Seller is aware, or of which Seller receives notice, that has or is reasonably likely to have, individually or in the aggregate, taken together with the other events or circumstances, a material adverse effect on the System or the Assets.

(c) Supplemental Information

(i) Seller shall provide PAWC, within fifteen (15) days of execution or the date of receipt thereof, a copy of (a) each of the Contracts entered into by Seller after the date hereof and prior to Closing relating to the System or the Assets, (b) a copy of any written notice of assessments for public improvements against any of the Assets received after the date hereof and prior to Closing, (c) any writs of summons or complaints filed against Seller or its representatives for any and all claims relating to the System or the Assets; and (d) a copy of the filing of any condemnation, eminent domain or similar proceeding affecting all or any portion of the System or the Assets received after the date hereof, but prior to the Closing.

(ii) Seller shall notify PAWC within fifteen (15) days of the receipt of any notice of violation.

(f) Access. Seller shall provide PAWC and its representatives free and full access to and right to inspect, during normal business hours and upon prior oral notice, all of the premises, properties, assets, records, Permits, contracts and other documents relating to the Assets and shall permit PAWC to consult with its officers, employees and other representatives for purposes of making such investigation of the Assets as PAWC shall desire to make, provided that no investigation shall unreasonably interfere with the Seller's operation of the System.

(g) Customer List. Attached as **Schedule 6.1(g)** is an accurate and complete listing of all customers of the System, providing customer names, service addresses, billing addresses for billing purposes and denoting those customers from which Seller has received notice to cancel or intend to cancel their account with Seller (or PAWC after Closing) (the "**Customer List**"). Seller shall promptly provide any additional detailed information pertaining to the Customer List as requested by PAWC between the date of this Agreement and the Closing Date. The Customer List (and any subsequent information provided upon request) shall be true and correct as of the date such information is provided to PAWC and shall be updated and provided to PAWC at Closing so as to be true and correct as of the Closing Date.

(h) Customer Advances. Within fifteen (15) days of the execution of this Agreement (to be updated at Closing), Seller will provide to PAWC accurate and complete copies of all customer advances and Extension Deposit Agreements reflected on **Schedule 4.1(t)**. Prior to the Closing Date, Seller shall complete the construction of all mains and facilities for which Seller has received customer advances and return all unexpended customer advances to the appropriate depositor. Provided, however, that for projects acceptable to and approved in writing by PAWC, Seller may pay over to PAWC the unexpended, non-refundable customer advances, and PAWC shall assume all of the responsibility of Seller as to those unexpended customer

advances and shall be bound by the terms and conditions contained in the Extension Deposit Agreements. PAWC shall not assume any responsibility for any unexpired customer advances received by Seller, or for any Extension Deposit Agreements to which Seller is or becomes a party, except as specifically agreed to in writing.

(i) **Updating of Information** Between the date of this Agreement and the Closing Date, Seller will deliver revised or supplementary Schedules to this Agreement as well as revised or supplementary lists of information, documents or data required to be provided under this Agreement, containing information that is accurate, true and correct as of the Closing Date, in order to enable PAWC to confirm the accuracy of Seller's representations and warranties and otherwise effectuate the provisions of this Agreement. The receipt by PAWC of any revised or supplementary Schedules, lists, documents or data shall in no way prejudice PAWC's right to terminate this Agreement based upon the failure of any condition to be satisfied under Section 8.1 hereof or seek indemnification under Section 9.1. Seller will promptly inform PAWC, in writing, of the occurrence or failure of any action or event that would violate Seller's representations and warranties under this Agreement or render them inaccurate as of the date hereof or the Closing Date or that would constitute a breach of any covenant of Seller under this Agreement or a failure of any condition to the obligations of either Seller or PAWC under this Agreement.

(j) **Retention of Records**. Seller shall preserve any books and records relating to the System and the business that are not delivered to PAWC hereunder for a period of seven (7) years after the Closing Date (or such longer period as shall be required by applicable law), and Seller shall make available such books and records for review and copying to PAWC and its authorized representatives following the Closing at PAWC's expense upon reasonable notice during normal business hours. During such period, Seller shall permit, to the extent permitted by applicable Law and upon request of PAWC, PAWC and any of its agents, representatives, advisors or consultants reasonable access to all properties, books, contracts and records of Seller related to the System and employees of or servicing the business for information related to periods up to and including the Closing.

6.2 **Title Information** Within thirty (30) days of the execution of this Agreement, Seller shall deliver to PAWC true, correct and complete copies of all existing title policies, surveys, leases, deeds, instruments and agreements in Seller's possession relating to title to the real estate and easements constituting part of the Assets, as well as any amendments thereto through to Closing. Thereafter, PAWC shall conduct, and Seller shall cooperate with PAWC in conducting, an abstract of such title information to determine whether Seller has sufficient real estate rights and continuous rights-of-way to permit PAWC, upon Closing, to operate a continuous wastewater system, including lines, facilities fittings and appurtenances necessary to operate such wastewater system, and that such rights are represented by legal instruments in appropriate form, duly recorded.

6.3 **Further Assurances** Each party to this Agreement shall cooperate and deliver such instruments and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby. After the Closing, each party shall take such other actions and execute such other documents, instruments, certifications, and further assurances as Seller or PAWC, as the case may be, may reasonably require in order to make effective the transactions contemplated hereby (including to transfer to PAWC or to put PAWC more fully in possession of any of the Assets).

6.4 **Cooperation** Subject to the terms and conditions of this Agreement, the parties shall cooperate fully with each other and their respective counsel and accountants in connection with, and take or cause to be taken and do or cause to be done, any actions required to be taken under applicable law to make effective the contemplated transactions as promptly as practicable. Prior to the Closing, PAWC, with Seller's cooperation,

shall proceed expeditiously and in good faith to make such filings to transfer Permits and to update the Act 537 Plan and take such other actions as may be reasonably necessary to satisfy the conditions to Closing set forth herein. Any and all filing fees in respect of such filings shall be paid by PAWC, including those fees implemented by the PUC (as defined below in **Section 7.1**). On or after the Closing Date, the parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments, including contract assignments not obtained prior to Closing, and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. Seller hereby agrees to cooperate with PAWC to ensure a proper transition of all customers with respect to billing and customer service activities.

6.5 **Rates, Rules and Regulations of Service At and After Closing.** PAWC shall have no obligation to fulfill or maintain any agreements or other understandings for the provision of free or otherwise subsidized or discounted services to any parties. Rates, rules, and regulations at and after Closing shall be approved by the PUC.

ARTICLE 7

PENNSYLVANIA PUBLIC UTILITY COMMISSION APPROVAL

7.1 **PUC Approval.** The obligation of PAWC to consummate the transactions contemplated by this Agreement is conditioned upon PAWC's and Seller's receiving the approvals of the PUC on terms and conditions reasonably satisfactory to PAWC. PAWC covenants and agrees to initiate, and use commercially reasonable efforts to prosecute the necessary proceedings to obtain the approval of the PUC for: (a) this Agreement and the transactions contemplated hereby which require approval by the PUC, including the transfer by sale of the Assets to PAWC and the Assignment of Contracts Agreement, (b) PAWC's acquisition of land pursuant to the Land Transfer Agreement, (c) the right of PAWC to provide wastewater service to the public in Seller's PUC-certificated service territory, (d) the right of Seller to abandon wastewater service to the public in its PUC-certificated service territory, (e) the right of PAWC to adopt Seller's rates as PAWC's rates in the area to be served at the time of Closing, together with the right to charge all other fees and surcharges permitted by PAWC's then effective wastewater tariff, including but not limited to, capacity reservation fees, tap-in fees, contributions in aid of construction, and a Distribution System Improvement Charge; (f) PAWC's Plan For Improvement of the System as required by 66 Pa. C.S. Section 529, (g) any other terms and conditions of the Settlement of the PUC's investigation at Docket No. I-2016-2526085, without modification; and (h) any other approval as may be reasonably appropriate to consummate the transactions contemplated by this Agreement. Seller, by this Agreement, covenants and agrees to provide such information, documents and assistance as may be reasonably requested by PAWC in connection with any such proceedings and to otherwise cooperate in the initiation and prosecution of any such proceeding.

ARTICLE 8

CONDITIONS PRECEDENT

8.1 **Conditions Precedent to PAWC's Obligations.** The obligation of PAWC to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the

following conditions (any one or more of which may be waived in writing in whole or in part by PAWC in its sole discretion).

(a) Representations and Warranties. Seller's representations and warranties set forth in this Agreement or in any Schedule, list, certificate or document delivered pursuant to this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules), and PAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to PAWC

(b) Performance of Covenants and Agreements Seller shall have performed and complied with in all material respects all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and PAWC shall have received from a proper representative of Seller a certificate to such effect, in form and substance reasonably satisfactory to PAWC.

(c) Adverse Change. There shall not have been a material adverse change, occurrence or casualty, financial or otherwise, to the System or the Assets (including a material loss of customers or Contracts), whether covered by insurance or not

(d) Release of Liens All necessary action shall have been taken to cause the release, cancellation and discharge of any and all Encumbrances so that as of the Closing, the Assets shall be free and clear of any and all Encumbrances, and Seller shall have provided PAWC with such opinions, instruments or documents as PAWC may reasonably request, and in form and substance satisfactory to PAWC, evidencing the release, cancellation and discharge of any and all Encumbrances and that the Assets are not subject to any liens or Encumbrances

(e) Other Regulatory Consents Seller and PAWC shall have received all of the written, final and un-appealable governmental approvals listed on Schedule 4.1(d) Seller and PAWC shall have obtained any other written, final and un-appealable authorizations and consents (including consents for Permit transfers) that are required to consummate the transactions contemplated by this Agreement and for PAWC to operate the System and the Assets after the Closing, including the approval of the appropriate permits from PUC, DEP and every regulatory agency of federal, state or local government that may be required in PAWC's opinion, each in the form and substance (including with respect to the terms and conditions contained in any such approval) acceptable to PAWC in its reasonable discretion, and all waiting periods under existing laws, and all extensions thereof, the passing of which is necessary to consummate the contemplated transactions and finalize a Closing, shall have expired.

(f) Opinion of Counsel and Resolutions Seller shall have delivered to PAWC a written Opinion of Seller's counsel, dated as of the Closing Date and addressed to PAWC, in the form set forth in **Schedule 8.1(f)**, along with a copy of the Resolutions, certified by their proper representatives, approving the execution, delivery and performance of this Agreement by Seller, together with the certificate of its proper representatives that said Resolutions are in full force and effect and were duly adopted.

(g) Contractual Consent. Seller shall have obtained written approvals, authorizations and consents of transfer to all Assigned Contracts, to the extent specifically required by the terms of such Assigned Contracts.

(i) Closing Deliveries Seller shall have delivered all documents required to be delivered by it pursuant to **Section 3.2(a)**

(j) Proceedings. No provision of any law or order shall be in effect, and no proceeding by any person shall be threatened or pending before any governmental authority, or before any arbitrator, that would: (i) prevent consummation of the contemplated transactions, (ii) have a likelihood of causing the contemplated transactions to be rescinded following consummation; (iii) adversely affect the right of PAWC to own any of the Assets or operate the System, or (iv) adversely affect the System prospects or the value or condition of any of the Assets or the System

(k) Due Diligence PAWC shall have completed and be satisfied, in its reasonable discretion, with the results of its due diligence review of the System, the Assets and Seller, including with the results of any environmental assessment performed with respect to any real property or the Assets or chain of title search, all material contracts and operating Permits and licenses of the System, and the Seller's operations, contracts, employment practices, compliance, accounting and other items as PAWC deems necessary, as each of the foregoing items relate to the System or the Assets

(l) PUC Approval The PUC shall have entered an order (or orders) providing the approvals set forth in Section 7.1, and such order(s) shall not be subject to appeal, challenge, supersedeas or injunction

(m) Withdrawal of Formal Complaint. The PUC's Bureau of Investigation and Enforcement shall have withdrawn (and not re-filed) the Complaint against the Seller at PUC Docket No. C-2017-258178

(n) Closing on the Land Transfer Agreement. Transfer of land by LCP to PAWC pursuant to the Land Transfer Agreement.

