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July 10, 2019

VIA ELECTRONIC FILING

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

Re: Application Of Pennsylvania-American Water Company Pursuant To Sections 507, 1102, And 1329 Of The Public Utility Code For Approval Of Its Acquisition Of The Wastewater System Assets Of Exeter Township; Docket No. A-2018-3004933

Dear Secretary Chiavetta:

Enclosed for electronic filing is Exeter Township's Main Brief In Opposition To St. Lawrence Borough's Claims For Relief And In Support Of The Agreed Upon Resolution Of The Section 1329 Application in the above-referenced matter. Please contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Samuel W. Cortes'.

Samuel W. Cortes

SWC:jcc
Enclosures

cc: Per Certificate of Service
Barnett Satinsky, Esq. (via email)

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Washington

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Pennsylvania-American : DOCKET A-2018-3004933
Company Pursuant to Sections 507, :
1102, And 1329 of the Public Utility :
Code For Approval of Its Acquisition of :
the Wastewater System Assets of Exeter :
Township :**

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 10th day of July, 2019, served a true copy Exeter Township's Brief in Opposition to St. Lawrence Borough's Claims for Relief and in Support of the Agreed Upon Resolution of the Section 1329 Application. upon the participants listed below via email and First Class U.S. Mail, postage prepaid, unless otherwise specified:

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Samuel W. Cortes, Esquire

**COMMONWEALTH OF PENNSYLVANIA
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**EXETER TOWNSHIP’S MAIN BRIEF IN OPPOSITION TO ST. LAWRENCE
BOROUGH’S CLAIMS FOR RELIEF AND IN SUPPORT OF THE AGREED UPON
RESOLUTION OF THE SECTION 1329 APPLICATION**

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**EXETER TOWNSHIP’S MAIN BRIEF IN OPPOSITION TO ST. LAWRENCE
BOROUGH’S CLAIMS FOR RELIEF AND IN SUPPORT OF THE AGREED UPON
RESOLUTION OF THE SECTION 1329 APPLICATION**

Exeter Township (“Exeter”), by and through its counsel, pursuant to the Scheduling Order of The Honorable Administrative Law Judge Andrew M. Calvelli, dated May 28, 2019, hereby files this Brief in Opposition to St. Lawrence Borough’s (the “Borough”) Claims for Relief and in Support of the Agreed Upon Resolution of the Section 1329 Application.

I. INTRODUCTION

In this matter concerning only the proposed sale of an asset – a sale to which the Borough does not object and a proceeding to which the Borough is solely an intervenor – the Borough purports to assert wholly baseless and unclear claims for relief against Exeter. Without filing a formal complaint in a proper venue and without identifying *any* cause of action, much less a legally viable cause of action, the Borough asks the Commission to award it unspecified and unsupported damages against Exeter, even though the Commission lacks (a) jurisdiction over such claims and (b) the authority to award the relief the Borough seeks. In doing so, the Borough ignores not only the law concerning the Commission’s jurisdiction and authority, but also the unambiguous binding agreement by and between the Borough and Exeter. Accordingly, for the reasons discussed below in greater detail, Exeter respectfully requests that the Commission deny or otherwise reject the Borough’s claims for relief, whatever they may be. Exeter further requests that the Commission approve the Section 1329 Application, as modified by the parties’ settlement.

II. STATEMENT OF THE CASE

A. The Asset Purchase Agreement And Subsequent Applications To The Commission

Exeter and Pennsylvania-American Water Company (“PAWC”) entered into an Asset Purchase Agreement pertaining to the sale by Exeter of substantially all of the assets comprising Exeter’s wastewater system (the “System”) (the “Transaction”). The Asset Purchase Agreement is dated May 29, 2018, and is amended by the First Amendment to Asset Purchase Agreement, executed November 26, 2018 (together, the “APA”).

In connection with the APA, PAWC filed an Application seeking approval of the Transaction pursuant to Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329.¹ In response, the Commission’s Law Bureau staff advised Exeter and PAWC that, in their opinion, Exeter required a certificate of public convenience for the limited wastewater service provided to a small number of customers located in Lower Alsace Township, Berks County, Pennsylvania. As a result, on December 10, 2018, Exeter filed an Application for Certificate of Public Convenience, *Nunc Pro Tunc* (“Application NPT”), seeking approval from the Commission to offer, furnish, render, and supply wastewater service in certain portions of Lower Alsace Township.²

B. The Borough-Exeter Sewer Agreement

Since 1967, the Borough and Exeter, or their respective municipal authorities, have been parties to a Sewer Agreement, most recently amended on May 8, 2003 (the “Agreement”). A true and correct copy of the Agreement, without exhibits, is attached and marked as Exhibit “A.”

¹ PAWC originally filed the 1329 Application on September 25, 2018. PAWC filed its Amended 1329 Application on December 5, 2018. For purposes of this Brief, both filings are referred to as the “1329 Application.”

² The docket number for the Application NPT is A-2018-3006505.

Essentially, the Agreement provides that Exeter, through its System, shall transport, treat, and dispose of the Borough's sewage. See Ex. A at § 3.01. In exchange, the Borough shall, among other things, pay certain proportional contributions for capital improvements to the System and for a portion of Exeter's debt service related to the System. Id. at Article IV, "Sharing of Costs."

The Agreement contains an arbitration provision, which states as follows: "The parties hereto agree that if, at any time, disputes shall arise between them concerning factual determinations under the terms of this Agreement, the matter of dispute shall be referred to three registered consulting engineers . . ." Id. at § 5.08.

The Agreement does not convey any ownership interest of the System to the Borough. See Ex. A, generally. The Borough concedes that it does not have an ownership interest in the System. See the June 28, 2019 Notes of Testimony from the Commission Hearing ("N.T."), attached hereto and marked as Exhibit "B," at p. 64, lines 5-8.³

C. The Borough's Intervention In The Commission Proceedings

The Borough filed a Petition to Intervene in both the Application NPT and the 1329 Application proceedings. Although the Borough has not objected to either Application, the Borough contends, through the testimony of Robert J. May, P.E., Borough Council President, that Exeter will receive a "windfall" after the sale contemplated by the APA closes. See N.T. at p. 63, lines 14-25.⁴ The Borough argues that Exeter should share with the Borough some

³ Such testimony is consistent with that of John Granger, Exeter's Manager, who confirmed in his Rebuttal Testimony that Exeter, alone, owns the System. A true and correct copy of Mr. Granger's Rebuttal Testimony is attached hereto and marked as Exhibit "C" at p. 4, lines 18-19 ("No agreement provides [the Borough] with any ownership interest in the System. [The Borough] owns no title to any real property or assets associated with the System. The permit to operate the System is in the name of Exeter alone.")

⁴ Recently, after lengthy negotiations, Exeter, PAWC, the Bureau of Investigation and Enforcement, and the Office of Consumer Advocacy have reached settlement agreements for both the Application NPT and the 1329 Application, subject to the recommendation of The Honorable Administrative Law Judge Andrew M. Calvelli and the approval of the Commission. The Borough does not oppose the proposed settlements.

unspecified portion of the payment that Exeter receives when the sale contemplated by the APA closes.

Mr. May confirmed that the purported claims that the Borough asserts against Exeter, whatever they may be, exclusively concern the capital contributions and debt service payments made by the Borough in accordance with the express terms of the Agreement. Id. at p. 60, lines 15-17. Specifically, Mr. May concedes that the Borough paid capital contributions to Exeter pursuant to the Agreement. See N.T. at p. 46, lines 20-23. Mr. May also concedes that the Borough paid debt service payments, and continues to make such payments, to Exeter as required by the Agreement. Id. at p. 47, line 3 to p. 48, line 19.

In fact, Mr. May admits that all of the claims that the Borough asserts against Exeter arise exclusively out of the Agreement:

Q: And these costs that are being discussed [in Article IV, Sharing of Costs] as being shared, those are the costs that you described earlier in your testimony concerning capital contributions and debt finance payments, correct?

A: Correct.

Q: And those are the costs that form the basis of St. Lawrence's claim that Exeter is somehow obtaining a windfall here, correct?

A: Correct.

Id. at p. 56, line 10 to p. 57, line 57.

With regard to the capital contributions, Mr. May admits as follows:

Q: And Section 4.02 [of the Agreement], that contemplates or requires the Borough to pay a certain sum to Exeter as a capital contribution . . . correct?

A: Correct.

Q: And those are the capital contributions that you were referring to earlier in your testimony, correct?

A: Correct.

Q: Provided for right here in Section 4.02 [of the Agreement], correct?

A: Correct.

Id. at p. 57, lines 9-20. Similarly, Mr. May admits that Section 4.03 of the Agreement requires the debt service payments at issue:

Q: And there is, without belaboring the point and making this more complicated than it needs to be, you agree with me that if you look at Section 4.03A through I, it describes a formula for calculating the costs that [the Borough] is required to pay under Section 4.03 [of the Agreement]?

A: Correct.

Q: And those costs are for debt service or financing related costs, correct?

A: Correct.

...

Q: So the debt service payments that you claim you made and are making are actually contemplated by and provided for in this agreement, correct?

A: Correct.

Id. at p. 58, line 16 to p. 59, line 15.

The Borough has never filed a lawsuit against Exeter or articulated a cause of action claiming any entitlement to relief or identifying any legal basis for the same. To the contrary, the Borough has asserted only vague statements of an alleged “windfall” that may result if Exeter sells the System purportedly because “the contributions made by [the Borough] are a windfall to [Exeter].” Id. at p. 63, lines 24-25. Additionally, although counsel for the Borough argued at the

June 28, 2019 hearing that the Borough is entitled to relief in the form of “a calculation of debt service payments that have been paid,” see N.T. at p. 17, lines 16-19, the Borough offers no evidence as to how the Commission may make such a calculation or what specific monetary amount the Borough seeks.

The Agreement does not preclude the Township from selling its System. See Ex. A, generally. Nor has the Borough ever articulated any objection to Exeter’s sale of the System as proposed. Furthermore, the Agreement does not provide that the Borough shall receive or have a claim to any portion of the sale proceeds or any repayment for capital contributions and/or debt service payments the Borough had previously made, if the Township sells its System. Id. Plainly, the parties could have included those terms if they were part of the bargain reached.

III. SUMMARY OF THE CASE

The Borough’s claims, whatever they may be, fail on multiple independent grounds. Initially, the Commission lacks jurisdiction over the Borough’s claims and/or the authority to award the relief sought by the Borough for the following reasons: (1) the Borough asserts what is a contractual dispute arising from the Agreement; (2) the Borough seeks damages the Commission lacks the authority to award; (3) Exeter is not a “public utility” regulated by the Code with regard to the service to the Borough; and (4) the Borough seeks to transform the pending 1329 Application proceeding into a wholly different proceeding. Additionally, even if the Borough could overcome these substantial legal hurdles, the Borough fails to establish any entitlement to the relief sought for the following reasons: (1) the Borough impermissibly asks the Commission to rewrite the Agreement; (2) equitable relief is unavailable to the Borough; (3) awarding damages to the Borough would deny Exeter due process; and (4) the Borough fails to offer evidence from which its alleged damages could be calculated. For all of the above

reasons, each of which is fatal to the Borough's claims, the Commission should deny the relief the Borough seeks and approve the 1329 Application, as modified by the parties' settlement.

IV. ARGUMENT

A. The Commission Lacks Jurisdiction Over The Borough's Claims.

1. The Borough's claims concern a contractual dispute over which the Commission lacks jurisdiction.

Although it is undisputed that the Commission has exclusive jurisdiction for the issues raised in the 1329 Application and the related Application NPT, the Commission lacks jurisdiction over the purported claims raised by the Borough against Exeter.

The Commission "does not have jurisdiction over private contractual disputes." T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co., 492 A.2d 776, 779 (Pa. Commw. Ct. 1985); see also Bell Tel. Co. of Pa. v. Pa. Pub. Util. Comm'n, 417 A.2d 827, 829 (Pa. Commw. Ct. 1980) (recognizing that the Commission lacks "power to decide private contract disputes"). This is in contrast to matters involving "rules and regulations governing reasonableness, adequacy, and sufficiency of service," which constitute issues falling within the exclusive jurisdiction of the Commission. T.W. Phillips Gas and Oil Co., 492 A.2d at 779.

Although the precise nature and legal basis of the Borough's "windfall" claims remain uncertain, Mr. May's testimony definitively confirms that the relief sought by the Borough arises out of the terms of a contract – the Agreement – exclusively. See N.T. at p. 56, line 10 to p. 57, line 1. The Borough does not object to the 1329 Application, the Application NPT, or the settlement reached among the parties. Similarly, the Borough does not raise any issues regarding the reasonableness or sufficiency of service provided by the System. Instead, the Borough asks the Commission to decide disputed rights under the Agreement. See N.T. at p. 56, line 10 to p. 57, line 1 (conceding that the Agreement requires the debt service payments and capital

contributions giving rise to the Borough's purported claims). Respectfully, the Commission lacks jurisdiction over such a claim. See, e.g., Bell Tel. Co., supra. The Borough's claims, whatever they may be, likely must be brought in arbitration in accordance with the Agreement. See Ex. A at § 5.08.

2. The Borough seeks damages that the Commission lacks the authority to award.

In addition to failing to establish that the Commission has jurisdiction over its contractual dispute with the Township, the Borough also seeks an award of money damages, which the Commission lacks the authority to award.

Although the Commission is granted a “statutory array of [] remedial and enforcement powers,” these powers do “**not include the power to award damages.**” Feingold v. Bell of Pa., 383 A.2d 791, 794 (Pa. 1977) (emphasis added); see also T.W. Phillips, 492 A.2d at 779 (observing that the Commission lacks authority to award damages in negligence or contract actions). In Feingold, the Pennsylvania Supreme Court determined that the legislature did not expressly or impliedly grant the Commission authority to award damages, and that “it can be concluded that the Legislature did not intend for the [Commission] to have such power.” Id. The court determined that the legislature left “traditional judicial remedies, such as damages, in the hands of the courts.” Id. As a result, “a complaint [] to the [Commission] seeking damages could not have resulted in an award by the [Commission] even if that agency had determined the complaint to be meritorious.” Id.

Here, the Borough did not file a complaint against Exeter, whether before the Commission, in arbitration, or in another court of competent jurisdiction, and it remains unknown exactly what cause of action the Borough alleges or what damages it seeks. It is clear, however, that the Borough seeks an award of damages. See N.T. at p. 17, line 16-19 (contending

that the Borough sought monetary relief in the form of “a calculation of debt service payments that have been paid”). It is also clear that the Commission lacks the authority to award such relief. See Feingold, 383 A.2d at 794.

3. Exeter is not a utility regulated by the Code with respect to the issues the Borough raises.

Both Section 507 and Section 508 of the Code presuppose the existence of a public utility subject to the Code. See 66 Pa. C.S. §§ 507; 508. It is undisputed that Exeter, at least with respect to its service to the Borough, is not a “public utility.” If Exeter obtains a Certificate of Public Convenience with respect to its limited service to Lower Alsace Township, it will immediately abandon the Certificate upon the closing of the APA. As a result, it is not a proper party to any claim asserted by the Borough before the Commission.

4. The Borough cannot convert the 1329 Application proceeding into a different proceeding.

PAWC filed its 1329 Application pursuant to 66 Pa. C.S. § 1329, which establishes a voluntary asset valuation procedure for an acquiring public utility and selling municipality. 66 Pa. C.S. § 1329. The 1329 Application sought specific, targeted relief from the Commission. PAWC had to satisfy the statutory requirements entitling it to the relief sought. See 1329 Application, generally. For the past several months, the PAWC, Exeter, the Bureau of Investigation and Enforcement, and the Office of the Consumer Advocate have engaged in extensive, intensive discovery to reach a settlement agreement.

Since intervening six months ago, the Borough has never once objected to the 1329 Application or, more recently, to the settlement terms. The Borough should not be permitted to transform the 1329 Application into something wholly separate, and attempt to pursue relief that the Commission lacks authority to grant for amorphous claims and unnamed causes of action over which the Commission lacks jurisdiction.

B. The Borough Fails To Establish An Entitlement To Relief.

1. The Borough asks the Commission to renegotiate the Agreement.

Even if the Commission had jurisdiction over the Borough's alleged claims – which, respectfully, it does not, for the reasons discussed at length, supra – the Borough has no legal basis to seek the renegotiation of the Agreement.

Pennsylvania case law precludes a party from seeking recourse directed at rewriting or renegotiating a contract merely because the party no longer likes the terms, or the terms are no longer favorable to the party:

The court may not rewrite the contract for the purpose of accomplishing that which, in its opinion, may appear proper, or, on general principles of abstract justice ... make for [the parties] a better contract than they chose, or saw fit, to make for themselves, or remake a contract, under the guise of construction, because it later appears that a different agreement should have been consummated in the first instance....

Steuart v. McChesney, 444 A.2d 659, 662 (Pa. 1982); see also, Chamberlin v. Chamberlin, 693 A.2d 970, 973 (Pa. 1997) (“[o]ne is bound by the terms of an agreement whether good, bad or indifferent”); Harnish v. Shannon, 141 A.2d 347, 351 (Pa. 1958) (“parties *sui juris* bind themselves by their lawful contracts, and courts cannot alter them because they work a hardship”); Chapleski v. Com., Dept. of Highways, 291 A.2d 360, 363 (Pa. Commw. Ct. 1972) (“when two parties bargain in good faith and come to an agreement acceptable at the time, one party cannot later come to this Court or any other and ask for a change in the terms of the agreement because it has not worked to his advantage”).

Here, the Agreement does not preclude Exeter from selling its System. See Ex. A, generally. Nor has the Borough ever once objected to its sale.⁵ Furthermore, although the Agreement requires the Borough to make certain payments, the Agreement does not entitle the Borough to any portion of the sale proceeds or any repayment for previously made payments if Exeter elects to sell its System. Id. The Borough cannot ask the Commission (or any other tribunal, for that matter) to rewrite the Agreement, particularly when it concerns such an obviously foreseeable event. Steuart, 444 A.2d at 662.

2. Equitable relief is not available given the existence of the Agreement.

When a contract exists between parties, a party to such contract has no viable claim for equitable relief. Because the Borough concedes the existence of the written Agreement, the Borough cannot establish an entitlement to any equitable relief for its purported claims against Exeter.

