

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Instituted per Section 529 into :
Whether the Commission Shall Order a Capable : I-2016-2526085
Public Utility to Acquire Delaware Sewer Company :

RECOMMENDED DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

An investigation was initiated pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529, into whether the Pennsylvania Public Utility Commission (Commission) should order a capable public utility to acquire the wastewater system assets of Delaware Sewer Company (DSC). The parties to this proceeding (Joint Petitioners)¹ filed with the Commission a Joint Petition for Approval of Settlement of All Issues (Joint Petition) in which all issues in this and related proceedings at Commission Docket Nos. C-2017-2587178, P-2014-2404341 and Pennsylvania Commonwealth Court Docket Nos. 1561 C.D. 2015 and 1705 C.D. 2015 were resolved. This decision recommends approval of the Joint Petition with no modifications.

HISTORY OF THE PROCEEDING

On February 6, 2014, DSC filed a Petition with the Commission asking the Commission to open an investigation, pursuant to Section 529 of the Pennsylvania Public Utility

¹ Aqua Pennsylvania Wastewater, Inc. (Aqua), a party to this proceeding, did not sign the Joint Petition but does not oppose the settlement.

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). By Secretarial Letter dated June 7, 2017, the Commission established June 30, 2017 as the deadline for the filing of Petitions to Intervene or other responsive pleadings. On June 30, 2017, Pennsylvania-American Water Company (PAWC) and Aqua filed Petitions to Intervene.

A prehearing conference was held in this matter on August 14, 2017. Subsequently, I issued an Order Re Procedural Schedule and a Corrected Order Re Procedural Schedule. On October 27, 2017, the Commission’s Bureau of Investigation and Enforcement (I&E) submitted direct testimony. On December 1, 2017, DSC, the Pennsylvania Office of Consumer Advocate (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, I held a status conference call with the Parties to this proceeding. At that time, the Joint Petitioners advised me 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, I 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.

On June 11, 2018, counsel for PAWC advised me that, although the parties had made significant progress in their negotiations, PAWC and DSC had not yet executed an Asset Purchase Agreement for the purchase of the DSC system by PAWC. PAWC requested a 30-day

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

On August 13, 2018, counsel for PAWC notified me 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 me that DSC opposed the request for a further extension of the litigation schedule. Subsequently, on September 12, 2018, counsel for PAWC advised me 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 prepare and submit a Joint Petition for Settlement.

On October 12, 2018, the Joint Petitioners filed a Joint Petition for Approval of Settlement of All Issues, along with a Joint Stipulation for Admission of Evidence and Statements in Support of the settlement. The Joint Stipulation for Admission of Evidence requests the admission of the following statements and exhibits:

DSC:

- a. Direct testimony of Scott F. Linde (DSC St. No. SFL-1).
- b. Rebuttal testimony of Scott F. Linde (DSC St. No. SFL-1R).

I&E:

- a. Direct testimony of Sunil R. Patel (I&E St. No. 1 and I&E Exh. No. 1).
- b. Direct testimony of Christopher Keller (I&E St. No. 2 and I&E Exh. No. 2).
- c. Rebuttal testimony of Sunil R. Patel (I&E St. No. 1-R).
- d. Rebuttal testimony of Christopher Keller (I&E St. No. 2-R).
- e. Surrebuttal testimony of Sunil R. Patel (I&E St. No. 1-SR).

OCA:

- a. Direct testimony of Ashley E. Everette (OCA St. No. 1).
- b. Direct testimony of Terry L Fought (OCA St. No. 2).

- c. Rebuttal testimony of Terry L. Fought (OCA St. No. 2R).
- d. Surrebuttal testimony of Ashley E. Everette (OCA St. No. 1S).
- e. Surrebuttal testimony of Terry L. Fought (OCA St. No. 2S).

