

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	
Water Company under Sections 507, 1102	:	
and 1329 of the Public Utility Code for	:	A-2018-3004933
Approval of its Acquisition of wastewater	:	
system assets of Exeter Township	:	

RECOMMENDED DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

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I. INTRODUCTION

This Decision recommends that the Joint Petition for Partial Settlement (Petition or Settlement) be approved in its entirety without modification because it is in the public interest and is supported by substantial evidence. This Decision finds that the Settlement complies with the relevant Sections of the Public Utility Code regarding applications for the acquisition of wastewater system assets and is consistent with Commission regulations promoting settlements.

This Decision further recommends that the one litigated issue in this case be decided against the Borough of St. Lawrence, an Intervenor in this case. The Borough of St. Lawrence asserted that Exeter Township owed certain monies to St. Lawrence, and that part of the Settlement proceeds in this case should be set aside by the Commission and paid directly to St. Lawrence. This Decision recommends denying this claim because the Commission lacks jurisdiction to decide private contractual disputes and to award money damages. Such claims are required to be brought in a court of general jurisdiction such as the Court of Common Pleas.

II. HISTORY OF THE PROCEEDING

On September 25, 2018, Pennsylvania-American Water Company (PAWC or Company) filed an Application under Sections 507, 1102, and 1329 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 507, 1102, 1329, seeking the approval of the Pennsylvania Public Utility Commission (Commission) of the acquisition of the Exeter Township (Exeter or Township) sewer system and the right of PAWC to provide wastewater service in the areas served by the Township and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. 66 Pa.C.S. §§ 1329(c). By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the Section 1329 Application was not accepted for filing purposes because the Application was incomplete.

On December 5, 2018, PAWC filed an Amended Section 1329 Application with the Commission. On December 19, 2018, the Commission notified PAWC that the Section 1329 Application had been conditionally accepted for filing. According to that Secretarial Letter, the

Commission would not accept the Section 1329 Application until PAWC complied with certain customer notice requirements.

On December 14, 2018, the Office of Consumer Advocate (OCA) filed a Petition to Reject or Hold in Abeyance Acceptance of the Application. PAWC filed an Answer on December 17, 2018. On December 20, 2018, the Bureau of Investigation and Enforcement (I&E) filed a Motion to Reject or Hold in Abeyance Pennsylvania-American Water Company's Amended Application. PAWC filed an Answer on December 26, 2018.

On December 28, 2018, Exeter filed a Petition to Intervene. On January 7, 2019, the Borough of St. Lawrence (St. Lawrence) filed a Petition to Intervene. On January 9, 2019, Exeter filed an Answer to I&E's Motion to Reject or Hold in Abeyance. On January 14, 2019, St. Lawrence filed the "Response of Intervenor, Borough of St. Lawrence to Application for Certificate of Public Convenience and Application for Approval of Transfer."

On January 14, 2019, the OCA filed a Protest and Public Statement and a Petition for Stay. PAWC filed an Answer to the Petition for Stay on January 16, 2019, and Exeter filed an Answer to the Petition for Stay on February 4, 2019.

On February 8, 2019, the Commission issued four Secretarial Letters to the following parties:

One addressed to the OCA indicating that the documents it filed on December 14, 2018 and January 14, 2019 were filed at an inactive docket, and would be addressed if the docket became active;

One addressed to I&E indicating that the document it filed on December 20, 2018 was filed at an inactive docket, and would be addressed if the docket became active;

One addressed to Exeter indicating that the documents it filed on January 9, 2019 and February 4, 2019 were filed at an inactive docket, and would be addressed if the docket became active; and

One addressed to PAWC indicating that its filings of December 17, 2018, December 26, 2018, and January 16, 2019 were filed at an

inactive docket, and would be addressed if the docket became active.

On March 8, 2019, PAWC notified the Commission that PAWC would shortly begin giving the required customer notices. On April 15, 2019, PAWC filed a verification stating that it had complied with all required customer notices. Consequently, on April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing. PAWC subsequently provided notice of the Application to certain municipalities, water and wastewater utilities, and state agencies. On April 27, 2019, notice of the Amended Application was published in the Pennsylvania Bulletin, 49 Pa.B. 2099, with a deadline of May 14, 2019 for filing Protests or Petitions to Intervene. No additional Protests were filed by the May 14, 2019 deadline.

The Commission assigned this case to its Office of Administrative Law Judge (OALJ) on April 17, 2019. By Notice dated April 17, 2019, OALJ scheduled an Initial Prehearing Conference for Friday, May 17, 2019 at 10:00 a.m. in Hearing Room 2 of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 before Administrative Law Judge Andrew M. Calvelli. On April 22, 2019, OALJ issued a Prehearing Conference Order concerning various issues to be addressed at the Prehearing Conference.

The Initial Prehearing Conference was held as scheduled and various procedural matters were discussed. Appearing at the Conference were the following attorneys:

David Zambito, Esq.	PAWC
Harrison Breitman, Esq.	OCA
Christine Maloni Hoover, Esq.	OCA
Erika McLain, Esq.	I&E
Joan London, Esq.	St. Lawrence
Samuel Cortes, Esq.	Exeter
Barnett Satinsky, Esq.	Exeter

The first issues addressed at the Conference were the Petitions to Intervene filed by Exeter and St. Lawrence. These Petitions were unopposed and were granted.

The next issues addressed were various pending Motions, most of which had been filed prior to this case being assigned to OALJ. By agreement of the parties, those Motions were withdrawn, without prejudice and with leave to refile, preserving the various parties' legal arguments set forth in the Motions. Specifically, the following Motions filed prior to this case being assigned to OALJ were withdrawn:

- OCA's Petition to Reject or Hold in Abeyance, filed on December 14, 2018
- I&E's Motion to Reject or Hold in Abeyance, filed on December 20, 2018
- OCA's Petition for Stay, filed on January 14, 2019

Also addressed was OCA's Motion to Expedite Discovery, filed on April 18, 2019. The parties advised that they had agreed upon a litigation schedule in this case and had also agreed upon discovery procedures and deadlines. As a result, OCA agreed to withdraw its Motion without prejudice and with leave to refile, preserving its legal arguments set forth in the Motion.

I advised the parties that their on-the-record oral requests to withdraw the various Motions would be sufficient and that I would enter an appropriate order regarding those requests in this Scheduling Order.

The next issue addressed was the litigation schedule. The parties advised that they had agreed upon the following schedule, which I adopted via my Scheduling Order dated May 29, 2019:

Non-Company Direct Testimony	June 7, 2019
Rebuttal Testimony	June 18, 2019
Surrebuttal Testimony	June 26, 2019
Hearings (w/ Oral Rejoinder Testimony) ...	June 27-28, 2019

Main Briefs	July 10, 2019
Reply Briefs	July 18, 2019
Recommended Decision	August 9, 2019
Exceptions	August 19, 2019
Reply Exceptions	August 27, 2019

In adopting the Parties’ proposed litigation schedule, I noted that the last public meeting of the Commission before the expiration of the six-month statutory deadline for this case (October 16, 2019) is October 3, 2019.

An Order Granting PAWC’s Petition for a Protective Order was issued on June 4, 2019.

On June 12, 2019, PAWC, Exeter, OCA and I&E submitted a Joint Petition for Approval of Settlement of All Issues regarding the Exeter/Lower Alsace Application (Exeter’s related Nunc Pro Tunc Application at Docket No. A-2018-3006505). In that case, Exeter had been supplying approximately 28 customers outside of Exeter’s municipal boundaries. Those customers were located in Lower Alsace Township. Exeter filed an Application for a Certificate of Public Convenience to serve those customers. If that Application is granted by the Commission, those customers would become part of the overall Settlement in this particular case, and PAWC’s acquisition of Exeter’s wastewater system in this case would include service to those particular customers.

By e-mail of June 28, 2019, the Parties informed the ALJ that they had reached a settlement of all issues except St. Lawrence’s claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant.

An Initial In-Person Evidentiary Hearing was held on June 28, 2019. Appearing at the hearing were the following attorneys:

David Zambito, Esq. PAWC
Jonathan Nace,, Esq. PAWC
Harrison Breitman, Esq. OCA
Christine Maloni Hoover, Esq. OCA
Erika McLain, Esq. I&E
Joan London, Esq. St. Lawrence
Samuel Cortes, Esq. Exeter

During the hearing, Exeter presented two witnesses and St. Lawrence presented one witness. The Parties were provided with the opportunity to cross-examine those witnesses. Following the witness presentations, pre-served testimony was admitted into the record with accompanying verifications without objection, as follows:

PAWC Statements

1 REV-A (Grundusky Direct, with PAWC Exhibit BJJ-1)
1-R (Grundusky Rebuttal, with PAWC Exhibit BJJ-2)
2-REV (Gable Direct, with PAWC Exhibits DRK-3R and DRK-4)
3 (Kaufman Direct, with PAWC Exhibits DRK-1 and DRK-2)
3-R (Kaufman Rebuttal, with PAWC Exhibits DRK-3R and DRK-4)
4-REV (Nevirauskas Direct)
4-R (Nevirauskas Rebuttal, with PAWC Exhibit RPN-1)
5 (Weinert Direct, with CV)
5-R (Weinert Rebuttal, with PAWC Exhibit JCW-1)

I&E Statements

1 (Kubas Direct, with I&E Exhibit 1)
1-SR (Kubas Surrebuttal)

OCA Statements

1 (Everette Direct)
1S (Everette Surrebuttal)

- 2 (Watkins Direct)
- 2S (Watkins Surrebuttal)

Exeter Statements

- 1 (Granger Direct)
- 2 (Walker Direct, with appendices)
- 3 (Granger Rebuttal)
- 4 (Walker Rebuttal)

St. Lawrence Statements

- 1 (May Direct, with Exhibits 1 through 7)
- 2 (May Surrebuttal, with Exhibits 9 through 12)

The Parties reached a partial settlement in this proceeding, and on July 11, 2019 a Joint Petition for Partial Settlement was filed by PAWC, Exeter, I&E and OCA. Although St. Lawrence did not join in the Joint Petition, it did not oppose the Joint Petition. In the Joint Petition, all of the issues that were the subject of litigation in this proceeding were resolved, with the exception of St. Lawrence’s claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant. The Joint Petition contained proposed Findings of Fact, proposed Conclusions of Law and proposed Ordering Paragraphs. The Joint Petition also referenced any filings needed to complete the Settlement, including (without limitation) the PAWC proposed Tariff which had been appended to PAWC’s Application.

In addition to the witness presentations and the admission of pre-served testimony into the record, the Parties requested permission to submit briefs on the sole contested issue of St. Lawrence’s claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant. I agreed to allow briefs on this issue and advised that the original briefing dates of July 10, 2019 for Main Briefs and July 18, 2019 for Reply Briefs would be maintained. PAWC, Exeter and St. Lawrence submitted Main Briefs on July 10, 2019. St.

Lawrence also submitted a Sur-Reply Brief¹ on July 18, 2019. Exeter submitted a Reply Brief on July 16, 2019, and PAWC submitted a Reply Brief on July 18, 2019. The record in this proceeding was closed on the Reply Brief Date of July 18, 2019.

III. FINDINGS OF FACT

The following Findings of Fact were submitted in the Joint Petition. I adopt those findings, as there was no objection to the proposed findings submitted by any of the Parties.

A. **Parties**

1. PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. It furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. No. 1 REV-A p. 13.