A party may assert a claim anchored in equity only when a claim sounding in contract is unavailable. Schafer Elec. & Const. v. Mantia, 96 A.3d 989, 996 (Pa. 2014); Heldring v. Lundy Beldecos & Milby, P.C., 151 A.3d 634, 643 (Pa. Super. Ct. 2016). “Where an express contract already exists to define the parameters of the parties’ respective duties . . . an equitable remedy [] cannot be deemed to exist.” Villoresi v. Femminella, 856 A.2d 78, 84 (Pa. Super. Ct. 2004); see also, Khawaja v. Re/Max Central, 151 A.3d 626, 633-34 (Pa. Super. Ct. 2016) (affirming the dismissal of plaintiff’s unjust enrichment claim where plaintiff conceded the existence of an express contract).

⁵ All such objections would be waived at this point in any event. See, e.g., Hong v. Pelagatti, 765 A.2d 1117, 1123 (Pa. Super. Ct. 2000) (recognizing that a party must raise an objection “at the earliest possible stage of the adjudicatory process” or the party waives the objection); Sawink, Inc. v. Pa. Pub. Util. Comm’n, No. 2005 C.D. 2012, 2013 WL 3156574 at *1 (Pa. Commw. Ct. June 7, 2013) (unreported) (same).

Here, the Borough concedes that the basis for its requested relief is grounded within the parties' Agreement. See, e.g., N.T. at p. 56, line 10 to p. 57, line 1. Thus, if the relief the Borough seeks from the Commission is equitable in nature, such relief is unavailable to it due to the existence of the express contract by and between the Borough and Exeter.

3. Granting the Borough's requested relief would deny Exeter due process where no complaint has been filed and no cause of action pleaded.

The Borough has never filed a lawsuit against Exeter or asserted any particular cause of action against Exeter. To the contrary, the Borough has asserted only vague statements about an alleged "windfall." Granting the Borough relief against Exeter in the absence of an identifiable cause of action or complaint asserted against it would deny Exeter due process.

"The basic elements of procedural due process are 'adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.'" Meyer v. City of Pittsburgh Historic Review Comm'n, 201 A.3d 929, 938 (Pa. Commw. Ct. 2019), quoting Commw. v. Turner, 80 A.3d 754, 764 (Pa. 2013).

Here, the Borough has never filed a complaint or named any particular cause of action that entitles it to relief from Exeter. Exeter has no notice, beyond vague "windfall" assertions made in a wholly unrelated Commission proceeding, to adequately defend itself. Additionally, such notice, if given, must be before a tribunal "having *jurisdiction over the case.*" See Meyer, 201 A.3d at 938 (emphasis added). As already discussed, the Commission lacks jurisdiction over a contractual dispute seeking money damages. See T.W. Phillips, 492 A.2d at 779. For this additional reason, the Borough's purported claims must fail.

4. The record lacks evidence from which the Borough's alleged damages could be calculated.

The Borough's counsel contended at the June 28, 2019 hearing that the Borough is entitled to relief in the form of "a calculation of debt service payments that have been paid." See N.T. at p. 17, lines 16-19. Even if the Commission had the authority to award money damages, which, respectfully, it does not, the Borough offers no evidence to permit such damages to be calculated with any reasonable certainty.

"As a general rule, damages are not recoverable if they are too speculative, vague or contingent and are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty." Spang & Co. v. U.S. Steel Corp., 545 A.2d 861, 866 (Pa. 1988). In other words, the law "requires a plaintiff to produce evidence which establishes, with a fair degree of probability, a basis for assessing damages." Wujcik v. Yorktowne Dental Associates, Inc., 701 A.2d 581, 584 (Pa. Super. Ct. 1997).

Here, the Borough has not established any legal basis from which damages could be awarded against Exeter. Although some evidence has been offered regarding capital contributions and debt service payments the Borough has made, the Agreement does not provide that such contributions and payments must be repaid in the foreseeable event that Exeter sold its System. See Ex. A. Additionally, the Borough has benefited, and will continue to reap future benefits, from the capital improvements made to the System. Additionally, setting those clear legal hurdles aside, it is not possible to calculate a damage award without engaging in speculation because the Borough introduced no evidence from which its damages, if any, could be calculated. Spang, 545 A.2d at 866.


V. CONCLUSION

For all of the reasons stated herein, Exeter respectfully requests that the Commission deny whatever claims are alleged and/or relief is sought by the Borough against Exeter. Exeter further requests that the Commission approve the Section 1329 Application, as modified by the parties' settlement.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: July 10, 2019

By: 

Barnett Satinsky, Esquire
Samuel W. Cortes, Esquire
Attorney ID Nos. 15767; 91494

Attorneys for Applicant, Exeter Township

EXHIBIT A

AGREEMENT

THIS AGREEMENT, dated as of May 8

2003, EXETER TOWNSHIP, BERKS COUNTY, AUTHORITY, the TOWNSHIP OF EXETER, Berks County, Pennsylvania, party of the first part, on the one hand, and ST. LAWRENCE BOROUGH AUTHORITY and THE BOROUGH OF ST. LAWRENCE, Berks County, Pennsylvania, parties of the second part, on the other hand.

WITNESSETH:

WHEREAS, the Township and Exeter Authority heretofore determined that it was necessary, in order to benefit and preserve the public health and general welfare of citizens of the Township, that Exeter Authority construct the Exeter Sewer System, in and adjacent to the Township, for the purpose of collection, transportation, treatment and disposal of Sewage; and

WHEREAS, the Borough, which is substantially surrounded by the Township, heretofore determined that it was necessary, in order to benefit and preserve the public health and general welfare of citizens of the Borough, to provide appropriate facilities for the collection, transportation, treatment and disposal of Sewage emanating from the Borough; and

WHEREAS, the St. Lawrence Sewer System, inclusion of certain areas of the System which transport sewage from Exeter Township, is connected to

the Exeter Sewer System at the points of connection identified on Exhibit A which is attached hereto and thereby made a part, hereof, and

WHEREAS, the Township presently provides Sewage transportation, treatment and disposal service for the Borough, as lessee and operator of the St. Lawrence Sewer System; and

WHEREAS, Exeter Authority, with consent and approval of the Township, has completed the Project, as hereinafter defined, and the parties hereto have determined to enter into this Agreement to provide for: (1) an equitable sharing by the parties hereto of the capital costs of jointly used portions of the Exeter Sewer System; including jointly used facilities contemplated by the Project; (2) appropriate annual payments to be made by the Borough to the Township for transportation, treatment and disposal by the Township of Sewage discharged from the St. Lawrence Sewer System to the Exeter Sewer System; (3) the terms and conditions under which Sewage may be discharged from the St. Lawrence Sewer System into the Exeter Sewer System for transportation, treatment, and disposal by the Township; and (4) other matters related to the foregoing; and

WHEREAS, it is the intention of the parties hereto that this Agreement shall supersede the prior agreements between tile parties hereto relating to the subject matter hereof in their entirety.

NOW, THEREFORE, Exeter Authority and the Township, on the one hand, and St. Lawrence Authority and the Borough, on the other hand, for and in

consideration of covenants and agreements herein contained, to be kept and observed, each intending to be legally bound hereby, covenant and agree as follows:

ARTICLE I

Definitions

Section 1.01 The terms and phrases defined in this Section 1.0 1, for the purposes of this Agreement, shall have the following meanings, unless the context clearly otherwise requires:

B.O.D. (Biochemical Oxygen Demand) shall mean the quantity of oxygen expressed in terms of concentration as milligrams per liter, utilized in the biochemical oxidation of organic matter under standard laboratory procedure for 5 days at 20° Centigrade. The standard laboratory procedure shall be that found in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association.

Borough shall mean the Borough of St. Lawrence, Berks County, Pennsylvania, a Pennsylvania municipality.

Exeter Authority shall mean Exeter Township, Berks County, Authority, a Pennsylvania municipality authority.

Exeter Sewer System shall mean the Sewage collection and transportation system and Sewage treatment and disposal facilities, including all related and necessary facilities, in and adjacent to the Township, owned by the

Exeter Authority and leased to the Township for operation and use including all future additions, alterations and improvements thereto.

Fiscal Year shall mean the period of twelve months beginning January 1 of each year.

Infiltration shall mean the seepage of groundwater into a sewer system, including service connections. Such seepage frequently occurring through defective or cracked pipes, pipe joints, connections and manhole covers.

Inflow shall mean water discharged into a sewer system or service connection from such services including, but not limited to, roof leaders, cellars, yards, area drains, foundation drains, cooling water discharges drawn from springs around manhole covers or through holes in covers, cross connections from storm and sewer combined systems, catch basins, storm sewers, surface runoff and street washwater or drainage.

Interceptor shall mean the interceptor sewer constituting part of the Exeter Sewer System, known as the Antietam Interceptor, extending from a point in the Township to the Schuylkill River trunk sewer constituting part of the Exeter Sewer System, as shown on Exhibit A.

NH₃N shall mean the quantity of elemental nitrogen present in the form of ammonia as analyzed by a method approved by the United States Environmental Protection Agency, expressed in terms of milligrams per liter.

Project shall mean additions, extensions and improvements to the Exeter Sewer System consisting of additions, extensions, modifications and improvements to the sewage collection and transportation facilities and additions, alterations, and improvements to the sewage treatment and disposal facilities of the Sewer System which shall be in accordance with plans and specifications prepared by the Exeter Authority's consulting engineers and approved by the Exeter Authority.

Sewage shall mean domestic sewage and/or industrial wastes, as such terms usually and customarily are used by sanitary engineers. Whenever used herein in the context of reference to discharge capacity or volume flows used in the computation of treatment charges, the term Sewage also shall include Infiltration and Inflow.

Sewage Treatment Plant shall mean the Sewage treatment and disposal facilities constituting part of the Exeter Sewer System.

St. Lawrence Authority shall mean St. Lawrence Borough Authority, a Pennsylvania municipality authority.

St. Lawrence Sewer System shall mean the Sewage collection system, including all related and necessary facilities, owned by St. Lawrence Authority and leased to the Borough for operation and use, including all future additions, extensions and improvements hereto.

Total Suspended Solids (TSS) shall mean the total matter in water, wastewater or other liquids and which is retained by laboratory filtering, expressed in terms of concentration as milligrams per liter.

Township shall mean the Township of Exeter, Berks County, Pennsylvania, a Pennsylvania municipality.

ARTICLE II

Sewer System

Section 2.01 The Exeter Authority constructed the 7.1 MGD wastewater treatment plant according to plans and specifications prepared by Gannett Fleming, Inc., Consulting Engineers, Harrisburg, Pennsylvania, and in accordance with NPDES, Part I Permit PA 0026972 dated August 6, 1992, obtained from Pennsylvania Department of Environmental Protection and Water Quality Management Permit Part 110692402 dated August 6, 1992, both as amended September 24, 1992.

Section 2.02 Exeter Township hereby agrees to satisfactorily operate and maintain the Exeter Sewer System, including the sewage treatment plant, according to conditions set forth in permits referred to in Section 2.01.

Section 2.03 St. Lawrence Authority and Borough hereby agree to satisfactorily operate and maintain its sewage collection system according to applicable requirements and permits of government agencies having jurisdiction and applicable conditions set forth in permits referred to in Section 2.01.

ARTICLE III

Service Availability and Conditions

Section 3.01 St. Lawrence Authority and the Borough covenant that all Sewage discharged into the St. Lawrence Sewer System will be discharged into the Exeter Sewer System for ultimate treatment and disposal perpetually, subject to the terms and conditions hereof and subject to the limits set forth herein. The Township shall accept from the St. Lawrence Sewer System flows in such volume and character as agreed to hereby for transportation, treatment and disposal. The Township shall transport, treat and dispose of all such Sewage from the St. Lawrence Sewer System, in accordance with sound engineering practice and applicable requirements of governmental agencies having jurisdiction over the matter.

St. Lawrence Authority and the Borough agree to prohibit the discharge of any Sewage into the St. Lawrence Sewer System by any municipality or municipality authority which has not been granted prior written approval by Exeter Authority and the Township.

Section 3.02 The parties agree that the Township or Exeter Authority-owned meters shall be used to measure the volume of Sewage, including Infiltration and Inflow, discharged from the St. Lawrence Sewer System into the Exeter Sewer System. Meters are located at the points indicated on Exhibit A. The Meters are used to determine the total volume of Sewage, including

Infiltration and Inflow, produced within the St. Lawrence Sewer System and discharged into the Exeter Sewer System. The parties hereto agree that the volume of Sewage entering the Exeter Sewer System from the St. Lawrence Sewer System, as indicated by the Meters, shall be adjusted by deducting an estimate or measurement where possible of the volume of an Sewage discharged into the St. Lawrence Sewer System by the Township and by adding an estimate or measurement where possible of the volume of Sewage from any of the Borough's customers that does not flow through one of the Meters. Any estimate of the flow of Sewage from any customer of the Borough shall be made jointly by the Township and the Borough. The parties hereto further agree that the resultant volume of Sewage, including Infiltration and Inflow after such adjustment is made shall represent the total volume of Sewage, including Infiltration and Inflow discharged by St. Lawrence into the Exeter Sewer System and that the infiltration/inflow produced within the St. Lawrence Sewer System shall be considered as part of the total Sewage discharged by the Borough into the Exeter Sewer System.

In the event of missing or inaccurate flow data caused by faulty operation of any Meters, missed reading data, or any other reason, the parties hereto agree that the Township, after consultation and agreement with the Borough, which agreement shall not unreasonably be withheld by either party, shall estimate flows based upon an evaluation of past flow records applicable to

conditions during the period of time that flow records are missing or are inaccurate.

The adjustment in flow is prepared according to the following procedure:

1. Using flow records during days or weeks when metering station flow meters are working accurately, compare the volume of flow passing through the metering station in question to the volume of flow received at the wastewater treatment plant for the quarter.
2. Calculate the percentage of flow passing through the metering station, when metering is accurate, to total plant flow for the quarter.
3. Multiply the percentage established in the preceding item 2 times the plant flow for weeks when the metering station is not metering flow accurately.

Section 3.03 The Township shall pay all the capital costs of installing and all costs and maintaining all Meters. The Township shall cause the Meters to be calibrated by a qualified contractor no less frequently than semi-annually, and shall provide to the Borough a copy of the calibration certificate within thirty (30) days after each calibration. The Township shall also notify the Borough at least five (5) days in advance, of the scheduled date that the meters will be calibrated.

The Township shall cause the Sewage Treatment Plant flow monitoring equipment

to be calibrated on the same day as the Meters and shall also furnish a calibration certificate to the Borough.

Section 3.04 The parties hereto agree that the Sewage Treatment Plant has permitted capacities as shown in NPDES Part I Permit PA 0026972 and in the Water Quality Management Permit Part H 0692402 issued by the Pennsylvania Department of Environmental Protection, formerly Pennsylvania Department of Environmental Resources which are in the totals and which are hereby allocated to the parties hereto as follows:

Million Gallons Per Day

	<u>St. Lawrence</u>	<u>Exeter</u>	<u>Total</u>
Average Daily Flow	0.462	6.638	7.1

Pounds Per Day

	<u>St. Lawrence</u>	<u>Exeter</u>	<u>Total</u>
BOD	871	8,979	9,850
Total Suspended Solids	924	9,926	10,850
NH ₃ N	74	1,056	1,130

Section 3.05 St. Lawrence Authority and the Borough, as appropriate covenant to the best of their ability, to prohibit or eliminate the discharge of roof drainage water, storm water, excessive ground water, infiltration, surface drainage,

or building foundation drainage from the St. Lawrence Sewer System into the Exeter Sewer System, either directly or indirectly,

St. Lawrence Authority and the Borough, as appropriate, covenant that the appropriate party will prohibit the discharge of any Sewage or other wastes into the St. Lawrence Sewer System having characteristics that violate the provisions of Ordinance 387 of the Township imposing sewer rentals or charges and regulating the discharge of sanitary sewage and industrial wastes into the Exeter Sewer System and its supplementing resolutions promulgated thereunder or the provisions of any similar subsequent sewer use ordinance and supplemental resolutions thereunder of the Township governing the discharge of Sewage into the Exeter Sewer System from time to time in effect. The Borough covenants that it has enacted and will keep in full force and effect, so long as Sewage shall be discharged from the St. Lawrence Sewer System into the Exeter Sewer System, an ordinance or ordinances prohibiting the discharge of Sewage into the St. Lawrence Sewer System at least as stringent as the similar sewer use ordinance or ordinances or resolutions at the time in effect in the Township and which ordinances or ordinances of the Borough shall at all times be in compliance with all rules, regulations of all governmental bodies having jurisdiction over the Exeter Sewer System, including but not limited to the United States Environmental Protection Agency. The Township and/or the Borough further covenant and agrees that they will enter into appropriate inter-jurisdictional agreements from time to time

required by the United States Environmental Protection Agency or any other governmental regulatory body having jurisdiction. The Township will notify the Borough of all ordinance revisions and amendments and resolutions within thirty (30) days of enactment or passage.

Section 3.06 The parties hereto agree that the measurements made by the Meters, adjusted in accordance with Section 3.02 hereof, shall be used to determine if the allowable Sewage (including Infiltration and Inflow) discharge volume limit of the Borough is being exceeded. The parties hereto agree that the volume limit shall be exceeded when the average daily rate of the Sewage flow for any consecutive ninety (90) day period exceeds the limit provided for in Section 3.04 hereof. For the purposes of this Section 3.06, the average daily rate shall be determined by obtaining the sum of the daily total Sewage flow for any ninety (90) consecutive days and dividing that sum by ninety (90). In the event that the Borough discharge limit is exceeded, the Township shall notify the Borough thereof in writing within thirty (30) days from the date that the Township obtains the meter reading. The parties hereto agree that the Borough shall, within six (6) months of receiving such written notification from the Township, either begin or have completed repairs to the St. Lawrence Sewer System to reduce the volume of discharge to within the discharge limit as defined herein, or shall apply to the Township in writing to purchase from the Exeter Authority and/or the Township additional capacity in the Sewage Treatment Plant. If, in the judgment of

the Township and Exeter Authority, such additional capacity is available, which judgment will not be unreasonably withheld, the Exeter Authority and/or the Township shall sell same to St. Lawrence Authority and the Borough in accordance with the calculation methods set forth in Exhibit E which is attached hereto and thereby made a part hereof.

Section 3.07 The parties hereto agree that the Meter locations and other sampling points selected by the Township shall be used to determine if the allowable Sewage discharge limits are being exceeded. The parties hereto agree that the limits shall be exceeded when the average daily rate of the BOD and Total Suspended Solids strength for any consecutive thirty (30) day period exceeds the limits. For the purposes of this Section 3.07, the average daily rates shall be determined by obtaining the sum of the daily total mass loadings of BOD and Total Suspended Solids for any thirty consecutive days and dividing the sum by the number of test results for such thirty (30) day period. In the event that the Borough's discharge limits are exceeded, the Township shall notify the Borough thereof in writing within thirty (30) days. The parties hereto agree that the Borough shall within six (6) months of receiving such written notification from the Township, begin or complete enforcement steps to reduce mass loadings to within the discharge limits as defined herein, or shall apply to the Township in writing to purchase from the Exeter Authority and/or the Township additional capacity in the Sewage Treatment Plant. If, in the reasonable judgment of the Township and the

Exeter Authority, such additional capacity is available, the Township and/or the Exeter Authority shall sell same to St. Lawrence Authority and the Borough at a price determined in accordance with the principles as set forth in Exhibit E.