PAWC:

- a. Direct testimony of David R. Kaufman, P.E. (PAWC St. No. 1).
- b. Direct testimony of John Cox (PAWC St. No. 2 and Exh. JC-1).
- c. Rebuttal testimony of David R. Kaufman, P.E. (PAWC St. No. 1-R).
- d. Surrebuttal testimony of David R. Kaufman, P.E. (PAWC St. No. 1-SR).

The Joint Petition, including PAWC’s Plan for Improvements pursuant to 66 Pa. C.S. § 529(j) (Improvement Plan), was served on the Pennsylvania Department of Environmental Protection (PA DEP) and Delaware Township (Township). PA DEP and the Township were provided a 60-day period within which to review the filing and submit comments, if any, to the Improvement Plan. Neither PA DEP nor the Township submitted any comments to the Plan for Improvement. The record in this proceeding closed on January 3, 2019, upon my receipt of confirmation that neither PA DEP nor the Township submitted comments to PAWC’s Improvement Plan.

FINDINGS OF FACT²

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 The Findings of Fact listed herein are taken directly from the settlement documents submitted by the Joint Petitioners and were attached to the Joint Petition as Appendix E.

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.

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."

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.

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.

42. 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.**

DISCUSSION

A. Joint Stipulation for Admission of Evidence

As noted above, this decision recommends that the Joint Petition for Approval of Settlement of All Issues (Joint Petition) be approved without modification. I note that the Joint Stipulation for Admission of Evidence submitted by the parties has not yet been granted. Accordingly, as an initial matter, I will grant this Stipulation and admit into evidence in this proceeding the various statements and exhibits identified above. The parties are directed to provide two copies of each document to the Commission's Secretary's Bureau for inclusion in the official record of this proceeding.

B. The DSC system

DSC's Certificate of Public Convenience authorizes it to serve Sections 19-22 of the Wild Acres Development (Wild Acres) in Delaware Township, Pike County, Pennsylvania. The DSC wastewater system currently provides wastewater service to 39 homes in Sections 19-22. The remaining portions of the development have on-lot septic systems. (PAWC Stmt. No. 1,

p. 3). Current tax parcel maps show there are currently 372 lots within Sections 19-22. After subtracting utility lots, open space, unbuildable lots and combined lots, the ultimate build-out is estimated to be approximately 306 lots. (PAWC Stmt. No. 1, pp. 3-4).

The DSC system is not currently operating as designed. It is presently being operated as a septic tank system. (OCA Stmt. No. 2 p. 4). 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 Stmt. No. 2 p. 3).

The WWTP was designed to serve the residential 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 Stmt. No. 1, p. 4).

The DSC system 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 Stmt. No. 1, p. 5).

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 Stmt. No. 1, p. 6).

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 Stmt. No. 1, p. 6).

C. Settlement Terms

The specific settlement terms agreed upon by the Joint Petitioners and unopposed by Aqua are stated below. The numbering is shown as it appears in the Joint Petition for ease of reference.

[Begin direct quote]

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(1)(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 ("LTIIIP"), 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 refile; 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 Pennsylvania⁴ 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.

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

⁴ 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.

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.

(Joint Petition, pp. 5-12). [End direct quote].

D. Approval of Settlement

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, however, 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. PUC 767 (1991).

Section 529 provides a mechanism by which the Commission may order a capable public utility to acquire a troubled small water or sewer utility. In order to issue such a directive, the Commission, after providing notice to the parties and an opportunity to be heard, must determine that the following conditions exist:

1. that the small water or sewer or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Streams Law, the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P. L. 206, No. 43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency

or reasonableness of the services provided by the small water or sewer utility;

2. that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;
3. that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;
4. that alternatives to acquisition have been considered in accordance with subsection(b) and have been determined by the commission to be impractical or not economically feasible;
5. that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and
6. that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

66 Pa. C.S. § 529(a)(1)-(6) (footnotes omitted).

In addition, the settlement in this proceeding must satisfy various other requirements set forth in Section 529. For example, Section 529(e) requires that the Commission find the agreed upon purchase price to be reasonable. 66 Pa. C.S. § 529(e). Additionally, the capable public utility ordered to acquire a small water or sewer utility must submit for Commission approval an improvement plan for bringing the small company into compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(j). On the other hand, a capable public utility ordered to acquire a small troubled system is afforded protections against liability and limitations on enforcement actions by State or local agencies where the bases of the liability or enforcement actions were proximately related to violations by the acquired system. 66 Pa. C.S. § 529(k)(l).

