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October 30, 2020

VIA eFILING

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

**Re: Pennsylvania Public Utility Commission v.
Pennsylvania-American Water Company
Docket Nos. R-2020-3019369 and R-2020-3019371**

Dear Secretary Chiavetta:

Enclosed for filing is the **Joint Petition for Non-Unanimous Settlement of Rate Investigation** (the “Joint Petition”) in the above-referenced matters, including Exhibits D and E. Exhibits A, B, C, F, G and H will be filed by November 6, 2020. This filing also includes the Statements in Support of Pennsylvania-American Water Company and the Bureau of Investigation and Enforcement. The Statement in Support of Pennsylvania-American Water Large Users Group will be filed separately.

As evidenced by the enclosed Certificate of Service, copies of the Joint Petition have been served on Administrative Law Judge Conrad A. Johnson and all parties of record.

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Rosemary Chiavetta, Secretary
October 30, 2020
Page 2

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth M. Kulak". The signature is fluid and cursive, with the first name "Kenneth" being more prominent and the last name "Kulak" following in a similar style.

Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	Docket No. R-2020-3019369
	:	Docket No. R-2020-3019371
	:	
v.	:	
	:	
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of a **Joint Petition for Non-
Unanimous Settlement of Rate Investigation**, in the above-referenced proceedings on the
following persons, in the manner specified below, in accordance with the requirements of 52 Pa.
Code § 1.54:

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Dated: October 30, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

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**DOCKET NOS. R-2020-3019369
R-2020-3019371**

**JOINT PETITION FOR
NON-UNANIMOUS SETTLEMENT OF RATE INVESTIGATION**

October 30, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

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**DOCKET NOS. R-2020-3019369
R-2020-3019371**

**JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT
OF RATE INVESTIGATION**

TO THE HONORABLE CONRAD A. JOHNSON, ADMINISTRATIVE LAW JUDGE:

Pennsylvania-American Water Company (“PAWC” or the “Company”), the Pennsylvania Public Utility Commission (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”) and the Pennsylvania-American Water Large Users Group (“PAWLUG”) (collectively, the “Joint Petitioners”) respectfully submit this Joint Petition for Non-Unanimous Settlement of Rate Investigation (the “Joint Petition”) and request that the Administrative Law Judge recommend approval of, and the Commission approve, the settlement set forth in the Joint Petition (“Settlement”) without modification.

In support of their request, the Joint Petitioners state as follows:

I. BACKGROUND

1. On April 29, 2020, the Company filed with the Commission Supplement No. 19 to Tariff Water – Pa. P.U.C. No. 5 (“Water Tariff Supplement”) and Supplement No. 19 to Tariff Wastewater – Pa. P.U.C. No. 16 (“Wastewater Tariff Supplement”) to become effective on June 28, 2020. The financial data in support of PAWC’s Water Tariff Supplement and Wastewater Tariff Supplement reflected an increase in total annual operating revenues of \$138.6 million over the two years of the Company’s proposed multi-year rate plan (“MYRP”) consisting of calendar

years 2021 (“Rate Year 1”) and 2022 (“Rate Year 2”). The original proposed increase in Rate Year 1 was \$92.4 million, or 12.9%, over PAWC’s annualized total-Company Rate Year 1 revenues at present rates including Distribution System Improvement Charge (“DSIC”) revenue. The proposed increase in Rate Year 2 was \$46.2 million, or 5.8% over PAWC’s annualized total-Company Rate Year 2 revenues at proposed Rate Year 1 rates. The Company’s supporting information included the prepared direct testimony of thirteen initial witnesses and the various exhibits sponsored by those witnesses.

2. By Orders entered May 21, 2020, the Commission instituted a formal investigation at Docket Nos. R-2020-3019369 (Water) and R-2020-3019371 (Wastewater) to determine the lawfulness, justness and reasonableness of the Company’s existing and proposed rates, rules and regulations. Accordingly, the Water Tariff Supplement and Wastewater Tariff Supplement were suspended by operation of law until January 28, 2021, unless permitted by Commission order to become effective at an earlier date. The case was then assigned to Administrative Law Judge Conrad A. Johnson (“ALJ”) for purposes of conducting hearings and issuing a Recommended Decision.

3. On May 7, 2020, the Office of Consumer Advocate (“OCA”) filed formal Complaints, Public Statements, and Notices of Appearances. On May 7, 2020, I&E entered a Notice of Appearance. On May 11, 2020, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint. Formal Complaints were also filed by the following parties that elected active party status¹: Jessica and Jeffrey LaBarge (April 29, 2020), Charles and Jennifer

¹ Formal Complaints were also filed by a number of individual customers who did not elect to be active parties in this case.

Spryn (May 26, 2020), Jan K. Vroman (June 3, 2020), PAWLUG (June 4, 2020), and West Norriton Township (June 17, 2020).

4. Petitions to Intervene were filed by the following parties: AK Steel Corp. (“AK Steel” (June 6, 2020), the Commission on Economic Opportunity (“CEO”), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) (May 12, 2020).

5. The Company filed timely Answers denying the material averments of all Complaints prior to the entry of the Investigation Order. On May 28, 2020, PAWC notified the ALJ and the parties that it would rely upon 52 Pa. Code § 5.61(d), which provides that answers to Complaints docketed in Commission-instituted investigations of rates are not required except as directed by the Commission or presiding officer.

6. On March 6, 2020, Governor Wolf issued a Proclamation of Disaster Emergency in response to the COVID-19 emergency (“Executive Order”). On March 15, 2020, Pennsylvania’s Deputy Secretary for Human Resources and Management issued an Executive Order implementing protocols for remote telework for state offices in Dauphin County and the Capital Complex, including the Commission’s offices for a period of at least fourteen days, beginning March 16, 2020. On March 16, 2020, the Governor’s office issued an order closing all businesses that are not life sustaining.

7. On March 20, 2020, the Commission issued an Emergency Order to furnish guidance on the conduct of Commission proceedings during the pendency of the COVID-19 emergency.² Additionally, as part of its response to the Executive Order, the Commission

² *Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Emergency Order, M-2020-3019262 (Mar. 20, 2020) (“Emergency Order”).

adopted broader electronic filing practices and ceased paper service on the Commission or by the Commission on others for the duration of the emergency.

8. On May 28, 2020, the OCA filed an Expedited Motion for an Extension of the Statutory Period of Pennsylvania-American Water Company's Base Rate Proceeding ("OCA Motion"), invoking the Executive Order and Emergency Order as the basis for seeking a 45-day extension of the statutory suspension period in this case. Answers supporting the OCA Motion were filed by I&E and CAUSE-PA.

9. On June 3, 2020, PAWC filed a Petition for Consolidation of the water and wastewater base rate proceedings. No party objected to PAWC's Petition for Consolidation.

10. A telephonic Prehearing Conference was held on June 4, 2020. Chief Administrative Law Judge Charles E. Rainey, Jr. ("CALJ") attended for purposes of hearing oral argument on the OCA Motion. Following presentations by the OCA, PAWC and other parties, the CALJ, after consultation with the ALJ, orally granted the OCA Motion and indicated a written order would follow. The CALJ Order was issued and served on June 4, 2020 ("Extension Order"). In addition, consistent with Commission practice, a schedule was adopted whereby all case-in-chief, rebuttal and surrebuttal testimony would be submitted in writing in advance of hearings. As memorialized in the Prehearing Order issued by the ALJ on June 15, 2020, virtual evidentiary hearings were scheduled for November 2-6 at which all testimony and exhibits would be placed in the record and all witnesses presented for oral rejoinder and cross-examination, if any.³

³ At the Prehearing Conference, Docket Nos. R-2020-3019369 and R-2020-3019371 and all complaints were consolidated for further proceedings and resolution.

11. On June 24, 2020, PAWC filed a Petition for Reconsideration of Staff Action seeking reversal of the CALJ’s June 4, 2020 Order (“Petition for Reconsideration”). I&E, the OCA, OSBA and CAUSE-PA filed Answers to PAWC’s Petition for Reconsideration.

12. On August 20, 2020, the Commission entered an Opinion and Order granting, in part, and denying, in part, PAWC’s Petition for Reconsideration (“August 2020 Order”). In the August 2020 Order, the Commission granted the OCA’s request to extend the effective date of new rates to March 15, 2020 – 45 days beyond the statutory suspension period – subject to allowing the Company to recoup revenues that might be lost during that interval. The Commission also noted that sufficient time was needed to consider and rule upon the Recommended Decision to be issued in this proceeding before the last public meeting prior to the expiration of the suspension date. Accordingly, the Commission established a deadline of December 24, 2020 for the issuance of the Recommended Decision and directed the ALJ to modify, if necessary, the litigation schedule established in the Prehearing Order.

13. On September 2, 2020, the ALJ issued the Second Interim Order Modifying Litigation Schedule (“Second Interim Order”), which revised the schedule for the submission of written testimony and evidentiary hearings in accordance with the August 2020 Order. The Second Interim Order rescheduled the evidentiary hearings for October 23, 26-29, 2020.

14. Eight virtual public input hearings were scheduled and held at the dates and times shown below:

Date	Time(s)
August 18, 2020	12:00 P.M. 6:00 P.M.
August 25, 2020	1:00 P.M. 6:00 P.M.

August 26, 2020	1:00 P.M. 6:00 P.M.
August 27, 2020	1:00 P.M. 6:00 P.M.

15. On August 4, 2020, a Secretarial Letter was issued directing the parties to address questions raised by Commissioner Ralph V. Yanora concerning utility practices to prevent cross-connections and back-flow. On September 4, 2020, the Company submitted a written statement of supplemental direct testimony to address the questions presented by the Secretarial Letter.

16. In accordance with the schedule established in the Second Interim Order, on September 8, 2020, AK Steel, CAUSE-PA, CEO, I&E, OCA, OSBA, and PAWLUG submitted a total of 18 written statements of direct testimony and accompanying exhibits. On September 29, 2020, PAWC, I&E, OSBA, and PAWLUG submitted a total of 19 written statements of rebuttal testimony with accompanying exhibits. On October 20, 2020, AK Steel, CAUSE-PA, I&E, OCA, OSBA, and PAWLUG submitted a total of 17 written statements of surrebuttal testimony with accompanying exhibits. On October 22, 2020, PAWC submitted an Oral Rejoinder Outline for seven witnesses.

17. The parties engaged in discussions to try to achieve a settlement of some or all of the issues in this case. As a result of those negotiations, the Joint Petitioners were able to agree to the Settlement set forth herein, which resolves all issues between I&E and the Company in the proceeding.

18. At the Second Prehearing Conference held on October 23, 2020, the Company notified the ALJ of the Settlement and explained that the Company was continuing negotiations with the remaining parties that did not join the Settlement to narrow the outstanding issues for

litigation in this case. The parties also notified the ALJ that all parties had waived cross-examination, subject to the right to cross-examine Company witnesses on their rejoinder testimony. The ALJ directed the Company to file the Settlement on October 30, 2020 and established a deadline for the submission of responses in opposition to the Settlement by November 20, 2020.

19. On October 26, 2020, the Company supplemented its Oral Rejoinder Outline by serving two written statements of rejoinder testimony in advance of the first evidentiary hearing.