Section 3.08 The parties hereto agree that at such time or times as the Sewage Treatment Plant is rerated for its treatment capacities by the state or Federal agency having jurisdiction and authority to rerate the capacities in the Sewage Treatment Plant, the Borough and St. Lawrence Authority shall automatically be entitled to an increase in their applicable allocated capacities in the Sewage Treatment Plant, said increase or increases to be determined by their percentile interests in the allocated capacity or capacities in the Sewage Treatment Plant as set forth in Section 3.04 hereof, and as related to the total applicable capacities in the Sewage Treatment Plant set forth in Section 3.04 hereof.

ARTICLE IV

Sharing of Costs

Section 4.01 The Borough shall pay to the Township annually the sum of \$9,590, payable in two installments of \$4,795 each, on or before February 5 and on or before August 5 in each year, beginning on or before February 5, 1993, to and including on or before August 5, 2012. Such payments shall be in consideration of the original reservation of additional BOD/suspended solids capacity in the Sewage Treatment Plant for St. Lawrence Authority and the Borough and for use of the Sewage Treatment Plant which continue in use

subsequent to the expansion and alterations to the Sewage Treatment Plant completed in 1996 and are in lieu of annual payments attributable to capital costs of the Sewage Treatment Plant which were payable pursuant to prior agreements between the parties hereto.

Section 4.02 The parties hereto acknowledge that St. Lawrence Authority and the Borough heretofore contributed from legally available funds the sum of \$641,250 to Exeter Authority as a capital contribution to be applied by Exeter Authority for and toward a portion of the costs and expenses of the plant expansion to 7.1 MGD attributable to St. Lawrence Authority and the Borough. Such capital contribution was paid by St. Lawrence Authority and the Borough as follows: \$99,239.60 upon the execution of the previous agreement; \$445,360.40 on April 30, 1993; and \$96,650.00 on June 1, 1993. Such capital contribution is deemed by the parties hereto as an initial payment on account for St. Lawrence Authority's and the Borough's proportionate share, as hereinafter provided of the costs and expenses of the Project attributable to St. Lawrence Authority and the Borough.

Section 4.03 In consideration of Exeter Authority undertaking and completing the plant expansion to 7.1 MGD, the Borough shall make annual payments to the Township attributable to the amortization of the net share of St. Lawrence Authority and the Borough of the costs and expenses of the Project attributable to St. Lawrence Authority and the Borough, giving appropriate credit

for the capital contribution provided for under Section 4.02 hereof calculated as follows:

A. The consulting Engineers for Exeter Authority shall determine, based upon construction actual prices received by Exeter Authority for Contract One - Expansion and Alterations to Wastewater Treatment Plant - the percentage of the actual costs of expansion of the Sewage Treatment Plant and the percentage of the actual costs of alterations of the Sewage Treatment Plant included in Contract One, all as set forth in Exhibit B attached hereto and thereby made a part hereof.

B. The applicable percentages determined in A above were applied to the additional construction costs based upon actual prices and related costs attributable to construction detailed on Exhibit C attached hereto and thereby made a part hereof to determine total construction-related actual costs of expansion of the Sewage Treatment Plant and total construction-related actual costs of alterations to the Sewage Treatment Plant, respectively.

C. The total construction-related actual cost of alterations to the Sewage Treatment Plant were apportioned to St. Lawrence Authority and the Borough by multiplying the total construction-related actual costs of the alterations of the Sewage Treatment Plant determined in B above by 6.51% which is the percentage which the capacity flow in the existing Sewage Treatment Plant reserved for the Borough (0.462 mgd) bears to the total design flow in the Sewage

Treatment Plant (7.1 mad), as illustrated in Exhibit D attached hereto and thereby made a part hereof.

D. The total construction-related actual costs of the expansion of the Sewage Treatment Plant attributable to St. Lawrence Authority and the Borough as determined in B above were determined by allocating to St. Lawrence Authority and the Borough their proportionate shares of such costs based upon the additional loading capacities allocated to St. Lawrence Authority and the Borough as set forth in detail in Exhibit E.

E. The total construction-related actual costs of the Interceptor attributable to St. Lawrence Authority and the Borough as set forth in Exhibit F attached hereto and thereby made a part hereof were determined by multiplying it by 6.22%, which is the percentage which the additional capacity flow in the Interceptor reserved for St. Lawrence Authority and the Borough (0.385 mgd) bears to the additional design flow capacity of the Interceptor (6.19 mgd).

F. The sums determined in C, D, and E above were added and represent the total of the construction-related actual costs of the Project attributable to St. Lawrence Authority and the Borough.

G. The capital contribution paid to Exeter Authority by St. Lawrence Authority and the Borough as provided in Section 4.02 hereof was deducted from the total construction-related actual costs of the Project attributable

to St. Lawrence Authority and the Borough calculated under F above and the result represents the net total of the construction-related actual costs of the Project attributable to St. Lawrence Authority and the Borough as set forth in Exhibit G attached hereto and made a part hereof.

H. A proportionate share of financing costs attributable to the net total of the construction-related actual costs of the Project attributable to St. Lawrence Authority and the Borough was determined by dividing the sum determined under G above by the net total of the construction-related actual costs of the Project financed by Exeter Authority with the proceeds of the Exeter Township General Obligation Bond issued to finance the Project and multiplying the result by costs and expenses of financing incurred in connection with any series of sewer revenue bonds issued by Exeter Authority to finance the Project, excluding capitalized interest and the amount of the Debt Service Reserve Fund capitalized for benefit of such sewer revenue bonds, to obtain St. Lawrence Authority's and the Borough's share of financing expenses related to jointly used portions of the Project as set forth in Exhibit H attached hereto and thereby made a part hereof.

I. The amounts determined under G and H above were added and the resulting sum was amortized in a hypothetical bond issue at the net interest cost and over the stated life of the series of General Obligation bonds issued by Exeter Authority to finance the Project in accordance with Exhibit I

attached hereto and made a part hereof to determine the annual sums payable by the Borough for its proportionate share of jointly used portions of the Project financed by Exeter Authority.

Sums payable by the Borough determined as provided above and as set forth in Exhibit I are payable by the Borough semi-annually on May 20 and November 20 of each year, beginning May 20, 1993, to and including November 20, 2022.

Section 4.04 The parties agree that annual payments to be made by the Borough attributable to the Project as provided in Section 4.03 were subject to final adjustment within three (3) months after the receipt of the Exeter Authority of a certificate of its consulting engineer that the Project is complete and that all costs and expenses of construction and financing the Project have been ascertained. Such adjustment was made by recomputing, in accordance with the principles set forth in Section 4.03, using actual costs, the annual payments due from the Borough to the Township. Any increase or decrease in costs of the Project was reflected in the hypothetical bond issue computed in accordance with Section 4.03-1 by amortizing the adjusted increase or decrease reflecting actual costs from the date of the calculation over the remaining life of the series of General Obligation bonds issued to finance the Project.

Section 4.05 The Borough agrees to pay for its proportionate share of operating and maintenance costs for jointly-used portions of the Exeter Sewer

System. To determine the Borough's proportionate share of such costs, the Township shall compute a Treatment Charge as follows:

A. The Township shall determine the total costs and expenses of operation, maintenance, and repair of the Sewage Treatment Plant and other jointly-used portions of the Exeter Sewer System, which hereinafter are referred to as "Shared Operating Costs". Shared Operating Costs shall not include: Sewage collection system operating expenses except those attributable to interceptor sewers used by the Borough; salaries unless directly attributable to the Sewage Treatment Plant or interceptor sewers used by the Borough; billing expenses; engineering services unless directly attributable to the Sewage Treatment Plant or interceptor sewers used by the Borough; sums payable by the Township with respect to debt not related to the Sewage Treatment Plant or interceptor sewers used by the Borough; or miscellaneous services not attributable to the Sewage Treatment Plant or interceptor sewers used by the Borough. Employee benefits included in Shared Operating Costs shall be determined by multiplying total employee benefits by the ratio of payroll costs attributable to the Sewage Treatment Plant and interceptor sewers used by the Borough to total payroll costs.

Any revenues received by the Exeter Authority or the Township during the year under consideration from any agency, department, or body of the Commonwealth of Pennsylvania or the United States or from user strong waste surcharges from the Township's or Borough's customers on account of costs of

operating, repairing, maintaining and/or replacing the Sewage Treatment Plant shall be deducted from the Shared Operating Costs determined in Subsection A above. These revenues shall include, but not be limited to, the following: septage revenues (septage revenues shared with St. Lawrence as a percentage of St. Lawrence flow to total flow through the plant less 1% percent); strong waste surcharges, including laboratory fees and sampling charges; miscellaneous service charges, if the work performed to generate the revenue is included in the Shared Operating Costs; state and Federal grants that are related to currently-existing portions of the Exeter Sewer System and that offset Shared Operating Costs; miscellaneous revenues, if pertaining to Shared Operating Costs; workmen's compensation for non-collection portions of the Exeter Sewer System personnel; refunds of expenses, if the expenses are included in Shared Operating Costs; and compensation for losses, if losses were included in Shared Operating Costs.

B. Shared Operating Costs determined by the Township in Subsection A above shall be divided by the total volume of Sewage flow received at the Sewage Treatment Plant to determine a "Unit Treatment Charge" to be expressed in dollars per thousand gallons of Sewage.

C. The Unit Treatment Charge shall be multiplied by the volume of Sewage discharged from the St. Lawrence Sewer System into the Exeter Sewer System expressed in thousand gallons as measured by the Meters and

adjusted as herein provided for non-metered flows to determine the applicable treatment charges payable by the Borough.

Section 4.06 The Township shall determine, on a quarterly basis, the Sewage Treatment Charges Contemplated by Section 4.05 hereof to be paid by the Borough. In April, July, October and January of each year, the Township shall determine the treatment charges to be paid by the Borough for the preceding three (3) month period. The Treatment Charges shall be calculated in accordance with the procedures set forth in Section 4.05 hereof. To calculate the Treatment Charge for the three (3) month periods preceding April, July and October, the Township shall use the values in the approved Township operating budget to determine Shared Operating Costs. In January of each year, the Township, in consultation with the Borough, shall calculate the Shared Treatment Costs based upon actual operating costs for the preceding year which shall, at that point, be known. In January of each year, the Township, in consultation with the Borough, shall also calculate any adjustments which may apply to the treatment charge that has been calculated during the preceding April, July and October. Bills for the Treatment Charge to be paid by the Borough and to be calculated in accordance with the procedures set forth in Section 4.05 hereof shall be prepared by the Township and sent to the Borough by the end of the months in April, July, October and January of each year. The bill sent by the end of January shall include all adjustments to previous bills calculated in accordance with this Agreement. The

Borough shall pay each bill in full to the Township within thirty (30) days of receipt.

Section 4.07 In addition to the Treatment Charges provided for under Section 4.05 hereof, the Borough shall pay to the Township quarterly a strong waste surcharge (debt service excluded) imposed by any Ordinance of the Township (deleted - and the Borough at the time in effect imposing such a strong strength surcharge.

Section 4.08 Exeter Township shall keep appropriate records and accounts with respect to costs and expenses of operation, maintenance, and repair of the Exeter Sewer System so that determinations which shall be necessary under Section 4.05 can be made promptly, at the required times, with fairness and accuracy. Such records and accounts shall be open to inspection by St. Lawrence Authority and the Borough, upon reasonable notice, at reasonable times. Certified audits of appropriate records and accounts of Exeter Authority or the Township, as appropriate, with respect to the Exeter Sewer System shall be made available to St. Lawrence Authority and the Borough annually.

St. Lawrence Authority or the Borough, as appropriate, shall keep appropriate records and accounts with respect to the St. Lawrence Sewer System, which records and accounts shall be open to inspection by Exeter Authority and the Township, upon reasonable notice, at reasonable times.

ARTICLE V

Miscellaneous

Section 5.01 If, pursuant to any regulations, rules, permits, approvals and/or other orders, standards or requirements of any local, state, or Federal regulatory agency having jurisdiction over treatment and/or disposal of Sewage, Exeter Township is required to upgrade the Sewage Treatment Plant, then St. Lawrence Authority and the Borough shall pay a proportionate share of the costs of any such upgrading, calculated in a manner consistent herewith for sharing costs of the expansion to 7.1 MGD. The parties hereto agree to enter into a supplement hereto in order to implement and carry out the intent and purpose of the foregoing.

Section 5.02 St. Lawrence Authority and the Borough agree that the rules and regulations to be adopted governing the installation of laterals and main sewers connecting properties in the Borough to the St. Lawrence Sewer System shall be at least as stringent as requirements for like installations adopted by Exeter Authority or the Township, as appropriate. The Borough shall be informed of all Exeter ordinance revisions.

St. Lawrence Authority continually shall provide Exeter Authority and the Township with a complete set of record drawings of the St. Lawrence Sewer System, showing complete information as to location, grade and depth of lines, location of manholes, and other similar relevant information.

Exeter Authority and the Township continually shall provide St. Lawrence Authority and the Borough with a complete set of record drawings of the Exeter Sewer System, showing complete information as to location, grade and depth of lines, location of manholes, and other similar relevant information.

Section 5.03 The Borough grants to Exeter Authority and the Township, and their respective successors and assigns, all easements, rights-of-way, and other rights necessary and desirable in, along, over, and under streets, roads, lanes, courts, public squares, alleys, and highways of the Borough in, along, over, or under which the Exeter Sewer System has been constructed, together with free ingress, egress, and regress therein and thereto, along with other persons having interests or rights therein, for use in connection with constructing, replacing, repairing, altering, maintaining, and operating the Exeter Sewer System. Exeter Authority and the Township shall repair or restore such streets, roads, lanes, courts, public squares, alleys, and highways of the Borough in accordance with the standards of the Pennsylvania Department of Transportation with respect to similar repair of comparably constructed state highways, and shall maintain said streets, roads, lanes, courts, public squares, alleys, and highways for a period of one (1) year after such repair or restoration.

Section 5.04 St. Lawrence Authority and the Borough agree to furnish or to cause to be furnished to the Township all information deemed essential by the Township for determination of the character and strength of

Sewage discharged from the St. Lawrence Sewer System into the Exeter Sewer System.

Exeter Authority and the Township agrees to furnish or to cause to be furnished to St. Lawrence Authority and the Borough, all information deemed essential by St. Lawrence Authority and the Borough, as appropriate, for determination of the character and strength of Sewage discharged into the Exeter Sewer System.

Exeter Authority and the Township, as appropriate, shall provide authorized representatives of St. Lawrence Authority or the Borough with access at reasonable times to the Exeter Sewer System in order to assure compliance with the terms of this Agreement.

Section 5.05 Exeter Authority and the Township, as appropriate, covenant and agrees that they will:

- (a) maintain the Exeter Sewer System in good repair, working order, and condition;
- (b) continuously operate the same;
- (c) from time to time make all necessary repairs, renewals, and replacements thereof and all necessary improvements thereto in order to maintain adequate service; and
- (d) comply with all present and future laws, rules, regulations, permits, orders, and requirements lawfully made by the

Pennsylvania Department of Environmental Protection or any other governmental body having jurisdiction.

Section 5.06 St. Lawrence Authority and the Borough, as appropriate, covenant and agree that they will:

(a) maintain the St. Lawrence Sewer System in good repair, working order, and condition;

(b) continuously operate the same;

(c) from time to time make all necessary repairs, renewals, and replacements thereof and all improvements thereto in order to maintain adequate service; and

(d) comply with all present and future laws, rules, regulations, permits, orders, and requirements lawfully made by the Pennsylvania Department of Environmental Protection or any other governmental body having jurisdiction.

Section 5.07 Exeter Authority and the Township may enter into any new or additional agreement concerning transportation, treatment, and disposal by Exeter Township of Sewage from any other municipality; provided, however, that no such new or additional agreement shall impair the ability of Exeter Authority or the Township, as appropriate, to receive, transport, treat and dispose of Sewage collected in the St. Lawrence Sewer System in accordance with the terms of this Agreement.

Section 5.08 The parties hereto agree that if, at any time, disputes shall arise between them concerning factual determinations under the terms of this Agreement, the matter of dispute shall be referred to three registered consulting engineers, one to be appointed by Exeter Authority and the Township, one to be appointed by St. Lawrence Authority and the Borough and the third to be agreed upon by the two appointees so selected; provided, however, that in the event such appointees cannot agree on the third arbitrator, the President Judge of the Court of Common Pleas of Berks County, Pennsylvania, shall appoint the third arbitrator. The decision or award of the majority of such arbitrators shall be final and binding upon the parties hereto, their respective successors and assigns. Each party hereto shall pay the costs of its own appointee and one-half of the costs of the third arbitrator.

Section 5.09 This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

Section 5.10 This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized appropriate officers and their

respective seals to be affixed hereunto, all as of the day and year first above written.

EXETER TOWNSHIP, BERKS COUNTY, AUTHORITY

ATTEST:

Eva M. Wald
Secretary

By: L. J. Drape
Chairman

(SEAL)

TOWNSHIP OF EXETER, Berks County, Pennsylvania

ATTEST:

Froyd S. By
Secretary

By: Ralph M. R
Chairman of Board of Supervisors

(SEAL)

ST. LAWRENCE BOROUGH AUTHORITY

ATTEST:

M. K. Reichard
Secretary

By: Harold C. Weyman MS
Chairman

(SEAL)

BOROUGH OF ST. LAWRENCE, Berks County, Pennsylvania

Attest

M. K. Reichard
Secretary

By: John C. Tedelobus
Mayor

By: Warren L. Hubenow
President of Counsel

(SEAL)

EXHIBIT B

APPEARANCES:

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(For Bureau of Investigation and Enforcement)

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Forum Place, Fifth Floor
Harrisburg, Pennsylvania 17101-1923
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Kozloff Stoudt
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Wyomissing, Pennsylvania 19610
(For Borough of St. Lawrence)

Commonwealth Reporting Company, Inc.