As explained below, I find that the settlement terms are in the public interest and satisfy the Section 529 criteria. Accordingly, I recommend that the Joint Petition be approved without modifications.

a. The Transaction

Under the settlement, PAWC will purchase, pursuant to an Asset Purchase Agreement (APA), substantially all of the wastewater system assets of DSC for a purchase price of \$61,700.00.⁵ In addition, PAWC has executed a Land Transfer Agreement (LTA) with Forest City Partnership (Forest City) for the purchase of approximately 140 acres of land that will ultimately be used and useful in the provision of wastewater service to the public throughout the entirety of DSC's existing certificated service territory. The LTA provides for a purchase price of \$420,000.00. As part of the purchases under the APA and the LTA, the Joint Petitioners request Commission determinations that (1) the purchase prices are reasonable, and (2) because PAWC's acquisition of DSC is the result of a Section 529 investigation, a depreciated original cost study is not required for the assets acquired from DCS and Forest City, because the purchase prices are reasonable.

PAWC states in its Statement in Support that approval of the Joint Petition is in the public interest because it is taking over a system that has been troubled for some time and that the Joint Petitioners agree DSC meets the criteria in Section 529 for the Commission to order that the system be acquired by a capable public utility. PAWC further notes that the Joint Petitioners all agree that it is a capable public utility that is financially, technically and managerially capable of acquiring and operating the DSC system in compliance with all regulatory standards. (PAWC Stmt. in Support, p. 4). DSC notes in its Statement in Support that the negotiated purchase price of the DSC assets is likely less than the price that would be determined under the eminent domain procedures, and that a negotiated purchase price is

⁵ Assets that are excluded from the transaction are identified on pp. 2-3 of the APA (Appendix A to the Joint Petition).

preferable to a contentious, protracted and costly eminent domain proceeding.⁶ The OCA notes in its Statement in Support that the purchase of the 140 acres of land from Forest City, which is adjacent to the current sand mound location, will allow PAWC to install new sand mounds in order to serve current customers and provide service to the entire DSC service territory at full build out. OCA agrees with PAWC that the agreement avoids the delays and added costs that would be experienced by the parties in an eminent domain proceeding. (OCA Stmt. in Support, p. 4). I&E states in its Statement in Support that the transaction is in the best interests of current DSC customers, DSC and PAWC, and is in the public interest. (I&E Stmt. in Support, p. 6).

I find that the purchase of the DSC assets for \$61,700.00 and the 140 acres of land from Forest City for \$420,000.00 is reasonable and in the public interest and recommend that these transactions be approved by the Commission.

The record is clear that the DSC system is a very troubled system whose prospects for future improvement appear very unlikely at best. The current conditions and problems at the DSC system are addressed by the OCA on pages 2-6 of OCA Statement 2 (Direct Testimony of Terry L. Fought), by I&E on pages 5-15 of I&E Statement No. 1 (Direct Testimony of Sunil R. Patel), and by PAWC on pages 5-6, 9-10 of PAWC Statement No. 1 (Direct Testimony of David R. Kaufman, P.E.). These witnesses describe numerous deficiencies with the DSC system, DSC's failure and inability to correct these deficiencies, and the improvements that will be necessary to bring the system into compliance with statutory and regulatory requirements and to enable the system to provide adequate, safe and reliable service to its customers. DSC itself states in its Statement in Support, "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." (DSC Stmt. in Support, 3).