20. Virtual evidentiary hearings were held on October 27-28, 2020. At the hearings, PAWC witnesses Bruce W. Aiton, Ashley E. Everette, John R. Wilde, Tawana Dean and Preston Pallas presented oral rejoinder testimony and were cross-examined by counsel for other parties. Company witness James H. Cawley, whose written rejoinder testimony had been served on October 26, 2020, was made available for cross-examination, and was questioned by the ALJ. The written testimony and exhibits of all parties were admitted into evidence.⁴ The ALJ also granted the Company's request for leave to file the following Appendices to the Settlement on November 6, 2020:

- Proposed Water Tariff (Appendix A)
- Proposed Wastewater Tariff (Appendix B)
- Proof of Revenues (Appendix C)
- Distribution System Improvement Charge ("DSIC") – Total Aggregate Plant Costs (Appendix F)
- Bill Comparisons (Water) (Appendix G)
- Bill Comparisons (Wastewater) (Appendix H)

⁴ At the request of the parties, the ALJ cancelled the hearing scheduled for October 26, 2020.

In addition, the ALJ granted PAWC's request to reply to any responses to the Settlement filed by other parties on November 30, 2020.

21. The Company will address the relationship of the Settlement, stipulations with parties that have not joined the Settlement and outstanding contested issues in its Main Brief due on November 10, 2020, after the filing of this Joint Petition.

22. The Joint Petitioners acknowledge that, except to the extent specifically set forth herein, they have not sought, nor would they be able, to agree upon the specific rate case adjustments which support their respective conclusions. Nonetheless, they are in full agreement that this Settlement is in the best interest of customers and of the Company and, therefore, is in the public interest.

II. TERMS AND CONDITIONS

The Settlement consists of the following terms and conditions:

A. Revenue Requirement

23. Upon the Commission's approval of this Settlement, but no later than January 28, 2021 (*see* Paragraph 72 below), and the Company will be permitted to charge the rates for water service set forth in the proposed Water Tariff provided in Appendix A to this Settlement and the rates for wastewater service set forth in the proposed Wastewater Tariff provided in Appendix B (hereafter, the "Settlement Rates").⁵ The Settlement Rates are designed to produce additional annual water and wastewater operating revenue of \$70.5 million, as shown on the proof of revenues set forth in Appendix C to the Joint Petition. The \$70.5 million increase will be offset by an annualized credit of \$10.5 million in each of years 2021 and 2022 beginning on the

⁵ As previously noted, PAWC will file Appendices A-C on November 6, 2020.

effective date of Settlement Rates as shown on the summary of revenue increase appended hereto as Appendix D.

24. The credit of \$10.5 million is a negative surcharge to flow-back to customers all (“protected” and “unprotected”) excess accumulated deferred income taxes (“EADIT”) that the Company amortized and will amortize for financial reporting purposes during the period from January 1, 2018 through December 31, 2020. The EADIT amortized by PAWC for financial reporting purposes that are being flowed-back by the two-year \$10.5 million credit were booked to reflect the effect on the Company’s accumulated deferred income taxes of the change in the federal corporate net income tax rate from 35% to 21% pursuant to the Tax Cuts and Jobs Act (“TCJA”) that became effective on January 1, 2018.

25. The total net increase will be implemented in two installments and the Settlement Rates are designed to produce: (1) a net increase of \$40 million (\$50.5 million increase in base rates less a \$10.5 million credit) on the effective date of the Settlement Rates (“Step 1 Rate Increase”); and (2) a second installment effective on January 1, 2022 that increases base rates by \$70.5 million, which will be off-set by a credit of \$10.5 million, for a net total increase of \$60 million for the twelve months ending December 31, 2022 (“Step 2 Rate Increase”). The credit will cease to apply on January 28, 2023.

26. The Settlement Rates are designed to produce: (1) approximately \$766 million in total net annual combined water and wastewater revenue (including Other Revenue) during the period commencing on the effective date of the Settlement Rates; (2) approximately \$786 million in total net annual combined water and wastewater revenue (including Other Revenue) during the period commencing January 1, 2022. An annualized credit of \$10.5 million per 12-month period will apply for the first 24 months rates are in effect (January 28, 2021 through

January 28, 2023) in the form of a negative surcharge to be applied equally to all classifications of water customers.⁶

27. The Joint Petitioners agree that the Company's originally filed pro forma present rate revenue level has been used to establish the Settlement Rates.

28. In future rate filings, PAWC will submit one or more separate stormwater and wastewater cost-of-service studies for each of its combined sewer systems ("CSS") currently consisting of McKeesport, Scranton and Kane and including any other CSS acquired by the time of each of the future rate filings. The Company is not required to provide a separate study for each combined stormwater system.

29. The Joint Petitioners acknowledge and agree that the depreciation rates set forth in PAWC Exhibit Nos. 11-C, 11-G, 11-K, 11-O, 11-S, 11-W, 11-AA and 11-AD are appropriate for ratemaking purposes in this case for 2021 and that the Company will use such depreciation rates to calculate the depreciation expense it records on its regulated books of account.

30. The Joint Petitioners agree that the Settlement Rates reflect the amortizations set forth in Appendix E to the Joint Petition, including amortization of protected EADIT produced by the TCJA in accordance with the average rate assumption method and all unprotected EADIT produced by the TCJA over a period of 20 years.

31. The Company will not implement a DSIC during the calendar year ending December 31, 2021. The first DSIC in 2022 will be effective no earlier than April 1, 2022 based on DSIC-eligible expenditures during January and February 2022. In any event, the Company

⁶ The revenues to be produced under Settlement Rates will be shown in Appendix C, which will be filed on November 6, 2020. If any inconsistency exists between the revenues described in Paragraph 26 and the proof of revenues set forth in Appendix C, the latter shall take precedence

will not begin to impose a DSIC until the total net plant balances reach the levels established in this proceeding using the adjusted utility plant in service balances for December 31, 2021 as referenced in Appendix F. In compliance with the Supplemental Implementation Order entered on September 21, 2016 at Docket No. M-2012-2293611, the amounts shown in Appendix F constitute the baseline of gross plant balances to be achieved in order to restart charges under the Company's DSIC.⁷

32. The Joint Petitioners agree and hereby stipulate that the Company shall use the rate of return on equity ("ROE") as calculated for water utilities and published in the "Bureau of Technical Utilities Services Report on the Quarterly Earnings of Jurisdictional Utilities" for the most recent quarter for purposes of calculating the ROE component of the Company's DSIC.

B. Alternative Ratemaking Mechanisms

33. PAWC agrees to withdraw: (1) the second year of its proposed MYRP, in its entirety; (2) its proposed Regionalization and Consolidation Surcharge; and (3) its proposal to implement a tracker and establish deferral accounts for its pension and other post-employment benefits expenses. This withdrawal is made without prejudice to propose these alternative ratemaking mechanisms in future proceedings.

C. Customer Assistance Programs and COVID-19 Relief Provisions

(1) COVID-19 Relief Measures

34. PAWC will waive reconnection fees for customers at or below 200% of the Federal Poverty Level ("FPL") for one year from the date of the final Order in this case and track

⁷ As previously noted, the Company will file Appendix F on November 6, 2020.

the extraordinary, nonrecurring incremental COVID-19 related expense and shall maintain detailed accounting records of such expense.

35. PAWC will waive good faith payment requirement for PAWC's H2O Help to Others Hardship Fund for one year from the date of the final Order in this proceeding.

36. PAWC will permit customers to self-certify income for purposes of qualifying for the PAWC's H2O Help to Others Hardship Fund until the earlier of: (1) March 31, 2021; (2) the date on which the Executive Order is rescinded.

37. PAWC will expand community outreach to communities in need within PAWC service territories. This includes developing a community outreach plan to target communities significantly impacted as a result of the COVID-19 emergency. Through the newly formed low-income advisory group (*see* Paragraph 43 below), PAWC will seek input from interested parties and stakeholders to target areas with the most need. The community outreach plan will include an overall strategy and tactics to educate and enroll eligible and interested customers at or below 50% of the FPL.

38. The Company's annual contribution to its H2O Help to Others hardship grant program will be increased from its current level of \$400,000 to \$500,000 for water operations and from \$50,000 to \$100,000 for wastewater operations.

39. COVID-19 related financial impacts will be deferred and a regulatory asset established consistent with the Commission's final Order on the Company's petition filed on October 15, 2020.

(2) PAWC's Low-Income Programs

40. PAWC will delete "To remain eligible for this rate, such customer must continually make timely payments on the discounted bills" from its water and wastewater tariffs.

41. PAWC will enhance its training materials and call scripts to specifically address how customers who call PAWC and the Customer Service Center indicating that they are having trouble paying their bills or are seeking financial assistance are directed to PAWC's customer assistance programs.

42. PAWC will continue to promote charitable contributions and donations to its H2O Help to Others Hardship Fund and expand its outreach channels to include working with the low-income advisory group to identify new sources of funding for the Hardship Fund.

43. Within 90 days of a Commission's final Order in this proceeding, PAWC will establish a low-income advisory group to include community based organizations within the Company's service territory, representative from the Commission's Bureau of Consumer Services, interested stakeholders and interested parties in this case for the purpose of soliciting input to enhance the H2O Help to Others Program. The group will meet on a quarterly basis, with the first meeting of the advisory group to be held within 90 days of a Commission's final Order in this proceeding.

44. PAWC agrees to request that the Commission, as part of the approval of this Settlement, initiate a proceeding to consider whether to extend the "CAP Policy Statement" to PUC-regulated water and wastewater utilities within three months of the final Order in this proceeding.

(3) Winter Moratorium

45. PAWC will track low-income customers protected from winter moratorium termination as provided for under 52 Pa. Code §§ 56.100(a) and 56.251.

(4) Discontinuance of Services to Leased Premises Act

46. Within 60 days of a final Order in this proceeding, PAWC will create and implement a standard form that a landlord will submit, with a notarized signature, swearing under penalty of law that the unit is unoccupied, that will be used when a landlord requests voluntary discontinuance of service. PAWC will modify internal policies to incorporate all the voluntary discontinuance requirements of the Discontinuance of Services to Leases Premises Act (“DSLPA”).

47. PAWC will accept a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant as acceptable identification to establish tenancy for purposes of the DSLPA.

48. PAWC will utilize the procedures under 66 Pa. C.S. § 1532 to require landlord ratepayers to provide the names and addresses of tenants of dwelling units and will notify those tenants of any impending termination in accordance with the DLSPA.

49. PAWC will revise its policies, procedures, and associated training materials, as follows:

- a. To indicate that, if PAWC terminates service to tenant occupied landlord ratepayer units without providing correct notice under the DSLPA, PAWC will restore service, deliver the required notice, and provide the time required under DSLPA for the tenant to make payment.
- b. To incorporate the voluntary discountenance requirements of the DSLPA;
- c. To ensure that tenants are not required to appear in person to demonstrate tenancy or exercise their rights under DSLPA.

(5) Language Access

50. PAWC will continue its review of customer communication materials and modify as necessary for compliance with Commission regulations at 52 Pa. Code § 56.201(b).

51. PAWC will provide written documents to customers in Spanish, if requested.

52. If a PAWC customer calls the Customer Service Center and requests correspondence in Spanish, the customer service representative (“CSR”) will code the system to automatically generate all customer correspondence going forward for that customer in Spanish.

53. PAWC will translate billing information into Spanish in compliance with 52 Pa. Code §56.201(b). PAWC will present the revised billing information to the low-income advisory group in advance of implementation and consider feedback from the advisory group in making its revisions.

54. PAWC will modify its termination notices to include information in Spanish directing Spanish-speaking customer to a number to call for information and translation assistance and Spanish language section of all termination notices will highlight that the document is a termination notice.