2. As of July 31, 2018, PAWC furnished wastewater services to approximately 65,139 customers in Pennsylvania, inclusive of 59,975 residential customers, 4,927 commercial customers, 33 industrial customers, and 204 other customers. As of July 31, 2018, PAWC furnished water services to 659,687 customers, inclusive of 607,090 residential customers, 45,359 commercial customers, 521 industrial customers, 2,400 municipal customers, 4,295 fire protection customers and 22 sales for resale customers. PAWC St. No. 1 REV-A p. 15.

3. Exeter is a Township of the Second Class organized and existing under the laws of the Commonwealth of Pennsylvania with its offices located at 4975 DeMoss Road, Reading, Pennsylvania. Asset Purchase Agreement p. 1.

¹ The Commission’s Regulations regarding Briefs do not recognize Sur-Reply Briefs. 52 Pa. Code § 5.502. I will treat the Sur-Reply Brief of St. Lawrence as a Reply Brief for purposes of this Recommended Decision.

4. I&E serves as the Commission’s prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code and Commission Regulations and Orders. *See, Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

5. I&E’s analysis in this proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interests of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1 p. 1.

6. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

B. The System

7. The System consists of a collection system, which consists of approximately 126 miles of pipe and six pumping stations, and a wastewater treatment plant. PAWC St. No. 3 p. 4.

8. The System currently provides service to 9,015 customers. PAWC St. No. 3 p. 4.

9. The System serves Exeter Township, St. Lawrence Borough, and small portions of Alsace Township and Lower Alsace Township in Berks County, Pennsylvania. PAWC St. No. 3 p. 4.

10. The System is not a municipal separate storm sewer system (“MS4”), nor it is a combined sewer system. PAWC St. No. 3 pp. 4-5.

C. The Transaction and the Asset Purchase Agreement

11. On March 29, 2017, Exeter issued a Request for Bids For the Sale of Wastewater System Township of Exeter, Pennsylvania. PAWC St. No. 1 REV-A p. 9.

12. On July 20, 2017, PAWC submitted a proposal to acquire the Exeter Wastewater Treatment Facilities Assets. PAWC St. No. 1 REV-A p. 9.

13. After subsequent arms-length negotiations, on May 29, 2018, Exeter and PAWC entered into the Asset Purchase Agreement (APA) for the sale of substantially all of the assets, properties and rights of Exeter's System at an agreed-upon price. PAWC St. No. 1 REV-A p. 9.

14. On November 26, 2018, Exeter and PAWC entered into the First Amendment to the Asset Purchase Agreement. PAWC St. No. 1 REV-A p. 9.

15. The APA provided for a purchase price of \$96,000,000, but the signatories agreed to use the fair market valuation process of Section 1329 of the Code, 66 Pa. C.S. § 1329. PAWC St. No. 1 REV-A p. 12; APA pp. 9 and 11.

D. The Application and the UVE Appraisals

16. On September 25, 2018, PAWC filed the instant application asking the Commission to approve the Transaction pursuant to Sections 1102 and 1329 of the Code, 66 Pa. C.S. §§ 1102 and 1329.

17. By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the September 25, 2018 Application was not accepted for filing purposes because, in the opinion of Commission staff, the Application was incomplete.

18. On December 5, 2018, PAWC filed an Amended Application with the Commission (for ease of reference, the September 25, 2018 Application and the December 5, 2018 Amended Application will be referred to collectively herein as the “Application”).

19. By e-mail of December 12, 2018, staff from the Bureau of Technical Utility Services (“TUS”) notified PAWC that they believed certain items were missing from the Application.

20. On December 17, 2018, PAWC responded to TUS staff’s request for additional information.

21. By Secretarial Letter dated December 19, 2018, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain customer notice requirements.

22. On March 8, 2019, PAWC notified the Commission that PAWC would shortly begin giving the required customer notices. These notices included individualized customer notice of the Application, which was sent to each of Exeter’s existing customers and each of PAWC’s existing water customers and wastewater customers. On April 15, 2019, PAWC filed a verification stating that it had complied with all required customer notices.

23. On April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing.

24. Notice of the Application was published in the Pennsylvania Bulletin on April 27, 2019. 49 *Pa. Bull.* 2099.

25. PAWC’s Application is seeking to utilize the process set forth in 66 Pa. C.S. § 1329, to determine the fair market value of the System assets and the ratemaking rate base of those assets. PAWC St. No. 1 REV-A p. 4.

26. As required by Section 1329, PAWC and Exeter jointly retained the services of Gannett Fleming to complete the Township of Exeter Wastewater System Engineering Assessment and Original Cost. PAWC Exhibit BJG-1 Appendix A-15-a.

27. As required by Section 1329, the Application included the appraisals of PAWC's UVE and Exeter's UVE. PAWC Exhibit BJG-1 Appendix A-5.

28. PAWC retained the services of AUS to complete an appraisal of the System. PAWC St. No. 5 p. 6.

29. AUS is registered as a utility valuation expert with the PUC. PAWC St. No. 5 p. 7.

30. AUS issued a fair market valuation report dated September 1, 2018. PAWC St. No. 5 p. 6.

31. AUS's fair market value report utilized the cost approach, the income approach, and the market approach. AUS filed a verification that states the fair market report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). PAWC St. No. 5 pp. 15-6; PAWC Exhibit BJG-1 Appendix A-7.

32. AUS's fair market value report concluded that the value of the Exeter System was \$101,817,204. PAWC St. No. 5 p. 20.

33. Exeter retained the services of Gannett Fleming to complete an appraisal of the System. Exeter St. No. 2 p. 3.

34. Gannett Fleming is registered as a utility valuation expert with the PUC. Exeter St. No. 2 p. 4.

35. Gannett Fleming issued a fair market valuation of the System as of April 30, 2018. Exeter St. No. 2 p. 10.

36. Gannett Fleming's fair market value report utilized the cost approach, the income approach, and the market approach. Gannett Fleming filed a verification that states the report was prepared in compliance with USPAP. Exeter St. No. 2 pp. 8-9; PAWC Exhibit BJK-1 Appendix A-7.

37. Gannett Fleming's fair market value report concluded that the value of the Exeter System was \$104,120,000 (rounded). Exeter St. No. 2 p. 10.

38. A spreadsheet error was discovered in Gannett Fleming's fair market value report during this proceeding. Consequently, Gannett Fleming's fair market value report was revised to conclude that the value of the Exeter System was \$101,576,000. Exeter St. No. 4 p. 19.

E. PAWC's Financial Fitness

39. No party to this proceeding challenged PAWC's financial fitness to own and operate the System.

40. PAWC had total assets of approximately \$4.6 billion, and annual revenues of \$661 million, for 2017. PAWC St. No. 4 p. 4.

41. For 2017, PAWC had operating income of approximately \$346 million and net income of approximately \$161 million. PAWC St. No. 4 p. 4.

42. In addition to generating positive operating cash flows, PAWC may also obtain financing through: (i) equity investments, (ii) a \$400 million line of credit through American Water Capital Corp. ("AWCC"); and (iii) long term debt financing at favorable rates

from AWCC, the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 4 p. 4.

43. PAWC is a financially-sound business that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public. PAWC St. No. 4 p. 5.

44. Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Exeter's customers and maintained for PAWC's existing customers. PAWC St. No. 4 p. 3.

45. PAWC does not anticipate that the acquisition of the Exeter System will have a negative impact on PAWC's cash flows, credit ratings or access to capital. Therefore, the Transaction will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. No. 4 p. 3.

46. PAWC will initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 4 p. 5.

F. PAWC's Technical Fitness

47. No party to this proceeding challenged PAWC's technical fitness to own and operate the System.

48. PAWC currently employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance,

distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting and customer service. PAWC St. No. 1 REV-A p. 14; PAWC St. No. 2 p. 4.

49. As a subsidiary of American Water, PAWC has available to it additional resources of highly trained professionals who have expertise in various specialized areas. These operations and process experts have deep experience in the operation and maintenance of every possible type of wastewater treatment technology, as well as the experience available to support PAWC's operations staff and facilities. PAWC St. No. 3 p. 10.

50. PAWC is currently the water provider within Exeter Township and Amity Township in Berks County and the community of The Golden Oaks in Ruscombmanor Township, Berks County. PAWC's Glen Alsace operations office is located less than one mile from the Exeter wastewater treatment plant and houses both the local operations team and operations support staff. PAWC St. No. 2 p. 5.

51. The Exeter System initially will be operated as a stand-alone system within PAWC's Southeast Area Operations, but it will have the support of PAWC's surrounding operations as well as PAWC's operations throughout the Commonwealth and American Water's nationwide resources. PAWC St. No. 2 p. 7.

G. PAWC's Legal Fitness

52. No party to this proceeding challenged PAWC's legal fitness to own and operate the System.

53. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 REV-A p. 18.

54. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to Exeter customers. PAWC St. No. 1 REV-A p. 18.

55. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and experienced managerial and operating personnel necessary to provide safe and reliable sewer services to the residents of Exeter and surrounding areas. PAWC St. No. 1 REV-A p. 14.

H. Benefits of the Transaction and the Settlement

56. Given its size, access to capital, and strengths in planning, capital budgeting and construction management, PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements continues to be provided to Exeter's customers. PAWC St. No. 1 REV-A p. 16.

57. PAWC is subject to the jurisdiction of the Commission and must comply with the Code, the Commission's Regulations and Orders. Exeter is not regulated by the Commission and does not need to comply with the Code, the Commission's Regulations or Orders. PAWC St. No. 1-R p. 3; PAWC St. No. 2 pp. 16-17.

58. Exeter's current customers will benefit from PAWC's enhanced and proven customer service. This includes additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to PAWC's customer assistance program. PAWC St. No. 1 REV-A p. 16; PAWC St. No. 2 pp. 13-15.

59. Customers can reach PAWC via e-mail and can manage their account on-line. In addition, PAWC offers emergency support 24 hours a day, seven days a week. PAWC St. No. 2 p. 14.

60. PAWC's customers can pay bills by mail, on-line, by e-check or electronic funds transfer, in person at multiple authorized payment locations across the state, and over the phone with a debit or credit card. PAWC St. No. 2 p. 14.

61. As customers of PAWC, Exeter's existing customers will have access to PAWC's customer assistance program, "H2O Help to Others Program." For wastewater customers, this program offers grants of up to \$500 per year and a 15% discount on total wastewater charges, in addition to a water saving kit. PAWC St. No. 2 p. 15.

62. The Transaction will have no immediate rate impact on PAWC's existing customers. PAWC St. No. 1 REV-A p. 17.

63. In the long-term, the Transaction will help PAWC keep rates reasonable for all of its customers. Through its expertise in wastewater management and the leveraging of economies of scale, PAWC will – over time – be able to improve efficiencies and lower or slow the increase in the cost of operating the System. PAWC St. No. 4 p. 9-10.

64. By adding additional connections to the entire PAWC system, there are more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of increased environmental requirements, is essential to the continued success of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 REV-A p. 17.

65. PAWC can use Exeter's facilities to save costs in other portions of PAWC's system (e.g., PAWC can use the existing sludge processing drying system at the Exeter wastewater plant to reduce operating costs by \$100,000 at the Coatesville and Shady Lane facilities, and may be able to use the residual handling facilities at Exeter to avoid a \$6 million capital expense at its Coatesville operations), PAWC St. No. 3-R p. 6.