700 Lisburn Road
Camp Hill, Pennsylvania 17011

WITNESS INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Harold A. Walker, III By Mr. Cortes	30	--	--	--
John A. Granger By Mr. Cortes By Ms. London	35 --	-- 37	-- --	-- --
Robert Joseph May By Ms. London By Mr. Cortes	40 --	-- 45	71 --	-- --

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EXHIBIT INDEX

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>PAWC Statement</u>		
1	1 REV-A (Grundusky - Direct, with PAWC Exhibit BJG-1)	26
2	1-R (Grundusky - Rebuttal, with PAWC Exhibit BJG-2)	26
3	2-REV (Gable - Direct)	26
4	3 (Kaufman - Direct, with PAWC Exhibits DRK-1 and DRK-2)	26
5	3-R (Kaufman - Rebuttal, with PAWC Exhibits DRK-3R and DRK-4)	26
6	4 REV (Nevirauskas - Direct)	26
7	4-R (Nevirauskas - Rebuttal, with PAWC Exhibit RPN-1)	26
8	5 (Weinert - Direct, with CV)	26
9	5-R (Weinert - Rebuttal, with PAWC Exhibit JCW-1)	26
<u>I&E Statement</u>		
10	1 (Kubas - Direct)	27
11	1-SR (Kubas - Surrebuttal)	27
<u>I&E Exhibit</u>		
12	1 (Kubas)	27
<u>OCA Statement</u>		
13	1 (Everette - Direct)	29
14	1S (Everette - Surrebuttal)	29

EXHIBIT INDEX (Continued)

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>OCA Statement</u>		
2 (Watkins - Direct)	29	29
2S (Watkins - Surrebuttal)	29	29
<u>Exeter Statement</u>		
2 (Walker - Direct, with appendices)	34	34
4 (Walker - Rebuttal)	34	34
1 (Granger - Direct)	39	39
3 (Granger - Rebuttal)	39	39
<u>Exeter Cross-Examination Exhibit</u>		
1 (5/8/2003 agreement between Exeter Authority and St. Lawrence Authority)	49	(not moved)
2 (3/12/18 email from Ms. London to Mr. Cortes)	67	(not moved)
<u>Borough Statement</u>		
1 (May - Direct, with Exhibits 1 through 7)	44	44
2 (May - Surrebuttal, with Exhibits 9 through 12)	44	44

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE ANDREW M. CALVELLI:

1
2
3 Good morning. We're on record. This is the time and place
4 set for a hearing in the case captioned, Pennsylvania-
5 American Water Company for approval -- well, in connection
6 with the proposed acquisition of Exeter Township's
7 wastewater services and facilities.

8 The Pennsylvania Public Utility Commission has
9 assigned Docket No. A-2019-3004933 to this case. It is
10 Thursday, June 28, 2019, a little after 10:00 a.m. in
11 Hearing Room 2 here in the Keystone Building.

12 My name is Andrew Calvelli. I am an
13 Administrative Law Judge. I have been assigned to preside
14 over this matter, issue any recommended decisions if
15 necessary for the Commission to consider.

16 I think everybody is signed in on my green
17 sheet here and the parties indicated that they are all
18 present and ready to proceed.

19 We had some off-the-record discussion about a
20 settlement in this case. There were some emails sent to me
21 as well in that regard, and it looks as though there's a
22 global settlement of the issues. There's one outstanding
23 issue with an intervening party, Borough of St. Lawrence,
24 which we'll get to in a minute.

25 What I want to do first is let me ask

1 Pennsylvania-American Water Company, if there is a
2 settlement, then the two outstanding motions to dismiss
3 objections, can they be withdrawn at this point?

4 MR. ZAMBITO: Yes, Your Honor.

5 JUDGE CALVELLI: Okay. I had them filed on
6 June 12, Pennsylvania-American Water Company motion to
7 dismiss the objections of the Office of Consumer Advocate,
8 and that's withdrawn, and then also June 12, Pennsylvania-
9 American Water Company motion to dismiss objections of the
10 Bureau of Investigation and Enforcement. All right. Thank
11 you.

12 And let me ask Pennsylvania-American Water
13 Company's counsel, so there is a settlement on all the
14 issues at this point?

15 MR. ZAMBITO: Yes, Your Honor. There's a
16 settlement on all the issues. It's joined by Pennsylvania-
17 American, Exeter, OCA and I&E, and intervenor St. Lawrence
18 Borough indicated that they do not object to the settlement,
19 but they reserve their issues with respect to Exeter.

20 MS. LONDON: That's a correct
21 characterization.

22 JUDGE CALVELLI: All right. And on my
23 scheduling order, there was a reply brief date of July 18th.
24 Would the parties be submitting statements in support and
25 settlement documents by that date?

1 MR. ZAMBITO: Yes, Your Honor, by no later
2 than that date.

3 JUDGE CALVELLI: No later than that date,
4 okay. And then Borough of St. Lawrence, you don't need an
5 extra five days after that to file an objection to the
6 settlement, or do you anticipate filing anything after the
7 settlement materials are submitted to me?

8 MS. LONDON: We don't think we're going to be
9 filing any type of objections to the settlement agreement
10 provided it's in the form that we have seen. Again, we
11 simply reserve our issues as against Exeter Township.

12 JUDGE CALVELLI: Okay. And in a minute we're
13 going to talk about that, and the borough may be seeking
14 affirmative relief from the PUC, I guess, in regard to these
15 issues, correct?

16 MS. LONDON: That is correct, Your Honor.

17 MR. ZAMBITO: Your Honor, if I could just
18 discuss a few settlement terms that may be relevant to
19 procedure?

20 JUDGE CALVELLI: Okay.

21 MR. ZAMBITO: The first is, the settlement is
22 conditioned upon Commission approval of the Exeter, Lower
23 Alsace nunc pro tunc application, because there's a rate
24 issue that that application needs to be resolved before or
25 at the same time as this settlement.

1 JUDGE CALVELLI: I'm working on that. It's a
2 holiday next week, but actually I'm probably going to be in
3 on Friday, as it turns out. I should have that done in a
4 week or week and a half. How's that?

5 MR. ZAMBITO: As long as it's to the
6 Commission for approval either before or at the same time.

7 JUDGE CALVELLI: Yeah, simultaneous would be
8 the worst case scenario, that both recommended decisions
9 would be at the same time. I'll try to send the one up
10 first, but I'll definitely get them both tended to.

11 MR. ZAMBITO: That will work, Your Honor.

12 JUDGE CALVELLI: Okay.

13 MR. ZAMBITO: The other, couple other minor
14 issues, as part of the settlement, the company,
15 Pennsylvania-American, has agreed to provide a supplemental
16 customer notice to Exeter customers and we've proposed that
17 that notice would be sent by direct mailer by July 11th, and
18 that responses would have to be postmarked with comments
19 from customers, would have to be postmarked by July 22nd,
20 which is after the reply brief date, but we had some
21 logistical issues with getting those out.

22 So we would ask you to consider those customer
23 comments if they come in on the settlement up to postmark
24 date of July 22nd.

25 JUDGE CALVELLI: Okay. That's fair enough.

1 MS. HOOVER: Excuse me, Your Honor. I just
2 wanted to note, just so you're aware of what this is going
3 to look like, it's really more of a hybrid between a notice
4 that will be sent, was sent in this case and the settlement
5 letter that is often sent to formal complainants in rate
6 cases.

7 So that's why we used sort of the same format
8 of, they have an opportunity to look at the settlement we've
9 reached in this case and would have an opportunity to
10 comment to Your Honor by a date certain. So it's a little
11 bit of a hybrid of those two mailings.

12 JUDGE CALVELLI: The comments, would they go
13 to the Secretary's Bureau?

14 MS. HOOVER: Yes, same format, Secretary's
15 Bureau, copy you, and they would have access on PAWC's
16 website to the actual settlement if they wish to see that.

17 JUDGE CALVELLI: Okay. All right. Are we
18 ready to talk about the witness thing?

19 MR. ZAMBITO: A couple more settlement terms.
20 You should have received a copy of a pro forma agreement
21 between Pennsylvania-American and St. Lawrence yesterday.
22 That's the final version but it's pro forma. That was
23 executed, is being executed today. We will file a final
24 executed version of that with the Commission and we would
25 ask that the record be held open for us to file that

1 executed version so that 507 approval could be granted in
2 conjunction with this proceeding.

3 MS. LONDON: Council President May --

4 THE REPORTER: I'm sorry, could you use the
5 microphone?

6 MS. LONDON: Council President May, who's
7 present here, signed the agreement this morning, subject to
8 borough council ratification to be attested by the
9 secretary, but I don't see any issues there at all and we
10 are going to be providing one exhibit which is a customer
11 list.

12 JUDGE CALVELLI: All right. We can keep the
13 record open. Were the parties looking at maybe five day
14 transcript turnaround or so, or three days? There's a
15 holiday next week, so I think three days might be next
16 Wednesday and five might be a week from Monday. I mean, if
17 I kept the record open for one of those two time frames,
18 would that give enough time for this agreement?

19 MR. ZAMBITO: Yes, I think so, Your Honor.

20 JUDGE CALVELLI: Okay.

21 MS. LONDON: The council meeting is on the
22 second Thursday, which is July 11th, so by July 12th we
23 would have the fully executed agreement.

24 JUDGE CALVELLI: All right. I can keep the
25 record open until July 22nd for these customer notices to

1 come in, if any?

2 MR. ZAMBITO: The customer notices would be
3 postmarked by July 22nd, and I don't think they are
4 technically part of the record. They would more be like
5 public comments.

6 JUDGE CALVELLI: All right. So I could do it
7 till the 18th if you want, which is the date for submitting
8 settlement materials.

9 MR. ZAMBITO: I think that would work, Your
10 Honor.

11 JUDGE CALVELLI: And then with the meeting on
12 the 12th until the 18th, that would be enough time to get
13 this document filed?

14 MS. LONDON: Yes, Your Honor.

15 JUDGE CALVELLI: All right. So I'll hold the
16 record open till July 18th.

17 MR. ZAMBITO: And then one other procedural
18 question for you, Your Honor.

19 JUDGE CALVELLI: Sure.

20 MR. ZAMBITO: We would file the joint petition
21 for approval of settlement along with statements in support
22 no later than the reply brief date of July 18th, and I guess
23 the issues related to St. Lawrence and Exeter are held open,
24 I assume that the main brief and reply brief dates would be
25 maintained to the extent that those issues needed to be

1 resolved?

2 JUDGE CALVELLI: Yeah, that's what I would do.
3 I didn't really even know if there was going to be much by
4 way of briefs. I think there's just this one or two issues
5 outstanding. So if there were any briefs, it would be
6 relating solely to the outstanding matters with St. Lawrence
7 and Exeter, correct?

8 MR. ZAMBITO: Yes, Your Honor.

9 JUDGE CALVELLI: So it would be briefs on
10 limited issues, I guess, right?

11 MR. ZAMBITO: Correct, Your Honor.

12 JUDGE CALVELLI: Okay.

13 MS. LONDON: That would be correct, just the
14 one issue.

15 JUDGE CALVELLI: All right. So if there is a
16 need to file a brief and a reply brief, go right ahead
17 within the -- whatever the dates were here, July 10th and
18 the 18th, right?

19 MR. ZAMBITO: Yes, Your Honor.

20 JUDGE CALVELLI: Okay. Fair enough.

21 Well, let's see. I think Pennsylvania-
22 American and/or Exeter had something to say about the
23 proposed testimony of St. Lawrence's witness?

24 MR. CORTES: Yes, Your Honor. Sam Cortes for
25 Exeter. At a minimum, I would ask for an offer of proof at

1 this point, given that St. Lawrence has not objected to the
2 settlement of the 1329 application which is what's before
3 Your Honor.

4 There is no claim that's been filed here,
5 whatever that is. There's no complaint. There's nothing
6 that my client has received that it could respond to in the
7 form of, say, a complaint and an answer.

8 But what is clear from what counsel for St.
9 Lawrence just said off the record is that they're seeking
10 affirmative relief, as Your Honor characterized it, against
11 Exeter, which means they're seeking damages against Exeter.

12 And this is a jurisdictional issue, so even if
13 it had raised a complaint, that's something that is a non-
14 waivable objection, and this forum, respectfully, doesn't
15 have the authority, and there's case law on this, to issue
16 damages, civil damages, which is what they're seeking, nor
17 is this a court of equity, nor is Exeter a utility with
18 respect to this particular service, with respect to St.
19 Lawrence.

20 We don't object obviously to St. Lawrence
21 pursuing these claims, whether in arbitration as the
22 agreement requires or in the Court of Common Pleas and we'll
23 deal with them there, but we don't think it's appropriately
24 before Your Honor, certainly not in a 1329 setting where
25 there's no objection to the settlement of the 1329

1 application itself.

2 At a minimum, in any proceeding, we would
3 insist upon our client actually seeing the claim, because as
4 I sit here right now, I can't even articulate for you what
5 the nature of the cause of action is, other than the breach
6 of contract claim, breach of the May 2003 agreement.

7 Certainly I understand that and we can deal
8 with that, but if I'm hearing this amorphous debt service
9 claim, if I'm understanding it correctly, they're claiming
10 that it's somehow outside of the agreement.

11 Well, then, I sit here and say, what's the
12 obligation, what's the claim? They want affirmative relief.
13 Therefore, there must be a cause of action associated with
14 it. None has been pled. I don't know what it is.

15 I can't prep my client to come in here and
16 say, "You're facing a tort claim, a contract claim,
17 whatever." But in any event, it's not appropriately before
18 this forum.

19 JUDGE CALVELLI: All right. Well, I mean, you
20 did get the testimony back a couple weeks ago, right?

21 MR. CORTES: I have the testimony, sure, but
22 again, I don't know what the cause of action would be.

23 JUDGE CALVELLI: Why don't we hand the
24 microphone over and I'll see. So there's a request for an
25 offer of proof which I think is appropriate, and so the

1 testimony would need to come into the record today for what
2 reasons, counsel?

3 MS. LONDON: The reasons for Mr. May's
4 testimony would be as to the agreement and the agreements
5 over time that have been entered into, and the contributions
6 for capital equipment, improvements and expenditures since
7 1967 and in particular since 1993, and debt and debt
8 payments that the Borough of St. Lawrence has incurred, and
9 also additional expenditures undertaken by the Borough of
10 St. Lawrence to, at the behest of Exeter Township and for
11 the benefit of its system, to repair an alleged inflow and
12 infiltration problem.

13 There is an arbitration clause in the
14 agreement. However, that relates to factual disputes. That
15 requires the appointment of three professional engineers as
16 arbitrators. That lends itself to technical disputes and we
17 agree this is a billing dispute.

18 The debt service in the context of the sale of
19 the plant is, in our opinion, another issue. It's outside
20 of the agreement. It is not a condition that would have
21 been anticipated, and the issue of the protection of the
22 public in the provision of utility service, which wastewater
23 treatment clearly is, is one of the core purposes for this
24 type of proceeding.

25 It is not an amorphous claim at all. Three

1 weeks ago on June 6th, counsel for Exeter Township received
2 the direct testimony of Robert May. On June 26th, counsel
3 for Exeter Township received the surrebuttal testimony of
4 Mr. May that lays out the claims very directly.

5 So it is well known to Attorney Cortes what is
6 the claim, and he has had the ability to respond to it. The
7 borough intervened in these proceedings in January, at the
8 earliest date possible for intervention.

9 And the reason for the intervention has been
10 well known to all the parties in this case. We believe that
11 there is jurisdiction in the PUC to hear the claim in this
12 proceeding.

13 JUDGE CALVELLI: Well, what is it you would
14 have me do, if anything, with this testimony? I mean, what
15 relief can I provided to St. Lawrence?

16 MS. LONDON: We believe that the relief to be
17 provided to St. Lawrence is a calculation of debt service
18 payments that have been paid and are properly awarded to St.
19 Lawrence.

20 An obligation has been acknowledged and we
21 believe that it's within the PUC's purview to calculate
22 that.

23 JUDGE CALVELLI: So this would be something of
24 a line item, like an offset to any recommended decision to
25 approve the sale?

1 MS. LONDON: Yes, Your Honor.

2 JUDGE CALVELLI: That there'd be money set
3 aside for St. Lawrence?

4 MS. LONDON: It could be done that way, yes,
5 because this is a windfall to Exeter Township.

6 JUDGE CALVELLI: Okay. And they've also
7 contended that they think your, St. Lawrence Borough's
8 remedy lies in Common Pleas Court, I think, or some other
9 court. What do you say about that?

10 MS. LONDON: We agree on the billing dispute
11 and I have conceded that to Attorney Cortes, that that is or
12 could properly fall under the arbitration clause.

13 However, the issue of the debt service payment
14 is one that's outside of the agreement. It's not a
15 contractual dispute in the sense that the billing dispute
16 would be.

17 JUDGE CALVELLI: Okay.

18 MR. ZAMBITO: Your Honor, if I could just
19 offer something briefly, from the company's perspective,
20 this is a private civil dispute between St. Lawrence and
21 Exeter.

22 The company in the asset purchase agreement
23 did not agree to assume any of these liabilities. This is a
24 matter that -- the Commission does not have jurisdiction
25 over contractual matters or civil complaints or to award

1 monetary damages.

2 So from the company's perspective, this is
3 between the two municipalities. Exeter is going to have the
4 proceeds from this sale, and to the extent that St. Lawrence
5 thinks they're entitled to a portion of those, that's an
6 issue that should be raised in civil court, not the PUC.

7 MR. CORTES: Your Honor, if I may briefly, a
8 couple things, Your Honor. First of all, while we may have
9 the testimony, again, I don't know -- this is a cause of
10 action. What's trying to be asserted here is an affirmative
11 claim for relief that Exeter owes money to St. Lawrence.

12 And under the law, there would have to be a
13 cause of action attached to that. This is not a court of
14 equity. And again, it's clear what's being asked, however
15 you want to characterize it or it is characterized, is that
16 money comes from the proceeds of the sale that are to go to
17 Exeter, out of Exeter's pocket, into St. Lawrence's pocket
18 because St. Lawrence is contending that Exeter has violated
19 its rights in some respect.

20 Now, yes, certainly I can read the testimony
21 and understand what they are, but the way our system works
22 is, you plead a cause of action, the other party has a
23 chance to move to dismiss it, like in this case we may
24 because we don't believe there is any obligation to repay
25 the debt service.

1 There's no contractual obligation that says it
2 has to be repaid. The debt service is addressed in the May
3 8, 2003 agreement as are future payments that are expressly
4 contemplated within the May 8, 2003 agreement, and it says
5 they will do amendments to address those if necessary.

6 So in my opinion, this is something where if I
7 received a complaint in the Court of Common Pleas, I would
8 respond with a preliminary objection that says there is no
9 such contractual obligation. The court would make a
10 determination about whether they'd stated a claim. We'd get
11 into discovery on that issue, and then we would have a trial
12 on the merits.