55. PAWC will revise its policies and procedures so that its CSRs will contact a third party interpreter service upon encountering a customer with limited English proficiency.

56. PAWC will develop a language access plan with 180 days of the final Order in this matter, in consultation with the low-income advisory group.

57. PAWC will conduct a formal needs assessment to determine whether any of its water or wastewater rate zones are populated by 5% or more of individuals who speak a language other than English or Spanish. If so, PAWC will comply with the Commission’s regulations at 52 Pa. Code § 56.91(b)(17) with respect to that group.

(6) Protection from Abuse Accounts

58. PAWC will develop written policies and procedures related to domestic violence issues, which will include guidelines for reviewing other court orders that qualify for protections under Chapter 56 of the Commission's regulations. PAWC will consult with the Pennsylvania Coalition Against Domestic Violence ("PCADV") in developing these policies and procedures. In addition, PAWC will consult with members of its newly formed low-income advisory group on PAWC's policies and procedures concerning victims of domestic violence.

59. PAWC will implement specific domestic abuse training for its Compliance and Customer Advocacy teams. Such trainings will be developed in consultation with PCADV.

60. PAWC will implement training for CSRs to increase their knowledge about the availability of additional protections for victims of domestic violence and to actively screen for and identify customers who may be exempt from Chapter 14 of the Public Utility Code. Such training documents will be developed in consultation with PCADV.

61. PAWC will develop scripts for CSRs to use when screening for potential domestic violence victims and for explaining the protections available to customers with PFAs and similar court orders.

62. PAWC will develop scripts and written guidance for its Compliance and Customer Advocacy teams to use when communicating with victims of domestic violence.

63. PAWC will conduct a review of its confidentiality procedure for information of customers with PFAs and similar court orders, and if necessary, enhance the process for protecting account information, including protections against access by a third party who is currently listed or was previously listed on the customer account.

64. PAWC will ensure training documents highlight the need for extra confidentiality protections for customers with PFAs and similar court orders.

65. PAWC will establish a dedicated group of individuals from the Compliance and Customer Advocacy teams, who will be responsible for consulting and communicating with customers with PFAs and similar court orders.

66. PAWC will establish a dedicated email address and fax for the submission of PFAs and applicable court orders, which will only be accessible to a limited number of PAWC employees.

67. PAWC will develop a fact sheet and other outreach materials that prominently highlight protections available to customers with PFA orders or other court orders with clear evidence of domestic violence. PAWC will share a draft of these materials with its low-income advisory group for input and feedback.

(7) Tariff Changes

68. The Joint Petitioners agree to the Company's proposal for no-fee credit card and e-check payments.

69. The Company will revise tariffs to include the following: 1) the rights of certain vulnerable customers with a Protection from Abuse Order; 2) right to a payment arrangement with criteria for eligibility; 3) obligation to issue a written denial or service that includes reasons for denial or payment of prior debt and dispute process; and 4) termination notice procedures.

D. Cost Allocation And Rate Design

70. The Settlement Rates set forth in Appendix A reflect the Joint Petitioners' agreement with regard to water rate structure, rate design and the distribution of the increase in revenues in this case, as follows:⁸

a. Under the Settlement Rates, Rate Zone 1 service charge for residential, commercial and municipal customers with 5/8-inch meters will be \$17.00 per month (2021) and \$17.50 per month (2022) in lieu of the \$18.00 (2021) and \$18.50 (2022) service charges proposed by the Company. The 5/8-inch service charge for the Industrial class in Rate Zone 1 under the Settlement Rates will be \$25.40, and the same percentage increase will be applied for all other meter sizes.

b. The metered rates for all classes of customers in Rate Zone 2 (Nittany, Sutton Hills, All Seasons, Balsinger and Berry Hollow) have been consolidated with Rate Zone 1 under the Settlement Rates.

c. The Company currently has a separate Rate Zone 3 for its McEwensville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 3 have been equalized with Rate Zone 1.

d. The Company currently has a separate Rate Zone 4 for its Turbotville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 4 have been equalized with Rate Zone 1. Additionally,

⁸ Subparagraphs a. - e. provide a general description of the water rate structure and water rate design incorporated in the Settlement Rates. While every effort has been made to ensure that the description is accurate, if any inconsistency exists between such description and the rates set forth in Appendix A, the latter shall take precedence.

usage charges for the residential class in Rate Zone 4 have been equalized with Rate Zone 1 in 2022.

e. The Company currently has a separate Rate Zone 5 for its Steelton Water Operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 5 have been increased.

f. Appendix G contains billing comparisons showing the impact on the bill of an average customer in each major general service rate class if the Settlement Rates are approved.⁹

71. The Settlement Rates set forth in Appendix B reflect the Joint Petitioners' agreement with regard to wastewater rate structure, rate design and the distribution of the increase in revenues in this case, as follows.¹⁰

a. The Company currently has ten wastewater rate zones. Under the Settlement Rates, existing wastewater Rate Zone 4 and future Rate Zone 11 will be consolidated with wastewater Rate Zone 1. The other eight rates zones will consist of Rate Zone 2 (New Cumberland), Rate Zone 3 (Scranton), Rate Zone 5 (Franklin), Rate Zone 6 (McKeesport), Rate Zone 7 (Sadsbury), Rate Zone 8 (Turbotville), Rate Zone 9 (Exeter) and Rate Zone 10 (Kane).

b. Under the Settlement Rates, Rate Zones 1, 2, 4, 6, 8, and 9 service charge for the residential class will be \$11.00 per month and the service charge for non-residential classes in Rate Zones 1, 2, 6 and 9 will be \$27.50 per equivalent dwelling unit ("EDU"). The Settlement Rates for all classes of customers and classes of wastewater service for Rate Zones 1-

⁹ As previously noted the Company will file Appendices G and H to the Joint Petition on November 6, 2020.

¹⁰ If any inconsistency exists between the information provided in subparagraphs a.-e. and the rates set forth in Appendix B, the latter shall take precedence.

6 and 8-10 are set forth in the applicable portions of the Wastewater Tariff attached as Appendix B.

c. Appendix H contains billing comparisons showing the impact on the bill of an average customer in each major rate class if the Settlement Rates are approved.

d. Combined Water and Wastewater Revenue Requirement: Pursuant to Section 1311(c) of the Public Utility Code and the Commission's Implementation Order in Docket No. R-2013-2355276, under the Settlement Rates a portion of the wastewater revenue requirement totaling \$29,296,281 (Step 1 Rate Increase) and \$21,480,685 (Step 2 Rate Increase) is being allocated to water customers, as shown in Appendix C, Water Operations Excluding Steelton).

e. Stormwater Rates: Under the Settlement, the Company agrees to propose potential recovery and rate methodology options for stormwater costs of combined sewer systems in its next general wastewater or combined water/wastewater base rate filing. The proposals will include an analysis of the recovery of such stormwater costs through various methodologies including forms of separate stormwater rates, and a description of the customers to whom the rates would apply. PAWC also agrees that, at intervals of approximately one year and two years after entry of the Commission's final Order approving the Settlement in this proceeding, unless the Company files a wastewater or combined water/wastewater general base rate case prior to either of those times, it will meet with the parties to this case to provide progress updates and discuss potential cost recovery methods under consideration.

E. Effective Date

72. The Joint Petitioners agree to the implementation of the Settlement Rates on January 28, 2021, when the suspension period will expire. Upon the entry of a Commission

Order approving this Joint Petition, the Company will be permitted to file a tariff for water service, in the form attached hereto as Appendix A, and a tariff for wastewater service, in the form attached hereto as Appendix B, reflecting the agreed-to additional operating revenue to become effective in two installments on January 28, 2021 and January 1, 2022, respectively. The Company's proposed limitation of liability provisions, which are outlined in the direct and rebuttal testimony of PAWC witness Ashley Everette, have been reflected in the proposed tariffs for water service and wastewater service provided in Appendices A and B.

73. If Commission approval of this Settlement occurs after January 28, 2021, the Joint Petitioners agree that PAWC shall be entitled to recoup the revenue increase not billed from the effective date through the date of PUC approval of new rates in the manner set forth in the Commission's final Order in this proceeding. The revenue increase not billed from the effective date through the date of PUC approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes.

III. PUBLIC INTEREST CONSIDERATIONS

74. PAWC, I&E and PAWLUG have each prepared Statements in Support identified as Statements A through D, respectively, setting forth the bases upon which they believe that the Settlement, including the Settlement Rates, is fair, just, reasonable, non-discriminatory, lawful and in the public interest.

75. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:

a. The Settlement provides for an increase in annual operating revenues of \$70.5 million in two installments, which will be offset by an annualized credit of \$10.5 million

in each of years 2021 and 2022, in lieu of the \$136.8 million increase over the two years of the MYRP PAWC originally requested.

b. The Settlement includes robust commitments from PAWC to protect its customers amid the COVID-19 public health and economic crisis.

c. The Settlement Rates will allocate the agreed upon combined water and wastewater revenue requirement to each rate zone and customer class in a manner that is reasonable in light of the rate structure/cost of service positions of the Joint Petitioners and implement Section 1311(c) of the Public Utility Code in a manner that is agreeable to the Joint Petitioners.

d. The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery, submitting testimony and engaging in in-depth discussions. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*see* 52 Pa. Code §§ 5.231, 69.391 and 69.401), and is supported by a substantial record.

IV. ADDITIONAL TERMS AND CONDITIONS

76. This Settlement is proposed by the Joint Petitioners to settle the instant case and is made without any admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within three business days following entry of the Commission's Order by any of the Joint Petitioners and, in such

event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including but not limited to presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions. The Joint Petition does not establish precedent and neither the Joint Petition nor Commission approval of the Joint Petition shall be cited in other proceedings, except to enforce the Joint Petition. The Joint Petitioners agree that, while the Settlement, upon Commission approval without modification, will be enforceable according to its terms, the Joint Petition does not expressly or implicitly represent approval of any specific claim or claims made in this proceeding and agree not to contend otherwise in any other proceeding.

77. All Joint Petitioners will make reasonable, good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the ALJ in the Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

V. CONCLUSION

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request as follows:

1. That the Honorable Administrative Law Judge Conrad A. Johnson recommend approval of, and the Commission approve, the Settlement embodied in this Joint Petition, including all terms and conditions thereof, without modification;
2. That the Commission find the Settlement Rates to be just and reasonable and grant the Company permission to file the Tariffs attached hereto as Appendix A and B to become effective for service rendered on and after January 28, 2021, which Tariffs, among other things, are designed to produce an annual increase in total operating revenues of \$70.5 million that will be offset by an annualized \$10.5 million credit to customers in each of years 2021 and 2022; and

3. That the Commission deem the complaints filed by parties that are Joint Petitioners to be satisfied by the approval of the Settlement and dismiss with prejudice all outstanding complaints filed by parties that are not Joint Petitioners.