The \$61,700.00 purchase price of the DSC assets was negotiated and agreed upon by PAWC and DSC, both of which were represented by experienced legal counsel. DSC states

⁶ Section 529 provides that, if the Commission orders a capable public utility to acquire a small water or wastewater system and the parties are unable to agree on a negotiated purchase price that the Commission finds reasonable, the purchase price will be determined by following the procedure prescribed for exercising the power of eminent domain. 66 Pa. C.S. § 529(e).

in its Statement in Support that, although the purchase price is likely less than the likely value of the system under eminent domain principles, it is willing to accept the negotiated price as preferable to a lengthy, contentious and costly eminent domain proceeding. (DSC Stmt. in Support, pp. 4-5). Accordingly, the record evidence supports the conclusion that the \$61,700.00 purchase price is fair and reasonable and, therefore, in the public interest.

PAWC witness Kaufman discusses the improvements that will be necessary to bring the DSC system into full statutory and regulatory compliance, both in the near term and in the future, to enable the system to serve the entire certificated service territory at full build-out. (PAWC Stmt. No. 1, pp. 9-12). Mr. Kaufman emphasizes the need for sufficient land in order to construct the facilities that will be necessary to service both the short and long-term needs of the service territory. Mr. Kaufman states, “[p]rovided that adequate land is available with suitable soil conditions, a community on-lot system may be viable to meet the immediate and short-term needs of the DSC system. Longer term needs for the entire Sections 19 through 22 would require the installation of a biological treatment plant process followed by sub-surface disposal of the plant’s effluent.” (PAWC Stmt. No. 1, pp 9-10).

No party disputes that the purchase by PAWC of the 140 acres of land from Forest City is a necessary component of the overall transaction that will allow PAWC to construct and install the necessary facilities to serve DSC’s service territory both now and in the future. Neither does any party dispute the \$420,000.00 purchase price as unreasonable or excessive. The parties have agreed upon this particular transaction, including the purchase price, as a necessary and acceptable component of the overall settlement in this proceeding. I&E stated, “[t]he acquisition of the land presently owned by Forest City is essential to achieving public sewer service to the maximum number homes. The ultimate buildout of the subdivision is estimated to be 306 homes.” (I&E Stmt. in Support, p. 8). OCA stated:

[t]he 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. This agreement avoids the delay and cost of an eminent domain process, which might take years . . .

and the uncertainty about what purchase price might be determined and the effect the price would have on rates.

(OCA Stmt. in Support, p. 4).

The Joint Petitioners request in the settlement that the Commission determine that the purchase prices of \$61,700.00 for the DSC assets and \$420,000.00 for the 140 acres of land are reasonable, as required under 66 Pa. C.S. § 529(e). Consistent with the record evidence and the above discussion, I find that the purchase prices are reasonable and in the public interest.

b. Plan for Improvements

66 Pa. C.S. § 529(j) requires the submission of an improvement plan by the acquiring utility and approval by the Commission as a necessary part of a Commission-ordered acquisition under Section 529.⁷ Appendix C to the Joint Petition is a Plan for Improvements in which PAWC sets forth its plan and timetable for upgrading the DSC system to bring it into compliance with applicable statutory and regulatory standards.

PAWC's Improvement Plan proposes a three-phased approach to system improvement and expansion. Phase one will address the immediate needs of the system and provide capacity to serve up to 80 homes in the certificated territory. It involves, *inter alia*, replacement of an existing pump station and installation of a new subsurface disposal system. PAWC anticipates that the Phase 1 expansion will take approximately 3 years and will provide adequate capacity for 15 to 20 years to serve up to 80 homes. The Phase 1 improvement costs are currently estimated at approximately \$1 million. Phase 2 will involve the installation of additional septic tanks and sand mounds for subsurface disposal and will provide additional capacity to serve up to 180 homes. The Phase 2 improvements are expected to provide adequate capacity well into the future. Phase 3 will involve the installation of additional sand mounds for subsurface disposal, increase to the pump station capacity, and the installation of a biological

⁷ As noted, PAWC's Improvement Plan was submitted to the Pennsylvania Department of Environmental Protection (PA DEP) and Delaware Township (Township) for review with a 60-day comment period. Neither PA DEP nor the Township submitted comments or raised objections.

treatment plant. The Phase 3 expansion and improvements will enable PAWC to serve the development at full buildout. (Joint Petition, Appendix C, pp. 4-5).