(o) Act 537 Plans. Any and all Act 537 Plans that are required to be updated as a result of PAWC's purchase shall be approved by PA DEP prior to Closing

8.2 Conditions Precedent to Seller's Obligations The obligation of Seller to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Seller in its sole discretion).

(a) Representations and Warranties PAWC's representations and warranties contained in this Agreement or in any Schedule, list, certificate or document delivered pursuant this Agreement shall be true, correct and accurate as of the date made and at and as of the time of the Closing, with the same force and effect as though such representations and warranties were made at and as of the Closing Date (without giving effect to any supplement to the Schedules)

(b) Performance of Agreements. PAWC shall have performed and complied, in all material respects, with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing

(c) Closing Deliveries PAWC shall have delivered the Purchase Price and all documents required to be delivered by it pursuant to **Section 3.2(b)**

ARTICLE 9

INDEMNIFICATION

9.1 Indemnification By Seller Seller agrees to indemnify, defend and hold harmless PAWC and its affiliates and their respective officers, directors, employees, and agents at all times after the date of this Agreement, from, against and in respect of any and all damage or deficiency resulting from (i) any misrepresentation, breach of warranty or non-fulfillment of any agreement or covenant made by Seller in this Agreement or in any Schedule, statement, certificate or other document furnished or to be furnished to PAWC in connection with the transactions contemplated hereby up to a maximum of \$61,700, and (ii) any and all liabilities of Seller of any nature, whether due or to become due, whether accrued, absolute, contingent or otherwise, existing on the Closing Date or arising out of any transaction entered into, any state of facts or any event occurring on or prior to such date.

9.2 Indemnification By PAWC. PAWC will indemnify and hold harmless DSC and its respective officers, directors, employees, and agents at all times after the date of this Agreement, from, against and in respect of any and all damage or deficiency including attorney's fees and other costs of litigation resulting from (i) any misrepresentation, breach of warranty or non-fulfillment of any agreement or covenant made by PAWC as set forth in this Agreement or in any Schedule, statement, certification or other document furnished or to be furnished to Seller, in connection with the transactions contemplated hereby, and (ii) PAWC's operation or use of the Wastewater System after Closing.

ARTICLE 10

TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Closing only (a) by mutual written consent of Seller and PAWC, (b) by Seller or PAWC upon written notice to the other, if the Closing shall not have occurred on or prior to December 31, 2018, (c) by PAWC, if PAWC is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of a representation, warranty, covenant or agreement contained in this Agreement on the part of Seller and Seller has not cured such breach within five (5) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured); (d) by PAWC, if, at any time before Closing, PAWC is not satisfied (in its reasonable discretion) with the results of its due diligence review of the System and the Assets or the prospects of obtaining all regulatory consents and approvals, (e) by Seller, if Seller is not in material breach of any of its representations, warranties, covenants and agreements under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of PAWC and PAWC has not cured such breach within five (5) business days after receipt of notice of such breach (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured), or (f) by Seller or PAWC upon written notice to the other, if any court of competent jurisdiction or other competent governmental entity shall have issued a statute, rule, regulation, order, decree or injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting the contemplated transactions, and such statute, rule, regulation, order, decree or injunction or other action shall have become final and non appealable.

10.2 Effect of Termination The right of each party to terminate this Agreement under **Section 10.1** is in addition to any other rights such party may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to **Section**

10.1, all further obligations of the parties under this Agreement will terminate, except that the obligations set forth in this **Section 10.1** (“**Effect of Termination**”) and **Article 11** (“**Miscellaneous**”) will survive, provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by another party or because one or more of the conditions to the terminating party’s obligations under this Agreement is not satisfied as a result of the other party’s failure to comply with its obligations under this Agreement, the terminating party’s right to pursue all legal remedies will survive such termination unimpaired

ARTICLE 11

MISCELLANEOUS

11.1 Contents of Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the parties hereto. Any and all previous agreements and understandings between or among any or all of the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

11.2 Binding Effect. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the legal representatives, successors and assigns of Seller or PAWC.

11.3 Waiver. Any term or provision of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument executed by such party or parties.

11.4 Transfer Taxes. Any transfer taxes imposed on the conveyance or transfer of any real property pursuant to this Agreement shall be split equally by PAWC and Seller (i.e., each pay 50% of such taxes).

11.5 Notices. Any notice, request, demand, waiver, consent, approval or other communication that is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally, by facsimile (if followed by overnight courier on the same date) or sent by nationally recognized overnight courier, as follows.

If to PAWC:

Pennsylvania-American Water Company
800 W. Hersheypark Drive
Hershey, Pennsylvania 17033
Attention: Andrew L. Swope, General Counsel
Fax: 717-531-3399

If to Seller:

Delaware Sewer Company
118 Armstrong Road
Pittston, PA 18640
Attention: Scott F. Linde
Fax: 570-289-5701

or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered.

11.6 Law to Govern. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any conflicts of law's provisions

11.7 No Third Party Beneficiaries The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto, and their legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other persons

11.8 Interpretation All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Unless otherwise indicated, the words "including", "includes", "included" and "include", when used, are deemed to be followed by the words "without limitation"

11.9 Schedules. All Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement

11.10 Severability Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstance shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction or under any circumstance shall not invalidate or render unenforceable such provision in any other jurisdiction or under any other circumstance, unless, in either event, the involved or unenforceable provision causes this Agreement to fail of its essential purpose

11.11 Counterparts This Agreement may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

11.12 Risk of Loss. Seller assumes risk of loss in connection with the Assets prior to Closing, including risk of loss from fire and other casualty. In the event of any loss or damage to any of the Assets, PAWC, at its option, prior to or at Closing shall have the right to (i) request that the damaged asset be replaced or restored to substantially the same condition of the asset as of the date of this Agreement, (ii) request an adjustment to the Purchase Price as can be agreed upon by the parties, or (iii) request the insurance proceeds of the Seller and/or other moneys to enable PAWC to make a proper restoration of the damaged asset.

11.13 Environmental Assessment Without limiting the parties rights and obligations under this Agreement (including **Sections 6.1(h), 8.1(k) and 10.1(d)**), after the date of this Agreement and until the Closing Date, PAWC shall have the reasonable right to enter upon the property and facilities constituting the System, after making reasonable prior arrangement with Seller, for the purposes of conducting an environmental assessment of the System. PAWC shall notify Seller in writing if the environmental assessment reveals the presence of oil or petroleum products or any hazardous or toxic wastes or materials or storage of

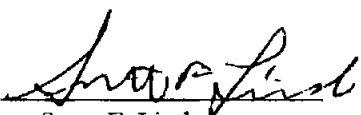
fuel tanks or any other environmental hazard or contamination. Within fifteen (15) days of the date of such notice, Seller shall advise PAWC in writing as to whether Seller can cure the environmental hazard or contamination and, if so, what remediation actions Seller will take to cure. In connection with such environmental assessment, PAWC shall have the right, in PAWC's sole discretion, to terminate this Agreement upon written notice to Seller.

11.14 Specific Performance and Injunctive Relief, Remedies. The parties hereto recognize that if either of them fails to perform, observe or discharge any of their respective obligations under this Agreement, a remedy at law may not provide adequate relief to the other party. Therefore, in addition to any other remedy provided for in this Agreement or under applicable law, a party hereto may demand specific performance of this Agreement, and such party shall be entitled to temporary and permanent injunctive relief, in a court of competent jurisdiction at any time if the other party fails to comply with any of the provisions of this Agreement applicable to such party. To the extent permitted by applicable law, the parties hereby irrevocably waive any defense based on the adequacy of a remedy at law that might be asserted as a bar to such party's remedy of specific performance or injunctive relief. Except as otherwise provided herein, all rights and remedies of the parties under this Agreement are cumulative and without prejudice to any other rights or remedies under law. Nothing contained herein shall be construed as limiting the parties' rights to redress for fraud.


[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have duly executed this Agreement on the date first written.

DELAWARE SEWER COMPANY

By: 
Name: Scott F. Linde
Its: *President*

PENNSYLVANIA-AMERICAN WATER COMPANY

By: 
Name: Jeffrey L. McIntyre
Its: President
Pennsylvania-American Water Company

List of Exhibits

Exhibit A

Assignment of Contracts Agreement

No Contracts Are Being Assigned

List of Schedules

Schedule 1.4 – List of Excluded Assets

None, other than those Excluded Assets set forth in Section 1.4

Schedule 4.1(b)

Assets Subject to Leasehold Interest

None

Schedule 4.1(h)

Free Service

None

Schedule 4.1(i)

Undisclosed Liabilities

None

Schedule 4.1(k)

List of Contracts

None

Schedule 4.1(k)(i)

Refund Arrangements

None

Schedule 4.1(j)(i)

Rights in Real Property and Leases

Deed Dated July 2, 1991 at Pike County Deed Book 422, Page 1

Schedule 4.1(l)(ii)

Easements and Rights of Way

Deed Dated July 2, 1991 at Pike County Deed Book 422, Page 1

Schedule 4.1(l)(iv)

Options and Rights of First Refusal

None

Schedule 4.1(l)(v)

Taxes and Assessments

None

Schedule 4.1(m)

Litigation

Wild Acres Lakes Property Homeowners' Association, Inc. v. Delaware Sewer,
No 458 – 2016, No 459 – 2016 (Pike County)
(Suit for Lot Dues)

Also see the following:

Opinion and Order of the Pennsylvania Public Utility Commission entered January 28, 2016 at PaPUC Docket
No P-2014-2404341

Complaint of the PaPUC's Bureau of Investigation and Enforcement at PaPUC Docket No C-2017-2587178

Schedule 4.1(p)

Violations of Law

See the following:

Opinion and Order of the Pennsylvania Public Utility Commission entered January 28, 2016 at PaPUC Docket No P-2014-2404341

Testimony of the PaPUC's Bureau of Investigation and Enforcement and of the Office of Consumer Advocate at PaPUC Docket No I-2016-2526085

Complaint of the PaPUC's Bureau of Investigation and Enforcement at PaPUC Docket No. C-2017 2587178

Schedule 4.1(q)

Permits

Certificate of Public Convenience at PaPUC Docket No. A 00101123
Water Quality Management Permit No. 5278404

Schedule 4.1(r)(iv)

Environmental Conditions

See the following:

Opinion and Order of the Pennsylvania Public Utility Commission entered January 28, 2016 at PaPUC Docket No. P-2014-2404341

Testimony of the PaPUC's Bureau of Investigation and Enforcement and of the Office of Consumer Advocate at PaPUC Docket No. I-2016-2526085

Schedule 4.1(t)

Unexpired Customer Advances for Construction and Extension Deposit Agreements

None

Schedule 5.1(c)