13 And that's what should happen here, because at
14 the end of the day, they're seeking affirmative relief from
15 Exeter Township and there's no question that's what they're
16 doing, and you can't do that in an administrative forum like
17 this.

18 JUDGE CALVELLI: All right. Do any of the
19 other parties wish to weigh in on this particular matter or
20 issue before I decide what to do?

21 MR. BREITMAN: Nothing from the OCA, Your
22 Honor.

23 JUDGE CALVELLI: Okay. All right. Were there
24 any final thoughts from St. Lawrence before I let everybody
25 know what I think I'm going to do here?

1 MS. LONDON: No, Your Honor.

2 JUDGE CALVELLI: All right. I mean, I'm
3 somewhat inclined to see it as a Common Pleas Court issue,
4 but at the same time, I think what I can do is have the
5 testimony offered, and whether or not I'm going to do
6 anything with it in terms of issuing any recommended
7 decision, I will leave that up to me.

8 In other words, the testimony I can bring in,
9 still subject to the objections that have been stated. It
10 is possible that I would then conclude that this is not
11 something for the PUC to be handling.

12 But I think, given what I've heard from
13 counsel for the Borough of St. Lawrence, you know, there is
14 at this point a plausible claim that what is being sought is
15 something that's within the purview of this entire agreement
16 if they're looking for some kind of adjustment of some sort.

17 So it's enough -- I mean, I'm satisfied that I
18 can at least do that. I think that's the way I'll handle
19 it, is I'll have the testimony. I will be reviewing it
20 again subject to the ongoing objections that have been
21 raised, and then in any decision that I submit, I will
22 address what has been done if anything with that testimony.

23 And again, I may end up saying that it's
24 outside the scope of this proceeding and therefore it's not
25 going to be part of my decision.

1 MR. CORTES: Yes, Your Honor. Then I would
2 have to add that from Exeter's standpoint, if an adjustment
3 were to be made within the scope of this forum, if Your
4 Honor were to recommend that, that would affect our position
5 on the settlement obviously.

6 So we certainly agree to the settlement. We
7 don't have any objections to it. But if -- and again, I
8 don't think this is properly before Your Honor for the
9 reasons I've addressed, but so the record is clear, if there
10 were a recommendation that were to be made that this would
11 somehow affect the proceeds to Exeter, that would affect our
12 settlement position.

13 We would not be inclined to consent at that
14 point, because we would have to be addressing the St.
15 Lawrence issue, we would take an appeal, etcetera, and that
16 sort of thing.

17 JUDGE CALVELLI: I think any of the parties
18 under the terms of the settlement would be free to withdraw
19 and pursue their claims anew if I were to --

20 MR. CORTES: Right.

21 JUDGE CALVELLI: -- if I were to recommend
22 some modification to the settlement, correct?

23 MR. ZAMBITO: That's correct, Your Honor,
24 standard settlement terms.

25 JUDGE CALVELLI: Fair enough. Okay, then.

1 Is there anything else we need to go over
2 before we hear from the witness?

3 MR. ZAMBITO: Your Honor, would you like us to
4 stipulate the other testimony and exhibits?

5 JUDGE CALVELLI: I guess we can -- can your
6 witness stick around for a little bit while we get the other
7 testimony in? Is that okay, Mr. May?

8 MR. MAY: Sure.

9 JUDGE CALVELLI: You're good? Okay. He can
10 hang in for -- why don't we do that then. I guess, PAWC,
11 you're going to go first with your testimony?

12 MR. ZAMBITO: Yes, Your Honor. Thank you.

13 Pennsylvania-American Water Company has
14 previously provided copies of testimony and exhibits to Your
15 Honor, the other parties and the court reporter. I will
16 list out the testimony and exhibits that we have agreed with
17 the other parties will be stipulated into the record.

18 We've included original verifications with
19 each of the pieces of testimony and the exhibits
20 authenticating the testimony and exhibit, attesting to the
21 truthfulness of the testimony and exhibits.

22 So at this time, Pennsylvania-American would
23 ask that the following testimony and exhibits be admitted
24 into the record subject to any objections:

25 The direct testimony, Pennsylvania-American

1 Water Company Statement No. 1 REV-A, dated December 17,
2 2018, the direct testimony of Bernard J. Grundusky, Jr.,
3 which includes PAWC Exhibit No. BJB-1, which is the complete
4 application as amended and its attachments, so that the
5 application and all the supporting information is part of
6 the record.

7 The rebuttal testimony of Bernard J.
8 Grundusky, Jr., PAWC Statement No. 1-R, dated June 18, 2019,
9 which includes PAWC Exhibit BJB-2.

10 The direct testimony of James A. Gable, PAWC
11 Statement No. 2-REV, dated April 17, 2019.

12 The direct testimony of David R. Kaufman, PAWC
13 Statement No. 3, dated September 25, 2018, including PAWC
14 Exhibit DRK-1 and PAWC Exhibit DRK-2.

15 The rebuttal testimony of David R. Kaufman,
16 PAWC Statement No. 3-R, dated June 18, 2019, which includes
17 PAWC Exhibit DRK-3R and Exhibit DRK-4, but I would note for
18 the record that as part of the settlement and conditioned
19 upon approval of the settlement, that Pennsylvania-American
20 will be striking in PAWC Statement No. 3-R from page 4, line
21 22 through page five, line seven, and Exhibit DRK-3R. So
22 that is conditioned upon approval of the settlement.

23 The next testimony is the direct testimony of
24 Rod P. Nevirauskas, PAWC Statement No. 4 REV, dated December
25 5, 2018; the rebuttal testimony of Rod P. Nevirauskas, PAWC

1 Statement No. 4-R, dated June 8, 2019, which includes PAWC
2 Exhibit RPN-1.

3 Next is the direct testimony of Jerome C.
4 Weinert, PAWC Statement No. 5, dated September 19, 2018,
5 including his curriculum vitae.

6 Next is the rebuttal testimony of Jerome C.
7 Weinert, PAWC Statement No. 5-R, dated June 18, 2019, which
8 includes PAWC Exhibit JCW-1.

9 Your Honor, at this time, Pennsylvania-
10 American would ask that the testimony and exhibits that I
11 just described be admitted into the record subject to any
12 objection.

13 JUDGE CALVELLI: The court reporter has a list
14 of all this, I think, as part of what was handed up to him?
15 Do you have a list of those things?

16 MR. ZAMBITO: I can give him my list, Your
17 Honor.

18 JUDGE CALVELLI: Okay. Fair enough. We can
19 do that at the end as well. Are there any objections to the
20 exhibits of Pennsylvania-American Water Company being
21 admitted into the record?

22 MR. ZAMBITO: Your Honor, we would ask, the
23 statements and exhibits.

24 JUDGE CALVELLI: I'm sorry, the statements and
25 the exhibits of Pennsylvania-American Water that counsel has

1 just gone over, are there any objections to any of those
2 being part of the record?

3 MR. BREITMAN: No, Your Honor.

4 JUDGE CALVELLI: All right. None being
5 indicated, then the statements and the exhibits as discussed
6 are entered into the record.

7 (Whereupon, the documents were marked as PAWC Statement
8 No. 1 REV-A with PAWC Exhibit BJG-1, PAWC Statement No.
9 1-R with PAWC Exhibit BJG-2, PAWC Statement No. 2-REV,
10 PAWC Statement No. 3 with PAWC Exhibits DRK-1 and
11 DRK-2, PAWC Statement No. 3-R with PAWC Exhibits DRK-3R
12 and DRK-4, PAWC Statement No. 4 REV, PAWC Statement No.
13 4-R with PAWC Exhibit RPN-1, PAWC Statement No. 5 with
14 CV and PAWC Statement No. 5-R with PAWC Exhibit JCW-1
15 were marked for identification, and were received in
16 evidence.)

17 JUDGE CALVELLI: Let's go to -- Exeter, do you
18 have any statements or exhibits that you wish to move into
19 the record?

20 MR. CORTES: I do, Your Honor, but we have
21 witnesses here as we do not have the verifications to
22 verify. If we want, we can yield the floor to I&E and OCA
23 and let them put everything in. Then I'll put the witnesses
24 on to verify.

25 JUDGE CALVELLI: Okay. Who's going to go next

1 then as far as moving their testimony, their exhibits into
2 the record? Do we have a preference here?

3 MS. McLAIN: Good morning, Your Honor. Erika
4 McLain on behalf of the Bureau of Investigation and
5 Enforcement. I've previously distributed to the parties,
6 the court reporter and to you documents that have been
7 identified as I&E Statement No. 1, the direct testimony of
8 Joseph Kubas with its accompanying exhibit, I&E Exhibit No.
9 1, and I&E Statement No. 1-SR, the surrebuttal testimony of
10 Joseph Kubas.

11 I've included a verification from Mr. Kubas
12 indicating that this testimony was prepared by him or under
13 his direct control and is true and correct to the best of
14 his knowledge.

15 There are no changes to these testimonies and
16 exhibits. Therefore, at this time, the Bureau of
17 Investigation and Enforcement requests the documents be
18 marked for identification as previously identified and
19 admitted into the record subject to any timely motions by
20 the other parties.

21 JUDGE CALVELLI: Okay. The documents,
22 statements and exhibits are so marked.

23 (Whereupon, the documents were marked as I&E Statements
24 Nos. 1 and 1-SR and I&E Exhibit No. 1 for
25 identification.)

1 JUDGE CALVELLI: Are there any objections to
2 I&E's statements and exhibits being part of the record?

3 (No response.)

4 JUDGE CALVELLI: None being indicated, the
5 statements and exhibits are entered into the record.

6 (Whereupon, the documents marked as I&E Statements
7 Nos. 1 and 1-SR and I&E Exhibit No. 1 were received in
8 evidence.)

9 MR. BREITMAN: Good morning, Your Honor. My
10 name is Harrison Breitman. I represent the Office of
11 Consumer Advocate in this matter. The OCA has provided the
12 court reporter with two copies of the public version and the
13 confidential version of OCA Statement 1, and two copies of
14 OCA Statement 1S, which are the direct and surrebuttal
15 testimonies of Ashley Everette with accompanying
16 attachments, exhibits and appendices.

17 Two copies of an errata sheet correcting OCA
18 Statement Nos. 1 and 1S have been provided to the court
19 reporter, the parties and Your Honor to correct inadvertent
20 errors in this testimony and exhibits.

21 The copies of the testimony submitted to the
22 court reporter today is the revised versions of Statements 1
23 and 1S.

24 OCA has also provided the court reporter with
25 two copies of OCA Statement Nos. 2 and 2S, which are the

1 direct and surrebuttal testimonies of Glenn Watkins, with
2 accompanying exhibits, attachments and appendices.

3 Verifications have been included with all of
4 the OCA's testimony, and cross-examination has been waived
5 for OCA's witnesses.

6 The OCA hereby moves for the admission into
7 the record of this testimony and all of the accompanying
8 schedules, exhibits and attachments.

9 JUDGE CALVELLI: Are there any objections to
10 entering the OCA Statements and Exhibits and attachments
11 into the record?

12 (No response.)

13 MR. CORTES: No objection.

14 MS. LONDON: No objection, Your Honor.

15 JUDGE CALVELLI: There being none stated, then
16 the OCA statements and exhibits and attachments are entered
17 into the record.

18 (Whereupon, the documents were marked as OCA Statements
19 Nos. 1, 1S, 2 and 2S with accompanying exhibits,
20 attachments and appendices for identification, and
21 were received in evidence.)

22 JUDGE CALVELLI: Exeter?

23 MR. CORTES: Yes, Your Honor. I'll call Mr.
24 Harold Walker.

25 JUDGE CALVELLI: Mr. Walker, if you don't mind

1 having a seat over to my right there? How are you today,
2 sir?

3 MR. WALKER: Good. How are you?

4 Whereupon,

5 HAROLD A. WALKER, III

6 having been duly sworn, testified as follows:

7 JUDGE CALVELLI: Have a seat.

8 MR. CORTES: Is it okay if I conduct the
9 examination seated, Your Honor?

10 JUDGE CALVELLI: Yes, sure.

11 MR. CORTES: Do you mind if I hand up the
12 statements to the witness?

13 JUDGE CALVELLI: No. Go right ahead.

14 (Pause.)

15 DIRECT EXAMINATION

16 BY MR. CORTES:

17 Q. Good morning, Mr. Walker.

18 A. Good morning.

19 Q. Please state your name and business address for the
20 record, please.

21 A. My name is Harold Walker. My business address is
22 P.O. Box 80794, Valley Forge, Pennsylvania.

23 Q. And are you employed?

24 A. Yes. I'm employed by Gannett Fleming Valuation and
25 Rate Consultants, LLC.

1 Q. And you were engaged in this matter, correct?

2 A. That is correct. I was engaged by Exeter Township
3 to provide a fair market valuation appraisal of the
4 wastewater system.

5 Q. I'm going to ask you, sir, if you can please look
6 in the binder that I've handed you and turn to tab two.

7 A. I have it.

8 Q. And take a moment to review it. Tell me when
9 you've had an opportunity to do so.

10 (Pause.)

11 A. I've reviewed it.

12 Q. Do you recognize this document, sir?

13 A. Yes, I do.

14 Q. Can you identify it?

15 A. Yes. It's the direct testimony of Harold Walker
16 III on behalf of the Township of Exeter, and it is marked as
17 Exeter Statement No. 2.

18 Q. So showing you then what's been marked as Exeter
19 Statement No. 2, which you've identified as your direct
20 testimony in this matter, are there any changes or errors
21 that you identified in this document?

22 A. There was an error which was corrected in the
23 rebuttal testimony which would have corrected my direct
24 testimony as well.

25 Q. And with the exception of that error that we'll

1 address when we get to the rebuttal testimony, are there any
2 answers to the questions that we see here in Exeter
3 Statement No. 2 that you would provide differently as you
4 sit here today?

5 A. No.

6 Q. And can you look at the exhibits to Exeter
7 Statement No. 2, please, or appendices, for lack of a better
8 term?

9 A. Yes, I have it.

10 Q. And do you recognize these appendices?

11 A. Yes.

12 Q. And are these the same appendices that you appended
13 to your direct statement?

14 A. Yes, they are.

15 Q. All right, sir. Can you turn to tab four, please?

16 A. I have it.

17 Q. And could you take a moment to review that?

18 (Pause.)

19 A. I've reviewed it.

20 Q. And can you identify it, please?

21 A. Yes. It's the rebuttal testimony of Harold Walker
22 III, and this one is not marked as -- maybe the cover sheet
23 has it.

24 Q. It is. It's the front first page of it. It's
25 marked as Exeter Statement No. 4.

1 A. Oh, yes, Exeter Statement No. 4, I see that.

2 Q. And this is a true and correct copy of your
3 rebuttal testimony in this matter, correct?

4 A. Yes, it is.

5 Q. Are there any changes or errors which you would
6 like to identify in this testimony as you sit here today?

7 A. No.

8 Q. And in this rebuttal testimony, you corrected the
9 error that you identified previously that is in Exeter
10 Statement No. 2, correct?

11 A. Yes.

12 Q. Can you identify that for the court, for the
13 tribunal, please?

14 A. Yes. On pages 18 and 19, the error is discussed
15 and explained. Would you like me to --

16 Q. No, that's okay.

17 A. Okay.

18 Q. Are there any questions here within Exeter
19 Statement No. 4 that you would answer differently as you sit
20 here today?

21 A. No.

22 MR. CORTES: I have nothing further, Your
23 Honor. At this time, I would like to move Exeter Statements
24 No. 2 and No. 4 into the record, along with the exhibits to
25 Exeter Statement No. 2.

1 JUDGE CALVELLI: Are there any objections to
2 Exeter Statement No. 2 and 4 and the exhibits with the
3 Exeter Statement 2 being part of the record?

4 MR. BREITMAN: No, Your Honor.

5 MS. LONDON: No, Your Honor.

6 JUDGE CALVELLI: All right. Those statements
7 and exhibits are admitted into the record.

8 (Whereupon, the documents were marked as Exeter
9 Statement No. 2 with appendices and Exeter Statement
10 No. 4 for identification, and were received in
11 evidence.)

12 JUDGE CALVELLI: Are there any questions for
13 the witness from any of the parties?

14 (No response.)

15 JUDGE CALVELLI: Okay. Thank you, sir.

16 (Witness excused.)

17 JUDGE CALVELLI: Mr. Granger?

18 MR. CORTES: Yes, Your Honor. At this time,
19 I'd call Mr. Granger.

20 JUDGE CALVELLI: Mr. Granger, if you don't
21 mind, sir?

22 (Pause.)

23 JUDGE CALVELLI: Raise your right hand,
24 please. Thank you.

25 Whereupon,

1 JOHN A. GRANGER

2 having been duly sworn, testified as follows:

3 JUDGE CALVELLI: Thank you, sir. Have a seat.
4 Counsel?

5 MR. CORTES: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. CORTES:

8 Q. Good morning, Mr. Granger.

9 A. Good morning.

10 Q. Please state your name and business address.

11 A. John A. Granger, 4975 DeMoss, D-E capital M-O-S-S,
12 Road, Reading, PA.

13 Q. And you are the township manager for Exeter
14 Township, correct?

15 A. Correct.

16 Q. And there should be a binder in front of you. You
17 see that?

18 A. Yes.

19 Q. Can you open it, please, to tab one? Showing you
20 what's been marked Exeter Statement No. 1. Is this a true
21 and correct copy of your direct testimony in this matter?

22 A. Yes, it is.

23 Q. Is there any inaccuracies or errors in this
24 document, Exeter Statement No. 1?

25 A. No.

1 Q. There's nothing you would change here today,
2 correct?

3 A. Correct.

4 Q. Can you turn to tab three, please? Showing you
5 what's been marked Exeter Statement No. 3. Take a moment to
6 review that. I'm going to ask you if this is a true and
7 correct copy of your rebuttal testimony in this matter.

8 (Pause.)

9 A. It is.

10 Q. And are there any answers contained within Exeter
11 Statement No. 3 that you would change as you sit here today?

12 A. No.

13 MR. CORTES: Your Honor, I have nothing
14 further for this witness and at that time I would ask to
15 move into the record Exeter Statement Nos. 1 and 3.

16 JUDGE CALVELLI: Are there any objections to
17 Exeter Statements 1 or 3 being a part of the record?

18 MR. BREITMAN: No, Your Honor.

19 MS. LONDON: No objection to their being part
20 of the record, but they need to be subject to cross-
21 examination, however.