In its Statement in Support, PAWC states:

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.

(PAWC Stmt. in Support, p. 5).

In supporting PAWC's Improvement Plan, I&E states, "I&E supports the Plan for Improvements. I&E believes the Plan for Improvements is in the best interests of the current DSC customers, DSC, and PAWC; and is in the public interest. Further, I&E believes the comprehensive nature of the improvements will, by their comprehensive application, cure and/or eliminate the several unsafe conditions cited in I&E's Complaint." (I&E Stmt. in Support, p. 8).

The Joint Petitioners support PAWC's Improvement Plan. Additionally, neither PA DEP nor the Township submitted any comments or raised any objections to the Plan. I agree with PAWC and I&E that the Plan reflects a reasonable, comprehensive and measured approach to addressing the various needs and deficiencies of the DSC system. Within approximately three years, the system will be brought into compliance with applicable statutory and regulatory standards, with expanded capacity to serve up to 80 homes. PAWC expects the Phase 1 expansion to be sufficient to serve the development for 15-20 years. Thereafter, the system will be expanded and improved as growth conditions dictate until the entire certificated service territory at full buildout is served.

Consistent with the record evidence and the above discussion, I find that PAWC's Improvement Plan is reasonable and in the public interest and should be approved. Accordingly, consistent with 66 Pa. C.S. § 529(j), the reasonably and prudently incurred costs of each improvement shall be eligible for recovery in rates as each improvement becomes used and useful in the public service. Additionally, PAWC's Improvement Plan shall be treated as a petition for modification of PAWC's Long term Infrastructure Improvement Plan, as approved by the Commission at Docket No. P-2017-2585707.

c. Rates

66 Pa. C.S. § 529(f) provides that the Commission may, in its discretion, allow the acquiring utility, for a reasonable period of time after the acquisition, to charge and collect rates from the acquired customers pursuant to a separate tariff. Appendix D to the Joint Petition is a *pro forma* tariff supplement that incorporates DSC's rates and the requested service territory into PAWC's existing wastewater tariff. The proposed *pro forma* tariff supplement sets initial rates in the requested territory equal to the rates currently charged by DSC, and includes all other fees and surcharges permitted by PAWC's current wastewater tariff, including but not limited to, capacity reservation fees. The Joint Petitioners request that the Commission permit PAWC to charge the separate tariffed rate to the acquired customers. As this arrangement is expressly authorized by Section 529(f), and since all parties either agree with the request or do not oppose it, I find the request to be reasonable and in the public interest.

The Joint Petitioners further 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." (Joint Petition, p. 8). Under the terms of the settlement, PAWC will provide to OCA and I&E, by April 1 of each year, a report listing all deferred extraordinary incremental operations and maintenance expenses incurred during the prior calendar year. This reporting requirement will cease when PAWC files its first base rate case that incorporates DSC. The settlement clarifies that OCA and I&E agree to this provision only to the extent that PAWC does not have to file a separate petition for the establishment of this

deferred account for accounting purposes. Neither OCA nor I&E agree to the recovery of any deferred incremental operations and maintenance expenses related to the provision of service in the requested service territory or waive any arguments they may have in any future rate filings related to any deferred amounts that PAWC would claim in its first post-closing base rate proceeding. (Joint Petition, pp. 8-9).