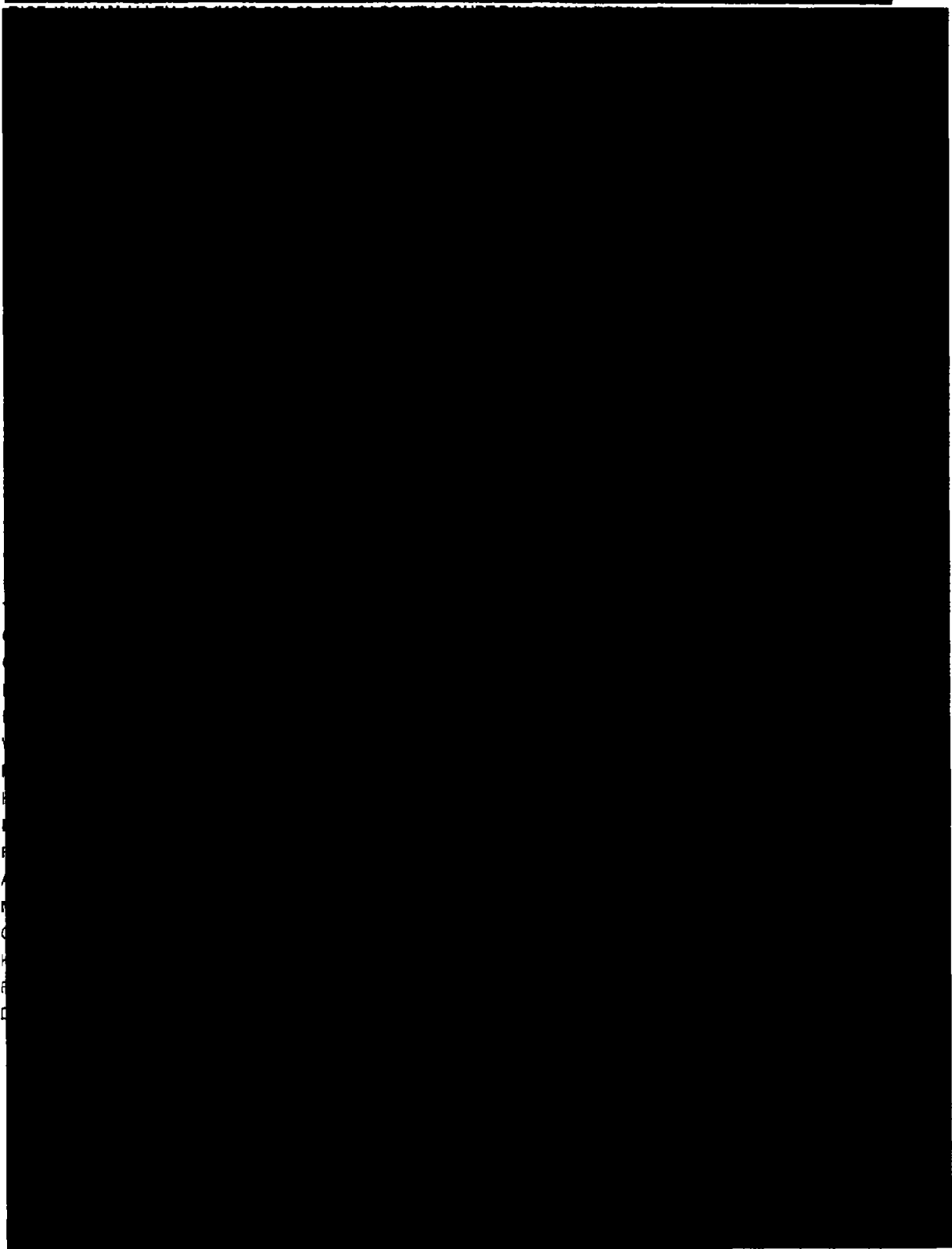
Assigned Contracts

None

Schedule 6.1(g)

Customer List

DELAWARE SEWER COMPANY
Customer List



Schedule 6.7

Seller's Rates

\$95.52 per month

Schedule 8.1(f)

Opinion of Seller's Counsel



B



APPENDIX B
LAND TRANSFER AGREEMENT

LAND TRANSFER AGREEMENT

THIS LAND TRANSFER AGREEMENT is entered into this 31st day of August, 2018, by and between the **PENNSYLVANIA-AMERICAN WATER COMPANY**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a business address of 800 W. Hersheypark Drive, Hershey, Pennsylvania 17033 (hereinafter referred to as "**PAWC**"), and **FOREST CITY PARTNERSHIP, LLC**, a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, having a business address of 118 Armstrong Road, Pittston, Pennsylvania 18640 (hereinafter referred to as "**FCP**").

RECITALS

WHEREAS, PAWC and the Delaware Sewer Company (hereinafter "**DSC**") have entered, or are about to enter, into an Asset Purchase Agreement (hereinafter the "**APA**"), whereby DSC shall sell to PAWC and PAWC shall purchase from DSC, a certain wastewater system with all appurtenant facilities, easements, rights-of-way, and other interests in such wastewater system (hereinafter collectively the "**System**"); and

WHEREAS, FCP anticipates conveying to PAWC by a Land Indenture approximately 140 acres of land that will be used and useful in the provision of wastewater serve to the public by way of the System (hereinafter the "**FCP Property**"); and

WHEREAS, in accordance with the terms of this Land Transfer Agreement, FCP shall convey the FCP Property to PAWC by special warranty deed, the form of which is attached hereto as Exhibit "A" and is incorporated herein by reference; and

WHEREAS, PAWC and FCP desire to enter into this Agreement to confirm that the closing on the FCP Property is contingent upon PAWC and DSC closing on the purchase of the System.

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants, representations, warranties, and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

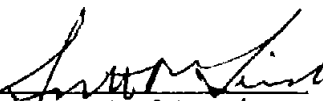
1. PAWC and FCP agree that the purchase of the FCP Property is contingent upon PAWC and DSC closing on the purchase of the System.
2. For the avoidance of doubt, in the event the APA is terminated on or after December 31, 2018 or otherwise pursuant to its Article X, then PAWC shall have no further obligation(s) to purchase the FCP Property, and FCP shall have no further obligation(s) to sell the FCP Property.

3. This Agreement may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages

4. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any conflicts of law's provisions.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have duly executed this Agreement on the date first written above.

FOREST CITY PARTNERSHIP, LLC

By: 
Name: Scott F. Linde
Its: Manager

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

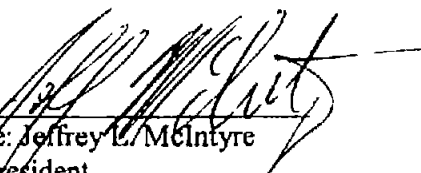
By: 
Name: Jeffrey L. McIntyre
Its: President
Pennsylvania-American Water Company

EXHIBIT "A"
FORM OF LAND INDENTURE

EXHIBIT A

RETURN TO:

Peter T. Ruth, Esq.

**Stock and Leader, Attorneys at Law 221 West Philadelphia, Suite 600
York, PA 17401-2994**

THIS INDENTURE made as of the day of , 2018

**BETWEEN Forest City Partnership, LLC, a Pennsylvania limited liability
company**

(hereinafter called the Grantor), party of the one part,

AND

Pennsylvania American Water Company, a Pennsylvania corporation

(hereinafter called the Grantee), party of the other part,

Witnesseth, That the said Grantor for and in consideration of the sum of Four Hundred Twenty Thousand Dollars (\$420,000), lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and does hereby grant, bargain, sell, and convey unto the said Grantee, its successors and assigns, forever all following described lot, piece or parcel land.

ALL that certain tract, piece or parcel of land situate in Delaware Township, Pike County, Pennsylvania bounded and described as follows:

BEGINNING at the most westerly corner of the Thomas Carney warrantee, on line of the Isabella Mease warrantee, also a corner of the Elizabeth Ingram warrantee; thence along said Isabella Mease warrantee, now or formerly of the Mink Pond Club, North 31 degrees East 1,155 feet, more or less, to a corner; thence through the aforementioned Thomas Carney warrantee, of which this tract was formerly a part, South 70 degrees East 5,280 feet more or less to a corner on line of the Hannah Carney warrantee; thence along said Hannah Carney warrantee South 31 degrees West 1,155 feet, more or less to a corner; thence along the aforementioned Elizabeth Ingram warrantee, now or formerly of the Mink Pond Club, North 70 degrees West 5,280 feet, more or less, to the place of **BEGINNING**.

CONTAINING 140 acres, more or less.

BEING that certain deed from Consolidated Pocono Utilities, Inc. to Forest City Partnership, LLC dated June 4, 2009 and recorded in Pike County Record Book 2310 at Page 276.

ALSO BEING Parcel No. 2 in that certain deed from First Eastern Bank, N.A. to Consolidated Pocono Utilities, Inc. dated September 28, 1993 and recorded in Pike County Record Book 778 at page 29.

ALSO BEING Parcel No. 6 in that certain deed from Michael Dalessio, Jr. to Michael Dalessio, Jr. and Debra Z. Dalessio, his wife, dated June 5, 1990 and recorded June 5, 1990 in Pike County Record Book 226 at page 200.

EXCEPTING AND RESERVING THEREFROM all right, title and interest in and to any and all of the oil, gas, natural gas, petroleum or other products, including all carbon-related and hydrocarbon products, and other minerals in and under, and that may be produced from, the lands as conveyed to Linde NGS, Inc. by Deed dated May 29, 2018 and recorded June 7, 2018 in Pike County Record Book 2551 at page 1949.

PROVIDED, HOWEVER, Provided however that the foregoing exceptions and reservations shall not disturb the surface of the Lands which would interfere with the Grantee's intended purpose for the Lands relating to the subsurface disposal of sanitary waste, without the written consent of the Grantee. The construction of any well pad or other related surface improvements for the extraction of subsurface minerals by the Grantor is prohibited unless approved in writing by both parties. Surface access to the Grantor, including without limitation Grantor's heirs, successors, and assigns, shall be limited to access that is necessary to traverse the property, at a future location, which shall be mutually agreeable to Grantor and Grantee. Grantee shall not unreasonably withhold, delay or condition Grantor's access to the above-described property.

To have and to hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever for the said Grantor, either in law or equity, to the proper use, benefit and behoof of the said Grantee forever.

Together with all and singular the rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof and all the estate, right, title, interest, property, claim, and demand whatsoever of the Grantor, its successors and/or assigns, in law or in equity, otherwise howsoever of, in, to, or out of the same.

And the said Grantor does hereby covenant and agree that it shall warranty specially the property hereby conveyed.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

FOREST CITY PARTNERSHIP, LLC

By: _____
Name:
Title: Manager

Sealed and Delivered
in the presence of us:

Commonwealth of Pennsylvania :
: SS:
County of :

On this, the _____ day of _____, 2018, before me, a Notary Public the undersigned officer, personally appeared _____, who acknowledged himself to be the Manager of **FOREST CITY PARTNERSHIP, LLC**, a Pennsylvania limited liability company, and that he, as such member/manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

_____ Seal
Notary Public

**SPECIAL WARRANTY DEED
(Excepting and Reserving Subsurface Rights)**

GRANTOR: **Forest City Partnership, LLC**

TO

GRANTEE: **Pennsylvania American Water Company**

PREMISES

Delaware Township, Pike County, PA (Excepting and Reserving all Subsurface Rights)

The address of the above named Grantee is:

On behalf of the Grantee



c



APPENDIX C
PLAN FOR IMPROVEMENTS

Appendix C. Plan for Improvements

Description of System

General

Delaware Sewer Company (DSC) is located in Delaware Township, Pike County, Pennsylvania. The system provides public sewer service to 39 existing homes in a portion of the Wild Acres development. PAWC serves public water to these 39 residents in this portion of the development as well as the entire Wild Acres Development. The other portions of the Wild Acres Development that are not served by Delaware Sewer Company have on-lot septic systems.

The Delaware Sewer Company certificate of franchise from 1978 describes the sewer service area as Sections 19 through 22 of the Wild Acres subdivision with a total number of lots of 557. Since the original subdivision of 557 lots, many lots have been combined and based upon the current tax parcel maps there are 372 lots within Sections 19 through 22. Attachment No. 1 depicts the proposed service territory.

The January 2010 Act 537 plan for Delaware Township describes the community sewer service for Sections 19 through 22 of the Wild Acres subdivision. The community sewer service is to be provided by the Delaware Sewer Company wastewater collection and treatment (Wild Acres WWTP) systems.

The Wild Acres WWTP was designed to serve residential dwelling lots within Sections 19 through 22 of the Wild Acres subdivision. The facility is owned by the Delaware Sewage Company and located off Child's Park Road. The WWTP's original intent was for the facility to discharge into Sand Spring Run, a tributary to Little Bushkill Creek. Following the issuance of the NPDES permit, the Pennsylvania Environmental Hearing Board revoked the permit. The hearing board ruled in favor of the local fishing club which was the complainant against Delaware Sewer to eliminate the stream discharge. Consequently, approximately thirty-nine residential dwellings were already connected to the system. An elevated sand mound disposal system was constructed to receive the treated effluent for disposal and the stream discharge was terminated.

Delaware Township has the responsibility for sewage planning and enforcement associated with the Act 537 Plan. The official Act 537 plan adopted by Delaware Township specifically mentions the Wild Acres Section 19 through 22 as a designated public sewer service area. The existing treatment and disposal system is inadequate to provide proper sewer service to the existing lots, therefore, a moratorium has been placed upon these sections of the Wild Acres development. Improvements or upgrades to the sewer system require regulatory approval from the Delaware Township and PaDEP. Delaware Township and PaDEP will require planning approval for a plan to address the immediate and long term needs in order to lift the moratorium.