Respectfully submitted,



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Dated: October 30, 2020

APPENDIX D

Summary of Revenue Increase

Summary of Settlement Revenue Increase

<u>January 28, 2021 through December 31, 2021 (“Step 1”):*</u>	<u>January 1, 2022 through January 27, 2023 (“Step 2”):**</u>	<u>January 28, 2023 and forward:</u>
Step 1 Base Rate Increase: \$50.5 M Step 1 Annualized Credit: <u>\$(10.5) M</u> Step 1 Net Increase: \$40.0 M	Step 1 Base Rate Increase: \$ 50.5 M Step 2 Base Rate Increase: \$ 20.0 M Step 2 Annualized Credit: <u>\$(10.5) M</u> Step 2 Net Increase: \$60.0 M	Total Base Rate Increase: \$70.5 M Credit: <u>\$ (0)</u> Net Increase: \$70.5 M

* The figures for Step 1 are annualized (i.e., they reflect the base rate revenue increase, credit and net increase for a full twelve-month period ending December 31, 2021. However, because the end of the suspension period and effective date for rates established in this case is January 28, 2021, the base rate revenue increase and credit and, therefore, the net increase the Company will realize in 2021 (Step 1), will be only approximately 92% $[(365-28)/365]$ of the annualized amounts shown in the table above. As shown above, the credit will expire by January 28, 2023.

** The base rate increases, credit and net increase are annualized (i.e., stated on the basis of a twelve-month period).

APPENDIX E

Amortizations

Pennsylvania American Water Company
Water Operations
Settlement
Appendix E, Amortizations

	Case Approved Docket No.	Amortization Period (Years)	Unamortized Balance 12/31/2020	Amortization End Date	Annual Amortization	Reference
Water Operations						
Positive Utility Plant Acquisition Adjustments						
PG&W	Docket No. R-973944	40	\$7,637,270	9/30/2037	\$455,956	Exhibit 3-A, p. 33
Saxonburg Area Authority	Docket No. R-2011-2232243	10	36,702	10/31/2021	36,702	Exhibit 3-A, p. 33
Birch Acres Waterworks Inc.	Docket No. R-2011-2232243	10	520	10/31/2021	520	Exhibit 3-A, p. 33
Lake Spangenberg Water Co.	Docket No. R-2013-2355276	10	41,125	12/31/2023	13,709	Exhibit 3-A, p. 33
Fernwood Community Water System	Docket No. R-2013-2355276	10	16,892	12/31/2023	5,630	Exhibit 3-A, p. 33
Olwen Heights Water Service Co.	Docket No. R-2013-2355276	10	16,185	12/31/2023	5,396	Exhibit 3-A, p. 33
Negative Utility Plant Acquisition Adjustments						
Boggs Township	Docket No. R-2011-2232243	10	(22,626)	10/31/2021	(22,626)	Exhibit 3-A, p. 62
Amwell Municipal Authority	Docket No. R-2011-2232243	10	(17,179)	10/31/2021	(17,179)	Exhibit 3-A, p. 62
Sutton Hills Homeowners Assn	Docket No. R-2011-2232243	10	(5,806)	10/31/2021	(5,806)	Exhibit 3-A, p. 62
Indian Rocks Prop. Owners Assoc.	Docket No. R-2013-2355276	10	(3,703)	12/31/2023	(1,234)	Exhibit 3-A, p. 62
North Fayette County Mun. Auth	Docket No. R-2013-2355276	10	(188,899)	12/31/2023	(62,966)	Exhibit 3-A, p. 62
Wildcat Park Corporation	Docket No. R-2013-2355276	10	(24,814)	12/31/2023	(8,271)	Exhibit 3-A, p. 62
Turbotville Water	Docket No. R-2020-3019369	10	(816,010)	1/28/2031	(81,601)	Exhibit 3-A Revised, p. 62R
Other Amortizations						
Demand Study	Docket No. R-2017-2595853	10	186,963	12/31/2027	26,709	Exhibit 3-B p. 354
Lead Service Line Costs	Docket No. R-2020-3019369	10	252,241	1/28/2031	25,224	Exhibit 3-B p. 354
DEP Safe Drinking Water Fees	Docket No. R-2020-3019369	3	1,676,000	1/28/2024	558,667	PAWC Statement No. 4R, p. 11
Turbotville Water Transaction costs	Docket No. R-2020-3019369	10	10,816	1/28/2031	1,082	Exhibit 3-A, p. 33
Equipment Discount	Docket No. R-2020-3019369	20	(553,806)	1/28/2041	(27,690)	Exhibit 3-A Revised, p. 35R
Receivership - Winola Water	Docket No. R-2020-3019369	10	406,190	1/28/2031	40,619	Exhibit 3-A Revised, p. 34R
Total Water Operations Excluding Steelton			\$8,648,061		\$942,841	
Steelton Water Operations						
Steelton Transaction Costs	Docket No. R-2020-3019369	10	\$158,976	1/28/2031	\$15,898	Exhibit 3-A, p. 90
Steelton DEP Safe Drinking Water Fees	Docket No. R-2020-3019369	3	10,000	1/28/2024	3,333	PAWC Statement No. 4R, p. 11
Steelton Post-in-service AFUDC	Docket No. R-2020-3019369	3	1,790	1/28/2024	597	Exhibit 3-A, p. 111
Steelton Deferred Depreciation	Docket No. R-2020-3019369	3	5,693	1/28/2024	1,898	Exhibit 3-A, p. 111
Total Water Steelton Operations			\$176,459		\$21,725	

Pennsylvania American Water Company
Wastewater SSS Operations
Settlement
Appendix E, Amortizations

	Case Approved Docket No.	Amortization Period (Years)	Unamortized Balance 12/31/2020	Amortization End Date	Annual Amortization	Reference
<u>Wastewater SSS Operations</u>						
Positive Utility Plant Acquisition Adjustments						
Clean Treatment Sewage Company	Docket No. R-2013-2355276	10	\$176,346	12/31/2023	\$58,782	Exhibit 3-A, p. 146
Delaware Sewer Acquisition Positive UPAA	Docket No. R-2020-3019369	10	61,700	1/28/2031	6,170	Exhibit 3-A Revised, p. 146R
New Cumberland Borough WW Acq. Costs	Docket No. R-2016-2544151	10	105,021	12/31/2027	15,003	Exhibit 3-A, p. 146
Negative Utility Plant Acquisition Adjustments						
Turbotville WW Negative UPAA	Docket No. R-2020-3019369	10	(204,064)	1/28/2031	(20,406)	Exhibit 3-A Revised, p. 167R
Other Amortizations						
Delaware Sewer Acquisition Transaction Costs	Docket No. R-2020-3019369	10	320,000	1/28/2031	32,000	Exhibit 3-A Revised, p. 146R
Turbotville WW Transaction costs	Docket No. R-2020-3019369	10	6,597	1/28/2031	660	Exhibit 3-A, p. 146
Total Wastewater SSS Excluding Sadsbury and Exeter			\$465,600		\$92,209	
<u>Sadsbury SSS Operations</u>						
Sadsbury Acquisition Costs	Docket No. R-2020-3019369	10	\$261,101	1/28/2031	\$26,110	Exhibit 3-A, p. 193
Post-in-service AFUDC	Docket No. R-2020-3019369	3	1,073	1/28/2024	358	Exhibit 3-A, p. 210
Deferred Depreciation	Docket No. R-2020-3019369	3	1,668	1/28/2024	556	Exhibit 3-A, p. 210
Total Sadsbury SSS			\$263,841		\$27,024	
<u>Exeter SSS Operations</u>						
Exeter Acquisition Costs	Docket No. R-2020-3019369	40	\$1,052,872	1/28/2061	\$26,322	Exhibit 3-A, p. 236
Post-in-service AFUDC	Docket No. R-2020-3019369	3	7,792	1/28/2024	2,597	Exhibit 3-A, p. 256
Deferred Depreciation	Docket No. R-2020-3019369	3	6,191	1/28/2024	2,064	Exhibit 3-A, p. 256
Total Exeter SSS			\$1,066,855		\$30,983	

Pennsylvania American Water Company
Wastewater CSS Operations
Settlement
Appendix E, Amortizations

	Case Approved Docket No.	Amortization Period (Years)	Unamortized Balance 12/31/2020	Amortization End Date	Annual Amortization	Reference
<u>Scranton CSS Operations</u>						
Scranton Sewer Auth - Acquisition Costs	Docket No. R-2017-2595853	40	\$2,754,137	12/31/2057	\$74,436	Exhibit 3-A, p. 285
Total Scranton CSS			\$2,754,137		\$74,436	
<u>McKeesport CSS Operations</u>						
McKeesport Acquisition Costs	Docket No. R-2020-3019369	40	\$1,152,816	1/28/2061	\$28,820	Exhibit 3-A Revised, p. 334R
Post-in-service AFUDC	Docket No. R-2020-3019369	3	434,157	1/28/2024	144,719	Exhibit 3-A, p. 353
Deferred Depreciation	Docket No. R-2020-3019369	3	391,647	1/28/2024	130,549	Exhibit 3-A, p. 353
Total McKeesport CSS			\$1,978,620		\$304,088	
<u>Kane CSS Operations</u>						
Kane Acquisition Costs	Docket No. R-2020-3019369	40	\$706,788	1/28/2061	\$17,670	Exhibit 3-A Revised, p. 378R
Total Kane CSS			\$2,685,408		\$321,758	

Pennsylvania American Water Company
Appendix E, Amortization of Tax Cuts and Jobs Act (TCJA)
Stub Period and Reconciliation

	Case Approved Docket No.	Amortization Period (Years)	Unamortized Balance 12/31/2020	Amortization End Date	Annual Amortization	Reference
Water	Docket No. R-2020-3019369	3	(\$22,633,729)	1/28/2024	(\$7,544,576)	Exhibit 3-A, p. 36
Wastewater	Docket No. R-2020-3019369	3	(1,059,468)	1/28/2024	(353,156)	Exhibit 3-A, p. 147
Scranton Wastewater	Docket No. R-2020-3019369	3	(693,301)	1/28/2024	(231,100)	Exhibit 3-A, p. 286
Total			(\$24,386,498)		(\$8,128,832)	

Pennsylvania American Water
Appendix E, TCJA Excess ADIT

Plant										Catchup Amortization	
Utility Plant in Service (PowerTax)										2018-2020	2021-2022
Item	Amortization Method	Period	Categorization pursuant to Tax Normalization rules	Net Excess Accumulated Deferred Income Taxes	2018 Amortization	2019 Amortization	2020 Amortization	2021 Amortization	2022 Amortization	Total	2 Yr amortization
Method / Life	ARAM	Asset Life	Protected	206,658,250	2,344,452	2,847,516	2,409,335	2,327,941	2,013,191	7,601,303	3,800,652
Cost of Removal	Straight Line		20 Unprotected	5,587,890	279,394	279,394	279,394	279,394	279,394	838,183	419,092
Repairs	Straight Line		20 Unprotected	140,081,147	7,004,057	7,004,057	7,004,057	7,004,057	7,004,057	21,012,172	10,506,086
Taxable CIAC	ARAM	Asset Life	Protected	(3,371,573)	(233,870)	(233,870)	(233,870)	(233,870)	(233,870)	(701,610)	(350,805)
All Other Federal	Straight Line		20 Unprotected	(975,857)	(48,793)	(48,793)	(48,793)	(48,793)	(48,793)	(146,379)	(73,189)
Federal Benefit of State	Straight Line		20 Unprotected	(13,651,713)	(682,586)	(682,586)	(682,586)	(682,586)	(682,586)	(2,047,757)	(1,023,878)
Sub-Total (UPIS)				334,328,143	8,662,656	9,165,720	8,727,538	8,646,145	8,331,394	26,555,914	13,277,957
CWIP, CAC, and other Non-UPIS Plant items											
Item	Amortization Method	Life									
Plant Customer Advances	Straight Line		20 Unprotected	(10,382,270)	(519,114)	(519,114)	(519,114)	(519,114)	(519,114)	(1,557,341)	(778,670)
Plant CWIP	Straight Line		20 Unprotected	446,724	22,336	22,336	22,336	22,336	22,336	67,009	33,504
CIAC WIP	Straight Line		20 Unprotected	(206,590)	(10,330)	(10,330)	(10,330)	(10,330)	(10,330)	(30,989)	(15,494)
Plant 481	Straight Line		20 Unprotected	745,845	37,292	37,292	37,292	37,292	37,292	111,877	55,938
CAC Reserve	Straight Line		20 Unprotected	1,031,707	51,585	51,585	51,585	51,585	51,585	154,756	77,378
Net Operating Loss Carryover	ARAM	Asset Life	Protected	(3,780,416)	(97,953)	(103,641)	(98,687)	(184,398)	(182,157)	(300,281)	(150,140)
Net Operating Loss Carryover	Straight Line		20 Unprotected	(4,929,046)	(246,452)	(246,452)	(246,452)	(246,452)	(246,452)	(739,357)	(369,678)
Sub-Total (Non-UPIS)				(17,074,045)	(762,634)	(768,323)	(763,368)	(849,080)	(846,838)	(2,294,325)	(1,147,163)
Sub-Total Plant				317,254,098	7,900,021	8,397,397	7,964,170	7,797,065	7,484,556	24,261,588	12,130,794
Non-Plant	Other	Straight Line	20 Unprotected	(1,394,184)	(69,709)	(69,709)	(69,709)	(69,709)	(69,709)	(209,128)	(104,564)
Total				315,859,914	7,830,312	8,327,688	7,894,461	7,727,356	7,414,847	24,052,460	12,026,230
Catch up								12,026,230	12,026,230		
Total								19,753,586	19,441,077		