22 JUDGE CALVELLI: You have some questions? I'm
23 sorry.

24 MS. LONDON: I do have some questions for Mr.
25 Granger.

CROSS-EXAMINATION

1
2 BY MS. LONDON:

3 Q. Good morning, Mr. Granger. I'm Joan London here
4 for the Borough of St. Lawrence. I would like you to look
5 at Exeter Statement No. 3 which is your rebuttal testimony.
6 I'd like you to look at page one, line 15 to page two, line
7 two under the topic of "Impact of the Transaction." Do you
8 have that in front of you?

9 A. I do.

10 Q. Is it your testimony that the benefits of this
11 transaction are maintaining real estate taxes at current
12 levels for the next decade, eliminating unfunded liability
13 in Exeter's pension plan and OPEB plan, funding stormwater
14 improvements and funding equipment related inspections and
15 instituting a homestead exemption? You'll agree that those
16 are benefits of the transaction to which you testify?

17 A. Yes.

18 Q. Do you agree with me that none of these benefits
19 are benefits to the Borough of St. Lawrence?

20 A. Correct.

21 Q. And none of these features benefit St. Lawrence
22 taxpayers or sewer ratepayers, correct?

23 A. I'm sorry?

24 Q. None of these benefits St. Lawrence sewer
25 ratepayers or taxpayers, correct?

1 A. Correct.

2 Q. Do you have any reason to doubt that capital
3 contributions were made under the agreement of 1967 and as
4 amended in 1978, 1982, 1992 and 2003?

5 MR. CORTES: Objection, Your Honor.

6 JUDGE CALVELLI: What's the objection?

7 MR. CORTES: Lack of foundation, for 1967.

8 JUDGE CALVELLI: I'm not sure that he -- none
9 of this is in that testimony, is it, in the pre-served
10 testimony?

11 MR. CORTES: It is not within Mr. Granger's
12 testimony.

13 JUDGE CALVELLI: Is it within the written
14 corners of what he's been reading from?

15 MS. LONDON: I'll withdraw the question.

16 JUDGE CALVELLI: Okay. Fair enough. I mean,
17 I didn't think I had seen it in there, but I was just double
18 checking because I didn't have it right in front of me. All
19 right. Go ahead, Attorney London.

20 MS. LONDON: I don't have anything further
21 based on the testimony.

22 JUDGE CALVELLI: Are there any other questions
23 for the witness?

24 (No response.)

25 JUDGE CALVELLI: All right. Thank you, sir.

1 (Witness excused.)

2 JUDGE CALVELLI: And with that, we'll admit
3 Exeter Statements 1 and 3 into the record.

4 (Whereupon, the documents were marked as Exeter
5 Statements Nos. 1 and 3 for identification, and were
6 received in evidence.)

7 MR. CORTES: Your Honor, does that excuse my
8 witnesses?

9 JUDGE CALVELLI: Will anybody need either of
10 the witnesses?

11 MS. LONDON: I don't need Mr. Granger.

12 JUDGE CALVELLI: Okay, free to go, if we have
13 no more questioning for them. Thank you.

14 Are there other witnesses we need to get to
15 before the Borough of St. Lawrence witness at this point?

16 (No response.)

17 JUDGE CALVELLI: Are we ready, Attorney
18 London, for Mr. May?

19 MS. LONDON: Yes, I am.

20 JUDGE CALVELLI: Mr. May, if you don't mind,
21 sir?

22 (Pause.)

23 JUDGE CALVELLI: If you don't mind raising
24 your right hand, Mr. May?

25 Whereupon,

1 ROBERT JOSEPH MAY

2 having been duly sworn, testified as follows:

3 MR. CORTES: Your Honor, I just want to note
4 our objection to the testimony for the reasons specified
5 previously.

6 JUDGE CALVELLI: Yes, and those objections,
7 again, are continuing and they'll remain on the record for
8 the duration of this proceeding until such time as I issue a
9 recommended decision and then pending final Commission
10 action.

11 Go ahead, counsel.

12 DIRECT EXAMINATION

13 BY MS. LONDON:

14 Q. Mr. May, could you state your name and business
15 address?

16 A. My name is Robert Joseph May, and my business
17 address is 1055 Andrews Drive, West Chester, Pennsylvania.

18 Q. Do you hold any offices with the Borough of St.
19 Lawrence?

20 A. I'm an elected councilperson with the Borough of
21 St. Lawrence and elected by council members as council
22 president.

23 Q. Do you have with you on the stand two documents
24 that we'll identify as Borough of St. Lawrence Statement No.
25 1 and Borough of St. Lawrence Statement No. 2, with No. 1

1 being labeled, testimony of Robert J. May, and Borough
2 Statement No. 2 will be marked as surrebuttal testimony of
3 Robert J. May?

4 A. Yes, I have the documents.

5 Q. Have you had the opportunity to review those
6 documents prior to today?

7 A. Yes.

8 Q. And are those documents -- I'll start with
9 Statement No. 1. Is Statement No. 1 your prepared direct
10 testimony in this proceeding?

11 A. Yes, it is.

12 Q. Are there any changes or errors that need to be
13 noted?

14 A. No, there is none.

15 Q. And if you were asked the same questions right now,
16 would you answer them in the same manner?

17 A. Yes.

18 Q. There are also documents that are attached to the
19 direct testimony that are marked as Borough Exhibits No. 1,
20 No. 2, No. 3, No. 4, No. 5, which has a number of exhibits
21 attached to it, No. 6 and No. 7. Have you had the
22 opportunity to review those documents prior to today?

23 A. Yes, I have.

24 Q. And are those documents the same as are identified
25 and described in your statement?

1 A. Yes.

2 Q. I'm going to ask the same questions for Statement
3 No. 2, which is marked as or titled as surrebuttal testimony
4 of Robert J. May. Have you had the opportunity to review
5 that document?

6 A. Yes, I have.

7 Q. And is this your prepared surrebuttal testimony in
8 this proceeding?

9 A. Yes, it is.

10 Q. Do you have any -- did you note any changes needed
11 or any errors or substantive changes that you would make to
12 the statement at this time?

13 A. No, there are none.

14 Q. If you were asked the same questions contained in
15 your surrebuttal testimony marked as Statement No. 3 (sic),
16 would you answer them the same way?

17 A. Yes, I would.

18 Q. There are also documents attached that are marked
19 as -- and we're going to take these out of order because
20 there was additional testimony that was not being offered
21 today -- Borough Exhibits No. 9, 10, 11 and 12. Have you
22 reviewed these documents?

23 A. Yes, I have.

24 Q. And are they the same documents identified and
25 described in your statement?

1 A. Yes, they are.

2 Q. And would you answer questions as to these
3 documents in the same manner?

4 A. Yes.

5 MS. LONDON: I'm going to ask that Borough
6 Statements Nos. 1 and 2 and Exhibits 1 through 7 and 9
7 through 12 be admitted into evidence.

8 JUDGE CALVELLI: Other than the objections
9 we've gone over at some length, are there other objections?

10 MR. CORTES: I do have another objection, Your
11 Honor.

12 JUDGE CALVELLI: Go ahead.

13 MR. CORTES: With respect to the surrebuttal
14 which was -- counsel, what was that marked?

15 MS. LONDON: Borough Statement No. 2.

16 MR. CORTES: -- Borough Statement No. 2, we
17 would object to page two, lines nine through twelve; page
18 five, line 21 through page six, line two; and page 15, line
19 17 through page 16, line eight.

20 And the basis for the objection, Your Honor,
21 is that it's improper surrebuttal. It is testimony that the
22 witness is providing, commenting upon direct testimony of
23 another borough witness, the licensed engineer, Mr. Conrad.

24 MS. LONDON: I would correct, Mr. Conrad is
25 not a licensed engineer. He's a consultant.

1 MR. CORTES: Okay.

2 MS. LONDON: With respect to -- because Mr.
3 Conrad's testimony is not being offered today, I will agree
4 that any response to Mr. Conrad's testimony may be stricken.

5 JUDGE CALVELLI: Would that suffice?

6 MR. CORTES: That suffices.

7 JUDGE CALVELLI: All right, then. So Borough
8 of St. Lawrence Statements 1 and 2, Exhibits 1 through 7 and
9 9 through 12 are admitted into the record subject to the
10 ongoing objections raised by counsel for Exeter and/or
11 Pennsylvania-American Water earlier today, and to the extent
12 that Borough Statement No. 2 is responsive to Mr. Conrad's
13 testimony, those portions of the statement are not admitted
14 into the record. They're stricken from what I'm admitting
15 into the record. All right? Were there any objections from
16 any of the other parties?

17 MR. BREITMAN: No, Your Honor.

18 (Whereupon, the documents were marked as Borough
19 Statements No. 1 with Exhibits 1 through 7 and Borough
20 Statement No. 2 with Exhibits 9 through 12 for
21 identification, and were received in evidence.)

22 JUDGE CALVELLI: Are there any questions or
23 cross-examination for the witness?

24 MR. CORTES: Probably not surprisingly, Your
25 Honor, yes, I have questions.

1 JUDGE CALVELLI: Fair enough.

2 CROSS-EXAMINATION

3 BY MR. CORTES:

4 Q. Good morning, Mr. May.

5 A. Good morning.

6 Q. How long have you been on the borough council?

7 A. Probably 28 years or so.

8 Q. And you testified or your counsel represented
9 earlier that St. Lawrence is seeking money here from Exeter;
10 do you agree with that?

11 A. I think counsel's position is that we've been a
12 contributor to the assets and capital improvements of the
13 sewer plant for many years under different agreements, and
14 there was never an inclination that the assets would be
15 sold, and that there's a windfall to Exeter Township, and
16 all the debt that St. Lawrence provided is a benefit to
17 Exeter Township.

18 Q. And having had the opportunity to review Borough
19 Statements No. 1 and 2 as you have, you agree with me that
20 those statements describe those, what you're characterizing
21 as investments in detail?

22 A. Yes.

23 Q. Are there any other investments or monies in the
24 system that are not contained within either Borough
25 Statement 1 or 2?

1 A. Could you help me understand what you mean by the
2 word "the system?"

3 Q. Sure. I guess what I'm trying to ensure is that
4 Borough Statement No. 1 and Borough Statement No. 2
5 encapsulate all of the investments that St. Lawrence is
6 contending it made in the Exeter system.

7 A. St. Lawrence made investments in the portion of its
8 own system where Exeter sewage runs through at no cost to
9 Exeter, so there could be some additional costs there. If
10 you want me to add those up, you know, maybe I would
11 consider those. I'm not sure at this point.

12 Q. All right. But with respect to the investments in
13 the Exeter system itself, those is what you're contending,
14 what St. Lawrence is contending, those are all contained
15 within Borough Statement 1 or 2, correct?

16 A. Correct.

17 Q. And there is a reference within Borough Statements
18 1 and 2 to capital contributions, correct?

19 A. Correct.

20 Q. And you acknowledge that those capital
21 contributions were made pursuant to a written agreement
22 between St. Lawrence and Exeter?

23 A. Correct.

24 Q. And there's reference to, I believe your counsel
25 said, in the statements, provide debt service payments,

1 correct?

2 A. Correct.

3 Q. And those debt service payments were payments that
4 -- or financing payments that, if I understand your
5 testimony correctly from Borough Statement No. 1, St.
6 Lawrence was making up through November 20, 2022, correct?

7 A. Correct.

8 Q. So to the extent necessary --

9 MR. CORTES: Do you have, is his statement
10 available to him up there?

11 MS. LONDON: Yes.

12 THE WITNESS: Yes.

13 BY MR. CORTES:

14 Q. Can you turn to page 11 of Borough Statement No. 1?

15 A. I have the page in front of me.

16 Q. And if you look at line 16, if I understand your
17 testimony correctly, you are testifying that St. Lawrence
18 knew that Exeter had incurred debt to expand its plant,
19 correct?

20 A. Correct.

21 Q. And St. Lawrence agreed in a written agreement to
22 share the financing costs, debt costs associated with that
23 debt, correct?

24 A. Correct.

25 Q. And that was something that was provided for by the

1 2003 agreement, correct?

2 A. Correct.

3 Q. It's not something that's outside of a written
4 agreement, correct?

5 A. I'm sorry, say again?

6 Q. I'll withdraw it. And those financing costs and
7 payments that St. Lawrence is sharing in, if you look at
8 page 12, sir, I'm sorry, the quote-unquote debt service
9 payments, referring to your testimony, that last up to
10 November 20, 2022, and I direct you to that on page 12?

11 A. Yes.

12 Q. Do you see the answer you give in line six, that
13 the debt service payments would last up to November 20,
14 2022, correct?

15 A. Correct.

16 Q. And those debt service payments were, if I
17 understand your testimony correctly, required by the 2003
18 agreement, correct?

19 A. Correct.

20 MR. CORTES: Your Honor, can I approach the
21 witness?

22 JUDGE CALVELLI: Yes. Go ahead.

23 (Pause.)

24 MR. CORTES: And I'll hand one to the court
25 reporter, Your Honor. I'm handing up what I've marked to

1 the witness as Exeter Cross No. 1.

2 (Whereupon, the document was marked as Exeter Cross-
3 Examination Exhibit No. 1 for identification.)

4 BY MR. CORTES:

5 Q. Could you take a moment to review that document,
6 please, sir?

7 (Pause.)

8 A. All right.

9 Q. And Exeter Cross No. 1, I'm sure you recognize, is
10 attached to your Borough Statement No. 1, correct?

11 A. Correct.

12 Q. And can you identify for the record what Exeter
13 Cross No. 1 is?

14 A. This is the 2003 agreement between Exeter and St.
15 Lawrence Borough.

16 Q. And this is the agreement that currently governs
17 the relationship between Exeter and St. Lawrence that is
18 ultimately being assumed by Pennsylvania-American if the
19 transaction closes, correct?

20 A. Correct.

21 Q. And incidently, if I heard your counsel correctly
22 earlier today, you approved the execution of an agreement
23 subject to ratification by borough council with PA-American,
24 correct?

25 A. Correct.

1 Q. And that agreement that you approved -- did you
2 execute it?

3 A. Well, I signed it. It has to be approved by
4 council at our next council meeting.

5 Q. And you reviewed it before you signed it?

6 A. Correct.

7 Q. And that agreement that you signed, does that
8 provide for rates for St. Lawrence?

9 A. Yes.

10 Q. And do you think, in your opinion as a borough
11 council member, are those rates satisfactory?

12 MS. LONDON: I'm going to object. This is
13 outside the scope of direct.

14 MR. CORTES: He did talk about, if I
15 understand his testimony correctly, he's talking about the
16 benefits of the transaction to St. Lawrence residents in
17 particular and getting rates that they agree upon in the
18 agreement. Certainly I think it would have an impact on the
19 benefits for those residents.

20 JUDGE CALVELLI: If he has an opinion on it,
21 he can answer.

22 THE WITNESS: I have not analyzed the rates
23 that are going to be in effect versus the current rates,
24 because there are certain things in the -- I noticed that,
25 for instance, PA-American is going to offer a lower rate to

1 economically disadvantaged customers or whatever, and we
2 would probably have to review that internally with our own
3 rates to our customers.

4 BY MR. CORTES:

5 Q. So you have no opinion on it?

6 A. Correct.

7 Q. But you signed the document, correct?

8 A. Correct.

9 Q. And you have a fiduciary obligation to do what's in
10 the best interest of the borough --

11 A. Yes.

12 Q. Let me finish the question, please, sir. You have
13 a fiduciary obligation to do what's in the best interest of
14 the borough as a borough council member, correct?

15 A. Correct.

16 Q. You wouldn't have signed the document unless you
17 thought it was in the best interests of the borough to do
18 so, correct?

19 A. Correct.

20 Q. All right. Can you look at what's been marked as
21 Exeter Cross No. 1?

22 A. All right.

23 Q. And as you testified earlier, this is the agreement
24 that governs the relationship between Exeter and St.
25 Lawrence, and do you, without causing the court reporter a

1 heart attack by reading this entirely, do you agree that
2 this agreement was intended to encapsulate the entire
3 relationship by and between Exeter and St. Lawrence for
4 purposes of the provision of sewer treatment services?

5 A. No.

6 Q. Okay. Can you look at page two of the agreement?

7 A. Okay.

8 MR. CORTES: Your Honor, would you like a
9 copy?

10 JUDGE CALVELLI: No, you can go ahead. I'm
11 listening.

12 MR. CORTES: Okay.

13 BY MR. CORTES:

14 Q. I'm looking at -- and you were, if I understood
15 your testimony, you were on borough council when this
16 agreement was executed, correct?

17 A. Correct.

18 Q. The second paragraph or full paragraph on page two
19 states, "Whereas Exeter Authority, with the consent and
20 approval of the township, has completed the project, as
21 hereinafter defined, and the parties hereto have determined
22 to enter into this agreement to provide for: (1) an
23 equitable sharing by the parties hereto of capital costs of
24 jointly used portions of the Exeter Sewer System, including
25 jointly used facilities contemplated by the Project; (2)

1 appropriate annual payments to be made by the Borough to the
2 Township for transportation, treatment and disposal by the
3 Township of Sewage which may be discharged from the St.
4 Lawrence Sewer System into the Exeter Sewer System; (3) the
5 terms and conditions under which Sewage may be discharged
6 from the St. Lawrence Sewer System into the Exeter Sewer
7 System for transportation, treatment and disposal by the
8 Township; and (4) other matters related to the foregoing;"
9 is that correct?

10 A. That's correct.

11 Q. Do you agree that that was what the purpose of this
12 agreement was?

13 A. Yes.

14 Q. And can you turn to page three of Exeter Cross No.
15 1?

16 A. All right.

17 Q. The definition of Exeter Sewer System, do you
18 acknowledge that that definition provides that the sewage
19 collection and transportation system and sewage treatment
20 and disposal facilities, including all related and necessary
21 facilities, in and adjacent to the township, owned by Exeter
22 Authority and the Township (sic) for operation and use
23 including all future additions, alterations and
24 improvements," that that is the definition provided for the
25 Exeter system, correct?

1 A. Correct.

2 Q. In fact, the St. Lawrence system, what's owned by
3 St. Lawrence is defined in Exeter Cross No. 1 as something
4 different, correct?

5 A. Well, I don't know where that's defined. You're
6 referencing it. If you'll give me the page, I'll --

7 Q. Page five.

8 A. Okay. Yes.

9 Q. That's a correct statement, right?

10 A. Correct.

11 Q. And if you turn to page six, please, in Section
12 2.02, do you agree with me that Exeter Township agrees to
13 satisfactorily operate and maintain the Exeter Sewer System,
14 including the sewage treatment plant, according to the
15 conditions set forth in the permits referred to in Section
16 2.01; is that what that provides?