Collection System

The collection system consists of a gravity system proximate to the treatment plant and a low pressure sewer collection system in the remaining areas. The collection system consists of approximately 22,000 ft. of low pressure sewer, 8,700 ft. of gravity pipe, 30 manholes, and one pump station. The majority of the customers are connected to the gravity portion of the system with 3 customers connected to the low pressure portion of the system adjacent to the gravity system.

Treatment Plant

The treatment system consists of two 15,000 gallon septic tanks followed by a non-functioning Rotating Biological Contactor (RBC) treatment process. The volume of the septic tanks is based on information from the owner and has not been verified. Effluent is pumped to a dosing tank which splits flow to the existing sand mounds. The pump station has two pumps with no local alarm and auto-dialer. Based on mapping, the sand mounds appear to be approximately 60,000 ft. square in total area.

System Deficiencies

Collection System

Based on the limited information provided by DSC, we do not anticipate to have a capacity issue within the existing collection system. The conveyance capacity of the collection system has not been evaluated.

Treatment Plant

The overall treatment facility was observed to be in poor condition. The two 15,000 gallon septic tanks appeared to be functioning and are of adequate size for the existing 39 homes. The RBC units were not rotating and internally the discs and shafts appeared to be broken and in disrepair. Its enclosure was showing signs of deterioration, the foundation appeared to be crumbling and the exterior insulation is wearing off the building. It appeared the housing for the air filters for the blowers were rusted shut, an indication that the air filters may have never been checked or replaced.

While the sand filter receives and passes the flow, the filter backwash system does not function. According to the wastewater operator, residual sludge has not been removed from the system. The disinfection and flow metering systems have been removed from service; therefore there is no historical record of flows that the treatment system has received. The effluent pump station appeared to be deteriorated to the point with large holes in the concrete structure with plywood covering.

The elevated sand mound system is not fenced, had little to no vegetation cover, and has been prone to soil erosion and large deep ruts caused by indiscriminant off-road vehicles. The sand mound distribution piping have been exposed and broken in several locations, to the point where the discharge from the pump station is not getting conveyed to the sand mound but rather ponding to the surface in several areas around the sand mounds.

Preliminary Investigations

PAWC's present understanding of the system, the compliance status of facilities and the capital improvements required to correct system deficiencies is based on system reports and operations testimony collected during the pre-acquisition investigations. While PAWC did receive all of the information requested from DSC that DSC had available to them, additional investigation post-acquisition is necessary in order to perform a complete evaluation to determine all reasonably prudent final corrective actions.

PAWC has knowledge of a total of one (1) regulatory permit issued to DSC that will be transferred as part of the acquisition. The permit consist of a Water Quality Management ("WQM") Permit (#5278404).

Plan to Correct System Deficiencies

Based on the studies and information available at this time, the treatment and subsurface disposal of the sewer system appears to be in such a state of disrepair that it has been deemed useless. A new subsurface disposal system should be constructed adjacent to the existing sand mounds. Once the new subsurface disposal system is constructed, the existing sand mounds can be abandoned in place. The existing septic tank appear to be functional and may be reused or refurbished, and additional septic tanks added as necessary. A new pump station will need to be installed to convey the effluent from the septic tanks to the sand mounds for disposal. The remaining portions of the existing treatment system can then be demolished. The existing sand mound is on a larger parcel of land, presently owned by Forest City Partnership, LLC, but PAWC has entered into a Land Transfer Agreement to acquire this parcel.

A phased approach is recommended to address the immediate deficiencies and the long term growth of the development. A phased approach is necessary due to the uncertainty of the growth rate and ultimate build-out of the development. The construction of a treatment facility sized for the ultimate build-out at the present time would cause severe operational problems with the treatment due to inadequate nutrient loading of the biological treatment process. From discussions with Delaware Township, we do not anticipate a sustainable growth of more than an average of 2 to 3 homes per year, resulting in a 20 year growth projections of an additional 40 to 60 homes. This approach will balance the capacity requirements of the projected customer growth with the operational needs of the treatment and disposal system.

Phase 1 – To address the immediate deficiencies and provide additional capacity to serve up to 80 homes. Phase 1 includes the demolition of the existing RBC units and the sand filter equipment that is not in use. The existing pump station must be replaced in its entirety as well as the force main and subsurface disposal system. The new subsurface disposal system would be constructed at an adjacent location to maintain some level of service. The site must be protected from the off road vehicle damage the existing mounds have incurred by fencing the entire site. The increased capacity would be provided by the installation of additional septic tanks and sand mounds for subsurface disposal.

During the first year of operation, PAWC plans to conduct soils testing and hydrogeological studies to determine the suitability of the site for sub-surface disposal. The site studies will include the proposed layout of a community on-lot system capable of providing service to Phase 1 or 80 homes (39 existing, 41 future growth). The studies will also project the suitability of the site for expansion beyond Phase 1 and improvements needed.

In addition to the activities described above, PAWC will prepare and submit Act 537 planning documents in the form of a planning module 3M form for the upgrade and expansion of the sewer system to accommodate Phase 1 of the project. Upon acquisition of DSC, PAWC will undertake limited remedial measures in coordination with the local Delaware Township Sewage Enforcement Officer (SEO) to try to correct some of the visual deficiencies.

During the second year of operation, PAWC will begin the final design/permitting stage of the project. Subject to more extensive investigation, construction and demolition plans will be developed for the improvements described above in Phase 1 of the project. A permit package will be submitted to PaDEP for review and approval.

During the third year of operation, PAWC should enter the implementation stage. The implementation stage will begin upon PAWC's receipt of all necessary permits in order to proceed with construction. PAWC anticipates the implementation stage to last between 12 to 18 months after all required permits are received.

Plan to Provide Service to Full Build-Out in DSC's Certificated Service Territory

DSC's certificated service territory consists of sections 19 through 22 of the Wild Acres subdivision. Since the original subdivision of 557 lots, many lots have been combined and based upon the current tax parcel maps there are 372 lots within Sections 19 through 22. In addition, the full build out for the subdivision is further reduced by the number of utility lots, lots designated as open space and unbuildable lots, the ultimate build out is estimated to be 306 lots.

Phase 2 – The Phase 1 expansion should provide adequate capacity for a 15 to 20 year period. PAWC will continue to monitor growth and update the growth estimates annually. When the projected growth rate exceeds the permitted capacity (80 homes) within a five year timeframe, PAWC will begin the planning, design and permitting stages for Phase 2. The exact number of new homes that Phase 2 would be capable of serving is uncertain and dependent upon details of the soils, groundwater, and overall permitting process, which are also uncertain. However for the purpose of this plan, we are estimating using general guidelines based upon the land available for disposal. Phase 2 would provide additional capacity to serve up to 180 homes. Phase 2 includes the installation of additional septic tanks and sand mounds for sub surface disposal. The pump station capacity would be increased to meet the higher flow rates and additional force main installed to the sand mounds. The site must be protected from the off road vehicle damage the existing mounds have incurred by fencing the entire site. The 180 homes is the estimated limit (pending permitting) that a traditional septic tank and sand mound system would be allowed given our knowledge of the existing soil characteristics and the

amount of acceptable land available. Further increases would require a biological treatment process.

Phase 3 – The Phase 2 expansion should provide adequate capacity well into the future, however, the land to serve the ultimate subdivision sewage flows must be considered. The acquisition of the land presently owned by Forest City Partnership, LLC is essential to achieving public sewer service to the maximum number of homes. The ultimate buildout of the subdivision is estimated to be 306 homes. PAWC will continue to monitor growth and update the growth estimates annually. When the projected growth rate exceeds the permitted capacity (180 homes) within a five year timeframe, PAWC will begin the planning, design and permitting stages for Phase 3. The exact number of new homes that Phase 3 would be capable of serving is uncertain and dependent upon details of the soil characteristics, groundwater, and overall permitting process, which are also uncertain. However for the purpose of this plan we are estimating that Phase 3 improvements would generally allow for increased capacity and may be able to get up to the ultimate buildout. Phase 3 would provide additional capacity to serve up to 306 homes. Phase 3 includes the installation of additional sand mounds to continue the sub surface disposal but also require the installation of a biological treatment process. The pump station capacity would be increased to meet the higher flow rates and additional force main installed to the sand mounds. The site must be protected from the off road vehicle damage the existing mounds have incurred by fencing the entire site.

Limitations on Liability and Enforcement Actions

Pursuant to Section 529, upon approval by the Commission of PAWC's Plan for Improvements and PAWC's subsequent acquisition of DSC, PAWC will be entitled to certain statutory protections against liability and enforcement actions. 66 Pa. C.S. § 529(k), (l). Specifically, PAWC will not be liable for damages beyond an aggregate amount of \$50,000, including a maximum amount of \$5,000 per incident, and shall not be subject to any enforcement actions by state or local agencies which had notice of the plan, provided that the basis for damages or an enforcement action is proximately related to identified statutory or regulatory violations by DSC. The Joint Petition for Settlement includes provisions intended to ensure that PAWC receives the protection of these provisions.

That being said, certain limitations apply to the limitations on liability/enforcement action provisions. One such limitation is that the cause/basis for damages or an enforcement action must be "proximately related to identified violations of applicable statutes or regulations" by DSC. 66 Pa. C.S. § 529(k) and (l)(3). DSC has disclosed violations of law on Schedule 4.1(p) of the Asset Purchase Agreement, and has disclosed environmental conditions on Schedule 4.1(r)(iv) of the Asset Purchase Agreement. Additional violations may be revealed in the course of PAWC's continuing due diligence. PAWC will work diligently to implement the improvements described in this Plan for Improvements to remedy existing physical conditions that may cause future violations. Nevertheless, PAWC should not be unfairly penalized for future violations due to system conditions that it did not create but which will be corrected according to the present plan.

Estimated Cost for Capital Improvements

At this time, the majority of the estimated capital expenditure is for the replacement of the treatment and disposal system. Additional costs associated with the gravity collection system and low pressure system are to be determined during the first year of operation. .

The Phase 1 improvements are currently estimated at approximately \$1.0 million in capital expenditure. The breakdown of the estimated cost including overheads and contingencies, engineering, and interest during construction (AFUDC) is as follows:

Delaware Sewer Company Cost Estimate of Improvements Improvements to Provide service up to 80 homes

1 Rehab existing septic tanks	\$	21,650.00
2 Demolition RBC structure	\$	23,000.00
3 Demolition filter building structure	\$	27,500.00
4 Demolition old pump station	\$	7,000.00
5 Install new pump station	\$	112,500.00
6 Install New Force Main	\$	120,000.00
7 Demolition existing sand mounds	\$	50,000.00
8 Construct new sand mounds (6-5,000SF beds)	\$	308,900.00
9 Distribution boxes	\$	15,000.00
10 Site Fencing	\$	65,900.00
<hr/>		
SUBTOTAL	\$	751,450.00
11 Permitting, Engineering and Design	\$	90,000.00
12 AFUDC and Overheads (7.5%)	\$	75,000.00
13 Contingency (10%)	\$	56,000.00
<hr/>		
TOTAL	\$	972,450.00