STATEMENT A

PAWC Statement in Support

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PENNSYLVANIA-AMERICAN WATER
COMPANY**

**Docket Nos. R-2020-3019369
R-2020-3019371**

**STATEMENT OF PENNSYLVANIA-AMERICAN WATER COMPANY
IN SUPPORT OF THE JOINT PETITION FOR
NON-UNANIMOUS SETTLEMENT OF RATE INVESTIGATION**

October 30, 2020

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PENNSYLVANIA-AMERICAN WATER
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**STATEMENT OF PENNSYLVANIA-AMERICAN WATER COMPANY
IN SUPPORT OF THE JOINT PETITION FOR
NON-UNANIMOUS SETTLEMENT OF RATE INVESTIGATION**

TO THE HONORABLE CONRAD A. JOHNSON, ADMINISTRATIVE LAW JUDGE:

I. INTRODUCTION AND OVERVIEW

Pennsylvania-American Water Company (“PAWC” or the “Company”) submits this Statement in Support with respect to the Joint Petition for Partial Settlement of Rate Investigation (“Joint Petition”) entered into by and among PAWC, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”) and the Pennsylvania-American Water Large Users Group (“PAWLUG”) (“Joint Petitioners”). If the settlement set forth in the Joint Petition (“Settlement”) is approved, it will resolve all issues between the Company, I&E and PAWLUG in this proceeding.¹

¹ AK Steel Corporation (“AK Steel”) has authorized the Joint Petitioners to represent that it does not oppose the Settlement. The Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services in Pennsylvania (“CAUSE-PA”), and the Commission on Economic Opportunity (“CEO”), which are also parties to the proceeding, are not joining the Settlement. The OCA, OSBA, CAUSE-PA, and CEO oppose any increase in rates at this time because they contend that the Commission should not approve an increase in utility rates during the COVID-19 emergency. PAWC will address this position in detail in its Main Brief and notes that the Company has entered into stipulations with CAUSE-PA regarding language access and protection from abuse accounts issues raised in this proceeding.

The Settlement of this case was achieved only after a comprehensive investigation of PAWC's operations and finances, which included: (1) extensive discovery (PAWC responded to approximately 700 interrogatories – many containing numerous subparts); (2) submission of direct, rebuttal and surrebuttal testimony covering a wide range of issues; (3) informal discovery; (4) public input hearings; and (4) negotiations among the Joint Petitioners as to the appropriate revenue level, rate structure, rate design, and other matters, as set forth in detail in the Joint Petition.²

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and careful consideration of the COVID-19 emergency's impact on economic conditions in the Commonwealth that was based on a thorough and detailed analysis of all the evidence adduced in this case, which was entered into the record at the evidentiary hearings conducted on October 27-28, 2020. Significantly, I&E functions as an independent prosecutorial bureau within the Commission and, as such, is charged with representing the public interest in utility rate proceedings and has a statutory obligation to carefully scrutinize all aspects of a utility's request to increase rates.³ As evidenced by its active and extensive participation in all aspects of this case, I&E has conscientiously and rigorously discharged its statutory obligations. I&E's joining in, and fully supporting, the Settlement is strong evidence that the Settlement's terms and conditions are just, reasonable and in the public interest.⁴

² On August 4, 2020, a Secretarial Letter was issued directing the parties to address questions raised by Commissioner Ralph V. Yanora concerning utility practices to prevent cross-connections and back-flow. On September 4, 2020, the Company submitted a written statement of supplemental direct testimony (PAWC St. 2-S) that fully addressed all of the questions presented by the Secretarial Letter. No other party submitted testimony on the directed questions.

³ See *Implementation of Act 129 of 2008 Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Order entered Aug. 11, 2011), p. 5 ("BI&E will serve as the prosecutory bureau for purposes of representing the public interest in ratemaking and service matters . . .").

⁴ See *Pa. P.U.C. v. T.W. Phillips Gas and Oil Co.*, Docket Nos. R-2010-2167797, *et al.*, 2010 Pa. PUC LEXIS 1598 at *80-85 (Recommended Decision issued Oct. 5, 2010), relying upon the support of I&E's predecessor, the Office

Moreover, as explained hereafter, the Company presented a compelling case for rate relief. This is evidenced by, among other factors: (1) PAWC's base rates have not increased since January 1, 2018;⁵ (2) since the end of the fully projected future test year ("FPFTY") in its last base rate case (December 31, 2018) PAWC has made significant investments in new and replacement water and wastewater plant with approximately \$409.1 million that has been or will be invested through the end of 2020⁶ and \$1.64 billion through the end of the second year (December 31, 2022) of the multi-year rate plan ("MYRP") that PAWC had proposed in this case;⁷ and (3) at the same time, PAWC has experienced a continuing trend of declining per-customer water usage.⁸

The Company's need for rate relief and the reasonableness of the increase in revenues set forth in the Settlement is addressed further in Section II, below. Section II also discusses the other terms of the Settlement and explains why they are reasonable in light of the evidence presented in this case and are in the public interest. Section III is a summation of the reasons why the Settlement as a whole is in the public interest.

A. Overview Of The Company's Filing And Of The Settlement

PAWC initiated this rate case on April 29, 2020, by filing Supplement No. 19 to Tariff Water-Pa. P.U.C. No. 5 ("Water Tariff Supplement") and Supplement No. 19 to Tariff

of Trial Staff ("OTS"), and other statutory parties as evidence that the settlement in that case was reasonable and in the public interest. The Recommended Decision was expressly approved and adopted by the Commission in its Final Order entered Nov. 4, 2010, at the above-referenced docket.

⁵ PAWC St. No. 1 (Nevirauskas), p. 9.

⁶ PAWC St. No. 3-R (Aiton), p. 2.

⁷ PAWC St. No. 1 (Nevirauskas), p. 8; *see also* PAWC St. No. 3 (Aiton), pp. 2-3 (describing PAWC's capital planning process and describing its planned water and wastewater projects, including many designed to address necessary replacements and gaining equipment); PAWC St. No. 3-R (Aiton), pp. 2-4 (explaining that the pandemic has not resulted in any delay or reduction of PAWC's planned capital projects).

⁸ PAWC St. No. 1 (Nevirauskas), pp. 35-37; *see also* PAWC St. No. 9 (Roach), pp. 4-33 (describing PAWC's analysis and calculation of continuing annual declines in its residential and commercial per-customer consumption of 893 gallons, or 2.18%, and 2,171 gallons, or 0.78%, respectively).

Wastewater Pa. P.U.C. No. 16 (“Wastewater Tariff Supplement”) requesting an increase in total-Company annual operating revenues of approximately \$138.6 million over the two years of its proposed MYRP as permitted by Section 1330(b)(1)(iv) of the Pennsylvania Public Utility Code (“Code”).⁹ Specifically, the Company proposed rates that would become effective at the end of the suspension period for this case and remain in effect until December 31, 2021 (“Rate Year 1”) and rates that would become effective on January 1, 2022 and remain in effect until December 31, 2022 (“Rate Year 2”). As proposed, the rates in effect in Rate Year 2 would remain in effect until the conclusion of another general base rate filing by the Company. As required by Section 1308(d), the Company’s proposed tariffs bore an effective date of June 28, 2020. Additionally, the Company proposed to invoke the Commission’s authority under Section 1311(c)¹⁰ to mitigate the impact of revenue increases on wastewater customers by recovering a portion of the Company’s wastewater revenue requirement from its total water and wastewater customer base.¹¹

On May 21, 2020, the Commission instituted an investigation of the Company’s existing and proposed rates and, as a result, the Company’s proposed tariffs were suspended by operation of law until January 28, 2021. On August 20, 2020, the Commission granted the request of the OCA to extend the effective date of new rates to March 15, 2020 – 45 days beyond the statutory suspension period – but made the extension subject to allowing the Company to recoup revenues that might be lost during that interval under new rates approved by the Commission.

⁹ 66 Pa.C.S. § 1330(b)(1)(iv). Hereafter all references to a “Section” are to the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, unless indicated otherwise.

¹⁰ Section 1311(c) provides, in relevant part, that “the commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.”

¹¹ PAWC St. No. 1 (Nevirauskas), pp. 30-34.

Various issues pertaining to the level of revenues to which the Company is entitled were the subject of extensive discovery and were addressed at length in the parties' direct, rebuttal, surrebuttal and rejoinder testimony. Revenue requirement was also the subject of intensive negotiations, which produced an agreement among the Joint Petitioners that PAWC has established its need for an increase in total-Company operating revenues of at least \$70.5 million as of the end of the statutory suspension period in this case. The agreed increase is in lieu of the PAWC's initially requested increase of \$138.6 million over Rate Years 1 and 2 and reflects PAWC's agreement that, if the Joint Petition is approved, its request for an increase in revenues for Rate Year 2 of the MYRP is withdrawn in its entirety. The impact of the agreed increase is further mitigated by two additional terms of the Settlement. First, the base rate increase of \$70.5 million will be offset by annualized credits of \$10.5 million in 2021 and 2022. Second, the increase will be implemented incrementally in two installments and, thereby, phased-in over two years. The implementation of the base rate increase, credits and phase-in are shown in Table 1 below:

<u>January 28, 2021 through December 31, 2021 ("Step 1"):</u> *	<u>January 1, 2022 through January 27, 2023, 2022 ("Step 2")**:</u>	<u>January 28, 2023 and forward:</u>
Step 1 Base Rate Increase: \$ 50.5 M	Step 1 Base Rate Increase: \$ 50.5 M	Total Base Rate Increase: \$70.5 M
Step 1 Credit: <u>\$(10.5) M</u>	Step 1 Base Rate Increase: \$ 20.0 M	Credit: <u>\$ (0)</u>
Step 1 Net Increase: \$ 40.0 M	Step 2 Credit: <u>\$(10.5) M</u>	Net Increase: \$70.5 M
	Step 2 Net Increase: \$ 60.0 M	

* The figures for Step 1 are annualized (i.e., they reflect the base rate revenue increase, credit and net increase for a full twelve-month period ending December 31, 2021. However, because the end of the suspension period and effective date for rates established in this case is January 28, 2021, the base rate revenue increase and credit and, therefore, the net increase the Company will realize in 2021 (Step 1), will be only approximately 92% [(365-28)/365] of the annualized amounts shown in the table above. As also shown above, the credit will expire by January 28, 2023.