66. Exeter had eight sanitary sewer overflows, eight unpermitted discharges of raw sewage and numerous other environmental violations over the past five years. PAWC St. No. 3-R p. 5.

67. In addition, Exeter had an overflow incident at its wastewater treatment plant's influent pump station that resulted in a Notice of Violation dated October 22, 2018. PAWC St. No. 3-R p. 5.

68. PAWC has no outstanding environmental complaints relative to its more extensive wastewater operations. PAWC St. No. 3-R p. 5.

69. After closing on the Transaction, PAWC plans to implement safety, security, supervisory control and data acquisition ("SCADA"), electrical and arc flash improvements. PAWC also plans to implement disinfection system improvements and treatment plant equipment and building structures improvements. PAWC will also complete an infiltration/inflow study and will make targeted collection system main replacements based on the infiltration and inflow study. PAWC St. No. 3 p. 7.

70. PAWC's ten year capital plan for the Exeter system is currently estimated at \$30.1 million. PAWC St. No. 3 p. 7.

71. PAWC can draw upon a much broader range of engineering and operational experience, as well as deeper financial resources, than can Exeter to address any environmental compliance challenges of the System. PAWC St. No. 3 p. 9.

72. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure. PAWC has funded more than \$1 billion in capital construction over the past five years with expenditures expected to total \$275 million to \$300 million per year for the next five years. PAWC St. No. 3 p. 11.

73. The Settlement requires PAWC to conduct an inflow and infiltration study of the System. Settlement ¶ 36. PAWC's due diligence included a consideration of inflow and infiltration issues and the Exeter System was not deemed to have significant I&I issues. PAWC

St. No. 3-R, p. 2. Nevertheless, no formal inflow and infiltration study of the System has been completed since the 1960s. I&E St. No. 1 p. 13.

74. The Settlement requires PAWC to provide notice of the Settlement to each existing customer of the Exeter System. This notice includes information about the proposed Settlement and the customers' right to submit comments on the Settlement to the Commission and the ALJ. Settlement ¶ 42, Attachment A.

I. Ratemaking Rate Base

75. PAWC and Exeter proposed a ratemaking rate base of \$96,000,000, based on the agreed-to purchase price of \$96,000,000. This amount was less than the average of the two UVE appraisals, even after Gannett Fleming's appraisal was adjusted during this litigation ($\$101,817,204 + \$101,576,000 = \$101,696,602$). PAWC St. No. 4-R p. 2; PAWC St. No. 5 p. 20; Exeter St. No. 4 p. 19.

76. The OCA challenged, and proposed adjustments to, the appraisals of AUS and Gannett Fleming in this proceeding. The OCA's proposed adjustments would have reduced the average of the two UVE appraisals below the agreed-to purchase price of \$96,000,000. OCA St. No. 1, OCA St. No. 2, OCA St. No. 1S, and OCA St. No. 2S.

77. The rate base agreed-to by the Joint Petitioners in the Settlement is \$92,000,000, based on a modified purchase price of \$93,500,000. Settlement ¶ 30.

78. The rate base agreed-to by the Joint Petitioners is within the range of the Joint Petitioners' litigation positions. PAWC St. No. 4-R p. 2; OCA St. No. 1S p. 28.

J. Rate Stabilization Plan

79. The Asset Purchase Agreement between PAWC and Exeter does not contain a "rate stabilization plan" as defined by 66 Pa. C.S. § 1329(g). PAWC St. No. 4 p. 8.

K. DSIC, AFUDC, Deferred Depreciation and Transaction and Closing Costs

80. PAWC requested authority from the Commission to approve the collection of a DSIC related to the Exeter System in the future, prior to the first base rate case in which the System plant-in-service is incorporated into rate base. PAWC St. No. 4 p. 9.

81. PAWC would not begin charging a DSIC until the eligible System plant is approved by the Commission in a modified Long-Term Infrastructure Improvement Plan for wastewater. Settlement ¶ 38.

82. PAWC's modified Long-Term Infrastructure Improvement Plan for wastewater will not reprioritize other existing capital improvements that PAWC has already committed to undertake in other service areas. Settlement ¶ 38.

83. PAWC has committed to make post-acquisition improvements in the Exeter System. As such, PAWC will likely accrue allowance for funds used during construction for post-acquisition improvements. PAWC St. No. 4 p. 11.

84. PAWC also intends to defer depreciation on non-DSIC-eligible post-acquisition improvements for book and ratemaking purposes. PAWC St. No. 4 p. 11.

85. Transaction and closing costs that PAWC may seek to recover include the UVE's appraisal fee, the buyer's share of the costs related to the engineer's assessment, and the buyer's closing costs, including reasonable attorney fees. PAWC is unable to determine the exact extent of transaction and closing costs at this time. In its Application, PAWC estimated the anticipated range of transaction and closing costs as \$1,100,000 to \$1,300,000. PAWC St. No. 4 pp. 6-7; PAWC Exhibit BJK-1 Appendix A-12.

86. Any transaction and closing costs that PAWC seeks to claim are not properly reviewed, and cannot be approved, in this Section 1329 proceeding. Instead, PAWC's transaction and closing costs are properly reviewed in its next base rate case that follows the

acquisition, and they will be subject to the preponderance of evidence standard in that review. PAWC St. No 4 p. 6; *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) p. 14.

L. Rates

87. As required by Section 1329, PAWC included a *pro forma* tariff supplement in its Application. PAWC Exhibit BJK-1, Appendix A-13.

88. After PAWC filed the Application, Exeter filed its Application for a Certificate of Public Convenience *nunc pro tunc* to serve 29 customers in Lower Alsace Township. *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505 (“Exeter/Lower Alsace Application”).

89. A settlement of all issues is presently pending before the Commission in the Exeter/Lower Alsace Application. Among other things, this settlement would establish Exeter’s rates in Lower Alsace Township.

90. The Settlement in the instant Application is conditioned on the Commission’s approval of the settlement regarding the Exeter/Lower Alsace Application. Settlement ¶ 28.

91. Upon closing of the Transaction, PAWC will adopt Exeter’s current customer charge and consumption charge then in effect (including in Lower Alsace Township). The current consumption charge utilized by Exeter is a rate per thousand gallons. Under PAWC ownership, the usage rate will be converted to a usage rate per hundred gallons, thereby corresponding to how all other PAWC customers are billed. PAWC St. No. 4 p. 7.

92. After PAWC closes on the Transaction, System customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4 p. 7.

93. Exeter's customers are currently billed quarterly. As PAWC customers, all Exeter customers will be billed monthly. PAWC St. No. 4 p. 8.

M. Municipal Agreements

94. In the Application, PAWC requested that the Commission approve the Asset Purchase Agreement and the First Amendment to the Asset Purchase Agreement. In addition, the Settlement is conditioned on PAWC filing the Second Amendment to the Asset Purchase Agreement (adjusting the purchase price to \$92,000,000), and the Settlement requests that the Commission approve the Second Amendment to the Asset Purchase Agreement. Settlement ¶¶ 30 and 43(a).

95. As part of the Transaction, three agreements will be assigned to and assumed by PAWC: an Intermunicipal Agreement with Alsace Township, a Leachate Treatment Agreement with the Chester County Solid Waste Authority, and a May 8, 2003 Agreement with the Borough of St. Lawrence. PAWC Exhibit BJK-1, Appendices B-1 (REV), B-2 (REV) (Corrected) and B-3-b REV.

96. In addition, PAWC has entered into a Sewage Treatment & Conveyance Agreement with the Borough of St. Lawrence, which will be effective upon closing on the Transaction. Exhibit BJK-1 Appendix B-3 REV-1.

97. The contracts described in Findings of Fact 94-96 are reasonable and necessary in order to provide continued service in Exeter's existing service territory. PAWC St. No. 1 REV-A pp. 17-18 and 20.

IV. DISCUSSION

A. Legal Standard

Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service....

66 Pa. C.S. § 1102(a)(3). The acquisition proposed by the Joint Petition falls under Section 1102(a)(3).

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” Since PAWC is the party that filed the Application at issue in this proceeding, PAWC has the burden of proof to satisfy this particular legal standard.

According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*); see also, *Popowsky v. Pa. Pub. Util. Comm’n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of

the public in some substantial way”). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.” 66 Pa. C.S. § 1103(a).

Additionally, pursuant to Section 1103 of the Code, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Exeter. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A. 2d 762, 764 (Pa.Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa.Super. 1958). As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992); see also, 66 Pa.C.S. § 1329.

With regard to the recently enacted Section 1329 of the Public Utility Code, this section sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. 66 Pa.C.S. § 1329. Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge. Section 1329 also enables a public utility or other acquiring entity’s post-acquisition improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an “acquiring public utility” and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa.C.S. § 1329(d)(1). For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.

PAWC also seeks approval of other connected agreements pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. § 507. Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

In this case, the parties submitted a settlement of all issues with the exception of St. Lawrence's claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-20102179103 (Opinion and Order entered July 14, 2011) (*Lancaster*). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed

terms and conditions are in the public interest. *Id.*, citing, *Warner v. GTE North, Inc.*, Docket No. C00902815 (Opinion and Order entered April 1, 1996) (Warner); *Pa. Pub. Util. Comm'n. v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

B. Settlement Terms

The terms of the Settlement are set forth below, as submitted by the Parties in the Joint Petition for Settlement on July 11, 2019. The original paragraph numbering and headings are retained:

The Joint Petitioners agree as follows:

A. Approval of Application

28. The Application shall, subject to the other terms and conditions contained in the Settlement, be approved as being in the public interest and the Commission shall issue such Certificates of Public Convenience as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of Exeter's assets, properties and rights related to its wastewater collection and treatment facilities to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish or supply wastewater service to the public in the areas served by Exeter as indicated in the Application. The Commission's approval of the Settlement is conditioned on the Commission's approval of the settlement regarding the Exeter/Lower Alsace Application.²

² Under the proposed Exeter/Lower Alsace Settlement, Exeter's service in Lower Alsace will be abandoned upon closing of the Transaction.

B. Tariff

29. The *pro forma* tariff supplement attached to the Application as Appendix A-13 (REV), including all rates, rules and regulations regarding conditions of PAWC's wastewater service as revised therein, shall be permitted to become effective immediately upon closing of the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

30. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$92,000,000 for ratemaking rate base purposes based on a modified purchase price of \$93,500,000 for the acquired assets. Commission approval of the Transaction shall be conditioned upon PAWC's filing of a Second Amendment to the Asset Purchase Agreement that adjusts the purchase price to \$93,500,000.

31. The Parties agree that any adjustment to the fair market value rate base reflects a compromise of the various positions of the Parties. The Parties reserve the right to present adjustments and oppose adjustments to Utility Valuation Expert ("UVE") appraisals in future cases. The Parties further agree however, for the purposes of this proceeding, that the following adjustments are explicitly accepted by the Parties:

(a) Cost Approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land.

(b) Market Approach:

(i) If "comparable acquisitions" are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;

(ii) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,

(iii) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality's financial statements will not be used.

D. Rates

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

33. In the first base rate case that includes Exeter wastewater system assets, PAWC will also provide a separate cost of service study for the Exeter System.

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

35. PAWC agrees that it will propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates; provided, however, that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that PAWC may agree to rates other than those proposed for Exeter customers in the context of a settlement of the base rate case.