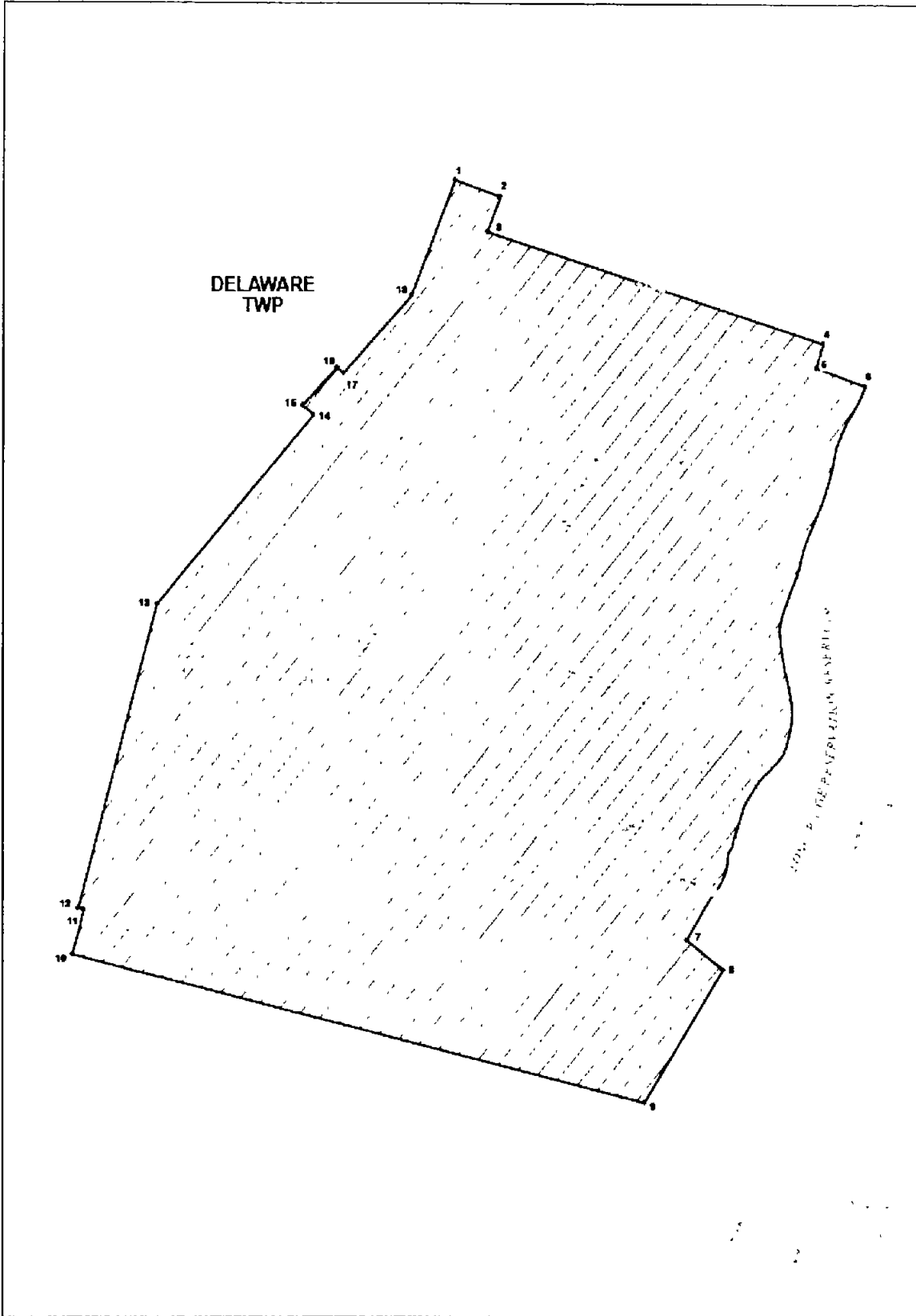
Operations

PAWC personnel will be utilized to staff this operation with the support from our neighboring Lehman Pike District. These personnel will assist in the identification of system deficiencies and address customer service issues.

Schedule

The presently estimated timeline for improvements is shown on Attachment No. 2. The proposed schedule includes time for testing, design, permitting and construction.

Attachment No. 1



• Bearings and Distances
 Applied For Service Territory
 Municipality

Pennsylvania - American Water Company
 Lehigh Valley Operating Area
 Proposed Service Territory - Delaware Wastewater System
 Approximately 320 Acres
 Delaware Township, Pike County

0 125 250 500 750 1,000 Feet

PENNSYLVANIA - AMERICAN WATER COMPANY
 LEHIGH VALLEY OPERATING AREA
 PROPOSED SERVICE TERRITORY - DELAWARE WASTEWATER SYSTEM
 APPROXIMATELY 320 ACRES
 DELAWARE TOWNSHIP, PIKE COUNTY

Pennsylvania - American Water Company
 Lehigh Valley Operating Area
 Proposed Service Territory - Delaware Wastewater System
 Approximately 320 Acres
 Delaware Township, Pike County

Starting point at northern most parcel corner of service territory. Note: Point 6 to point 7 are bounded by the shore of Long Ridge Reservation Reservoir.

<u>Sequence</u>	<u>From</u>	<u>To</u>	<u>Bearing</u>	<u>Distance (ft)</u>
1	1	2	S70°47'02"E	270.41
2	2	3	S20°34'11"W	208.19
3	3	4	S71°58'45"E	1985.19
4	4	5	S16°23'12"W	138.24
5	5	6	S69°53'02"E	293.93
6	6	7	S18°06'23"W	3220.92
7	7	8	S51°00'05"E	263.78
8	8	9	S30°57'22"W	857.34
9	9	10	N75°43'15"W	3314.40
10	10	11	N14°21'15"E	254.12
11	11	12	N74°40'04"W	32.14
12	12	13	N14°39'23"E	1739.00
13	13	14	N40°07'00"E	1365.73
14	14	15	N51°19'37"W	81.01
15	15	16	N42°40'50"E	285.07
16	16	17	S50°09'24"E	48.19
17	17	18	N41°34'00"E	572.73
18	18	1	N20°51'46"E	682.33

ESTIMATED TIMELINE FOR IMPROVEMENTS

ID	Task Name	Year 1				Year 2				Year 3				Year 4			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1	Soils Testing	■	■														
2	Hydrogeological Study	■	■														
3	Preliminary Design Development			■													
4	Planning Module 3M			■													
5	Final Base Plan				■	■											
6	Permitting						■	■	■								
7	Construct Improvements Phase 1									■	■	■	■	■	■		

Attachment No. 2

D

APPENDIX D
PRO FORMA TARIFF SUPPLEMENT

PENNSYLVANIA-AMERICAN WATER COMPANY

SCHEDULE OF RATES

RATE ZONE 8 – UNMETERED

(C)

APPLICABILITY

The rates under this schedule apply in the Delaware Sewer service territory 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.

UNMETERED CHARGES -This charge is a flat rate fee for customers.

A. All Customers

Flat rate per month, per lot upon which a \$95.52
structure has been erected which is
connected to the wastewater company
facilities.

The term "structure" shall be deemed to mean any building connected to the wastewater collection system and containing any one or more of the following fixtures; a washstand, a flush toilet, a bathtub, a shower or a kitchen faucet.

(C) means Change

Issued: xxxxx xx, xxxx

Effective Date: xxxxx xx, xxxx



E



APPENDIX E
PROPOSED FINDINGS OF FACT

PROPOSED FINDINGS OF FACT

A. Parties to these proceedings

1. Delaware Sewer Company (“DSC”) is a regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. OCA St. No. 2 p. 2; PAWC St. No. 1 p. 3. It is engaged in the business of collecting, treating and disposing of wastewater for the public pursuant to a certificate of public convenience issued by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) on or about October 4, 1996 at Docket No. A-230051.

2. Pennsylvania-American Water Company (“PAWC”) is a regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is 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. Water and wastewater service is furnished by PAWC to the public in a service territory encompassing more than 400 communities across the Commonwealth of Pennsylvania with a combined population of over 2,300,000. PAWC Petition to Intervene p. 1.

3. 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.

4. The Bureau of Investigation and Enforcement (“I&E”) serves as the prosecutory bureau for the Commission for purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See

Implementation of Act 129 of 2008: Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

5. Aqua Pennsylvania Wastewater, Inc. (“Aqua”) is a Class A wastewater utility, duly organized and existing under the laws of the Commonwealth of Pennsylvania, operating under PUC granted certificates of public convenience. Aqua provides service to approximately 20,000 customers in various counties throughout the Commonwealth, including Pike County. Aqua Petition to Intervene p. 2.

B. DSC’s Wastewater System

6. DSC’s wastewater system (the “System”) provides wastewater service to approximately 39 existing homes in Sections 19 through 22 of the Wild Acres Development (the “Development”) in Delaware Township, Pike County, Pennsylvania (the “Township”). PAWC St. No. 1 p. 3.

7. The portions of the Development that do not receive wastewater service from DSC have on-lot septic systems. PAWC St. No. 1 p. 3. PAWC provides water service to the Development, including the existing wastewater customers of DSC. PAWC St. No. 1 p. 3.

8. DSC’s certificate of public convenience describes the sewer service territory as Sections 19 through 22 of the Development with a total lot number of 557. Since the original subdivision, many lots have been combined. Based on the current tax parcel maps, there are currently 372 lots within Sections 19 through 22. Subtracting utility lots, open space, unbuildable lots and additional combined lots, the ultimate build-out of the subdivision is estimated to be approximately 306 lots. PAWC St. No. 1 pp. 3-4.

9. The January 2010 Act 537 plan for the Township describes the community wastewater service for all lots within Sections 19 through 22 of the Development. The community wastewater service is to be provided by the System. PAWC St. No. 1 p. 4.

10. Wastewater from the collection system flows into the wastewater treatment plant (“WWTP”). The effluent from the WWTP flows to a pumping station that pumps the effluent through a force main to a subsurface disposal system. OCA St. No. 2 p. 3.

11. The System is not currently operating as designed. It is presently being operated as a septic tank system. OCA St. No. 2 p. 4.

12. The WWTP was designed to serve the residential dwelling lots within Sections 19 through 22 of the Development. The original design intent of the WWTP was for effluent to discharge to Sand Spring Run. Following the issuance of the National Pollutant Discharge Elimination System (“NPDES”) permit, the Pennsylvania Environmental Hearing Board (“EHB”) revoked the NPDES permit. To serve the 39 residential dwellings that were already connected to the System, an elevated sand mound disposal system was constructed to receive the treated effluent from the WWTP for disposal and the stream discharge was terminated. PAWC St. No. 1 p. 4.

13. DSC’s WWTP is in poor condition. The elevated sand mound system is not fenced, has little to no vegetation cover, and has been prone to soil erosion and large deep ruts caused by off-road vehicles. The sand mound distribution piping is exposed and broken in several locations, so that the discharge from the pump station is not being conveyed to the sand mound but rather ponding on the surface at several areas around the sand mounds. PAWC St. No. 1 p. 5.

14. A moderate amount of clear water flows through the collection system near the treatment plant during dry weather periods, raising concerns regarding the amount of inflow and infiltration entering the System and the overall physical condition of the System. PAWC St. No. 1 p. 6.

15. The Township has imposed a moratorium on DSC. The Township has the responsibility for sewage planning and enforcement associated with the Act 537 plan. The Township revoked planning approval for Sections 19 through 22 of the Development, halting new construction. PAWC St. No. 1 p. 6.

C. Section 529(a)

16. I&E's witnesses testified that the System is in violation of statutory and/or regulatory standards. I&E St. No. 1 pp. 5-10; I&E St. No. 1-R pp. 4-5.

17. The OCA's witnesses testified that the System is in violation of statutory or regulatory standards. OCA St. No. 2 p. 5

18. I&E's witnesses testified that DSC failed to comply, within a reasonable period of time, with an order of DEP or the PUC. I&E St. No. 1 pp. 10-12; I&E St. No. 1-R pp. 4, 5; I&E St. No. 1-SR p. 2-4.

19. The OCA's witnesses testified that DSC failed to comply, within a reasonable period of time, with an order of DEP or the PUC. OCA St. No. 2 p. 6; OCA St. No. 2-S p. 2.

20. Although PAWC disputes that DSC failed to comply, within a reasonable period of time, with an order of DEP or the PUC, PAWC St. No. 1 pp. 8-9, it has agreed to compromise to settle this proceeding.

21. I&E's witnesses testified that DSC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. I&E St. No. 1 pp. 12-14; I&E St. No. 1-S pp. 2-4.

22. The OCA's witnesses testified that DSC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. OCA St. No. 2 p. 6; OCA St. No. 1-S p. 2.

23. The OCA's witnesses testified that DSC has had net losses since receiving a rate increase in 2015 in Docket No. R-2014-2452705, and that DSC spent \$1,250 on maintenance and repairs in 2015 and \$0 on maintenance and repairs in 2016. OCA St. No. 1 pp. 4-5.

24. The OCA's witnesses testified that DSC lacks the financial, managerial and technical fitness to continue to operate the System. OCA St. No. 1 p. 6.

25. I&E's witnesses testified that the alternatives to acquisition listed in 66 Pa. C.S. § 529(b) were considered by DSC and found to be impractical or not economically feasible. I&E St. No. 2 pp. 3-7.

26. I&E's witnesses testified that PAWC is financially, managerially, and technically capable of acquiring DSC and operating it in compliance with applicable statutory and regulatory standards. I&E St. No. 2 pp. 7-11.