All parties either agree with this settlement term or do not oppose it. Further, neither OCA nor I&E have waived any arguments they may have in any future rate filings by PAWC related to the recovery of any deferred amounts PAWC would claim in its first post-closing base rate case. I find this term to be reasonable and in the public interest and recommend that it be approved by the Commission.

d. Future PAWC Rate Proceedings

The Joint Petitioners agree that nothing contained in the Joint Petition, or the Commission's approval of the settlement, will preclude any Joint Petitioner from asserting any claims or positions or raising any issues in future PAWC base rate proceedings, provided that:

- Joint Petitioners will not contest PAWC's rate base claim of the full purchase price for the DSC assets;
- Joint Petitioners will not contest PAWC's rate base claim for the full purchase price of the land purchased from Forest City (\$420,000), which land is or may be necessary for PAWC to provide wastewater service throughout the requested service territory. However, to the extent 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. As land becomes used and useful in Phases 1, 2 and 3 of PAWC's Improvement Plan (Appendix C), the parties agree that the used and useful portion may be included in rate base in a base rate proceeding.
- 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 they may contest the reasonableness and prudence of the amounts of the claimed expenses.

- 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.
- 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.
- 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.

(Joint Petition, pp. 9-11).

The Joint Petitioners agree that that these terms provide PAWC with the opportunity to recover various costs associated with the acquisition, improvement and expansion of the DSC system while preserving the rights of OCA and I&E to challenge the prudence and reasonableness of the amounts claimed. I&E states:

I&E supports the Settlement and therefore supports the Settlement terms regarding future PAWC rate proceedings as providing regulatory certainty with respect to the disposition of issues and final resolution of this case, which all Parties agree, benefits their discreet interests and is in the public interest. Further, I&E supports the Joint Petitioners preserving their rights to assert any position or raise any issue in future PAWC rate proceeding subject to the provision of subparagraphs 29(a) through 29(f) of the Joint Petition as a fair compromise of the Parties interests.

(I&E Stmt. in Support, p. 10).

I find these terms involving future rate proceedings to be reasonable and in the public interest as providing an appropriate balance between PAWC's interests in recovering reasonable and prudently incurred expenses related to the acquisition with the interests of OCA and I&E in retaining the right to challenge the reasonableness of the company's claims in future rate proceedings. Accordingly, I recommend that these terms be approved by the Commission.

e. Termination of Other Proceedings

There are several other proceedings involving DSC currently pending before either the Commission or the Pennsylvania Commonwealth Court, the final disposition of which have been addressed in the Joint Petition.

On February 3, 2017, I&E filed a formal complaint against DSC at Docket No. C-2017-2587178 involving allegations of numerous violations by DSC of statutory and regulatory standards applicable to the sewer system. As part of the comprehensive settlement of the Section 529 proceeding, I&E has agreed to withdraw its formal complaint against DSC.

On June 30, 2017, PAWC filed a Petition to Amend the Commission's Order entered January 28, 2016 in the proceeding at Docket No. P-2014-2404341, addressed on pages 1-2 above. As part of the comprehensive settlement of the Section 529 proceeding, the Joint Petitioners agree that PAWC's Petition shall be deemed moot upon final disposition of this proceeding.

The OCA and DSC filed appeals in the PA Commonwealth Court challenging various parts of the Commission's Order entered July 30, 2015 in DSC's 2014 Rate Case. The DSC appeal was filed at Docket No. 1561 C.D. 2015. The OCA appeal was filed at Docket No. 1705 C.D. 2015. The Joint Petitioners agree that, within ten days following PAWC's filing of a notice of the Closing of the Transaction with the Commission, both OCA and DSC will file to withdraw and discontinue their respective appeals.

The Joint Petitioners agree that the Joint Petition reflects a comprehensive settlement of the interests of the various parties and that the withdrawal of all related proceedings will allow them to avoid the expenditure of significant added time and expense associated with litigating these related proceedings. I agree and find that these terms are reasonable, in the public interest and should be approved by the Commission.

f. Limitation of Future Actions

66 Pa. C.S. § 529(l) provides for limits on enforcement actions by state agencies against the acquiring public utility following the acquisition and Commission approval of the Plan for Improvements. The Joint Petitioners agree that these enforcement action limitation provisions apply to PAWC's acquisition of DSC and that no Joint Petitioner will seek a rate refund or civil penalty from PAWC after closing for rates charged or actions that occurred prior to closing.