** The base rate increases, credit and net increase are annualized (i.e., stated on the basis of a twelve-month period).

Additionally, the Settlement includes extensive commitments from the Company to enhance assistance to low-income and payment-troubled customers and help customers address conditions that arose because of the COVID-19 emergency.

This case presented additional issues because, as the first base rate case filed by PAWC since the enactment of Act 58 of 2018, which added Section 1330 to the Code, it was the first opportunity for PAWC to seek to implement alternative ratemaking mechanisms that were authorized by the Legislature in Section 1330.

Witnesses for I&E, OCA, and OSBA also raised a number of issues pertaining to how and from whom the cost of furnishing wastewater service should be recovered. In particular, parties took issue with PAWC's proposal to allocate approximately \$32.9 million (Rate Year 1) and \$35.2 million (Rate Year 2) of its wastewater revenue requirement to water customers. Witnesses for I&E and OCA also recommended that PAWC develop and propose a separate stormwater rate for the Company's Scranton, McKeesport and Kane combined sewer system ("CSS") operations in its next rate case.

Issues pertaining to the Company's proposals to implement alternative ratemaking mechanisms in this case and the issue of wastewater cost recovery will be resolved by the Commission's approval of the Settlement. Pursuant to Paragraph No. 33 of the Joint Petition, and as noted previously, upon approval of the Settlement, the Company agrees to withdraw in its entirety the second year of its MYRP proposal and to withdraw its proposed Regionalization and Consolidation Surcharge ("RCS") and Pension and Other Post-Employment Benefit ("OPEB") Tracker and deferral mechanism. Additionally, the Settlement will resolve among the Joint Petitioners issues concerning the recovery of a portion of wastewater revenue requirement from the customer base of the Company's water operations. Specifically, under the Settlement Rates

only \$29.3 million (Step 1) and \$21.5 million (Step 2) of wastewater revenue requirement – not the amounts of \$32.9 million (Rate Year 1) and \$35.2 million (Rate Year 2) PAWC originally proposed – would be allocated to its water operation’s cost of service.¹² In addition, in Paragraph No. 71.e of the Joint Petition, the Company agrees to propose potential recovery and rate methodology options for storm water costs for its CSS operations in its next general wastewater or combined water/wastewater base rate filing.

Various other specific issues that were raised by other parties’ testimony have been largely resolved by the compromises on all sides that resulted in the agreed upon increase in revenues of \$70.5 million, subject to the credits and phase-in discussed previously, in lieu of the Company’s original rate increase proposal. There are certain terms that reflect the Joint Petitioners’ agreement on specific issues, which are typically addressed in settlements, such as, for example, the depreciation rates to be used going forward,¹³ approved amortizations,¹⁴ the equity return rate to be used in calculating the Company’s Distribution System Improvement Charge (“DSIC”),¹⁵ the “baseline” of FPFTY plant additions that must be exceeded before the Company may reinstitute its DSIC¹⁶. In addition, the Joint Petitioners have resolved all rate structure and rate design issues by collaboratively developing the Settlement Rates, as set forth in the water and wastewater tariffs provided in Appendices A and B. The Joint Petitioners are in

¹² See Joint Petition ¶ 69. e. While the Section 1311(c) allocation to water operations under the Settlement Rates plays an important role in mitigating the increases to the Company’s 76,000 wastewater customers, it has a modest effect on water customers’ bills – representing an increase of approximately \$2.40 per month to an average residential customer.

¹³ Joint Petition ¶ 29.

¹⁴ Joint Petition ¶ 30.

¹⁵ Joint Petition ¶ 32.

¹⁶ Joint Petition ¶ 31.

full agreement that the Settlement Rates fairly and reasonably allocate the increase in water and wastewater revenues among PAWC's customer rate classes.¹⁷

A total of eight public input hearings were held in this case across the Company's service territory.¹⁸ The Company believes that, given its size (PAWC provides service to approximately 740,000 customers)¹⁹ and the challenges of serving a geographically diverse service territory (PAWC provides service in 36 of the 67 counties in the Commonwealth),²⁰ there were remarkably few service-related issues raised at the public input hearings.

As the Commission is aware, PAWC has been an industry leader in initiating, developing and implementing innovative programs to assist low-income and payment-troubled customers.²¹ Continuing its commitment to assisting low-income customers and with particular emphasis on providing greater assistance during the COVID-19 emergency, the Settlement includes an array of enhancements to furnish COVID-19 relief measures to customers²² and to strengthen and augment PAWC's robust low-income assistance programs.²³ These enhancements are coupled with commitments to expand community outreach to communities in need, establish a low-income advisory group and work with community-based organizations in its service territory to expand awareness of PAWC's low-income assistance programs and facilitate the delivery of low-income assistance.²⁴ In addition, the Settlement includes measures to track low-income

¹⁷ See Joint Petition ¶¶ 70-71.

¹⁸ See Joint Petition ¶ 14.

¹⁹ PAWC St. 2 (Clarkson), p. 3.

²⁰ *Id.* at 4.

²¹ See PAWC St. 1 (Nevirauskas), pp. 44-45 and 47-49.

²² Joint Petition ¶¶ 34-39.

²³ Joint Petition ¶¶ 40-44 and 68.

²⁴ Joint Petition ¶¶ 37, 43 and 69.

customers protected by the winter moratorium on termination,²⁵ additional protection for water service to occupants of leased premises,²⁶ enhanced and expanded language access measures²⁷ and additional protection for customers or members of a customer's household that might face actual or threatened domestic violence.²⁸

As previously indicated, the specific terms of the Settlement are discussed in more detail in Section II, *infra*.

B. The Settlement Is Consistent With Commission Policy, Practice And Precedent Concerning Settlements

The Commission's long-standing policy, practice and precedent, which are embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401, strongly encourage parties to resolve contested proceedings by settlement. Indeed, in its Policy Statement, the Commission states that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." There are many reasons why settlements can produce better outcomes and do a better job of promoting the public interest than full litigation, which have been repeatedly affirmed in decisions approving proposed settlements. Those reasons were aptly summarized in the Commission's recent approval of a settlement of PECO Energy Company's 2018 electric rate case:

Rate increase proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of

²⁵ Joint Petition ¶ 45.

²⁶ Joint Petition ¶¶ 46-49.

²⁷ Joint Petition ¶¶ 50-57.

²⁸ Joint Petition ¶¶ 58-67 and 69.

preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.²⁹

Settlements also promote the public interest in another important way. In settlements, parties can, through compromise and agreement, craft innovative and creative solutions that the Commission may not be in a position to develop and impose unilaterally. That is certainly the case with the Settlement that has been achieved by the Joint Petitioners in this proceeding.

C. Settlements That Do Not Stipulate Or Identify The Specific Components Underlying A Settled Revenue Increase Have Been Consistently Approved And Strongly Endorsed By The Commission As Promoting The Public Interest

As the Joint Petition makes clear (*see* Paragraph Nos. 23 and 76) the Joint Petitioners acknowledge that, subject to the limited exceptions set forth in the Joint Petition, they have not sought, nor would they be able, to agree upon the specific ratemaking adjustments that support their respective decisions to enter into the Settlement. Nonetheless, as the Joint Petitioners explain in their respective Statements in Support, they are in full agreement that the Settlement achieves the following goals:

- Resolves a number of contested issues, by means of inter-related compromises, in a manner that produces an overall outcome well within the range of reasonable outcomes supported by the record evidence;
- Appropriately and fairly balances: (1) the interests of customers in receiving safe, adequate and reliable service at just and reasonable rates; and (2) the interests of

²⁹ *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Final Opinion and Order entered Dec. 20, 2018) (“*PECO 2018 Rate Case Order*”), p. 15.

the Company and its shareholders in having a reasonable opportunity – through continued prudent and efficient management – to earn a fair return on their investment in property dedicated to the public service, which will support further investment in additional needed plant and equipment;

- Fully reflects tax savings related to the Tax Cuts and Jobs Act (“TCJA”)³⁰ to offset the rate increase experienced by all customers;
- Produces a fair result for all parties;
- Contains significant COVID-19 relief measures, substantial enhancements to the Company’s low-income programs, and various additional customer protection measures, and
- Therefore, for all the foregoing reasons, is in the public interest.

As explained above, the Joint Petition embodies a so-called “black box” settlement because the Joint Petitioners have neither agreed upon, nor identified, their individual assessments of the various subsidiary components of the overall revenue requirement upon which they settled. The Joint Petitioners’ approach facilitates settlements by allowing parties to agree to an overall settled outcome that all parties find reasonable without abandoning or reversing their litigation positions on issues they deem important and, thereby, compromising their ability to present their arguments in other proceedings where settlement may not be possible.³¹ Thus, the net result is reasonable and acceptable to all, so long as the parties are not

³⁰ Tax Cuts and Jobs Act, Pub. L. No. 115-97 (2017).

³¹ See 52 Pa. Code § 5.231 and the Commission’s Policy Statement on Settlements, *supra*. While there are many Commission-approved Recommended Decisions that have found black box settlements to be in the public interest on this basis, one recent example is *Pa. P.U.C. v. Borough of Ambler Water Dept.*, Docket No. R-2014-2400003, 2014 Pa. PUC LEXIS 547 at *12-15, (Recommended Decision of Administrative Law Judge Cynthia Williams Fordham issued Oct. 17, 2014). In her Recommended Decision, Judge Fordham, after summarizing Commission precedent approving black box settlements, affirmed I&E’s position in that case that “the revenue amount and rate design in the Settlement are within the range of potential litigated outcomes” and “further line-by-line identification

forced to reveal their positions and strategies or the compromises they made to reach the settled outcome. Nonetheless, limited exceptions to the black box concept were made in this Settlement – as in other settlements that have been approved by the Commission – as needed to implement and administer the Settlement terms.

The Joint Petitioners’ approach to delineating the terms of the Settlement in the Joint Petition, namely, a “black box” subject to limited but appropriate exceptions, has been consistently and repeatedly approved by the Commission. One of the strongest endorsements of black box settlements as not only consistent with the public interest but a means of affirmatively promoting the public interest occurred in two companion cases involving Citizens’ Electric Company of Lewisburg, PA (“Citizens”) and Wellsboro Electric Company (“Wellsboro”), which are subsidiaries of a common parent. Citizens and Wellsboro made simultaneous rate filings, and black box settlements were achieved in both cases. The Administrative Law Judge approved the settlements in separate Recommended Decisions³² but noted, parenthetically, that “‘Black Box’ agreements are sometimes regarded with little enthusiasm” by some participants. The Commission approved both Recommended Decisions in Final Orders issued on January 13,

and ultimate resolution of each revenue-related issue raised in the proceeding beyond those addressed in the Settlement is not necessary to find that the Settlement is in the public interest” *Id.* Judge Fordham’s Recommended Decision was approved and adopted by the Commission in its Final Order entered Dec. 4, 2014. While *Borough of Ambler* involved a relatively smaller utility, black box settlements of base rate increases have been approved on the same basis for many large utilities, such as the settlement of PECO’s 2018 electric rate case discussed previously. *See, e.g., PECO 2018 Rate Case Order* (approving a black box settlement for a base rate increase of \$82 million); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-2017-2595853 (Final Order entered Dec. 7, 2017) (approving a black box settlement for a base rate increase of \$62 million); *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2015-2468981 (Final Order entered Dec. 17, 2015) (approving a black box settlement for a base rate increase of \$127 million); *Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2014-2406274 (Final Order entered Dec. 10, 2014) (approving a black box settlement for a base rate increase of \$32.5 million); *Pa. P.U.C. v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Final Order entered Apr. 23, 2014) pp. 8-15 (approving a black box settlement providing for a base rate increase of \$48 million); *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2010 Pa. PUC LEXIS 2001 at *15 and *30-35 (Final Order entered Dec. 16, 2010), (approving a black box settlement providing for a base rate increase of \$77.5 million).