E. Inflow and Infiltration Study

36. Within six months after closing of the transaction, PAWC will start an Infiltration and Inflow ("I&I") study for the Exeter System and provide the results of said study, upon completion, to all Parties to this proceeding. All Parties reserve the right to challenge the recovery of costs related to I&I, including the cost of the study, in subsequent rate proceedings.

F. Low Income Program Outreach

37. Within the first 90 days of PAWC's ownership of the Exeter System, PAWC shall include a bill insert to the Exeter-area customers regarding its low income programs and shall include such information in a welcome letter to Exeter-area customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs' eligibility requirements for participation in the programs, and PAWC's contact information.

G. Distribution System Improvement Charge

38. If PAWC proposes to modify its Long-Term Infrastructure Improvement Plan ("LTIP") to include the Exeter System, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIP, PAWC shall be permitted to collect a distribution system improvement charge ("DSIC") related to the Exeter System prior to the first base rate case in which the Exeter assets are incorporated into rate base.

H. Accrual of Allowance for Funds Used During Construction

39. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to accrue Allowance for Funds Used During Construction ("AFUDC") for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claim for AFUDC related to post-acquisition improvements not recovered through the DSIC will be addressed in PAWC's first base rate case which includes Exeter wastewater system assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

I. Deferral of Depreciation for Post-Acquisition Improvements

40. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to defer depreciation related to post acquisition improvements not

recovered through the DSIC for book and ratemaking purposes. Any claim for deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Exeter wastewater system assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request.

J. Transaction and Closing Costs

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

K. Customer Notice

42. The Joint Petitioners agree that PAWC shall mail the notice attached hereto as Attachment A to existing customers of Exeter notifying them of the Settlement concurrently with the filing of this Joint Petition. The Joint Petitioners agree that such notice of settlement provides existing customers of Exeter with adequate notice and opportunity to be heard on this proposed Settlement.

L. Approval of Section 507 Agreements

43. The Joint Petitioners agree that the Commission shall issue a Certificate of Filing or approvals, pursuant to 66 Pa. C.S. § 507, for the following agreements between PAWC and a municipal corporation:³

(a) Asset Purchase Agreement between Township of Exeter (as Seller) and Pennsylvania-American Water Company (as Buyer), dated as of May 29, 2018 (attached to Application as Appendix A-24-a), the First Amendment to Asset Purchase

³ The OCA does not join in this paragraph but does not oppose PAWC's request.

Agreement (attached to the Application as Appendix A-24-a REV), and the Second Amendment to the Asset Purchase Agreement (reflecting revised purchase price per settlement);

(b) Intermunicipal Agreement, dated as of December 11, 1996, between Exeter Township, Berks County, Authority and Exeter Township, on the one hand, and the Township of Alsace, on the other hand, with the First and Second Amendments thereto (attached to Application in Appendix B-1 (REV)⁴);

(c) Leachate Treatment Agreement between Exeter Township and the Chester County Solid Waste Authority, dated December 12, 2016 (attached to Application as Appendix B-2 (REV) (Corrected));

(d) Sewage Treatment and Conveyance Agreement dated June 28, 2019, between Pennsylvania-American Water Company and the Borough of Saint Lawrence (attached to Application in Appendix B-3 REV-1);

(e) Agreement dated as of May 8, 2003 between Exeter Township, Berks County, Authority and the Township of Exeter, on the one hand, and St. Lawrence Borough Authority and the Borough of St. Lawrence, Berks County, Pennsylvania, on the other hand (attached to Application in Appendix B-3-b REV).

M. Other Provisions

44. PAWC Statement No. 3-R, page 4 line 22 through page 5 line 7 and Exhibit DRK-3-R shall not be admitted into the evidentiary record.

N. Other Necessary Approvals

45. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner and consistent with the settlement regarding the Exeter/Lower Alsace Application.

⁴ Exhibit A to the Agreement of 1996 has not been located. The Parties agree that the Commission should approve the agreement in the absence of Exhibit A because the referenced facilities have been installed and are part of the existing Exeter system. Exhibit B has not been located. The Parties agree that the Commission should approve the agreement in the absence of Exhibit B because the rates set forth on that exhibit are no longer in effect.

O. Standard Settlement Conditions

46. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

47. The Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding, other than St. Lawrence's claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

49. Each Joint Petitioner has prepared a Statement in Support of Settlement (attached as Attachments B-E) setting forth the bases upon which the Joint Petitioner believes the Settlement to be fair, just and reasonable and, therefore, in the public interest.

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

C. Public Interest Analysis

1. PAWC's Position

a) Financial, Technical and Legal Fitness

In its statement in support of the settlement, PAWC notes that it must demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness.⁵ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its technical, financial, and legal fitness. PAWC St. Sup. p. 4.⁶

With respect to technical fitness, PAWC noted in its statement in support that it is the Commonwealth's largest water and wastewater provider. (PAWC St. Sup. pp. 4-5). It furnishes service to more than 400 communities in 36 counties, serving a combined population in excess of 2,400,000. PAWC St. No. 1 REV-A p. 13. PAWC employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations. *Id.* In addition, as a subsidiary of American Water Works Company, Inc. ("American Water"), PAWC has available to it additional highly-trained professionals with expertise in specialized areas. These operations and process experts have deep experience in the operation and maintenance of different types of wastewater technologies. PAWC St. No. 3 pp. 9-11. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. *Id.* p. 11.

⁵ Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager*, 49 Pa. PUC 138 (1975). No party has contested the continued need for wastewater collection and treatment service in Exeter.

⁶ This cite is to PAWC's Statement in Support of Settlement; I will use the same citation format for the other Parties – "[Party Name] St. Sup. p. ___]"

With respect to legal fitness, PAWC noted in its statement in support that the settlement is in the public interest because the company has a record of environmental compliance, a commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable sewer service to the existing customers of Exeter. PAWC has a good compliance history with the Commission and there are currently no legal proceedings that would suggest that PAWC is not legally fit to provide service in Exeter. PAWC St. No. 1 REV-A p. 18; PAWC St. No. 3 pp. 9-11.

With respect to financial fitness, PAWC had total assets of approximately \$4.6 billion in 2017. In addition, it had a net income of approximately \$161 million for the 12 months ending December 31, 2017. PAWC St. No. 4 p. 4. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and/or equity investments. *Id.*

b) Affirmative Public Benefits

PAWC notes in its statement in support that the settlement is in the public interest because it demonstrates that the Transaction and PAWC's ownership/operation of the Exeter System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

PAWC argued in testimony that the Transaction benefits members of the public-at-large in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a); PAWC St. No. 1

REV-A p. 16. In addition, the Transaction benefits members of the public-at-large by promoting the public policy goals embodied in Section 1329, PAWC St. No. 1 REV-A p. 17.

PAWC further argued in testimony that the Transaction also benefits the public-at-large due to its environmental benefits. PAWC introduced evidence of several environmental violations at the System in recent years, one of which resulted in a Notice of Violation from the Pennsylvania Department of Environmental Protection (“DEP”). PAWC St. No. 3-R p. 5.

PAWC, in contrast, has a good record of compliance with environmental laws and regulations.

Id. Accordingly, PAWC states that it is better able to make the necessary improvements to the System to protect Pennsylvania’s pure water and the natural, scenic, historic and esthetic values of the environment, as mandated by the Pennsylvania Constitution. (PAWC St. Sup. p. 6).

PAWC notes that it has a better credit rating than Exeter and has access to equity markets that are unavailable to Exeter. PAWC St. No. 4 pp. 4-5. PAWC is also in a better technical position than Exeter to make the necessary improvements and operate the System going forward due to its greater expertise in wastewater operations. PAWC St. No. 3 pp. 8-9; PAWC St. No. 3-R pp. 4-5.

PAWC also states in its statement in support that the settlement is in the public interest because it contains additional benefits for the public-at-large because it is part of a package that resolves several pieces of related litigation, including *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505 and a related complaint proceeding filed by I&E against Exeter (*Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Exeter Township*, Docket No. C-2019-3007920). PAWC notes that by resolving all three pieces of litigation, the instant Settlement and the Exeter/Lower Alsace Settlement are in the public interest because they conserve the resources of the Parties and the Commission and ensure a consistent resolution of related proceedings. PAWC St. Sup. pp. 7-8.

PAWC further states that the Transaction benefits Exeter Township. PAWC notes that the Transaction will provide the following benefits to Exeter (PAWC St. Sup. pp. 8-9):

- Exeter will receive the purchase price of \$93,500,000, which it will use for public purposes such as: fully funding all Township pension plans, defeasing all sewer debt, funding storm sewer improvements and an equipment replacement program; and providing matching funds for State and Federal grants, Exeter St. No. 1 p. 2;
- Exeter will no longer be responsible for complying with increasingly stringent environmental regulations concerning wastewater, *id.*; and,
- Exeter will be free to focus on core functions of local government, such as police, fire, highways, code enforcement and parks and recreation, *id.* p. 5.

PAWC also states that the Transaction has specific benefits for Exeter's existing customers, including but not limited to the following (PAWC St. Sup. p. 9):

- The System will become a Commission-regulated utility, and its customers will gain the protection of the Code, the Commission, I&E, OCA, and the Office of Small Business Advocate, PAWC St. No. 2 pp. 16-17;
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance program (H2O Help to Others) and customer dispute resolution process, PAWC St. No. 2 pp. 13-15;
- PAWC plans to implement improvements to the wastewater system, including improvements to address existing environmental issues, PAWC St. No. 3-R pp. 4-5; and
- Exeter's customers will become part of a system with a larger customer base, adding more customers to share future infrastructure investment costs, PAWC St. No. 1-REV-A p. 17.

PAWC asserts that the Settlement contains additional public benefits for Exeter's existing customers, including: requiring PAWC to provide information to Exeter's customers regarding PAWC's low-income programs within 90 days of PAWC's ownership of the System, and requiring PAWC to conduct an inflow and infiltration study of the System. PAWC St. Sup. p. 9. PAWC also asserts that the Settlement includes the following specific benefits for PAWC's existing wastewater customers (*Id.*):

- In the long term, the Transaction will benefit PAWC's existing wastewater customers because it will add new customers to PAWC's wastewater customer

base, who can share the cost of operating the entire PAWC wastewater system, PAWC St. No. 1 REV-A p. 17;

- In the short term, the Transaction will have no immediate impact on the rates paid by PAWC's existing customers, *id.*; and
- PAWC can use Exeter's facilities to save costs in other portions of PAWC's system (e.g., PAWC can use the existing sludge processing drying system at the Exeter wastewater plant to reduce operating costs by \$100,000 at the Coatesville and Shady Lane facilities, and may be able to use the residual handling facilities at Exeter to avoid a \$6 million capital expense at its Coatesville operations), PAWC St. No. 3-R p. 6.

c) Ratemaking Issues

PAWC contends that the Settlement is in the public interest because it provides further benefits to PAWC's existing water and wastewater customers. The Settlement requires PAWC, in its next base rate case, to move Exeter's customers toward their cost of service (Settlement ¶ 35), limiting any potential subsidization of Exeter's customers by PAWC's existing water and wastewater customers. PAWC St. Sup. p. 10. The Settlement nevertheless contains certain limitations on the proposed rate increase to Exeter customers in order to ensure gradualism; namely, the Settlement limits the proposed rate increase to no more than 1.8 times the Exeter customers' initial rate or PAWC's proposed Rate Zone 1 system-average rates, whichever is lower. *Id.* The Settlement also allows any Joint Petitioner to assert any position or raise any issue in a future PAWC base rate proceeding. *Id.* This provision allows PAWC, in the context of its next base rate case, to propose the use of Act 11 of 2012 to spread a portion of the Exeter wastewater revenue requirement to PAWC's water revenue requirement. *Id.* Further, the Settlement contains no provision purporting to restrict the Commission's ultimate ratemaking authority to set "just and reasonable" rates. *Id.*

PAWC notes that it will submit two cost of service studies in its next base rate case: (a) a cost of service study that removes all costs and revenues associated with the operation of the Exeter System; and (b) a cost of service study for the Exeter System. Settlement ¶¶ 32-33; PAWC St. Sup. p. 11. Under the Settlement, PAWC's obligation to prepare cost of service

studies extends only to its next base rate case. In this way, unnecessary cost of service studies can be avoided in subsequent rate cases. *Id.*

PAWC and Exeter agreed to use the procedure set forth in Section 1329 for the Transaction. PAWC St. Sup. p. 11. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. *Id.* In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-approved utility valuation expert (“UVE”). The ratemaking rate base of the selling utility is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs’ appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility’s next base rate case. *Id.*

PAWC notes in its statement in support that the settlement is in the public interest because the Joint Petitioners compromised on certain adjustments in the UVEs’ appraisals. PAWC St. Sup. p. 11. The Joint Petitioners also agreed that \$92,000,000 (rather than the \$96,000,000 original purchase price) will go into PAWC’s rate base in its next rate case due to the acquisition of the System. *Id.* PAWC states that the agreed-upon ratemaking rate base of \$92,000,000 is well within the range of litigation positions of the Joint Petitioners and, accordingly, is supported by substantial record evidence.⁷ *Id.* at p. 13.