27. The OCA's witnesses testified that PAWC is financially, managerially, and technically capable of acquiring DSC and operating it in compliance with applicable statutory and regulatory standards. OCA St. No. 2 p. 6.

28. I&E's witnesses testified that the rates charged by PAWC to its pre-acquisition customers will not increase unreasonably because of the acquisition of DSC. I&E St. No. 2 pp. 11-13.

29. DSC's witness testified that DSC supports the acquisition of its wastewater system by a capable public utility pursuant to Section 529. DSC St. No. 1, p. 2.

30. DSC's witness testified that DSC lacks funding to address system improvements and system emergencies; that, prior to the sale of the Clean Treatment Sewage Company ("CTSC"), a DSC sister company, to PAWC, DSC was able to share common costs with CTSC; and that, with the sale of the CTSC system, the opportunity to share costs no longer exists. *Petition of Delaware Sewer Company for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa. C.S. § 529*, Docket No. P-2014-2404341, Delaware Sewer Company Statement SFL-1 pp. 5, 7 and 8.³

D. The PUC Should Approve PAWC's Acquisition of DSC Pursuant to Section 529

31. PAWC has agreed to acquire the DSC System, subject to all necessary governmental approvals, including the approval of the PUC, the Pennsylvania Department of Environmental Protection, and Delaware Township. Asset Purchase Agreement, Section 8.1(e).

32. DSC and PAWC agreed to a purchase price for the System of approximately \$61,700, as may be adjusted at closing. Asset Purchase Agreement Section 2.1.

33. In order for PAWC to provide wastewater service to the entirety of DSC's existing service territory, PAWC requires the purchase of approximately 140 additional acres that is presently owned by Forest City Partnership, LLC ("Forest City"). PAWC and Forest City have agreed to a purchase price of \$420,000 for this property. Land Transfer Agreement, Exhibit A p. 1.

³ The Order re Procedural Schedule states at Ordering Paragraph No. 2: "Judicial notice will be taken in this proceeding of the record in the proceeding at Docket No. P-2014-2404341."

34. PAWC requests authority to provide wastewater service to the public in the territory described in Attachment 1 to **Appendix C**. DSC requests authority to abandon wastewater service to the public in Pennsylvania.

E. The Plan for Improvements Should be Approved Pursuant to Section 529

35. PAWC has submitted a Plan for Improvements, including a timetable, for bringing the DSC System into compliance with applicable statutory and regulatory standards.

36. Improvements or upgrades to the System require regulatory approval from both the Township and DEP. The Township and DEP will require planning approval for a plan to address the immediate and long term needs to lift the moratorium. PAWC St. No. 1 p. 6.

37. The Settlement provides for DEP and the Township to receive notice and an opportunity to be heard on the Plan for Improvements.

38. In the Plan for Improvements, PAWC proposes a plan, including a timetable and a list of anticipated capital projects costing approximately \$972,450, for bringing the System into compliance with applicable statutory and regulatory standards.

F. Rates to be Charged to DSC's customers

39. DSC's existing rates, as approved by the PUC in Docket No. R-2014-2452705, are \$95.52 per month (\$1,146 per year). PAWC St. No. 2 p. 2.

40. PAWC currently has 12 rate zones for wastewater service. The rates charged in these zones range from approximately \$38 per month to approximately \$85 per month.

41. If the costs of the Plan for Improvements would be financed entirely by existing DSC customers, the result would be a dramatic increase in the bill for DSC's existing 39

customers. PAWC St. No. 2 p. 3. This would create a hardship for the customers of DSC.
PAWC St. No. 2 p. 4.

41. PAWC will adopt the rates presently charged by DSC, together with all other fees and surcharges permitted by PAWC's current wastewater tariff, including but not limited to, capacity reservation fees. **Appendix D.**



F



APPENDIX F
PROPOSED CONCLUSIONS OF LAW

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this investigation. 66 Pa. C.S. § 529.
2. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.
3. 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. *See* 52 Pa. Code § 69.401.
4. 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 October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).
5. The Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.
6. DSC is in violation of statutory or regulatory standards, enforced by the Commission, DEP, and the Township, which affect the safety, adequacy, efficiency or reasonableness of the service provided by DSC. 66 Pa. C.S. § 529(a)(1).
7. DSC has failed to comply, within a reasonable period of time, with an order of the Commission or DEP concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2).
8. DSC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. 66 Pa. C.S. § 529(a)(3).

9. Alternatives to the acquisition of DSC have been considered and the Commission determines they are impractical or not economically feasible. 66 Pa. C.S. § 529(a)(4).

10. PAWC is financially, managerially and technically capable of acquiring and operating DSC. 66 Pa. C.S. § 529(a)(5).

11. The rates that PAWC charges its preacquisition customers will not increase unreasonably because of the acquisition of DSC. 66 Pa. C.S. § 529(a)(6).

12. Based on the findings contained in Conclusions of Law 6-11, the Commission orders PAWC to acquire DSC. 66 Pa. C.S. § 529(d).

13. The acquisition of DSC by PAWC affirmatively benefits the public interest in a substantial way. 66 Pa. C.S. § 1103.

14. Considering that PAWC is acquiring the wastewater system currently owned by DSC as a result of a Section 529 proceeding, in its next base rate case, PAWC is not required to submit a depreciated original cost study for the assets to be acquired from DSC or Forest City Partnership, LLC.

15. The Commission may allow PAWC to charge rates from the customers of DSC pursuant to a separate tariff. 66 Pa. C.S. § 529(f).

16. The rates set forth in the *Pro Forma* Tariff Supplement, attached as **Appendix D** to the Joint Petition for Approval of Settlement of All Issues, charges the rates currently charged by DSC, together with all other fees and surcharges permitted by PAWC's current wastewater tariff, including but not limited to capacity reservation fees.

17. The Commission has authority to approve a Plan for Improvements, including a timetable, by which a capable public utility will bring a small wastewater utility into compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(j).

18. DEP and the Township have both been served with the Plan for Improvements and have had a reasonable opportunity to comment thereon. The Commission has considered the comments submitted by DEP and the Township in approving the Plan.

G

APPENDIX G
PROPOSED ORDERING PARAGRAPHS

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement of All Issues by Pennsylvania-American Water Company, Delaware Sewer Company, the Office of Consumer Advocate, and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement is approved without modification.

2. That, consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Paragraph 7 below, PAWC shall:

a. Purchase substantially all of the wastewater system assets of DSC pursuant to the Asset Purchase Agreement dated August 31, 2018, between DSC and PAWC; and

b. Purchase approximately 140 acres of land, to be used and useful in the provision of wastewater service to the public in the entirety of DSC's existing certificated service territory from Forest City Partnership, LLC, pursuant to the Land Transfer Agreement dated August 31, 2018, between PAWC and Forest City.

3. That, pursuant to 66 Pa. C.S. § 529(e), the Commission finds that the purchase prices contained in the Asset Purchase Agreement and the Land Transfer Agreement are reasonable.

4. That the Plan for Improvements submitted by PAWC is approved, consistent with 66 Pa. C.S. § 529(j), and shall be approved as a Petition for Modification of PAWC's Long Term Infrastructure Improvement Plan, pursuant to 52 Pa. Code § 121.5(a).

5. That PAWC is permitted to charge a separate tariffed rate to DSC customers, consistent with 66 Pa. C.S. § 529(f).

6. That, pursuant to the condition contained in Section 8.1(e) of the APA, prior to Closing on the Transaction, PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from DEP and the Township).

7. That PAWC shall notify the Commission, OCA and I&E upon closing on the transaction described in Ordering Paragraph No. 2.

8. That, upon receipt of the notice of closing and consistent with 66 Pa. C.S. § 529(d), the Secretary's Bureau shall issue certificates of public convenience evidencing Commission approval of:

a. PAWC's acquisition of substantially all of the wastewater system assets of DSC;

b. PAWC's acquisition of approximately 140 acres of land from Forest City;

c. PAWC's right to begin providing wastewater service to the public in the Requested Territory.

d. DSC's sale of substantially all of its wastewater system assets to PAWC.

e. DSC's abandonment of the provision of wastewater service to the public in Pennsylvania.

9. That PAWC shall, within ten (10) days following closing of the Transaction, issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Settlement, to be effective as of the date of Closing.

10. That within ten days after PAWC files notice of closing with the Commission: (a) Delaware Sewer Company shall withdraw and discontinue its appeal in the Pennsylvania Commonwealth Court at Docket No. 1561 C.D. 2015, and (ii) the Office of Consumer Advocate shall withdraw and discontinue its appeal in the Pennsylvania Commonwealth Court at Docket

No. 1705 C.D. 2015. The Office of Consumer Advocate and Delaware Sewer Company shall each notify the other Joint Petitioners when their respective appeals have been withdrawn.

11. That, in its next base rate case, PAWC need not submit a depreciated original cost study for the acquired assets of Delaware Sewer Company or Forest City Partnership, LLC, because the purchase price is reasonable and otherwise reflects the fair market value of the assets.

12. That PAWC may include, in its next base rate case, a claim for transaction and transition costs related to the transaction described in Ordering Paragraph No. 2.

13. That PAWC shall be afforded deferred accounting treatment for ratemaking purposes for incremental operations and maintenance expenses associated with the provision of service in the territory shown in Attachment 1 to **Appendix C**.

14. That PAWC, in its next base rate case, may include a claim for transaction and transition costs related to the transaction described in Ordering Paragraph No. 2.

15. That upon issuance of the certificates of public convenience described in Ordering Paragraph No. 8, the filing of the compliance tariff described in Ordering Paragraph No. 9 and the withdrawal of the appeals described in Ordering Paragraph No. 10, the Commission's Secretary's Bureau shall close this Section 529 investigation proceeding.

APPENDIX H
STATEMENT IN SUPPORT OF
PENNSYLVANIA-AMERICAN
WATER COMPANY

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Steven K. Haas

Investigation Instituted per Section 529 into Whether :
the Commission Shall Order a Capable Public Utility : Docket No. I-2016-2526085
to Acquire Delaware Sewer Company :

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

Pennsylvania-American Water Company (“PAWC”) files this Statement in Support of the Joint Petition for Approval of Settlement of All Issues (“Settlement”), entered into by PAWC, Delaware Sewer Company (“DSC”), the Office of Consumer Advocate (“OCA”), and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“PUC” or “Commission”) (singularly, a “Joint Petitioner” and collectively, the “Joint Petitioners”).¹ PAWC respectfully requests that the Honorable Administrative Law Judge Steven K. Haas (“ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

The Settlement pertains to this Section 529 investigation of DSC, a small, troubled wastewater utility in Delaware Township, Pike County, Pennsylvania. In order to resolve this

¹ The other party to this Section 529 proceeding, Aqua Pennsylvania Wastewater, Inc. (“Aqua”), does not oppose the Settlement. The Joint Petitioners, together with Aqua, are referred to herein as the “Parties.”

matter, PAWC has agreed to acquire substantially all of DSC's wastewater system (the "System"), together with approximately 140 acres of land owned by Forest City Partnership, LLC ("Forest City"), that will be used and useful in the provision of wastewater service to the public in the entirety of DSC's existing certificated service territory (together, the "Transaction"). The Transaction, however, is subject to the condition that, prior to closing on the Transaction (the "Closing"), PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from the Commission, the Pennsylvania Department of Environmental Protection ("DEP") and Delaware Township, Pike County, Pennsylvania (the "Township")).

There are a number of on-going Commission proceedings involving DSC. The Settlement, if approved, would bring all of them to closure. The Settlement is in the best interest of Delaware Sewer Company and its existing customers and the public-at-large. It is in the public interest and, accordingly, should be approved.

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 October 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 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 role that they have 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 complex case.

It should be noted that the Joint Petitioners, and their counsel and experts, have considerable experience in Commission 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 all the issues. The Joint Petitioners, their counsel and experts fully explored all 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. For these reasons, and the reasons set forth below, the Settlement is in the public interest and should be approved without modification.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

The Joint Petitioners have agreed to a settlement of all issues in this proceeding. It is the culmination of years of contentious litigation and should be approved without modification.