17 A. Correct.

18 Q. And those permits are identified right above in
19 Exeter Cross No. 1, and those were permits to operate the
20 Exeter Sewer System as defined by this agreement, correct?

21 A. Correct.

22 Q. And those permits were issued by the state, the
23 Commonwealth, excuse me, to Exeter Township, correct?

24 A. Correct.

25 Q. St. Lawrence has no permit to operate any portion

1 of the Exeter Sewer System, correct?

2 A. Correct.

3 Q. And could you turn to page seven, please -- or
4 strike that. Still on page six, in return, what St.
5 Lawrence agreed to do in Section 2.03 was to operate and
6 satisfactorily operate and maintain its own sewage
7 collection system according to applicable requirements and
8 permits of government agencies having jurisdiction over it,
9 correct?

10 A. Correct.

11 Q. And page seven, please, sir. Would you agree with
12 me that page seven, Article III discusses the service
13 availability and conditions for purposes of the service that
14 the Exeter Sewer System was to provide to St. Lawrence?

15 A. Yes.

16 Q. And if you look at Section 3.01 of Exeter Cross No.
17 1, it states, "St. Lawrence Authority and the Borough
18 covenant that all Sewage discharged into the St. Lawrence
19 Sewer System will be discharged into the Exeter Sewer System
20 for ultimate treatment and disposal perpetually, subject to
21 the terms and conditions hereof and subject to the limits
22 set forth herein." Did I read that correctly?

23 A. Yes.

24 Q. Can you turn to page 14 of Exeter Cross No. 1?
25 This is the provision entitled, "Sharing of Costs," correct?

1 A. You'll have to give me a little bit more reference.

2 Q. Sure. Are you on page 14?

3 A. I'm on 14. I don't see any heading saying,
4 "Sharing of Costs." So what are you referencing?

5 MR. CORTES: Your Honor, could I approach to
6 make sure the witness has the right page?

7 JUDGE CALVELLI: Yes.

8 MR. CORTES: Thank you.

9 (Pause.)

10 THE WITNESS: Oh, I'm sorry, under Article IV,
11 correct, at the bottom?

12 BY MR. CORTES:

13 Q. Yes.

14 A. All right.

15 Q. So you see the heading, "Sharing of Costs,"
16 correct, sir?

17 A. Correct.

18 Q. And these costs that are being discussed here in
19 Exeter Cross No. 1 as being shared, those are the costs that
20 you described earlier in your testimony concerning capital
21 contributions and the debt finance payments, correct?

22 A. Correct.

23 Q. And those are the costs that form the basis of St.
24 Lawrence's claim that Exeter is somehow obtaining a windfall
25 here, correct?

1 A. Correct.

2 Q. And just to go specifically through Exeter Cross
3 No. 1, Section 4.01 refers to the borough paying annual
4 payment to the township for -- strike that -- in
5 consideration of the original reservation of additional
6 BOD/suspended solids capacity in the sewage treatment plant,
7 correct?

8 A. Correct.

9 Q. And Section 4.02, that contemplates or requires the
10 borough to pay a certain sum to Exeter as a capital
11 contribution to be applied by Exeter for and towards a
12 portion of the costs and expenses of plant expansion to 7.1
13 MGD attributable to St. Lawrence Authority and the borough,
14 correct?

15 A. Correct.

16 Q. And those are the capital contributions that you
17 were referring to earlier in your testimony, correct?

18 A. Correct.

19 Q. Provided for right here in Section 4.02, correct?

20 A. Correct.

21 Q. And if you go down to the last sentence of Section
22 4.02, it states the purpose of those capital contributions,
23 correct?

24 A. Correct.

25 Q. It states, "Such capital contribution is deemed by

1 the parties hereto as an initial payment on account for St.
2 Lawrence Authority's and the Borough's proportionate share,
3 as hereinafter provided, of the costs and expenses of the
4 Project attributable to St. Lawrence Authority and the
5 Borough," correct?

6 A. Correct.

7 Q. Okay. If you look at Section 4.03, that also
8 contemplates St. Lawrence making payments to Exeter
9 Township, quote, "In consideration of Exeter Authority
10 undertaking and completing the plant expansion to 7.1 MGD,"
11 correct?

12 A. Correct.

13 Q. And those are also part of the costs that you were
14 referring to earlier in your testimony, correct?

15 A. Correct.

16 Q. And there is, without belaboring the point and
17 making this more complicated than it needs to be, you agree
18 with me that if you look at Section 4.03A through I, it
19 describes a formula for calculating the costs that St.
20 Lawrence is required to pay under Section 4.03?

21 A. Correct.

22 Q. And those costs are the debt service or financing
23 related costs, correct?

24 A. Correct.

25 Q. In fact, if you look at page 18, paragraph 4.03H,

1 the purpose of the financing expenses is described -- or the
2 purpose of this cost reimbursement, for lack of a better
3 term, is described, correct?

4 A. Correct.

5 Q. And it talks about St. Lawrence, that the
6 calculation that we see in this Section 4.03 is necessary to
7 obtain St. Lawrence Authority's and the borough share of
8 financing expenses related to jointly used portions of the
9 project as set forth in Exhibit H attached hereto and
10 thereby made a part hereof, correct?

11 A. Correct.

12 Q. So the debt service payments that you claim you
13 made and are making are actually contemplated by and
14 provided for in this agreement, correct?

15 A. Correct.

16 Q. And in fact, if you look at page 19, the first full
17 paragraph of Exeter Cross No. 1, it states that, "Sums
18 payable by the Borough as provided above" -- excuse me --
19 "determined as provided above," which are the debt service
20 costs, "and as set forth in Exhibit I are payable by the
21 Borough semi-annually on May 20 and November 20 of each
22 year, beginning May 20, 1993 to and including November 20,
23 2022," correct?

24 A. Correct.

25 Q. And looking at Section 4.05 on page 19, that

1 provides that the borough agreed to pay for its
2 proportionate share of operating and maintenance costs for
3 jointly used portions of the Exeter Sewer System, correct?

4 A. Correct.

5 Q. And then it goes on to describe the calculation of
6 what they call the treatment charge that St. Lawrence would
7 pay, correct?

8 A. Correct.

9 Q. And that also is another cost that you claim that
10 Exeter would -- St. Lawrence claims Exeter is obtaining
11 windfall for, correct?

12 A. No.

13 Q. That one you exclude?

14 A. Correct.

15 Q. So it's the capital contributions and the debt
16 service only?

17 A. Correct.

18 Q. Can you look at page 24, please?

19 A. All right.

20 Q. Isn't it a fair statement, you've been on the
21 borough council, I would assume, probably longer than
22 anybody; is that a fair assumption on my part?

23 A. I don't know.

24 Q. You've been there since -- for 28 years, you said,
25 correct?

1 A. Correct.

2 Q. Is it fair to say that when this agreement was
3 signed in 2003, that the borough council understood that if
4 there were additional upgrades to the sewer system, that the
5 borough would have to pay proportionate costs associated
6 with those?

7 A. Yes.

8 Q. And in fact, if you look at, in Section 5.01, it
9 provides that if Exeter upgrades the sewage treatment plant,
10 then St. Lawrence Authority and the borough shall pay a
11 proportionate share of the cost of any such upgrading,
12 calculated in a manner consistent herewith for sharing the
13 costs of the expansion to 7.1 MGD, correct?

14 A. Correct.

15 Q. And it also states, "The parties hereto agree to
16 enter into a supplement hereto in order to implement and
17 carry out the intent and purpose of the foregoing," correct?

18 A. Correct.

19 Q. And you did continue, St. Lawrence did continue to
20 make payments associated with upgrades to the facility,
21 correct?

22 A. Correct.

23 Q. Was any supplement ever entered into?

24 A. Not that I know of.

25 Q. Did the borough ever ask for one?

1 A. We would get an invoice yearly for the capital
2 contributions showing what the capital costs would be. We
3 would review that and then pay based on a mutually agreeable
4 amount.

5 Q. Did the borough ever invoke Section 5.01 of Exeter
6 Cross No. 1 here and ask or demand that Exeter enter into a
7 supplement to this agreement?

8 A. I think over the past years, we've asked them to
9 renegotiate this agreement, primarily on the billing of the
10 -- the meter billings and other issues, and there was no
11 interest on Exeter Township to ever modify the agreement.

12 Q. And no modification or supplement has been entered
13 into, correct?

14 A. Well, if one party doesn't want to change the
15 agreement, the agreement doesn't get changed.

16 Q. And you've been making these capital contributions
17 and debt service payments certainly since 2003 and before,
18 correct?

19 A. Correct.

20 Q. If you look at page 25, is it a correct statement
21 that in this agreement, the township -- the borough, excuse
22 me, granted to Exeter and its assigns and successors all
23 easements, rights-of-way, and other rights necessary and
24 desirable in, along, over and under the streets, roads,
25 lanes, courts, public squares, alleys and highways of the

1 borough in, along, over or under which the Exeter Sewer
2 System has been constructed, together with free ingress,
3 egress, and regress therein and thereto, along with other
4 persons having interests or rights therein, for use in
5 connection with constructing, replacing, repairing,
6 altering, maintaining, and operating the system; that's
7 correct, right?

8 A. Correct.

9 Q. And if you look at page 28, Section 5.08, you agree
10 with me that the parties, St. Lawrence and Exeter, agree
11 that any dispute concerning factual determination under this
12 agreement shall be referred to arbitration?

13 A. Yes.

14 Q. And again, to summarize your testimony, each of the
15 costs, if I understand it correctly, that St. Lawrence is
16 seeking here as a, quote, "windfall," to use the term that
17 your counsel used, those costs provided for and required as
18 a payment were provided for and required by this 2003
19 agreement, correct?

20 A. I think the counsel believes, for a very long
21 period of time, the project or the system had a 6.51 percent
22 contribution by St. Lawrence, and there was no anticipation
23 that the plant would ever be sold to another party.

24 And if Exeter sells that asset, the contributions made
25 by St. Lawrence are a windfall to Exeter Township.

1 Q. The 6.51 percent, though, that you're referring to
2 is specifically called for in this agreement, referring to
3 the 2003 agreement?

4 A. Correct.

5 Q. And you knew that Exeter, as you testified in your
6 direct statement, Exeter solely has title to the Exeter
7 Sewer System, correct?

8 A. Yes.

9 Q. So at the time you entered into this agreement, you
10 had to have known that it was possible the system could be
11 sold by Exeter?

12 A. No. At that time, the St. Lawrence Borough
13 Authority, which members were on, who had been the lead for
14 all this, like most municipalities, the authorities come in
15 at some point, St. Lawrence Borough took over the authority
16 because it was more economical for us to assume the debt and
17 the bond payments and the bond review every year.

18 So, no, I don't know if I would have specifically
19 reviewed this agreement line for line at that time.

20 Q. But you understand, without getting too far afield,
21 I'm assuming you own a home; is that correct?

22 A. That's correct.

23 Q. And you have title to that home, correct?

24 A. Correct.

25 Q. And you know that as the title holder to a piece of

1 property, you can convey that, correct?

2 A. That's correct.

3 Q. And you knew that -- somebody, presumably yourself,
4 knew at St. Lawrence that Exeter had title to the assets of
5 the sewer system, correct?

6 A. Correct.

7 Q. And they could have obviously conveyed those assets
8 at some point, correct?

9 A. I don't think that was ever anticipated in this
10 agreement.

11 Q. So no one advised you that, no counsel or anyone
12 advised you at the time you entered into this agreement?

13 A. Correct.

14 Q. And so if I understand what St. Lawrence's gripe
15 here is, is that this agreement provides for St. Lawrence to
16 make these specific payments you've testified about, but
17 doesn't provide any rights to St. Lawrence to recover those
18 costs in the event of a sale, correct?

19 A. I don't think St. Lawrence ever encountered that
20 the asset would be sold. St. Lawrence has entered into
21 other agreements with Exeter Township for other projects
22 with our understanding, we would have shared benefits.

23 There was a recycling project that was done where a
24 chipper-shredder was gotten through some sort of a permit.
25 We signed on as contributors to that. We contribute to the

1 Exeter Township library costs so they can get matching state
2 costs. So there's a partnership involved here from the
3 township at Exeter.

4 In fact, the borough was at one point part of Exeter,
5 and a dispute years and years and years ago, I think 1927,
6 was citizens along one road wanted sidewalks and Exeter
7 Township refused to do that, so the citizens decided to form
8 their own government and borough and that's how the borough,
9 you know, was established. So St. Lawrence Borough is
10 essentially a doughnut hole in the doughnut of Exeter.

11 Q. But it's a separate legal entity, sir?

12 A. That's correct.

13 Q. Right. And at the time that you entered into the
14 agreement, there were two separate legal entities bargaining
15 with one another at arm's length, represented by counsel,
16 and I'm referring to Exeter --

17 A. Well, actually, represented by the authorities.

18 Q. Right. The authorities at the time --

19 A. Right.

20 Q. -- both have since dissolved, correct?

21 A. Correct.

22 Q. And the assets have flowed back or been distributed
23 to the respective municipalities, correct?

24 A. I'm not sure how it was done in Exeter.

25 Q. But at the time of the borough's entering into --

1 or, excuse me, the authorities entering into Exeter Cross
2 No. 1, they were both represented by counsel and they were
3 both negotiating at arm's length, correct?

4 A. Correct.

5 MR. CORTES: Your Honor, I have one more
6 exhibit that I'm going to hand out.

7 (Pause.)

8 BY MR. CORTES:

9 Q. Sir, I'm showing you what I've marked as Exeter
10 Cross No. 2. Please take a moment to review it.

11 (Whereupon, the document was marked as Exeter Cross-
12 Examination Exhibit No. 2 for identification.)

13 MS. LONDON: I'm going to object to the
14 exhibit. It has no relevance to Mr. May's direct testimony.

15 JUDGE CALVELLI: All right. There's an
16 objection as to relevance of the exhibit. Counsel, do you
17 wish to respond?

18 MR. CORTES: Yes, Your Honor. It goes to
19 credibility of his direct testimony because this is an email
20 that was sent to me by Ms. London, copying Mr. May, in which
21 the borough acknowledged that they were intervening in this
22 matter for purposes of protecting the interests of its
23 residents with respect to rates. There is nothing here
24 regarding the cost issue that we're hearing.

25 MS. LONDON: This -- (inaudible) -- was never

1 intended as an all-inclusive --

2 THE REPORTER: I'm sorry. I'm having trouble
3 hearing you.

4 MS. LONDON: This correspondence was never
5 intended as an all-inclusive narrative and it's being
6 offered for that purpose. It's not a pleading in the
7 litigation, in the administrative proceeding or any
8 litigation.

9 Again, I'll renew my objection that it goes
10 beyond the scope of the direct testimony.

11 JUDGE CALVELLI: All right. I'll overrule the
12 objection. You can ask a few questions about it, but again,
13 I tend to -- my own view is that without even reading it --
14 I mean, go ahead, counsel. I understand what you're going
15 to question the witness on, but at the same time, if he
16 wasn't discussing every single thing, then maybe he wasn't
17 discussing every single thing. But I'll give a little
18 latitude here. Go on.

19 MR. CORTES: I'll be brief, then, Your Honor.
20 What I was simply going to ask the witness about was,
21 looking at -- it references Bob May in the cc line here of
22 Exeter Cross No. 2.

23 BY MR. CORTES:

24 Q. That's a reference to you, correct?

25 A. Correct.

1 Q. And you did receive this, this email, is that a
2 fair statement, referring to the first page of Exeter Cross
3 2?

4 A. Correct.

5 Q. And looking at the second page -- the first page,
6 excuse me, you state -- or Ms. London states, "It is the
7 portion of the collection system constructed by St. Lawrence
8 which conveys sewage from St. Lawrence to the plant, over
9 which the borough asserts ownership," correct?

10 A. Correct.

11 Q. In other words, the borough does not assert
12 ownership over any of the Exeter Sewer System itself,
13 correct?

14 A. Well, I don't know what she meant by that. I
15 didn't author this email.

16 Q. Did you respond to this email in any fashion by
17 saying, you don't understand that?

18 A. I don't know.

19 MS. LONDON: I'm going to object. That's
20 attorney/client privilege.

21 JUDGE CALVELLI: He's saying he doesn't
22 remember, so that's sufficient for me.

23 MR. CORTES: I'll withdraw.

24 BY MR. CORTES:

25 Q. And looking at the second paragraph, it discussed

1 it being the intention of the borough to intervene in this
2 matter to protect the interests of its residents in any rate
3 proceeding under 52 Pa. Code Section 5.72, correct?

4 A. Correct.

5 Q. And the rates at this point, St. Lawrence, if I
6 understand your testimony from earlier correctly, St.
7 Lawrence is prepared to enter into an agreement which you've
8 executed in your fiduciary capacity as a borough council
9 member, that provides for rates for the Exeter St. Lawrence
10 customer, correct?

11 A. Correct.

12 MR. CORTES: Your Honor, just give me one
13 moment.

14 (Pause.)

15 MR. CORTES: Your Honor, I have nothing else.

16 JUDGE CALVELLI: Is there further or
17 additional cross-examination for this witness from other
18 parties?

19 MR. BREITMAN: No, Your Honor.

20 MR. ZAMBITO: No, Your Honor.

21 JUDGE CALVELLI: Is there redirect?

22 MS. LONDON: Very brief redirect.

23 (Pause.)

24 JUDGE CALVELLI: We're going to have a recess
25 for a couple of minutes.

1 (Recess.)

2 JUDGE CALVELLI: Okay. Go ahead.

3 REDIRECT EXAMINATION

4 BY MS. LONDON:

5 Q. Mr. May, I'll be brief on redirect. Is it correct
6 that St. Lawrence undertook a project to correct inflow and
7 infiltration in its collection system?

8 A. Years ago, we had wild invoicing from Exeter
9 Township on our sewer rates. We would be billed quarterly.
10 They sometimes varied by 70, 80 percent, and it came down to
11 the point, we couldn't even actually project what our costs
12 were going to be, how to set our own sewer rates with our
13 own customers.

14 So at that time, in talking with the Exeter Township
15 Authority and operators of the plant, they claimed, well,
16 it's probably I&I, which is infiltration and inflow from
17 generally groundwater or stormwater.

18 So we went and did some extensive analysis and review of
19 our system, tried to ascertain if we did have an I&I problem
20 and that was really the reason the bill amounts varied so
21 much.

22 MR. CORTES: Your Honor, I would just state an
23 objection. This is beyond the scope of my cross. I didn't
24 ask him anything about I&I.