PAWC notes that in reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *New Garden*. PAWC St. Sup. p. 13. PAWC further notes that approving the Settlement is in the public interest because the Settlement furthers the legislative intent behind Section 1329. First, the Settlement allows a municipality *who wishes to do so* to monetize an asset for fair market value. *Id.* at p. 14.

⁷ PAWC and Exeter introduced evidence supporting a ratemaking rate base of \$96,000,000, *i.e.*, the lower of the purchase price (\$96,000,000) and the average of the two UVE appraisals (\$101,817,204 + \$101,576,000 = \$101,696,602). PAWC St. No. 5 p. 26; Exeter St. No. 4 p. 19. OCA introduced evidence supporting a ratemaking rate base of \$74,838,964, *i.e.*, the lower of the purchase price of \$96,000,000 and the average of the two UVE appraisals as adjusted by the OCA witnesses (\$74,838,964). OCA St. No. 1S p. 28.

Second, by establishing a rate base for the System that is greater than what would have been allowed using traditional ratemaking principles, PAWC is willing to enter into the Transaction. *Id.*

The final ratemaking issues concern various costs and/or credits relating to the Transaction. These include Distribution System Improvement Charges, Accrual of Allowance of Funds Used During Construction, Deferred Depreciation, and Transaction and Closing Costs. PAWC St. Sup. pp. 15-17. PAWC notes that none of the Joint Petitioners have objected to the Settlement terms regarding these particular issues, and therefore requests a Commission finding that the Settlement terms regarding these issues is in the public interest. *Id.*

2. Exeter's Position

Exeter notes in its statement in support that the settlement is in the public interest because the Transaction allows Exeter to maintain real estate taxes at current levels for the next decade once the sale of the System is finalized. Exeter St. Sup. pp. 3-4. Exeter also notes that the Transaction allows for eliminating the unfunded liability in Exeter's pension plans, and Other Post Employment Benefits (OPEB) plan, as well as funding storm sewer improvements and equipment replacement expenses, which will have a significant positive impact on Exeter's General Fund. *Id.*

Exeter also states that in addition, when realized, the institution of a homestead exemption for Exeter residents in the amount of \$50,000 on real estate taxes would become effective for the 2020 fiscal year. *Id.* An analysis of the impact of the homestead exemption for Exeter residents indicates that 11.9 percent of Exeter's households would pay no Exeter real estate taxes, and that this would have a significant positive impact on the lowest socioeconomic strata in Exeter. *Id.*

Exeter has grant applications pending with various governmental agencies for grants for infrastructure improvements. *Id.* The Grant applications are in excess of \$5,000,000 and will require a local match in excess of \$1,000,000. *Id.* The anticipated proceeds from the

sale have enabled Exeter to submit these applications. *Id.* The infrastructure improvements that are the subject of the grant applications support Exeter's economic development strategy, as well as provide improvements to Exeter's park systems and stormwater management system. *Id.*

Finally, Exeter notes in its statement in support that the settlement is in the public interest because PAWC's acquisition of the System fosters the Commission's goal of regionalizing wastewater systems, thereby providing greater environmental and economic benefits to customers. *Id.* Specifically, PAWC's acquisition of the System promotes continued regionalization of PAWC's operations, which, in turn, permits PAWC to pursue economies of scale and spread costs over a larger customer base for the benefit of all of its ratepayers. *Id.* Exeter notes that PAWC has an exemplary record of environmental compliance, which will improve the operation of the System and deliver benefits to all residents of the Commonwealth. *Id.*

3. I&E's Position

I&E notes in its statement in support that, in total, through this acquisition, PAWC is seeking to provide service to Exeter's approximately 9,015 customers.⁸ I&E also notes that the record supports the findings that PAWC is technically, legally, and financially fit to acquire Exeter Township's wastewater services. I&E St. Sup. p. 7.

I&E states that PAWC's Application will provide affirmative public benefits. At the outset of this case, I&E recommended that PAWC's Application be approved only upon the condition that it be required to undertake a cost of service study.⁹ PAWC has agreed to the cost of service study recommended by I&E, which I&E avers will provide an important tool for the parties and the Commission in PAWC's next base rate case, and which will also provide an important protection to PAWC's ratepayers in the future. I&E St. Sup. p. 7. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that

⁸ PAWC Application, Appendix A-14, St. No. 1, p. 14.

⁹ I&E St. No. 1, p. 28.

PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval. *Id.*

I&E added that a further public benefit is that pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff supplement, which is attached to the Application as Appendix A-13 (REV), shall be permitted to become effective immediately upon closing of the transaction. I&E St. Sup. p. 8. The Joint Petitioners support the *pro forma* tariff supplement, under which Exeter's current rates would be initially adopted, and note that the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of PAWC's wastewater service, and this full and accurate disclosure of rates is in the public interest. *Id.*

At the outset of this case, PAWC requested that the ratemaking rate base value of Exeter's assets be established at \$96 million.¹⁰ The \$96 million figure represented the negotiated purchase price between PAWC and Exeter.¹¹ As part of the Settlement, the Joint Petitioners agreed that PAWC will be permitted to use \$92 million for ratemaking rate base purposes for the acquired assets. I&E St. Sup. p. 8. This number reflects a compromise between the various positions of the Joint Petitioners and is in the public interest. *Id.*

Pursuant to the Settlement, at the time of its next base rate case, PAWC has agreed to submit a cost of service study that removes all costs and revenues associated with the operation of the Exeter System. I&E St. Sup. p. 9. PAWC also agrees to provide a separate cost of service study for the Exeter System at the time of the filing of PAWC's next base rate case, and I&E fully supports this term which is consistent with its recommendation in this proceeding. *Id.* I&E avers that PAWC's commitment to providing the requested cost of service study is in the public interest, as the cost of service study will protect PAWC, its customers, the parties to this proceeding and the Commission. *Id.* Specifically, the results of the cost of service study PAWC committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. *Id.* The cost of service study will benefit PAWC's ratepayers as well, because if PAWC's Application is approved, PAWC's existing customers

¹⁰ PAWC Application, Appendix A-14, St. No. 1, p. 11.

¹¹ *Id.*

will bear the rate impact. *Id.* In this case, the cost of service study for the Exeter System would help the Commission determine Exeter's revenue requirement to provide service to its different customer classes, and extend rate making options that may not exist without such a study. *Id.* Absent the cost of service study, the Commission's ability to evaluate any cost spreading from the perspective of cost causation would be compromised, but pursuant to the Settlement, the study will be available to preserve future ratemaking options. *Id.*

I&E further noted in its statement in support that the Settlement also provides that PAWC will propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates and provided that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. *Id.* at pp. 9-10. This term is in the public interest because a goal of ratemaking is to charge customers rates equal to the cost to serve those customers. *Id.* at p. 10. Here, PAWC is proposing to move Exeter customers' rates to Exeter's cost of service but will not increase Exeter's rates more than 1.8 times the current rates which insulates those customers from rate shock. *Id.*

The Settlement provides that PAWC will start an Infiltration and Inflow ("I&I") study for the Exeter System within six months after closing of the transaction, and that PAWC will provide the results of the study, upon completion, to all Parties to the proceeding. *Id.* All Parties reserve their right to challenge the recovery of costs related to I&I, including the cost of the study, in subsequent rate proceedings. *Id.* Since I&I levels are a strong indicator of a system's condition, the concerns that I&E has identified regarding I&I has been addressed through the instant Settlement as PAWC has agreed to conduct an I&I study and all parties preserved their ability to challenge the costs related to I&I and the study itself therefore, this term is in the public interest. *Id.*

Pursuant to the Settlement, PAWC has agreed that within the first 90 days of its ownership of the Exeter System, it will notify Exeter-area customers of its low-income programs and will include a description of the available low-income programs, the eligibility requirements for participation in the programs, and PAWC's contact information. *Id.* at pp. 10-11. I&E

supports this term; ensuring that low-income customers are aware of available opportunities for financial assistance is in the public interest because it will better facilitate these customers' access to wastewater service, and increasing access to wastewater service is consistent with the Code's policy to ensure that service remains available to all customers on reasonable terms and conditions.¹² *Id.* at p. 11.

I&E concluded its Statement in Support by discussing various ratemaking issues regarding various costs and/or credits relating to the Transaction. These include Distribution System Improvement Charges, Accrual of Allowance of Funds Used During Construction, Deferred Depreciation, and Transaction and Closing Costs. I&E does not oppose the Settlement terms regarding these particular issues, but I&E and the other Joint Petitioners retain their right to challenge any such future costs claimed by PAWC in future rate-related proceedings before the Commission. *Id.* at pp. 11-14. I&E opines that the Settlement terms regarding these issues is in the public interest. *Id.*

4. OCA's Position

OCA notes in its statement in support of the settlement that the settlement is in the public interest because, based on appraisals presented by PAWC and Exeter, PAWC sought a ratemaking rate base of \$96,000,000, which was less than the average of the two appraisals, which was \$102,968,602. OCA St. Sup. p. 4. OCA's recommended adjustments to the appraisals resulted in an average appraisal amount of \$74,838,964. OCA St. 1S at 28. The parties have agreed in the Settlement that the ratemaking rate base should be \$92,000,000. Settlement ¶ 30. This number represents a compromise of the parties' positions and, in the OCA's judgement, represents a result that is within the range of likely outcomes if the case were fully litigated. OCA St. Sup. p. 4. This provides some mitigation of the rate impact of the transaction for existing PAWC customers and the acquired Exeter Township customers by reducing overall costs. *Id.*

¹² 66 Pa. C.S. § 1402(3).