I find that this settlement term is fully consistent with 66 Pa. C.S. § 529(l), is reasonable and in the public interest and should be approved.

g. Standard Settlement Conditions

The settlement outlined in the Joint Petition is conditioned upon the Commission's approval of the terms and conditions contained in the Joint Petition without modification. If the Commission modifies the Joint Petition, the Joint Petitioners may elect to withdraw from the settlement and may proceed with litigation and, in such event, the Joint Petition 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 Joint Petition. The Joint Petitioners acknowledge and agree that the Joint Petition, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

The Joint Petition is proposed to settle all issues in the instant proceeding. If the Commission does not approve the Joint Petition 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 Joint Petition is made without any admission against, or prejudice to, any position which the Joint Petitioners may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

h. Section 529(a) Requirements

The record evidence in this proceeding supports a conclusion that the six requirements identified in section 529(a)(1)-(6) are present and that approving the acquisition of DSC by PAWC under Section 529 is appropriate and in the public interest.

First, both OCA and I&E presented testimony showing that DSC is in violation of applicable statutory or regulatory standards. 66 Pa. C.S. § 529(a)(1). The OCA addressed this requirement in the direct testimony of Terry L. Fought. (OCA Stmt. No. 2, p. 5). I&E addressed this requirement in the direct and rebuttal testimony of Sunil R. Patel. (I&E Stmt. No. 1, pp. 5-10; I&E Stmt. No. 1-R, pp. 4-5). This testimony supports a conclusion that this requirement has been met.

Second, both OCA and I&E presented testimony showing that DSC failed to comply, within a reasonable period of time, with an order of PA DEP or the Commission. 66 Pa. C.S. § 529(a)(2). The OCA addressed this requirement in the direct and surrebuttal testimony of Terry Fought. (OCA Stmt. No. 2, p. 6; OCA Stmt. No. 2-S, p. 2). I&E addressed this requirement in the direct, rebuttal and surrebuttal testimony of Sunil Patel. (I&E Stmt. No. 1, pp.

10-12; I&E Stmt. No. 1-R, pp, 4-5; I&E Stmt. No. 1-SR, pp. 2-4). This testimony supports a conclusion that this requirement has been met.

Third, both OCA and I&E presented testimony showing that 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). OCA addressed this requirement in its direct and surrebuttal testimony. (OCA Stmt. No. 2, p. 6; OCA Stmt. No. 1-S, p. 2). I&E addressed this requirement in its direct and surrebuttal testimony. (I&E Stmt. No. 1, pp. 12-14; I&E stmt. No. 1-S, pp. 2-4). This testimony supports a conclusion that this requirement has been met.

Fourth, I&E presented testimony showing that alternatives to acquisition, as described in 66 Pa. C.S. § 529(b), were considered by DSC and found to be impracticable or not economically feasible. 66 Pa. C.S. § 529(a)(4). I&E addressed this requirement in the direct testimony of Christopher Keller. (I&E Stmt. No. 2, pp. 3-7). This testimony supports a conclusion that this requirement has been met.

Fifth, both OCA and I&E presented testimony showing that PAWC is financially, managerially, and technically capable of acquiring DSC and operating it in compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(a)(5). OCA addressed this requirement in the direct testimony of Terry Fought. (OCA Stmt. No. 2, p. 6). I&E addressed this requirement in the direct testimony of Christopher Keller. (I&E Stmt. No. 2, pp. 10-11). This testimony supports a conclusion that this requirement has been met.

Sixth, I&E presented testimony showing that the rates charged by PAWC to its pre-acquisition customers will not increase unreasonably because of the acquisition of DSC. I&E addressed this requirement in the direct testimony of Christopher Keller. (I&E Stmt. No. 2, pp. 11-13). This testimony supports a conclusion that this requirement has been met.