³² *Pa. P.U.C. v. Citizens’ Elec. Co. of Lewisburg, PA*, Docket No. R-2010-2172665, 2010 Pa. PUC LEXIS 1890 at *20-21, (Recommended Decision issued Dec. 21, 2010), *Pa. P.U.C. v. Wellsboro Elec. Co.*, Docket No. R-2010-2172662, 2010 Pa. PUC LEXIS 1891 at *17-18 (Recommended Decision issued Dec. 21, 2010).

2010. In each case, then-Chairman Powelson issued separate statements endorsing black box settlements:

I . . . will continue to support settlements, including those of a black box nature, enthusiastically. Determination of a company's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company's cost of capital. To reach agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. *Black box settlements are an integral component of the process of delivering timely and cost-effective regulation.* (Emphasis added.)

Then-Chairman Powelson's separate statements in *Citizens'* and *Wellsboro*, *supra*, have been relied upon by parties, Administrative Law Judges and the Commission itself in many subsequent cases. For example, in Peoples TWP LLC's 2013 base rate case,³³ the Commission approved the settlement reached in that case and denied all of an objecting party's exceptions. In response to a complainant's specific objection to the black box nature of the settlement, the Commission stated that its holding was squarely based on Commissioner Powelson's statements in *Citizens'* and *Wellsboro*³⁴:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate

³³ *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Final Order entered Dec. 19, 2013), pp. 27-28.

³⁴ *Id.* at 28.

increase can be difficult and impractical in many cases. For these reasons, we support the use of a “black box” settlement in this proceeding and, accordingly, deny this Exception.

Similarly, in the Recommended Decision recommending approval of the black box settlement in PECO’s 2015 electric rate case, Administrative Law Judge Angela T. Jones explained:

The Commission has noted that “Black box” settlements are an important aspect in the process of delivering timely and cost effective regulation. A black box settlement is a means to reach agreement on a rate increase in a case where the issues raised are varied and complex. To delineate and specify each component of the rate increase to the issues would be difficult, time-consuming, expensive and costly to the consumers as a rate case expense. To curtail any delineation is to save time, expense and costs of the parties and the ratepayers. The Commission has in the past found such black box settlements to be reasonable and in the public interest. The instant case is consistent with Commission precedent.³⁵

As evidenced by the authorities discussed above, the Commission fully endorses the concept of black box settlements such as the Settlement achieved in this case.

D. General Standard For Approval Of Settlements

It is well-established that, in order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the public interest. *See Pa. P.U.C. v. CS Water & Sewer Assoc.*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. P.U.C. v. Philadelphia Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985). In Section II, below, each of the principal terms of the Settlement is discussed in light of the record evidence and the parties’ positions. As explained therein, the final resolution achieved by each of those terms is consistent with, and promotes, the public interest.

³⁵ Recommended Decision, *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2015-2468981 (entered Oct. 8, 2015), pp. 18-19 (citations omitted).

II. SPECIFIC SETTLEMENT TERMS³⁶

A. Revenue Requirement (Joint Petition, Paragraphs 23-32)

1. Revenue Increase (Joint Petition, Paragraphs 23-26)

As explained in Section I.A., *supra*, following detailed formal and informal discovery, the submission of multiple rounds of testimony and extensive negotiations, the Joint Petitioners carefully considered the economic impacts of the COVID-19 pandemic and agreed to the Settlement embodied in the Joint Petition, which resolves all issues among the Joint Petitioners in this case. The Settlement provides for a total-Company increase in operating revenues of \$70.5 million, based on its pro forma present rate revenue level, to become effective as of January 28, 2021 in lieu of the \$136.8 million increase over the two years of the MYRP PAWC initially requested in its April 29, 2020 rate filing. The \$70.5 million total revenue increase will be achieved in two installments and offset by an annualized \$10.5 million credit in the manner described in Section I.A. above.

A billing comparison for all general water service customer classes in all of the Company water rate zones is provided in Appendix G to the Joint Petition, which will be filed on November 6, 2020. Pending the submission of Appendix G, the Company estimates that, under the Settlement Rates, the monthly bill of a typical residential water customer in the Company Rate Zone 1 (in which 99% of all water customers are served) will increase by approximately 7% for the period from the effective date through January 1, 2022. Increases that will occur thereafter pursuant to the second installment of the proposed increase and after the expiration of the \$10.5 million credit as of January 28, 2023 are to be shown in Appendix G. The Company

³⁶ Section II of this Statement in Support contains a general description of the terms and conditions of the Settlement set forth in the Joint Petition. While every effort has been made to try to ensure that the descriptions are accurate, if any inconsistency exists or is perceived between the Statement in Support and the terms and conditions of the Joint Petition, the Joint Petition shall take precedence and shall control.

has ten separate wastewater rate zones under its current rates. Under the Settlement Rates, two of the smaller wastewater rate zones are being consolidated into Rate Zone 1 and, as a result, under the Settlement Rates, the Company will have a total of eight wastewater rate zones. The increase in the monthly bill of an average wastewater customer in each of the Company's existing rate zones under the Settlement Rates is provided in Appendix H to the Joint Petition.³⁷

There are four important factors that need to be considered and understood in order to place the proposed revenue increase under the Settlement in the proper context: (1) the time elapsed since the Company's last base rate case; (2) the Company's efforts to control operating and maintenance ("O&M") expenses and improve efficiency, while maintaining and enhancing customer service; (3) the Company's substantial investment in new and replacement property to replace aging infrastructure and comply with evolving legal and regulatory drinking water and environmental standards; and (4) the continuing trend of year-over-year reductions in per-customer water usage.³⁸

PAWC's current base rates were established by the Commission's Final Order entered December 7, 2017 at Docket No. R-2017-2595853 and became effective on January 1, 2018. Consequently, if the Settlement in this case is approved, PAWC's customers will have experienced no increase in distribution base rates in over three years.

Significantly, between the end of the FPFTY in PAWC's last base rate case (December 31, 2018) through the end of what had been the proposed Rate Year 2 in this case (December 31,

³⁷ All of the wastewater Settlement Rates and resulting average customer bills would be higher absent the Section 1311(c) allocation of a portion of wastewater revenue requirement to water operations, which was discussed in Section I.A., *supra*.

³⁸ See PAWC St. 1 (Nevirauskas), pp. 7-9 and 35-37 (explaining the forces driving the need for a rate increase. 4-32 (explaining the Company's efforts to improve efficiencies and reduce costs while maintaining and enhancing high quality service); PAWC St. 3 (Aiton), pp. 5-35 (explaining the major projects included in the Company's future test year ("FTY"), Rate Year 1 and Rate Year 2 capital additions); PAWC St. 9 (Roach) (explaining and quantifying the ongoing trend of declining per-customer residential and commercial water consumption).

2022), the Company will have invested over \$1.64 billion in new plant and equipment, and the majority of this investment is in source of supply, treatment, distribution and collection assets.³⁹ A material part of this total investment is being used to improve service to small, troubled water and wastewater systems that PAWC has acquired in furtherance of the Commission's policy to have larger, viable utilities acquire and upgrade smaller, less viable and service-troubled systems.⁴⁰ In fact, PAWC has been an industry leader in helping the Commission meet the significant challenges posed by the many small, troubled systems that still exist across the Commonwealth. To address all of these diverse capital needs, PAWC must raise substantial amounts of debt and equity capital and, in the process, must demonstrate its ability to provide a reasonable return in order to convince investors to commit their funds for its use. Additionally, the Company presented substantial un rebutted evidence, based on a well-established and widely-used economic model, that its capital expenditures can be expected to generate economic activity within its service territory totaling approximately \$540 million in 2020 and \$460 million in each of 2021 and 2022.⁴¹ That increase in economic activity would create over \$286 million, in 2020, and \$245 million, in each of years 2021 and 2022, in incremental gross region product in its service territory, including between \$17 and 20 million in additional state and municipal tax

³⁹ PAWC St. 1 (Nevirauskas), p. 8; PAWC St. 1-R (Nevirauskas), p. 5.

⁴⁰ PAWC St. 1 (Nevirauskas), p. 5. *See* PAWC St. 8 (Grundusky) (identifying the small, troubled and non-viable water and wastewater systems PAWC acquired since its last base rate case and explaining the regulatory violations and service deficiencies each system experienced, which have been or will be addressed by PAWC).

⁴¹ PAWC St. 15-R, pp. 30-31. As explained in PAWC Statement No. 15-R (Bishop), at pages 10-11, the results of the economic analysis detailed above are based on the IMPLAN econometric model, which is a widely recognized modeling platform used by various governmental agencies, universities, and public and private sector organizations for assessing the economic impacts of projects comparable to the construction projects reflected in PAWC's capital expenditures. Additionally, as explained by PAWC witness Bruce W. Aiton (PAWC St. 3-R, p. 4), the Company's need to continue to construct plant and equipment in order to furnish safe and reliable service has also been a "lifeline" to the many contractors and vendors with which it does business – vendors and contractors that would otherwise be struggling to survive and facing difficulties in continuing to employ their workforce during the economic downturn.

revenue.⁴² On an annual basis, the economic activity flowing from the Company's capital expenditures has also been shown by detailed economic modeling to support 4,400 job in 2020 and over 3,700 job in each of 2021 and 2022.⁴³ While PAWC has been making substantial investments in new and replacement plant to maintain and enhance service to customers, it has been experiencing – and will continue to experience – a well-documented multi-year trend of declining per-customer residential and commercial consumption.⁴⁴ The decline in consumption was delineated and quantified by PAWC witness Gregory P. Roach based on a comprehensive analysis, which demonstrated continuing declines in residential and commercial per-customer consumption of 893 gallons, or 2.18%, and 2,171 gallons, or 0.78%, respectively.⁴⁵ Averaged across PAWC's residential customer base, this equates to about 2.45 gallons and 5.95 gallons less usage per day per residential and commercial account, respectively. Mr. Roach explained the statistical analysis he performed to quantify the ten-year trend of declining residential usage and discussed the reasons why the decline will continue for the foreseeable future. In broad summary, the primary driver of this decline in usage is water-efficient plumbing fixtures and water-efficient appliances, which are mandated by federal law. Other factors contributing to the multi-year continuing trend of declining per-customer consumption include increased societal emphasis on conservation and the environment, Company and government programs encouraging efficient water use, and changes in consumer behavior in response to price signals provided by rising water and energy rates.⁴⁶ The COVID-19 emergency is not expected to stop or materially change the long-term trend of declining consumption. As explained by Mr. Roach,

⁴² *Id.*

⁴³ *Id.*

⁴⁴ PAWC St. 1 (Nevirauskas), p. 35.