OCA also notes in its statement in support that its witnesses identified a number of adjustments in the Utility Valuation Expert appraisals as well as the use of assumptions and adjustments that were unreasonable or inconsistent with financial and utility ratemaking practices and the OCA's witnesses recommended corrective adjustments. OCA St. Sup. pp. 4-5. The proposed Settlement reflects the Parties' explicit acceptance of certain OCA adjustments, including:

- (a) Cost approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land;
- (b) Market approach: If "comparable acquisitions" are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;
- (c) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,
- (d) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality's financial statements will not be used.

OCA St. Sup. p. 5. These adjustments reflect accepted financial and ratemaking principles and help to improve the reliability of data used in appraisals and the integrity of the result. *Id.*

In this proceeding, OCA identified the need for a separate cost of service study for the Exeter Township system in the first base rate case in which PAWC includes the Township's assets in rate base. OCA St. 1 at 25. A separate cost of service study will provide information to establish rates that reflect the costs for that system. *Id.* The Settlement addresses this issue, since PAWC will provide a separate cost of service study for the Exeter Township system and will submit a wastewater cost of service study that removes all costs and revenues associated with the Exeter system. OCA St. Sup. p. 5. PAWC will propose to move the Exeter system to its cost of service (based on the separate cost of service study), unless such increase is more than 1.8 times current rates; provided that such rates do not exceed the proposed Zone 1 wastewater rate. *Id.* These settlement terms will provide a means for the parties to use the cost

of service data to set rates for the Exeter customers that differ, as appropriate, from rates established for other wastewater customers; this will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the Exeter service area. *Id.* at p. 6.

The OCA also noted in its statement in support that the settlement is in the public interest because, during the billing cycle beginning March 11, 2019, PAWC provided one notice to its existing customers and the Exeter customers, which stated that the acquisition of the Exeter system could increase the monthly water bill for a residential customer by \$0.24 and the monthly wastewater bill for a residential customer by \$2.79. OCA St. Sup. p. 7. The OCA raised concerns whether the notice provided by PAWC to the Exeter customers was adequate and accurate because:

(1) The calculated rate impact was not based on an Exeter customer bill; it was based on current rates of a current PAWC Zone 1 customer. Exeter's current wastewater rates are \$44.33 per month for 3,630 gallons, as compared to the \$64.93 that PAWC customers currently pay for the same usage. OCA St. 1 at 12.

(2) The calculated rate impact did not reflect PAWC's stated intention to move Exeter's rates toward single-tariff pricing. OCA St. 1 at 12-13.

(3) The notice did not inform customers they had the opportunity to request a public input hearing on the proposed acquisition, pursuant to 52 Pa. Code § 53.45. OCA St. 1 at 14. The Settlement addresses these issues.

OCA St. Sup. p. 7. OCA notes that the Settlement provides that PAWC will mail a new notice to current Exeter customers on July 11, 2019, which informs them of the proposed Settlement and the amount by which their bills could increase if, in PAWC's next base rate case, their rates are moved toward cost of service. *Id.* at pp. 7-8 (referencing Settlement, Attachment A). The notice shows that the bill of an average residential customer paying \$44.33 per month could increase by \$26.73, to \$71.06, which provides more accurate information regarding the level of rate increase that may result from PAWC's acquisition of the Exeter system. *Id.* at p. 8.

The OCA added that PAWC has agreed to provide information about PAWC's low-income programs in a bill insert and in a welcome letter to the Exeter system customers, within 90 days of the closing of the transaction. *Id.* at p. 8. The information will describe the available programs, eligibility requirements and contact information for PAWC. *Id.* The OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Exeter system customers. *Id.*

OCA also discussed in its statement in support of the settlement that various ratemaking issues regarding various costs and/or credits relating to the Transaction. These include Distribution System Improvement Charges, Accrual of Allowance of Funds Used During Construction, Deferred Depreciation, and Transaction and Closing Costs. OCA does not oppose the Settlement terms regarding these particular issues, but OCA and the other Joint Petitioners retain their right to challenge any such future costs claimed by PAWC in future rate-related proceedings before the Commission. OCA St. Sup. pp. 4-9.

5. Public Opposition to the Proposed Settlement

Many current Exeter customers have filed written opposition to the proposed Settlement. As of the date of this Recommended Decision, 57 current Exeter customers have filed their written opposition with the Commission.

The main area of opposition is the potentially large rate increase that current Exeter customers may see in their future bills. As discussed above in the Parties' Statements in Support of Settlement, current Exeter customers could see a rate increase as high as 80% over their current rates. Those opposed to such an increase correctly note that it would be a very large increase and that it could occur soon after the sale of the Exeter system to PAWC.

Another issue raised in the public letters in opposition to the Settlement was the timing of notification from PAWC. A number of people have expressed that they were only provided approximately 11 days in which to file their letters opposing the Settlement, and that this timeframe was too short to allow for meaningful public participation in this matter.

The other recurring issue raised is the fact that Exeter customers are paying PAWC to purchase Exeter's water system, and many objecting residents think that this arrangement is unfair. The residents believe that PAWC should be required to use its own funds to purchase Exeter's water system, following which PAWC could earn a rate of return on its newly purchased water system.

6. Disposition

Having reviewed the various statements made in support of the Settlement, statements made in opposition to the Settlement, and all other relevant filings and record evidence in this proceeding, I conclude that the Settlement is in the public interest and should be approved by the Commission without modification.

Initially, I note that no party to this proceeding has challenged PAWC's financial, legal or technical fitness to own and operate Exeter's wastewater system. FOFs 39, 47, 52. I also note that PAWC has introduced substantial record evidence to demonstrate that it possesses the necessary fitness standards to own and operate Exeter's wastewater system.

Regarding financial fitness, PAWC had total assets of approximately \$4.6 billion, and annual revenues of \$661 million, for 2017. PAWC St. No. 4 p. 4. For 2017, PAWC had an operating income of approximately \$346 million and net income of approximately \$161 million. PAWC St. No. 4 p. 4. PAWC is a financially-sound business that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public. PAWC St. No. 4 p. 5. Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Exeter's customers and maintained for PAWC's existing customers. PAWC St. No. 4 p. 3. PAWC does not anticipate that the acquisition of the Exeter System will have a negative impact on PAWC's cash flows, credit ratings or access to capital. Therefore, the Transaction

will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. No. 4 p. 3.

Regarding technical fitness, the settlement is in the public interest because PAWC currently employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting and customer service. PAWC St. No. 1 REV-A p. 14; PAWC St. No. 2 p. 4. As a subsidiary of American Water, PAWC has available to it additional resources of highly trained professionals who have expertise in various specialized areas; these operations and process experts have deep experience in the operation and maintenance of every possible type of wastewater treatment technology, as well as the experience available to support PAWC's operations staff and facilities. PAWC St. No. 3 p. 10. PAWC is currently the water provider within Exeter Township and Amity Township in Berks County and the community of The Golden Oaks in Ruscombmanor Township, Berks County. PAWC's Glen Alsace operations office is located less than one mile from the Exeter wastewater treatment plant and houses both the local operations team and operations support staff. PAWC St. No. 2 p. 5. The Exeter System initially will be operated as a stand-alone system within PAWC's Southeast Area Operations, but it will have the support of PAWC's surrounding operations as well as PAWC's operations throughout the Commonwealth and American Water's nationwide resources. PAWC St. No. 2 p. 7.

Regarding legal fitness, PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 REV-A p. 18. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to Exeter customers. PAWC St. No. 1 REV-A p. 18. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and experienced managerial and operating personnel necessary to provide safe and reliable sewer services to the residents of Exeter and surrounding areas. PAWC St. No. 1 REV-A p. 14.

PAWC and the other settling parties have also introduced substantial record evidence to demonstrate that the transactions proposed in the Settlement will produce affirmative public benefits. The main benefit noted is that PAWC will ensure that Exeter customers receive high quality wastewater service meeting all applicable state and federal regulatory requirements. PAWC St. No. 1 REV-A p. 16.

As a regulated public utility, PAWC is subject to the jurisdiction of the Commission and must comply with the Code, the Commission's Regulations and Orders; Exeter, by contrast, is not regulated by the Commission and does not need to comply with the Code, the Commission's Regulations or Orders. PAWC St. No. 1-R p. 3; PAWC St. No. 2 pp. 16-17. Exeter's current customers will benefit from PAWC's enhanced and proven customer service, including additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to PAWC's customer assistance program. PAWC St. No. 1 REV-A p. 16; PAWC St. No. 2 pp. 13-15. In addition, PAWC offers emergency support 24 hours a day, seven days a week. PAWC St. No. 2 p. 14. Customers will also have numerous payment options, including payment of bills by mail, online, by e-check or electronic funds transfer, in person at multiple authorized payment locations across the state, and over the phone with a debit or credit card. PAWC St. No. 2 p. 14. Customers will also benefit by having access to PAWC's customer assistance program, "H2O Help to Others Program." For wastewater customers, this program offers grants of up to \$500 per year and a 15% discount on total wastewater charges, in addition to a water saving kit. PAWC St. No. 2 p. 15.

The settlement is also in the public interest because another affirmative public benefit of the transaction is rate stabilization and the establishment of reasonable customer rates. Although the parties and members of the public recognize that the proposed transaction may in the near future result in an initial substantial increase of up to 80%, the transaction will have no immediate rate impact on PAWC's existing customers. PAWC St. No. 1 REV-A p. 17. Moreover, in the long-term, the Transaction will help PAWC keep rates reasonable for all of its customers. Through its expertise in wastewater management and the leveraging of economies of scale, PAWC will – over time – be able to improve efficiencies and lower or slow the increase in

the cost of operating the System. PAWC St. No. 4 p. 9-10. By adding additional connections to the entire PAWC system, there are more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of increased environmental requirements, is essential to the continued success of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 REV-A p. 17.

In terms of ratemaking, the settlement is in the public interest because PAWC requested that the ratemaking rate base value of Exeter's assets be established at \$96 million.¹³ The \$96 million figure represented the negotiated purchase price between PAWC and Exeter.¹⁴ As part of the Settlement, the Joint Petitioners agreed that PAWC will be permitted to use \$92 million for ratemaking rate base purposes for the acquired assets. I&E St. Sup. p. 8. This number reflects a compromise between the various positions of the Joint Petitioners and is in the public interest. *Id.*

In addition, the settlement is in the public interest because, at the time of its next base rate case, PAWC has agreed to submit a cost of service study that removes all costs and revenues associated with the operation of the Exeter System. I&E St. Sup. p. 9. PAWC also agrees to provide a separate cost of service study for the Exeter System at the time of the filing of PAWC's next base rate case, and I&E fully supports this term which is consistent with its recommendation in this proceeding. *Id.* I&E avers that PAWC's commitment to providing the requested cost of service study is in the public interest, as the cost of service study will protect PAWC, its customers, the parties to this proceeding and the Commission. *Id.* Specifically, the results of the cost of service study PAWC committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. *Id.* The cost of service study will benefit PAWC's ratepayers as well, because if PAWC's Application is approved, PAWC's existing customers will bear the rate impact. *Id.* In this case, the cost of service study for the Exeter System would help the Commission determine Exeter's revenue requirement to provide

¹³ PAWC Application, Appendix A-14, St. No. 1, p. 11.