A. Acquisition of System and Land

PAWC and DSC have entered into an Asset Purchase Agreement (“APA”) by which PAWC will acquire the System for a purchase price of \$61,700. In addition, PAWC and Forest City have entered into a Land Transfer Agreement (“LTA”), by which PAWC will pay \$420,000 to acquire 140 acres of land that will be used and useful in the public service to provide wastewater service throughout DSC’s existing service territory.

Significantly, a condition contained in Section 8.1(e) of the APA requires PAWC to obtain all necessary governmental approvals prior to closing on the Transaction. PAWC will notify the Commission when closing occurs on the Transaction. At that time, DSC shall cease providing wastewater service in the Commonwealth.

Consistent with 66 Pa. C.S. § 529(e), the Joint Petitioners specifically request a Commission determination that the purchase prices contained in the APA and the LTA are reasonable. They also request a Commission determination that a depreciated original cost study will not be required for the assets to be acquired from DSC and Forest City because the purchase price for those assets is reasonable.

The Transaction is in the public interest because PAWC will take over the ownership and operation of a System that has been troubled for some time. Under the Settlement, the Joint Petitioners agree that DSC meets the criteria set forth in Section 529(a) for the Commission to order the System to be acquired by a capable public utility. They also agree that (i) PAWC is a capable public utility, financially, managerially and technically capable of acquiring DSC and operating it in compliance with applicable statutory and regulatory standards, and (ii) the rates charged by PAWC to its pre-existing customers will not increase unreasonably because of the acquisition of DSC.

B. Plan for Improvements

Consistent with 66 Pa. C.S. § 529(j), the Settlement includes a plan, including a timetable, for bringing the System into compliance with applicable statutory and regulatory standards (“Plan for Improvements”). PAWC will serve a copy of the Settlement, including the Plan for Improvements, upon the Pennsylvania Department of Environmental Protection (“DEP”) and Delaware Township (the “Township”), so they will have an opportunity to submit comments to

the Commission on the Plan for Improvements within 60 days of service. This provision is important because it protects PAWC from liability and enforcement actions as a result of statutory or regulatory violations by DSC. 66 Pa. C.S. § 529(k)(3) and (l)(3).

The Joint Petitioners request approval of the Plan for Improvements and permission for the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service. The Joint Petitioners also request that the Plan for Improvements be treated as a petition for modification of PAWC's Long Term Infrastructure Improvement Plan ("LTIIP"), as approved by the Commission at Docket No. P-2017-2585707.

These aspects of the Settlement are in the public interest because they will result in improvements in the quality of wastewater service currently being rendered in DSC's service territory. The Plan for Improvements is also in the public interest because it would allow the System to be expanded so that it can provide reasonable and efficient wastewater service to the public throughout DSC's service territory. At the present time, DSC is only able to provide service to a portion of its certificated service territory. Finally, these provisions are in the public interest because PAWC's existing customers will share the multi-million dollar cost of bringing the System into compliance with statutory and regulatory standards. If the 39 existing customers of the System had to finance these improvements, the rates would increase substantially.

C. Rates

Consistent with 66 Pa. C.S. § 529(f), the Settlement includes a request that PAWC be permitted to charge a separate tariffed rate to DSC customers. PAWC will charge initial rates in the Requested Service Territory equal to the rates currently charged by DSC, together with all other fees and surcharges permitted by PAWC's current wastewater tariff, including but not

limited to, capacity reservation fees. The Joint Petitioners agree that the tariff supplement will be filed within 10 days of the Closing as a matter of compliance, and request that it be permitted to become effective as of the date of the Closing.

This provision is in the public interest because it is consistent with law. It is also in the public interest because it promotes rate stability for the existing customers of DSC. The rates of DSC will be adjusted in PAWC's next base rate case in which the System is included, when the cost of providing service in the System can be considered in the context of PAWC's costs of providing wastewater service throughout its system.

D. Termination of Other Proceedings Involving DSC

The Settlement is also in the public interest because it will end a number of on-going legal proceedings in the Commission and the Unified Judicial System pertaining to DSC:

- I&E will withdraw a complaint against DSC at Docket No. C-2017-2587178;
- PAWC will withdraw a Petition to Amend the Order at Docket No. P-2014-2404341;
- DSC will withdraw an appeal in the Commonwealth Court of Pennsylvania ("Commonwealth Court") at Docket No. 1561 C.D. 2015; and the OCA will withdraw an appeal in the Commonwealth Court at Docket No. 1705 C.D. 2015.

This aspect of the Settlement is in the public interest because it will allow the parties, the Commission and the court system to devote their resources to other matters, such as improving service to the existing customers of DSC.

E. Limitation on Future Actions

The Settlement includes provisions intended to protect PAWC from enforcement actions as a result of any alleged violations of statutory or regulatory standards by DSC. Specifically, the Settlement requires that DEP and the Township be given 60 days to comment on the Plan for Improvements, so that PAWC will be protected by 66 Pa. C.S. § 529(k)(3) and (l)(3). This aspect

of the Settlement promotes the public interest by removing impediments that might otherwise prevent PAWC from acquiring DSC.

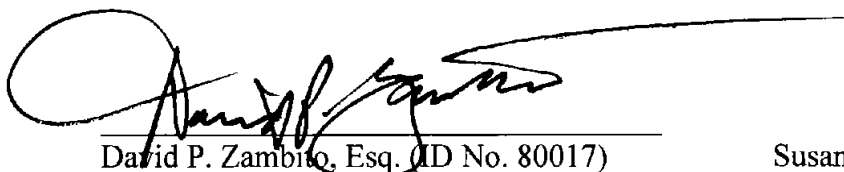
F. Communication with DSC's Customers

Prior to closing on the Transaction, PAWC has made a commitment to notify DSC's existing wastewater customers of PAWC's acquisition of the System. PAWC will provide an advance copy of these materials to the OCA and I&E, which may provide comments to PAWC.

G. Conclusion

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judge Steven K. Haas 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.

Respectfully submitted,



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Dated: October 12, 2018



APPENDIX I
STATEMENT IN SUPPORT OF
DELAWARE SEWER COMPANY

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Instituted per Section 529 :
Into Whether the Commission Shall : **Docket No. I-2016-2526085**
Order a Capable Public Utility to Acquire :
Delaware Sewer Company :

**DELAWARE SEWER COMPANY'S
STATEMENT IN SUPPORT OF JOINT PETITION
FOR APPROVAL OF SETTLEMENT OF ALL ISSUES**

AND NOW, comes Delaware Sewer Company ("DSC" or "Company"), by its attorneys, and submits the following statement in support of the Joint Petition for Approval of Settlement of All Issues ("Joint Petition") presented in the above captioned Section 529 Investigation by DSC, Pennsylvania-American Water Company ("PAWC"), the Office of Consumer Advocate ("OCA") and the Bureau of Investigation and Enforcement ("I&E") (sometimes referred to hereinafter as "Joint Petitioners").

I. Background

This proceeding concerns the Public Utility Commission's ("Commission") Investigation under Section 529 of the Public Utility Code ("Code"), 66 Pa. C.S. § 529, into whether the Commission should order a capable public utility to acquire DSC.

The Commission instituted the Investigation by Opinion and Order entered January 28, 2016, in *Petition of Delaware Sewer Company for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa. C.S. § 529* ("Petition Proceeding").

DSC commenced the Petition Proceeding on February 6, 2014. Through its Petition, DSC asked the Commission to, *inter alia*, initiate a proceeding under Section 529 of the Code with the objective of ordering a capable public utility to acquire its wastewater system.

DSC provides wastewater service to 39 residential locations in Sections 19 through 22 of Wild Acres. Prior to 2013, DSC had been a sister company of Clean Treatment Sewage Company (“CTSC”), a much larger public utility with approximately 373 residential customers. CTSC was acquired by PAWC in 2013 through a Section 529 investigation at Docket No. I-2009-2109324.

With the acquisition of CTSC by PAWC, DSC has been operating as a stand-alone company. As a stand-alone company with a small customer base, DSC lacks funding to address wastewater system improvements and wastewater system emergencies. Additionally, with the sale of the CTSC system, the opportunity to share common costs no longer exists.

Following significant discussion and negotiation, the Joint Petitioners are presenting a comprehensive plan which results in the acquisition of the DSC wastewater system by PAWC. The Joint Petition also resolves a service Complaint at C-2017-2587178 brought by I&E against DSC and results in the withdrawal of DSC’s appeal at No. 1561 C.D. 2015 challenging the Commission’s decision in the Company’s 2014 Rate Proceeding at Docket No. R-2014-2452705.

This matter has been pending for close to five years and DSC supports the resolution presented in the Joint Petition.

II. The Joint Petition Is Consistent with the Requirements of the Public Utility Code and in the Public Interest

Statutory and Policy Considerations

Section 529 gives the Commission the power to order the acquisition of a small sewer utility by a large capable utility. In their Joint Statement at Public Meeting of February 12, 2015 at M-2014-2453735, Chairman Powelson and Commissioner Witmer explained that Section 529 gives

the Commission the power to order the acquisition of small water and sewer utilities and that the Commission has used its 529 authority “with great success to ensure that customers of troubled water and sewer utilities throughout the Commonwealth receive safe and reliable service.”¹

DSC is not financially viable. Its lack of funding and the lack of a meaningful customer base over which to spread costs negatively affects the safety, adequacy, efficiency or reasonableness of DSC’s sewer service. With its small customer base, DSC has no funding to address DEP Notices of Violation, barrier fencing or sand mound seeding. It has no funding to cover operating losses.

PAWC, on the other hand, has the financial, managerial and technical ability to acquire the DSC wastewater system and provide sewer service in Wild Acres where it presently provides water service to 2,000 customers, including the DSC wastewater customers. PAWC can readily address any necessary improvements to this small sewer system.

The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.² The Joint Petition proposes a comprehensive resolution of all issues. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.³

It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.⁴ Settlements lessen the time and expense the parties must expend litigating

¹ Petition Proceeding, DSC St. SFL-1 at 5-7 and Attachment 2.

² *Pa. P.U.C. v. C.S. Water & Sewer Assocs.*, 74 PA PUC 767 (1991); *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996).

³ *C.S. Water & Sewer Assocs.*, *supra*; see also *Pa. P.U.C. v. Phila. Elec. Co.*, 60 PA PUC 1 (1985).

⁴ 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement 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.

a case and, at the same time, conserve administrative hearing resources. Such savings directly benefit the individual parties to a proceeding, the Commission and utility ratepayers, who otherwise may have to bear the financial burden such litigation necessarily entails.⁵ The avoidance of unnecessary litigation expense is in the public interest.

The Joint Petition addresses a Commission Section 529 Investigation in a manner acceptable to the acquired company, the acquiring company, I&E and the OCA. Consistent with recognized Commission policy, the Joint Petition ensures that customers of DSC will receive safe and reliable service. By doing so, the Joint Petition and proposed terms of settlement further the public interest.

Specific Settlement Terms and Conditions

Specific settlement terms and conditions are presented in the Joint Petition. The focus of DSC in this statement in support is its Assets Purchase Agreement with PAWC, the proposed resolution of the Complaint proceeding at C-2017-2587178 and DSC's agreement to withdraw its appeal of the rate case decision upon the closing of the sale of the wastewater system to PAWC.

The Purchase Agreement

DSC has a statutory right under Section 529 (e) of the Code to have the purchase price for its wastewater system determined under the Eminent Domain Code. DSC, however, has entered into an Assets Purchase Agreement with PAWC for a negotiated sale of the wastewater system for \$61,700. The negotiated purchase price is, likely, significantly less than the value of the wastewater system under Eminent Domain principles. Although significantly less than the purchase price that might be realized through Eminent Domain, DSC, nevertheless, is willing to

⁵ *Pa. P.U.C. v. The Newtown Artesian Water Co.*, Docket No. R-2011-2230259 (Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011), slip op. at 9.

accept the negotiated purchase price in settlement of this proceeding. A negotiated purchase price is preferable to a contentious, protracted and costly Eminent Domain proceeding.

The Withdrawal of the I&E Complaint at C-2017-2587178

The I&E Complaint claims, *inter alia*, that DSC did not cover three concrete tanks located on DSC property. DSC denied the substantive allegations in the Complaint. It also reset covers at each of the three tanks. The Complaint proceeding has been stayed generally pending the resolution of the Section 529 Investigation.