I find that the settlement terms set forth in the Joint Petition represent a comprehensive settlement that is fair and reasonable to the Joint Petitioners and is in the public interest. The settlement provides for the acquisition of a very small, troubled system that is

incapable of making the necessary expenditures for facilities and improvements that would bring the system into compliance with applicable statutory and regulatory standards. DSC is being acquired by a very sound and capable public utility that will be able to make all necessary expenditures and improvements, as described in the Improvement Plan, to bring the system into full compliance with all applicable statutory and regulatory standards in an efficient and measured manner. This acquisition will result in a significant improvement in the quality of the wastewater service provided to DSC's customers.

DSC stated:

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 Violations, 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.

(DSC Stmt. in Support, p. 3).

OCA stated:

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.

(OCA Stmt. in Support, p. 6).

I&E stated:

This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. . . . I&E is satisfied that no further action is necessary and considers its investigation of this Section 529 proceeding complete.

(I&E Stmt. in Support, p. 12).

CONCLUSION

For the reasons set forth above, I find that the proposed settlement is in the public interest and consistent with the requirements of 66 Pa. C.S. § 529. Accordingly, I recommend that the Commission approve the proposed settlement without modifications.

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

13. Since 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.

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

15. 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.

16. 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).

17. PA DEP and the Township have both been served with the Plan for Improvements and neither had any objections.

ORDER

THEREFORE,

IT IS RECOMMENDED:

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 filed on October 12, 2018 at docket number I-2016-2526085 is approved without modification.

2. That the following documents are admitted into the record as set forth in the Joint Stipulation for Admission of Evidence and the parties are directed to provide two

copies of each document to the Commission's Secretary's Bureau for inclusion in the official record:

DSC:

- c. Direct testimony of Scott F. Linde (DSC St. No. SFL-1).
- d. Rebuttal testimony of Scott F. Linde (DSC St. No. SFL-1R).

I&E:

- a. Direct testimony of Sunil R. Patel (I&E St. No. 1 and I&E Exh. No. 1).
- b. Direct testimony of Christopher Keller (I&E St. No. 2 and I&E Exh. No. 2).
- c. Rebuttal testimony of Sunil R. Patel (I&E St. No. 1-R).
- d. Rebuttal testimony of Christopher Keller (I&E St. No. 2-R).
- e. Surrebuttal testimony of Sunil R. Patel (I&E St. No. 1-SR).

OCA:

- f. Direct testimony of Ashley E. Everette (OCA St. No. 1).
- g. Direct testimony of Terry L Fought (OCA St. No. 2).
- h. Rebuttal testimony of Terry L. Fought (OCA St. No. 2R).
- i. Surrebuttal testimony of Ashley E. Everette (OCA St. No. 1S).
- j. Surrebuttal testimony of Terry L. Fought (OCA St. No. 2S).

PAWC:

- e. Direct testimony of David R. Kaufman, P.E. (PAWC St. No. 1).
- f. Direct testimony of John Cox (PAWC St. No. 2 and Exh. JC-1).
- g. Rebuttal testimony of David R. Kaufman, P.E. (PAWC St. No. 1-R).
- h. Surrebuttal testimony of David R. Kaufman, P.E. (PAWC St. No. 1-SR).

3. 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 (Joint Petition, Appendix A); 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 (Joint Petition, Appendix B).

4. 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.

5. 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).

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

7. 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.

8. That PAWC shall notify the Commission, OCA and I&E upon closing on the transactions described in Ordering Paragraph No. 3.

9. 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.

10. 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 (Joint Petition, Appendix D), to be effective as of the date of Closing.

11. 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; (b) the Office of Consumer Advocate shall withdraw and discontinue its appeal in the Pennsylvania Commonwealth Court at Docket No. 1705 C.D. 2015; and (c) I&E shall withdraw its formal complaint at Docket No. C-2017-2587178. The Office of Consumer Advocate and Delaware Sewer Company shall each notify the other Joint Petitioners when their respective appeals have been withdrawn.

12. 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.