25 MS. LONDON: Well, he asked about work,

1 different types of work on the system, and the difference
2 between the Exeter and St. Lawrence systems and the
3 distinction. And I believe that one benefits the other, and
4 that's the reason for this line of questioning.

5 JUDGE CALVELLI: I'll give a little leeway on
6 this. You can object again if you think it's still going a
7 little too far. Go ahead.

8 BY MS. LONDON:

9 Q. Was debt incurred?

10 A. Yes.

11 Q. And that debt was incurred by St. Lawrence. Were
12 there any discoveries as far as the Exeter allegations of
13 I&I?

14 MR. CORTES: Same objection, Your Honor.

15 JUDGE CALVELLI: All right. Yeah, I think --
16 is this part of the claim that the Borough of St. Lawrence
17 is asserting? I thought the claims were the other ones that
18 we were just talking about.

19 MS. LONDON: I'll move on.

20 JUDGE CALVELLI: Okay.

21 BY MS. LONDON:

22 Q. You had testified in cross-examination and I
23 believe on direct as well that Exeter flows, there are
24 Exeter flows through the borough collection system. Can you
25 describe where that occurs?

1 A. There's a point in the St. Lawrence system where a
2 portion of one section of Exeter flows through pipe that is
3 owned by St. Lawrence as part of its system. Then it exits,
4 and then so other Exeter sewage enters beyond that point.

5 So there's several meter pits that calculate what flow
6 is coming from whom, in versus out, and the difference and
7 things like that.

8 Q. And is Exeter charged for this?

9 A. No.

10 Q. Now, under the agreement, if you go to page 21 of
11 Cross-Examination Exhibit 1, and you go to the one, two,
12 three, third and fourth line down, there is reference to
13 septage revenue.

14 A. Yes.

15 Q. You testified earlier regarding the sludge dryer.
16 Was the sludge dryer to be a source of septage revenue?

17 A. When the project was --

18 MR. CORTES: Objection, Your Honor. It's,
19 again, beyond the scope of cross. I didn't ask about sludge
20 dryer revenue at all.

21 MS. LONDON: Well, he referred to different
22 revenues, including septage revenue.

23 MR. CORTES: What I referred to was the costs
24 that they -- I was trying to encapsulate the costs that they
25 were claiming, not revenues to St. Lawrence. I didn't ask a

1 question about that.

2 MS. LONDON: Well, that's been along the lines
3 of a credit, though, under the agreement, and there were
4 questions regarding the billing under the agreement and the
5 formula used, and part of that formula was septage credit.

6 JUDGE CALVELLI: Well, what is the borough
7 claiming regarding this sludge drying issue, though?

8 MS. LONDON: Well, the claim is that debt was
9 incurred for the sludge dryer and that's part of the debt
10 and part of the debt service payments that are being made.

11 JUDGE CALVELLI: That this is part of the
12 whole debt service payment issue?

13 MS. LONDON: Yes, it is, Your Honor.

14 JUDGE CALVELLI: I guess it's one of the line
15 items?

16 MS. LONDON: That's correct.

17 JUDGE CALVELLI: What percentage is it of the
18 whole total?

19 MS. LONDON: As far as how much for the sludge
20 dryer? I can't give you an exact percentage.

21 JUDGE CALVELLI: All right. You can establish
22 it as some of the debt service issue, I guess. I'll let
23 that happen.

24 BY MS. LONDON:

25 Q. Was there belief that there would be a benefit from

1 the sludge dryer to St. Lawrence?

2 A. When the sludge dryer project was originally
3 proposed, it was to reduce the cost of the plant itself by
4 drying out sludge and being able to have it reused as some
5 sort of biosolid to be applied on farmlands and other things
6 like that.

7 It was also presented that because in Berks County that
8 would be the only such facility, other municipal plants
9 would then truck their sludge over and they would get
10 beneficial use and there would be an income from that asset
11 that was going to be added to the plant.

12 As part of the agreement, St. Lawrence was supposed to
13 share a percentage of that revenue from that project.

14 Q. And is the sludge dryer part of the sale of the
15 plant?

16 A. Yes, it is.

17 MS. LONDON: Nothing further.

18 JUDGE CALVELLI: Is there additional cross-
19 examination?

20 MR. CORTES: I'm sure Your Honor will be happy
21 to hear, no, there's not.

22 JUDGE CALVELLI: Are there any other questions
23 of any kind for this witness at this time?

24 MR. BREITMAN: No, Your Honor.

25 JUDGE CALVELLI: All right. Thank you, sir.

1 (Witness excused.)

2 JUDGE CALVELLI: Let me ask, are there any
3 other witnesses? I don't believe so, but do we have any?

4 MS. LONDON: Not on behalf of St. Lawrence,
5 Your Honor.

6 JUDGE CALVELLI: Okay. Will there be any
7 other motions made or documentary exhibits offered at this
8 point?

9 (No response.)

10 MR. CORTES: Your Honor, just in case, in an
11 abundance of caution, I know Your Honor allowed me a
12 continuing objection, but I will, for purposes of the
13 record, make a renewed motion to strike Mr. May's testimony
14 for the reasons already articulated.

15 JUDGE CALVELLI: Okay. And I've already
16 denied that. What about transcripts? Do we want three or
17 five days here? I think three days would be maybe next
18 Wednesday and five would be the Monday after. So I don't
19 know if the parties have any preference on what they're
20 looking for.

21 MR. ZAMBITO: Your Honor, given that the
22 Exeter/St. Lawrence issue has to be briefed, I believe we
23 should probably go with the three day.

24 MS. LONDON: I agree.

25 JUDGE CALVELLI: Is that okay with the others,

1 everybody? All right, and for me as well, I think, and I
2 have to tell my people and then they'll complain that it
3 costs too much or whatever. Okay. Fair enough.

4 Are there any other issues that we need to
5 tend to at this hearing?

6 MR. ZAMBITO: Not from the company, Your
7 Honor.

8 MS. LONDON: None from St. Lawrence.

9 JUDGE CALVELLI: Is there anything I've
10 forgotten to do that anybody wants to remind me about?

11 (No response.)

12 JUDGE CALVELLI: All right. Okay. We'll
13 conclude this hearing. I do wish to thank everybody for
14 being available. I appreciate that, and I look forward to
15 receiving all the materials by the deadlines that we talked
16 about. Thank you, everybody. Have a good day.

17 (Whereupon, at 11:32 a.m., the proceedings were
18 concluded.)

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C E R T I F I C A T E

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I hereby certify that the foregoing proceedings,
A-2019-3004933 were reported by me on June 28, 2019, and
that I, John A. Kelly, read this transcript and attest that
this transcript is a true and accurate record of the
proceedings.

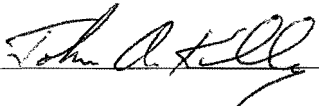
By: 
John A. Kelly

EXHIBIT C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water Company :
under Sections 507, 1102(a), and 1329 of the Pennsylvania :
Public Utility Code, 66 Pa C.S. §§ 507, 1102(a), 1329 for :
approval of its acquisition of wastewater system assets of the : Docket No. A-2018-_____ *et al.*
Township of Exeter, related wastewater service rights, fair :
market valuation ratemaking treatment, accrual and deferral of :
certain post-acquisition improvement costs, and certain contracts :
with municipal corporations. :

**DIRECT TESTIMONY OF
JOHN A. GRANGER
ON BEHALF OF
TOWNSHIP OF EXETER**

1 **DIRECT TESTIMONY OF**
2 **JOHN GRANGER**
3

4 **I. INTRODUCTION AND BACKGROUND**

5 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

6 **A.** My name is John A. Granger. My business address is 4975 DeMoss Road,
7 Reading, PA 19606.
8

9 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

10 **A.** I am the Township Manager of Exeter Township and have been employed in this position
11 since June, 2016.
12

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **EMPLOYMENT EXPERIENCE.**

15 **A.** I have a Bachelor's degree from Temple University in Urban Studies and a Master's degree
16 in Public Administration from Penn State University. In addition, I have completed post-
17 graduate work in finance and economics. I have been an invited speaker at state and local
18 conferences focusing primarily on multiyear financial planning and strategic planning. I
19 have in excess of 40 years' experience in Pennsylvania local government including
20 positions as finance director, assistant township manager, and township manager.
21

22 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PENNSYLVANIA**
23 **PUBLIC UTILITY COMMISSION ("PUC" OR "COMMISSION")?**

24 **A.** No.

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Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am appearing on behalf of the Township of Exeter (“Township”) in this proceeding. This proceeding concerns the application (“Application”) of Pennsylvania-American Water Company (“PAWC”), seeking PUC approval of PAWC’s acquisition of the wastewater system (“System”) currently owned by the Township. As more fully explained below, the Township has a vested interest in seeing the Application promptly approved by the Commission.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY AND SUMMARIZE THE KEY POINTS.

A. I will focus on the benefits of the transaction that are most important to Exeter, including:

- Stabilizing the real estate tax base;
- Defeating all sewer debt;
- Fully funding all Township pension plans;
- Fully funding all Township other post-employment benefits (“OPEB”) requirements;
- Funding storm sewer improvements;
- Funding an equipment replacement program;
- Providing matching funds for State and Federal grants to meet other capital needs;
- Removing Township responsibility for compliance with increasing environmental requirements; and,
- Improving and sustaining a high quality of service to Township residents.

The democratically-elected Township Supervisors have voluntarily agreed to enter into the transaction because it is in the best interests of the Township’s citizens. The Township will receive \$96,000,000 from the sale of the System, and will use this money for public purposes. Eliminating the unfunded liability in the Township pension plans,

1 eliminating the unfunded liability in the OPEB plan, fully funding equipment purchases,
2 and eliminating the General Fund debt, will reduce the operating expenses of the General
3 Fund in excess of \$1,400,000 annually. This will greatly benefit our citizens.

4
5 **II. DESCRIPTION OF THE TOWNSHIP AND REASONS FOR THE**
6 **TRANSACTION**
7

8 **Q. PLEASE DESCRIBE THE TOWNSHIP GENERALLY.**

9 **A.** Exeter Township is a second class township in Berks County, consisting of 24.59 square
10 miles, with a population of approximately 25,500.

11
12 **Q. DESCRIBE THE FINANCIAL CHALLENGES OF THE TOWNSHIP OVER THE**
13 **PAST TWENTY FIVE YEARS.**

14 **A.** Exeter experienced substantial residential growth in the 1990's and a modest growth in
15 commercial development culminating in 2008 with the opening of the Exeter Commons
16 Shopping Center. There has, however, been very little economic development in the
17 Township since 2008.

18 In 2013, the Township's Board of Supervisors ("Board") engaged the Pennsylvania
19 Economy League ("PEL"), and undertook Phase 1 of the Pennsylvania Department of
20 Community and Economic Development's Early Intervention Program to better
21 understand the financial challenges facing the Township. The result was a report that
22 examined the changes to the revenue streams on all non-tax revenues, in addition to the
23 changes in revenues from all tax sources. This analysis revealed a precipitous decline in
24 non-tax revenues during the period 2005-2012. Real estate taxes, however, were
25 significantly increased in 2009.

1 The report also analyzed data on personnel and non-personnel expenses over the
2 2008 to 2012 time period. Personnel expenses as a percentage of total expenses increased
3 from 63.8 percent to 70.8 percent.

4 Using this data as a base, PEL projected total Township revenues and expenses
5 from 2014 to 2018 and estimated annual deficits each year with a cumulative deficit of
6 \$5,075,437. PEL's recommendations to address the deficit focused largely on increasing
7 the real estate tax rate.

8 Upon completion of Phase 1 of this program, the Township embarked on Phase 2,
9 which resulted in the implementation of a program budget, the acquisition of a modern
10 financial reporting system and the systematic analysis of expenses and revenues.

11 The tax collector for the Business Privilege Tax was changed, resulting in an
12 increase in collections exceeding 75 percent the first year. A significant future cost
13 savings, in excess of \$18 million, was realized through a fifteen-year labor agreement with
14 the Police Department. The agreement structurally changes the Police Pension Plan by
15 increasing the retirement age, eliminating the cost of living adjustment, and eliminating
16 post medical retirement benefits for all officers hired after January 1, 2017.

17 Two services that were historically provided by Township employees are now
18 provided by contracted services at a savings in excess of \$100,000 annually. Those
19 services are building maintenance and brush/yard waste recycling.

20 Upon completion of Phase 2 of the program, the Township engaged in Phase 3,
21 which resulted in a detailed analysis of the impact that the sale of the System would have
22 on the Township. An analysis of the use of the proceeds states that the annual savings from
23 funding both pension plans and the Township's OPEB requirement will exceed \$900,000

1 annually. When the savings from defeasing additional debt and funding the equipment
2 replacement plan are included, the total savings will exceed \$1.4 million annually.

3 The cumulative savings that the Township has realized through these actions, along
4 with the potential savings to be realized through the sale of the system will enable the
5 Township to stabilize the tax rate for the next decade.

6
7 **Q. DESCRIBE THE RATIONALE FOR THE DECISION TO EXPLORE THE SALE**
8 **OF THE SEWER SYSTEM.**

9 **A.** The Board has a strong belief that the operation of the wastewater treatment plant is no
10 longer a core function of government. It is the Board's opinion that the economies of scale
11 and the professional expertise exhibited in the private sector far surpasses the ability of the
12 Township to operate a wastewater treatment system, particularly with regard to ever-
13 increasing environmental regulatory compliance matters. The Board feels very strongly
14 that the sale of the System would provide the Board and the Administration of the
15 Township sufficient time and resources to more effectively manage the service delivery of
16 the core services to the Township which are police, fire, highways, code enforcement and
17 parks and recreation.

18
19 **Q. HAS THE TRANSACTION BEEN APPROVED BY THE TOWNSHIP?**

20 **A.** Yes. On March 27, 2017, the Board authorized the advertisement of a Request for
21 Proposals from interested parties for the potential sale of the System. The proposals were
22 received on July 20, 2017. After undergoing a thorough analysis by staff, a financial
23 planner, and the Township Solicitor, the Board concluded that the sale of the System was

1 in the best interest of the Township and, on April 23, 2018, the Board approved the Asset
2 Purchase Agreement.

3
4 **III. PROJECT DESCRIPTION AND TRANSACTION BENEFITS**

5 **Q. PLEASE SUMMARIZE THE TRANSACTION.**

6 **A.** The Township will sell substantially all of the assets of the System to PAWC. In return,
7 PAWC will pay the Township \$96,000,000.

8
9 **Q. PLEASE DESCRIBE THE LIKELY IMPACT OF THE TRANSACTION ON THE**
10 **TOWNSHIP, ITS RESIDENTS AND THE REGIONAL ECONOMY.**

11 **A.** As stated above, the analysis prepared by the Administration and supported by PEL
12 concludes that the Township will be in a position to maintain real estate taxes at current
13 levels for the next decade should the sale of the System be finalized. Eliminating the
14 unfunded liability in the Township's pension plans and OPEB plan, as well as funding
15 storm sewer improvements and equipment replacement expenses, will have a significant
16 positive impact on the General Fund. This, coupled with the Township's extraordinary
17 labor agreement with the Police Department, will enable the Township to stabilize its
18 expenses and enhance its revenues such that real estate taxes will not be required to be
19 increased in the next decade.

20 In addition, the Board has directed the Administration to assess the impact of
21 instituting a homestead exemption, in the amount of \$50,000, on real estate taxes as a result
22 of the transaction. If realized, the homestead exemption would become effective for the
23 2019 fiscal year. An analysis of the impact of the homestead exemption for Township

1 residents indicates that 11.9 percent of Township households would pay no Township real
2 estate taxes. This would have a significant positive impact on the lowest socioeconomic
3 strata in the Township.

4 The Township has grant applications pending with PennDot, DCED, DEP and
5 DCNR for grants for infrastructure improvements. The grant applications are in excess of
6 \$5,000,000 and will require a local match in excess of \$1,000,000. The proceeds from the
7 sale have enabled the Township to submit these applications. The infrastructure
8 improvements that are the subject of the grant applications support the Township's
9 economic development strategy as well as provide improvements to the Township's park
10 system and stormwater management system.

11
12 **Q. ASIDE FROM THE USE OF THE TRANSACTION PROCEEDS TO ADDRESS**
13 **CERTAIN OF THE TOWNSHIP'S FINANCIAL CHALLENGES, ARE THERE**
14 **ADDITIONAL BENEFITS OF THE TRANSACTION FROM THE TOWNSHIP'S**
15 **PERSPECTIVE?**

16 **A.** Absolutely, the use of the proceeds is only one of the benefits. The Transaction has several
17 additional benefits that justify Commission approval. Other witnesses in this proceeding
18 will address them more thoroughly from their specific perspective. From my perspective,
19 these further benefits include but are not limited to:

- 20 • Because the System would be owned by a public utility rather than a
21 municipality, the System's assets would become taxable.
- 22 • Because PAWC has greater financial resources than does the Township,
23 PAWC is in a better position to replace aging infrastructure and make
24 upgrades in the System to address increasingly stringent environmental
25 regulations.
- 26 • Because the System would be owned by a public utility regulated by the
27 Commission, customers of the System would be protected by the

1 Commission's rate-making process and its complaint process. They would
2 also be able to seek assistance from the Office of Consumer Advocate, the
3 Office of Small Business Advocate, and the Bureau of Investigation and
4 Enforcement.
5 • Customers of the System will have access to PAWC's customer assistance
6 programs.
7 • Because PAWC is a large and experienced public utility, it has greater
8 expertise in the operation of a wastewater system than does the Township,
9 ensuring that customers of the System will receive adequate and efficient
10 wastewater service in the future.
11

12 **Q. TO THE BEST OF YOUR KNOWLEDGE, DOES THE TRANSACTION**
13 **ADVERSELY IMPACT ANY SEGMENT OF THE PUBLIC IN ANY MATERIAL**
14 **WAY?**

15 **A.** No. To the contrary, the transaction will have positive impacts on the Township, on the
16 citizens of the Township and on the customers of the System as noted above.

17 The Board of Supervisors discussed the proposed sale at five (5) publicly advertised
18 meetings and held two (2) publicly advertised special meetings on the sale. The public
19 was invited to speak on the proposed transaction at each of these public meetings.

20
21 **Q. ARE YOU AWARE OF ANY UNDEDICATED ASSETS THAT WERE**
22 **INCLUDED IN THE ENGINEER'S INVENTORY UPON WHICH THE UVES**
23 **BASED THEIR APPRAISAL?**

24 **A.** No. To the best of my knowledge, information and belief, all assets included in the
25 engineer's inventory are owned by the Township.
26
27
28

1 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

2 **A.** Yes. However, I reserve the right to supplement my testimony as additional issues arise
3 during the course of this proceeding.