I&E has agreed in settlement to move to withdraw the Complaint. DSC will not object to the withdrawal. DSC, in any event, has no monies to engage in formal litigation with I&E and no monies to pay a civil penalty as requested by I&E.

The resolution of the I&E Complaint without contentious, protracted and costly litigation furthers the public interest.

The Withdrawal of the DSC Appeal at No. 1561 C.D. 2015

In its 2014 Rate Case at Docket No. R-2014-2452705, DSC proposed to increase its monthly rate for wastewater service to \$200. The Commission, in its Opinion and Order entered July 30, 2015, allowed DSC to implement a rate of \$95.52 per month. DSC appealed the Opinion and Order to the Commonwealth Court at No. 1561 C.D. 2015.

DSC has agreed in settlement to withdraw its appeal at No. 1561 C.D. 2015. The OCA will also withdraw its cross appeal at No. 1705 C.D. 2015. The resolution of the appeals without contentious, protracted and costly litigation furthers the public interest.

III. CONCLUSION

The Joint Petition addresses a Commission Section 529 Investigation in a manner acceptable to the acquired company, the acquiring company, I&E and the OCA. Consistent with

recognized Commission policy, the Joint Petition ensures that customers of DSC will receive safe and reliable service. By doing so, the Joint Petition and proposed terms of settlement further the public interest. The Joint Petition should be approved without modification.

WHEREFORE Delaware Sewer Company requests that the Pennsylvania Public Utility Commission approve the Joint Petition for Approval of Settlement of All Issues as proposed therein.

Respectfully submitted,

By 

Thomas T. Niesen, Esquire
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THOMAS, NIESEN & THOMAS, LLC
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Attorneys for Delaware Sewer Company

APPENDIX J
STATEMENT IN SUPPORT OF
OFFICE OF CONSUMER ADVOCATE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Instituted into Whether the Public .
Utility Commission Shall Order a Capable Public . Docket No. I-2016-2526085
Utility to Acquire Delaware Sewer Company :

**OFFICE OF CONSUMER ADVOCATE
STATEMENT IN SUPPORT
OF JOINT PETITION FOR SETTLEMENT OF ALL ISSUES**

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Settlement of All Issues (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (PUC or Commission). This request is based upon the OCA's conclusion that the proposed Settlement is in the interest of the customers of Delaware Sewer Company (DSC) and in the interests of the public as a whole.

Background

On February 6, 2014, DSC filed a Petition asking the Commission to open an investigation, pursuant to Section 529 of the Pennsylvania Public Utility Code ("Code"), 66 Pa. C.S. § 529, into whether the Commission should order a capable public utility to acquire its wastewater system.¹ The OCA supported the request for a Section 529 proceeding. By Order

¹ While the Petition was pending, DSC filed a general rate increase request on November 7, 2014, at Docket No. R-2014-2457205, requesting an increase of \$67,663, or 285%. The OCA filed a formal complaint against the request and argued, *inter alia*, that no increase should be granted because DSC was not providing safe, adequate and reliable service. The Commission agreed with the OCA that the Company was not fully meeting its requirements under Section 1501 of the Public Utility Code. July 30, 2015 Order (Rate Case Order), Slip op. at 15. The Commission

entered January 28, 2016, the Commission granted that request and instituted an investigation pursuant to Section 529 of the Public Utility Code. Petition of Delaware Sewer Company for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa. C.S. § 529. Docket No. P-2014-2404341 (Order entered January 28, 2016). The Section 529 proceeding was docketed at I-2016-2526085. On March 29, 2016, the OCA filed a Motion to Join Pennsylvania-American Water Company (PAWC) in the Section 529 investigation proceeding, arguing that PAWC is an indispensable party.

By Secretarial Letter dated June 7, 2017, PAWC was notified that I&E had identified it as a proximate public utility providing the same type of service as DSC. The Secretarial Letter established June 30, 2017 as the deadline for filing a petition to intervene or other responsive pleading. On June 30, 2017, PAWC filed a Petition to Intervene. Also on June 30, 2017, Aqua Pennsylvania filed a Petition to Intervene.

On June 30, 2017, PAWC filed a Petition to Amend the Order Entered January 28, 2016 (“Petition”). That Petition argued that the Order should be amended to (i) clarify the scope of the instant proceeding and the potential remedies that can be ordered, and (ii) require that additional notice be published in the *Pennsylvania Bulletin* to ensure due process to DSC’s customers. I&E filed correspondence on July 10, 2017, indicating that it would not be filing a response to the Petition. DSC filed an Answer opposing the Petition. The OCA also filed an Answer opposing the Petition on July 10, 2017.

granted a rate increase of \$43,557. Slip op. at 40. DSC filed an appeal of the Rate Case Order. Delaware Sewer Co. v. Pa. PUC, 1561 C.D. 2015. The OCA filed a cross-appeal. McCloskey v. Pa. PUC, 1705 C.D. 2015. Both appeals have been stayed while this proceeding has been pending.

A prehearing conference was held on August 14, 2017. Thereafter, the ALJ issued a procedural order. Among other things, the order stated that the ALJ would take judicial notice of the record in the proceeding at P-2014-2404341.

In accordance with that procedural schedule, on October 27, 2017, I&E submitted Direct Testimony. On December 1, 2017, DSC, OCA and PAWC each submitted Direct Testimony, and Aqua submitted correspondence indicating that it would not be filing Direct Testimony. On January 5, 2018, DSC, OCA and PAWC each submitted Rebuttal Testimony, and Aqua submitted correspondence indicating that it would not be filing Rebuttal Testimony. On February 9, 2018, I&E, OCA and PAWC each submitted Surrebuttal Testimony.

On February 13, 2018, the ALJ held a status conference call with all of the Parties to this proceeding. At that time, the Joint Petitioners advised the ALJ that they had reached an agreement in principle to resolve this proceeding. The Joint Petitioners requested that this matter be stayed for 120 days so they could pursue further negotiations to resolve all issues in this proceeding. On February 14, 2018, the ALJ issued an order granting the requested stay. As a result, the hearings scheduled for February 15-16, 2018 was cancelled.

On June 11, 2018, counsel for PAWC advised the ALJ that, although the parties had made significant progress in their negotiations, PAWC and DSC had not yet executed an Asset Purchase Agreement. PAWC requested a 30-day extension of the stay of the litigation schedule. By Order dated June 13, 2018, the ALJ granted a 60-day extension of the litigation schedule.

On August 13, 2018, counsel for PAWC notified the ALJ that PAWC and DSC had not yet executed an Asset Purchase Agreement. PAWC requested a further 30-day extension of the litigation schedule. On August 20, 2018, counsel for DSC notified the ALJ that DSC opposed the request for a further extension of the litigation schedule.

On September 12, 2018, counsel for PAWC advised the ALJ that PAWC and DSC had executed an Asset Purchase Agreement, and requested an extension of the stay of the litigation schedule for twenty days so the parties could submit a Joint Petition for Settlement.

Throughout this process, the parties to this Settlement participated in extensive discussions to reach an agreement on terms to resolve the remaining issues and accomplish the transfer of the system to PAWC without the delay, cost and uncertainties of the eminent domain process and litigation of DSC and OCA's appeals of the Commission's Rate Case Order and I&E's formal complaint before the Commission.

Terms of Settlement

Purchase Price: The Settlement provides for an agreed-upon purchase price of \$61,700 for the DSC system. Settlement at ¶ 16-17, Appendix A. In addition, PAWC is purchasing approximately 140 acres of land adjacent to the current sand mound area from Forest City Partnership for \$420,000. Settlement at ¶ 16-17, Appendix B. The land will allow PAWC to install new sand mounds to serve the current customers and provide service to the full build out level of properties as currently constituted. See Settlement, Appendix C at 1-2, 5-6. This agreement avoids the delay and cost of an eminent domain process, which might take years (board of viewer proceedings and subsequent appeals) and the uncertainty about what purchase price might be determined and the effect the price would have on rates.

Usage Rates: Under the proposed Settlement, after acquisition, DSC customers will continue to pay the existing rates of \$95.25 per month. Settlement ¶ 26, Appendix D. Thus, customers will experience no rate increase, despite the change in ownership to a capable utility that is financially, managerially and technically capable of acquiring and operating the system.

Plan for Improvements: The Settlement requests that the PUC approve PAWC's Plan for Improvements. Settlement ¶ 22-25, Appendix C. The Plan is separated into three phases, with Phase I covering PAWC's investigation and improvements during the first three years of operation and providing a community on-lot system that can provide service to 80 homes (39 existing and 41 future growth). Plan at 4. During the first year of operation, PAWC will conduct soil testing and hydrogeological studies to find the appropriate location for the subsurface disposal and submit Act 537 planning documents. Plan at 4-5. PAWC estimates that Phase I provides adequate capacity for a 15-20 year period. Plan at 4, 5. Phases II and III will be implemented to the extent that growth in the community requires additional treatment capacity. Plan at 5-6.

Accounting Issues: PAWC has asked that it be afforded deferred accounting treatment for extraordinary incremental operations and maintenance expenses associated with the provision of service in the Requested Territory. Settlement ¶ 27. PAWC has agreed to provide a report by April 1 of each year of the expenses incurred during the prior calendar year. The request is for accounting purposes and is limited to extraordinary operations and maintenance expenses. In addition, the OCA is not reserve its rights as to recovery of any extraordinary expenses that PAWC may claim in its first post-Closing base rate case.

Regarding the cost to acquire the land, the OCA has agreed that it will not contest PAWC's rate base claim for the full purchase price of \$420,000 provided, however, that to the extent that the land or a portion of the land is not used and useful, that portion will be treated as land held for future use. Settlement ¶ 29.b.

Communication with Customers: PAWC agrees that it will provide all DSC customers with information regarding the beginning of wastewater service by PAWC. This is an important

requirement because it ensures that all customers will have necessary information about the changes as a result of the sale to PAWC. PAWC agrees to work with OCA on the materials before they are sent to the customers.

Withdrawal of Appeals: DSC sought Commonwealth Court review of the Commission Order in its last rate case. Delaware Sewer Company v. Pa. PUC, No. 1561 C.D. 2015. The OCA filed a cross-appeal. McCloskey v. Pa. PUC, No. 1705 C.D. 2015. The terms of the proposed Settlement require the Company and OCA to withdraw all of the appeals within 10 days after notice of closing. Settlement ¶ 30.c. In this way, the parties will avoid the delay and cost associated with litigating the appeals before the Commonwealth Court and potentially, higher courts.

The Settlement is in the public interest and is in accordance with Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. The OCA submits that the Settlement is the result of extensive negotiations of parties with different interests to achieve a desired result to benefit DSC customers. The result of the attached Settlement should be an improvement to wastewater service. Approval of this Settlement serves the public interest by avoiding the delay, uncertainties and cost of further litigation.

For all of the foregoing reasons, the OCA submits that the terms and conditions of the Settlement are in the public interest and should be approved by the Commission.

Respectfully Submitted.

A handwritten signature in black ink, reading "Christine Maloni Hoover". The signature is written in a cursive style and is positioned above a horizontal line.

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

October 12, 2018
259545

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APPENDIX K
STATEMENT IN SUPPORT OF
BUREAU OF INVESTIGATION
AND ENFORCEMENT



VIA SUBMISSION WITH JOINT PETITION FOR SETTLEMENT

October 12, 2018

The Honorable Steven K. Haas
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Investigation Instituted Per Section 529 Into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company
Docket No. I-2016-2526085**

Dear Administrative Law Judge Haas:

Concerning the Section 529, 66 Pa. C.S. § 529, proceeding at Docket No. I-2016-2526085, Aqua Pennsylvania Wastewater, Inc. does not oppose the Joint Petition for Settlement between the parties.

If you have any questions concerning this correspondence, please contact me at 610-645-1130.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Stahl".

Alexander R. Stahl
Regulatory Counsel

cc: David P. Zambito (via Email and First Class Mail)
George A. Bibikos (via Email and First Class Mail)
Susan Simms Marsh (via Email and First Class Mail)
Thomas T. Niesen (via Email and First Class Mail)
Scott B. Granger (via Email and First Class Mail)
Allison C. Kaster (via Email and First Class Mail)
Christine M. Hoover (via Email and First Class Mail)
Lauren M. Burge (via Email and First Class Mail)
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