¹⁴ *Id.*

service to its different customer classes, and extend rate making options that may not exist without such a study. *Id.* Absent the cost of service study, the Commission's ability to evaluate any cost spreading from the perspective of cost causation would be compromised, but pursuant to the Settlement, the study will be available to preserve future ratemaking options. *Id.*

The Settlement also provides that PAWC will propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates and provided that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. *Id.* at pp. 9-10. This term is in the public interest because a goal of ratemaking is to charge customers rates equal to the cost to serve those customers. *Id.* at p. 10. Here, PAWC is proposing to move Exeter customers' rates to Exeter's cost of service but will not increase Exeter's rates more than 1.8 times the current rates which insulates those customers from rate shock. *Id.*

I also note that, based on appraisals presented by PAWC and Exeter, PAWC sought a ratemaking rate base of \$96,000,000, which was less than the average of the two appraisals, which was \$102,968,602. *See, e.g.* OCA St. Sup. p. 4. The parties have agreed in the Settlement that the ratemaking rate base should be \$92,000,000. Settlement ¶ 30. This number represents a compromise of the parties' positions and represents a result that is within the range of likely outcomes if the case were fully litigated. This provides some mitigation of the rate impact of the transaction for existing PAWC customers and the acquired Exeter Township customers by reducing overall costs.

Given the foregoing, I conclude that the Settlement should be approved by the Commission without modification, because the Settlement is in the public interest. The Settlement will ensure that Exeter residents will receive high quality wastewater service from PAWC, a certificated public utility with the necessary financial, technical and legal resources to provide that service into the foreseeable future. Bringing Exeter's existing customers into PAWC's customer base will also ensure that Exeter residents will have access to the Commission's procedures for investigating and enforcing any complaints that the residents may

have regarding Exeter's wastewater service. Additionally, although the parties in this proceeding acknowledge that PAWC may apply for a substantial rate increase in the near future, any such rate increase application will be subject to the Commission's jurisdiction. PAWC would be required to apply for any increase, following which other parties in interest, including existing customers, may intervene in any such proceeding. Any requested increase would ultimately be subject to approval by the Commission, and the Commission would have the authority to approve, deny or modify any such requested increase.

In reaching the conclusion that the Settlement should be approved by the Commission without modification, the numerous complaints filed by existing Exeter wastewater customers were considered. As noted above, the main area of customer concern was a potentially large rate increase in the near future of up to 80%. While I acknowledge that there is the potential for such an increase, at this point it is a potential increase and not an increase which has actually been made by PAWC. I also note that any requested increase is subject to the Commission's jurisdiction and would ultimately be decided by the Commission. Accordingly, any such requested increase would be examined at the appropriate time by the Commission to determine whether it should be approved, denied or modified. Accordingly, I did not deem it necessary to modify or reject the Settlement on this basis.

I also note that existing Exeter wastewater customers mentioned a lack of notice, in that the customers were given approximately 11 days (via PAWC's notice mailed to those customers) to respond to the proposed Settlement. However, I note that the Commission's Regulations and the Public Utility Code do not contain any particular notice requirement for a proposed acquisition once a settlement is reached. Therefore, rather than being provided with limited notice, the customers were provided with additional notice. Accordingly, I did not deem it necessary to modify or reject the Settlement on this basis.

The other recurring issue raised by current Exeter customers was that they would be paying PAWC to purchase Exeter's water system, and many objecting residents think that this arrangement is unfair. The residents believe that PAWC should be required to use its own funds to purchase Exeter's water system, following which PAWC could earn a rate of return on its

newly purchased water system. However, as noted by the Parties in this proceeding, Section 1329 of the Public Utility Code explicitly provides for the acquisition of municipal water systems by existing public utilities. Also, as noted by PAWC and Exeter, the legislative intent behind Section 1329 of the Code is to encourage the sale of municipal water systems so that those systems will be operated by public utilities with the resources and expertise to ensure those systems' viability into the future. Additionally, Exeter noted that the proceeds of the sale of its wastewater system would provide immediate and substantial benefits to its residents, including maintaining real estate taxes at current levels for the next decade once the sale of the System is finalized, eliminating the unfunded liability in Exeter's pension plans, and OPEB plan, as well as funding storm sewer improvements and equipment replacement expenses, the institution of a homestead exemption for Exeter residents in the amount of \$50,000 on real estate taxes to become effective for the 2020 fiscal year, and the ability of Exeter to submit applications with PennDOT, DCED, DEP, and DCNR for grants for infrastructure improvements. Accordingly, I did not deem it necessary to modify or reject the Settlement on this basis.

For the reasons discussed above, it is my recommendation that the Commission approve the Settlement without modification.

Since I am recommending approval of the Settlement without modification, I am, by necessity, denying the request of one of the Intervenors in this proceeding, Borough of St. Lawrence, to modify the Settlement by setting aside some of the purchase money due to Exeter from PAWC. St. Lawrence had requested a set aside of some of the proceeds to pay St. Lawrence for money that it claims may be owed to it by Exeter under a certain contract or contracts. That discussion follows below.

D. St. Lawrence's Claims for Money Allegedly Due from Exeter

At the Initial In-Person Evidentiary Hearing held in this case on June 28, 2019, St. Lawrence requested permission to introduce testimony and legal argument concerning certain debt service and/or other payments it contended were owed to it by Exeter. St. Lawrence stated that such payments were appropriately before the Commission and that the Commission had the

legal jurisdiction to entertain those claims. Over the objections of PAWC and Exeter, I allowed testimony and argument on those claims. I also permitted Briefs to be submitted on those issues. St. Lawrence submitted its Main Brief on July 10, 2019 and its Sur-Reply Brief (Reply Brief) on July 18, 2019. PAWC submitted its Main Brief on July 10, 2019 and its Reply Brief on July 18, 2019. Exeter submitted its Main Brief on July 10, 2019 and its Reply Brief on July 16, 2019. The other Parties did not submit Briefs on these issues.

I advised the parties that I would dispose of St. Lawrence's claims substantively, if I concluded that the Commission had jurisdiction over those claims, or that I would dismiss those claims if I concluded that the Commission lacked jurisdiction over those claims. For reasons discussed below, I am dismissing those claims due to lack of Commission jurisdiction over those claims.

1. St. Lawrence's Position

As discussed in its Main Brief,¹⁵ St. Lawrence contends that it incurred debt most recently in 1993 for the plant expansion, which is to be paid in full by November 20, 2021, and in 2010 for the sludge dryer, on which the Borough will be making payments until 2026 (with total debt amortized of \$405,334.10 as of March 31, 2011. St. Lawrence witness May Sur-Rebuttal Testimony, pg. 11:2; Borough Exh. 10). St. Lawrence also states that Exhibit "I" to the 2003 Agreement (Borough Exh. 5) shows that in 1993, the total amount financed by the Borough was \$238,183, which, with debt service payments to 2022, as originally financed, totaled \$530,464.63. St. Lawrence witness May further testified to shared capital costs (6.51 % by the Borough), such as a truck and equipment upgrades for the Exeter plant. (May Sur-Rebuttal Testimony, pgs. 13:11-14:6; Borough Exh. 11).¹⁶ St. Lawrence further states that the Township Manager, John Granger, admitted in testimony that the Borough was to be compensated for its debt service obligations. See, Granger Testimony, p. 4:20-21).

¹⁵ I cannot cite to page numbers in St. Lawrence's Main Brief or Sur-Reply Brief, as they were not numbered.

¹⁶ The debt service payments for 2019 were the subject of May's Sur-Rebuttal Testimony (May Sur-Rebuttal Testimony. pgs. 14:17-17:9; Borough Exh. 6)

St. Lawrence further contends in its Main Brief that the septage credit should be similarly compensable: The credit has been acknowledged in Township invoices to the Borough, and appears in Township invoices to the Borough, making it clear that the credit was a reasonable expectation to continue and carry forward. Conditions attached to the sale, requiring the compensation of the Borough, are necessary to carry out the objectives of Section 1103(a) of the Public Utility Code. In this case, St. Lawrence argues, the conditions need to include the compensation of the Borough, to prevent the Borough and ultimately its residents from bearing an unfair, unreimbursed burden of debt service and loss of a valuable credit against invoices, while the Township enjoys a windfall from an approximately \$96 million sale of its waste water plant, to which the Borough, which is far smaller in land area, resources, population and tax base, has significantly contributed.

In both its Main Brief and Sur-Reply Brief, St. Lawrence contends that the Public Utility Code allows for the imposition of conditions to a sale of a municipal utility to a certified public utility. St. Lawrence therefore requests that the Commission impose conditions on the Settlement in this case, in order to set aside some of the Settlement proceeds due to Exeter from PAWC, and to pay those proceeds directly to St. Lawrence.

2. PAWC's Position

In its Main Brief, PAWC notes that St. Lawrence contends that the Commission should order Exeter to re-pay some or all of the amounts that St. Lawrence paid to Exeter for debt service related to Exeter's wastewater treatment plant pursuant to a May 2003 Agreement. PAWC M.B. p. 9; *citing* Tr. 45, 47-48. PAWC also notes that the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Code. *Tod and Lisa Shedlosky v. Pa. Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). PAWC M.B. p. 9. PAWC states that the Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa Super. 1945) (*Pittsburgh*). PAWC M.B. p. 10.

PAWC next argues that the Public Utility Code does not give the Commission jurisdiction to adjudicate private contractual disputes. *Shafer v. Nat'l Util. Inc.*, 1996 Pa. PUC Lexis 57; *Consolidated Rail Corp. v. City of Harrisburg*, 577 Pa. 71, 842 A.2d 369 (2004). PAWC M.B. p. 10. The Courts have held that the Commission lacks authority to interpret the terms and conditions of a utility's contract or to determine whether a breach of contract has occurred. *See generally Morrow v. The Bell Tel. Co. of Pa.*, 479 A.2d 548 (Pa. Super. 1984) (explaining that the courts retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility's performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts). *Id.*

Given the foregoing, PAWC argues that the Commission lacks the legal authority to review the May 2003 Agreement to determine whether that contract requires Exeter to re-pay all or some of St. Lawrence's debt service payments in the event Exeter's wastewater treatment plant is sold. *Id.* Even if the Commission would have authority to review and interpret the contract, the Commission clearly lacks authority to grant the relief requested by St. Lawrence. Numerous cases have held that the Commission lacks authority to order a public utility to pay monetary damages. *See Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977) (holding that the Commission does not have the authority to award damages) (*Feingold*); *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980). *Id.*

PAWC concludes, in its Main Brief and Reply Brief, that St. Lawrence's claims are properly addressed to the civil courts rather than the Commission, and that St. Lawrence would not be put "out of court" if the Commission declines to get involved in a contractual dispute between Exeter and St. Lawrence. PAWC M.B. p. 11; PAWC R.B. p. 11.

3. Exeter's Position

In its Main Brief, Exeter notes that 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); *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”). Exeter M.B. p. 7. Exeter also notes that St. Lawrence witness 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. *Id.*

Also in its Main Brief, Exeter notes that St. Lawrence seeks an award of money damages, which the Commission lacks the authority to award. Exeter M.B. p. 8. Although the Commission is granted a “statutory array of [] remedial and enforcement powers,” these powers do “not include the power to award damages.” *Feingold*, 383 A.2d at 794; *T.W. Phillips*, 492 A.2d at 779 (observing that the Commission lacks authority to award damages in negligence or contract actions). Exeter M.B. p. 8. 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.* Given that St. Lawrence seeks an award of damages (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”)), Exeter contends that the Commission lacks the authority to award such relief. *Id.* at pp. 8-9.

In its Reply Brief, Exeter notes that the cases cited by St. Lawrence for the proposition that the Commission may impose conditions on a sale such as the one in this case do not permit conditions like the one being requested by St. Lawrence – namely, setting aside some of the proceeds and paying the set-aside proceeds directly to St. Lawrence. Exeter R.B. p. 2. Instead, the cases cited by St. Lawrence allow the Commission to typically impose conditions relating to the quality of the service provided and the protection of ratepayers. Exeter R.B. pp. 1-2. Exeter concludes its Reply Brief by reiterating its argument that the Commission lacks the authority to award money damages as requested by St. Lawrence.

4. Disposition

It is clear that St. Lawrence is seeking monetary compensation from Exeter for payments that are due (if at all) pursuant to the terms of one or more contracts between those parties. *See*, St. Lawrence M.B. (Second Page) – “If the Borough is not compensated for its contributions, which are above and beyond the value of services rendered, and which have benefitted the Township, the Township will sustain a windfall in the sale of the plant.” *See also*, St. Lawrence M.B. (Conclusion) – “For the foregoing reasons, it is respectfully requested by Intervenor, Borough of St. Lawrence, that the Borough be compensated for debt service payments and loss of the septage credit as a condition of the completion of the sale of the wastewater treatment plant.”

In its Main Brief, PAWC notes that St. Lawrence contends that the Commission should order Exeter to re-pay some or all of the amounts that St. Lawrence paid to Exeter for debt service related to Exeter’s wastewater treatment plant pursuant to a May 2003 Agreement. PAWC M.B. p. 9; *citing* Tr. 45, 47-48. Exeter also notes that St. Lawrence witness May’s testimony definitively confirms that the relief sought by the Borough arises out of the terms of a contract – the Agreement – exclusively. Exeter M.B. p. 7 (*citing* N.T. at p. 56, line 10 to p. 57, line 1).

As noted by the Pennsylvania Supreme Court in the case of *Elkin v. Bell*

Telephone:

In spite of the PUC's rather extensive statutory responsibility for ensuring the adequacy, efficiency, safety and reasonableness of public utility services, we recognized in Feingold v. Bell of Pennsylvania, *supra*, that the Courts of Common Pleas have original jurisdiction to entertain suits for damages against public utilities based upon asserted failure to provide adequate services, even though the subject matter of the complaint is encompassed by the Public Utility Law. Traditional judicial remedies such as damages had been preserved by the Public Utility Law, and since the legislature had withheld from the PUC the power to award damages . . . this Court concluded that the courts must have jurisdiction over all damage actions.

Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 375 (Pa. 1980) (citing *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977)); see also, *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995).

It is well settled that the Commission may not exceed its jurisdiction and must act within it. *Pittsburgh, supra*. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101 *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold*. The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.* at 794. See also, *Kollar v. Pennsylvania-American Water Company*, Docket No. C-20042788 (Final Order entered Feb. 23, 2005).

Given the above jurisdictional limitations, and given the fact that St. Lawrence is clearly seeking money damages only, the Commission lacks the authority to rule on those claims. Those claims, should any exist, must be brought in a court of general legal jurisdiction such as the Common Pleas Court. Such claims are not properly before the Commission, as they are outside of the Commission's legal jurisdiction. For those reasons, St. Lawrence's claims are denied.

V. CONCLUSION

For the reasons discussed above, it is recommended that the Commission approve the Settlement without modification, as the Settlement is in the public interest. It is further recommended that the Commission dismiss any claims asserted by St. Lawrence over Exeter in this proceeding concerning money owed to it from Exeter.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. §§ 1102, 1103, 1329.
2. Commission policy promotes settlement. 52 Pa. Code § 5.231. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401.
3. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991).
4. The Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.
5. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized ...” 66 Pa. C.S. § 1102(a)(1).
6. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).
7. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985);

Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n, 138 A.2d 240, 243 (Pa. Super. 1958).

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

9. Financial fitness means that the applicant should possess the financial resources to provide the proposed service. *Re Perry Hassman*, 55 Pa. PUC 661 (1982).

10. Technical fitness means that the applicant should have sufficient staff, facilities and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. PUC 661 (1982); *Merz White Ways Tours v. Pa. Pub. Util. Comm'n*, 201 A.2d 446 (Pa. Super. 1964).

11. Legal fitness means that the applicant has a propensity to obey the Code and the Commission's regulations. *Re Perry Hassman*, 55 Pa. PUC 661 (1982).

12. PAWC has carried its burden of establishing that it is financially, technically, and legally fit to own and operate the Exeter System.

13. The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a) ("Procedure to obtain certificates of public convenience").

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

15. PAWC has carried its burden of demonstrating that the Transaction will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

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

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

18. A rate stabilization plan is defined as “A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa. C.S. § 1329(g).

19. Section 1329(d)(5) of the Public Utility Code permits a public utility acquiring a municipal wastewater system to collect a distribution system improvement charge prior to the first base rate case in which the municipal system is included in its rate base. 66 Pa. C.S. § 1329(d)(5).

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

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

22. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base in its next base rate case. 66 Pa. C.S. § 1329(d)(2).

23. The \$92,000,000 ratemaking rate base in the Settlement is in the public interest, considering the provisions of Section 1329 and the Commission's ability to set just and reasonable rates prospectively pursuant to 66 Pa. C.S. § 1301.

24. PAWC's notice of the Application to Exeter's existing customers and PAWC's existing water and wastewater customers were sufficient to meet the requirements established by the Commission in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered February 28, 2019) and by the Commonwealth Court of Pennsylvania in *McCloskey v. Pa. Pub. Util. Comm'n*, 1624 CD 2017 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*New Garden*).

25. The notice of the Settlement to Exeter's existing customers, attached to the Settlement as Attachment A, provides existing customers of Exeter with adequate notice and opportunity to be heard on the proposed Settlement.

26. The Commission does not have the authority to award monetary damages to a private litigant for breach of contract by a public utility. *Feingold v. Bell of Pa.*, 383 A.2d 791, 794. (Pa. 1977).

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

VII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Partial Settlement filed by Pennsylvania-American Water Company, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and the Township of Exeter, on July 11, 2019 at Docket No. A-2018-3004933, including all terms and conditions thereof, is approved, without modification.

2. That the Application filed by PAWC on September 25, 2018, as amended, be granted, subject to the following conditions:

a) That the Commission approve the Settlement in *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505;

b) That PAWC mail the notice attached to the Settlement as Attachment A to existing customers of Exeter concurrently with the filing of the Settlement;

c) That PAWC file a Second Amendment to the Asset Purchase Agreement that adjusts the purchase price to \$93,500,000; and,

d) That PAWC Statement No. 3-R, page 4 line 22 through page 5 line 7, and Exhibit DRK-3-R, are not admitted into the record in this proceeding.

3. That the Commission's Secretary's Bureau shall issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of substantially all of Exeter's assets, properties and rights related to its wastewater system to PAWC as provided in the Application, (ii) PAWC's right to begin to offer, render, furnish or supply wastewater service to the public in the areas served by Exeter as indicated in the Application; and (c) Exeter's abandonment of service in Lower Alsace Township.

4. That PAWC, upon closing of the Transaction, shall issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Application as Appendix A-13 (REV), to be effective on the date of issuance.

5. That the Commission approves, pursuant to 66 Pa. C.S. § 1329(c), a rate base addition of \$92,000,000 associated with the acquisition of the System.

6. That in the first base rate case that includes Exeter wastewater system assets, PAWC shall submit a cost of service study that removes all costs and revenues associated with the operation of the Exeter System.

7. That in the first base rate case that includes Exeter wastewater system assets, PAWC shall provide a separate cost of service study for the Exeter System.

8. That PAWC shall propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates; provided, however, that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.

9. That the Commission acknowledges that the Joint Petitioners have accepted the following adjustments for purposes of this proceeding:

a) Cost Approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land.

b) Market Approach:

1) If “comparable acquisitions” are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;

2) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,

3) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality’s financial statements will not be used.

10. That, within six months after closing of the transaction, PAWC shall start an Infiltration and Inflow study for the Exeter System and provide the results of said study, upon completion, to all Parties to this proceeding. All Parties reserve the right to challenge the recovery of costs related to inflow and infiltration, including the cost of the study, in subsequent rate proceedings.

11. That, within the first 90 days of PAWC’s ownership of the Exeter System, PAWC shall include a bill insert to the Exeter-area customers regarding its low-income programs and shall include such information in a welcome letter to Exeter-area customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low-income programs’ eligibility requirements for participation in the programs, and PAWC’s contact information.

12. That PAWC, pursuant to 66 Pa. C.S. § 1329(d), may collect a distribution system improvement charge related to the Exeter System prior to the first base rate case in which the System plant-in-service is incorporated into rate base, subject to the following conditions:

a) PAWC files an amended wastewater long term infrastructure investment plan incorporating the Exeter area, which does not re-prioritize other existing commitments in other service areas;

b) the Commission approves the amended wastewater long term infrastructure improvement plan incorporating the Exeter area, as may be modified in the discretion of the Commission; and

c) PAWC files a compliance tariff supplement which incorporates Exeter into its existing DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the amended long-term infrastructure improvement plan.

13. That PAWC, pursuant to 66 Pa. C.S. § 1329(f), may accrue allowance for funds used during construction for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, provided that the Joint Petitioners reserve their rights to litigate their positions fully in the first base rate case which includes Exeter wastewater system assets and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

14. That PAWC, pursuant to 66 Pa. C.S. § 1329(f), may defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in the first base rate case which includes Exeter wastewater system assets and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

15. That PAWC, pursuant to 66 Pa. C.S. § 1329(d)(iv), may include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Exeter System, provided that the Joint Petitioners reserve their rights to litigate their positions fully in that base rate case and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

16. That the Commission's Secretary's Bureau shall issue Certificates of Filing or approval for the following agreements between PAWC and a municipal corporation:

a) Asset Purchase Agreement between Township of Exeter (as Seller) and Pennsylvania-American Water Company (as Buyer), dated as of May 29, 2018 (attached to the Application as Appendix A-24-a), the First Amendment to Asset Purchase Agreement (attached to the Application as Appendix A-24-a REV), and the Second Amendment to the Asset Purchase Agreement (reflecting revised purchase price per settlement);

b) Intermunicipal Agreement, dated as of December 11, 1996, between Exeter Township, Berks County, Authority and Exeter Township, on the one hand, and the Township of Alsace, on the other hand, with the First and Second Amendments thereto (attached to Application in Appendix B-1 (REV));

c) Leachate Treatment Agreement between Exeter Township and the Chester County Solid Waste Authority, dated December 12, 2016 (attached to Application as Appendix B-2 (REV) (Corrected));

d) Sewage Treatment and Conveyance Agreement dated June 28, 2019, between Pennsylvania-American Water Company and the Borough of Saint Lawrence (attached to Application as Appendix B-3 REV-1);

e) Agreement dated as of May 8, 2003 between Exeter Township, Berks County, Authority and the Township of Exeter, on the one hand, and St. Lawrence

Borough Authority and the Borough of St. Lawrence, Berks County, Pennsylvania, on the other hand (attached to Application as Appendix B-3-b REV).

17. That the Commission issue any and all other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

18. That any claim asserted by the Borough of St. Lawrence for a modification to the Settlement, in order to set aside some of the Settlement proceeds for payment to St. Lawrence, is hereby denied.

19. That the Commission's proceeding at Docket No. A-2018-3004933 be terminated and marked closed.

Dated: August 5, 2019

/s/
Andrew M. Calvelli
Administrative Law Judge