⁴⁵ PAWC St. 9 (Roach).

⁴⁶ *Id.*

adjusting for the seasonal effects of warmer than normal weather during the Spring and early Summer, the Company's usage data through August 2020 are consistent with the long-term trend of declining per-customer usage.⁴⁷

The factors discussed above, namely, increased investment and declining load growth, have compromised the Company's ability to earn a fair return on its investment absent rate relief, notwithstanding its efforts to control its O&M expenses.⁴⁸ On a pro forma basis, PAWC's water and wastewater operations are projected to produce an overall return on invested capital of 6.31% and 5.62%, and a return on common equity of only 7.85% and 6.70%, as of December 31, 2021 and 2022, respectively.⁴⁹ Those return levels are clearly inadequate, as PAWC witness Ann E. Bulkley pointed out in her direct testimony.⁵⁰ Absent rate relief, PAWC's financial results would deteriorate even further in 2023 and thereafter and could jeopardize its ability to appropriately invest in the infrastructure needed to maintain and improve its safety, reliability and customer service levels. It is particularly important for PAWC to maintain and possibly improve its credit ratings because water and wastewater service is extremely capital intensive, as evidenced by the level of investment PAWC has made and will continue to make since its last base rate case, as discussed previously. Accordingly, it is important that PAWC obtain the increased revenues that the Settlement will provide.

⁴⁷ PAWC St. 9-R (Roach), pp. 2-6.

⁴⁸ PAWC St. 1-R (Nevirauskas), pp. 5-6 (explaining that PAWC has been able to the growth in non-depreciation O&M expense for its water operation to a compound annual growth rate of 1.76% since the end of the FPFTY in its last case).

⁴⁹ PAWC St. 1 (Nevirauskas), p. 6 and Schedule RPN-2.

⁵⁰ See PAWC St. 13 (Bulkley), pp. 3-4 (summarizing current market-determined equity cost rates and providing Ms. Bulkley's recommended rate of return on equity).

2. Pro Forma Present Rate Revenues As Filed By The Company Used To Establish the Settlement Rates (Joint Petition, Paragraph 27)

As previously explained, PAWC has been experiencing a multi-year trend of declining residential and commercial consumption. The Company, therefore, adjusted its revenue under present rates to reflect the decline in residential consumption by calculating the impact of the decline in consumption from the mid-point of the historic test year (“HTY”) to the mid-point of the Rate Year 2 – an interval of 36 months. Paragraph No. 27 of the Joint Petition embodies the Joint Petitioners’ agreement that PAWC’s pro forma present rate revenues reflecting its adjustment for the decline in residential and commercial consumption calculated and included in the Company’s rate filing have been used to establish the Settlement Rates.

3. Cost of Service Studies For Each CSS (Joint Petition, Paragraph 28)

In accordance with settlement of its last base rate case, the Company presented separate revenue requirement studies for each CSS it owns and filed cost-of-service studies that separately identify stormwater costs for the PAWC’s Scranton, McKeesport and Kane CSS operations.⁵¹ In Paragraph 28, the Company has agreed to provide in future base rate filings one or more separate stormwater and wastewater cost-of-service studies of each of its CSS operations. This provision assures that the Commission and the parties in the Company’s next base rate case will have information related to all PAWC-owned CSSs comparable to the cost of service information developed and filed in this case.

⁵¹ PAWC St. 1 (Nevirauskas), p. 10; PAWC St. 12 (Heppenstall), p. 5.

4. Depreciation Rates (Joint Petition, Paragraph 29)

The Company proposed annual depreciation accrual rates developed by John J. Spanos⁵² based on detailed depreciation studies conducted with regard to the Company's water and wastewater assets for the HTY, FTY, Rate Year 1 and Rate Year 2.⁵³ The depreciation rates proposed by the Company were reviewed and accepted by all other parties. Accordingly, the Joint Petitioners acknowledge and agree that those depreciation rates are appropriate for ratemaking purposes in this case and that PAWC will use those depreciation rates to calculate the depreciation expense it records on its regulated books of account.

5. Amortizations (Joint Petition, Paragraph 30)

Paragraph 30 reflects the Joint Petitioners' agreement resolving issues pertaining to amortizations to recover certain costs claimed by the Company and amortizations proposed by PAWC to return EADIT produced by the TCJA to customers in accordance with the average rate adjustment method ("ARAM") for "protected" EADIT and over a twenty-year period for all "unprotected" EADIT. The amounts being amortized, the periods of amortization and the annual amortization amounts are set forth in Appendix E to the Joint Petition.

6. Baseline For Restarting Charges Under The DSIC (Joint Petition, Paragraph 31)

Section 1358(b)(1) requires that a utility's DSIC be reset at zero on the effective date of new base rates. Section 1358(b)(2) specifies when, after such a "reset," a utility may begin to charge a DSIC. In its Supplemental Implementation Order,⁵⁴ the Commission has set forth its criteria for determining when a utility may charge a DSIC following a base rate "reset."

⁵² Mr. Spanos is a Senior Vice President of Gannett Fleming Valuation and Rate Consultants, LLC, and has testified extensively on depreciation for regulated utilities in proceedings before the PUC and the regulatory agencies and courts of other states. *See* PAWC St. 11, Appendices A and B.

⁵³ PAWC St. 11 (Spanos); PAWC Exhibits 11-A through 11-AE.

⁵⁴ *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Final Supplemental Implementation Order entered Sept. 21, 2016.

Consistent with the requirements of the Supplemental Implementation Order, Appendix F of the Joint Petition sets forth the “baselines” for water and wastewater operations that, when reached, will permit the Company to reinstitute charges under the respective water and wastewater DSIC Riders. In addition, the Company has agreed that, in any event, it will not reinstitute a DSIC prior to April 1, 2022.

7. Return On Equity For DSIC Revenue Requirements (Joint Petition, Paragraph 32)

As explained in Section I, *supra*, the revenue requirement elements of the Settlement reflect, for the most part, a matrix of compromises by the Joint Petitioners and, therefore, specific ratemaking adjustments are not spelled out in the Joint Petition, subject to limited exceptions. The Joint Petitioners have recognized that, notwithstanding the “black box” nature of the Settlement regarding revenue requirement, it is important to resolve, as part of the Settlement, the rate of return on equity that Joint Petitioners agree should be used by the Company in computing the Company’s DSIC revenue requirement. To that end, the Joint Petitioners have agreed and stipulated in Paragraph 32 of the Joint Petition that the Company shall use the rate of return on equity as calculated for water utilities and published in the “Bureau of Technical Utility Services Report on the Quarterly Earnings of Jurisdictional Utilities” (“TUS Quarterly Earnings Report”) for the most recent quarter for calculating the return on equity component of the Company’s DSIC. The TUS calculation is a recognized and accepted benchmark return on equity for use in calculating revenue requirement under the DSIC. Moreover, TUS regularly updates its calculation to reflect changes in market-determined equity costs based on a clearly stated methodology and database. A term similar to Paragraph 32 has been adopted in settlements of numerous base rate cases for major utilities that employ a DSIC.

8. The Revenue Requirement Provisions Of The Settlement Are Reasonable And In The Public Interest

In light of the standards consistently applied by this Commission, the revenue requirement provisions of the Settlement are reasonable and in the public interest, particularly when viewed in conjunction with the credits provided in 2021 and 2022 and the phase-in of the proposed increase. In its Final Order approving the settlement of Aqua PA's 2009 base rate case, the Commission outlined the following general principles for assessing whether a settlement meets the public interest standard:⁵⁵

The purpose of this investigation is to establish rates for Aqua customers which are "just and reasonable" pursuant to Section 1301 of the Public Utility Code (Code), 66 Pa.C.S. § 1301. A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pennsylvania Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper

⁵⁵ *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-2009-2132019, 2010 Pa. PUC LEXIS 1808 at *22-24 (Final Order entered June 16, 2010).

discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Applying the ratemaking principles discussed above and the standards employed by the Commission for assessing settlements, the revenue level set forth in the Settlement is reasonable, in the public interest and should be approved. As previously explained, the interval since the Company's last base rate case, the significant increase in its plant in service since that time, and declining usage, among other factors detailed in the testimony of PAWC's witnesses, present a compelling case for rate relief.

Moreover, with respect to the *Bluefield* and *Hope*⁵⁶ standards cited by the Commission in Aqua PA's 2009 base rate case, the Settlement carefully balances: (1) the right of the Company and its investors "to earn a return on the value of the property which it employs for the convenience of the public" and "to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties," with (2) the right of customers to pay rates that are commensurate with "business undertakings which are attended by corresponding risks and uncertainties" without providing the utility "profits . . . realized or anticipated in highly profitable enterprises or speculative ventures."⁵⁷ That balance is assured by the fact that I&E – the party legally obligated to protect consumers and the public interest – vigorously investigated all aspects of the Company's proposed increase and concluded that the Settlement Rates are just and reasonable. Similarly, the Company carefully considered the proposed revenue increase in light of the need to have a reasonable opportunity to earn a fair return, maintain the financial stability of its business, and obtain needed capital on reasonable

⁵⁶ *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

⁵⁷ *Bluefield*, as quoted in *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, *supra*.

terms to continue to furnish safe and reliable service. The Company concluded that the Settlement Rates satisfy those criteria by carefully balancing the interests of customers and the Company to promote the public interest. Additionally, although certain parties have elected to pursue litigation in order to try to block any increase in the Company's rates at this time, the Settlement resolves all issues among the Joint Petitions that, absent the Settlement, would have required a significant expenditure of time, money and other resources by the Joint Petitioners and the Commission to individually litigate. Those issues have now been fully subsumed by the inter-related compromises among the Joint Petitioners that led to the Settlement. Those savings are in everyone's interest and, in themselves, are another important reason why the Settlement promotes the public interest.

B. Alternative Ratemaking Mechanisms (Joint Petition, Paragraph 33)

In its initial filing, the Company sought approval to implement alternative ratemaking mechanisms consisting of its proposed (1) MYRP covering periods ending December 31, 2021 and 2022; (2) RCS mechanism; and (3) Pension and OPEB Tracker. As proposed by PAWC, the RCS would reflect and recover, between base rate cases, the revenue deficiency that may exist upon the Company's acquisition of the water or wastewater assets of a municipal corporation or authority at a fair market valuation established pursuant to Section 1329 of the Code. The Pension and OPEB Tracker would establish tracker and deferral accounts to reflect increases and decreases in annual amounts of pension and OPEB expense that occur between rate cases. Witnesses for I&E opposed the second year of the MYRP, as well as the RCS and Pension and OPEB Tracker. Paragraph 33 of the Joint Petition acknowledges that, in order to reach the Settlement, the Company's proposed alternative ratemaking mechanisms were withdrawn, and also sets forth the Joint Petitioners' agreement that withdrawal of PAWC's alternative

ratemaking proposals for purposes of this case is without prejudice to the Company's right to propose such mechanisms in future proceedings.

C. Customer Assistance, COVID-19 Relief Measures and Related Tariff Changes (Joint Petition, Paragraphs 34-69)

PAWC has always given careful consideration to developing and enhancing assistance to low-income and payment troubled customers. The Company had heightened concern for these important issues now because of the effects of the COVID-19 emergency and government measures to control the spread of COVID-19 that depressed economic activity and employment in its service territory. Because of those concerns, the Settlement includes an array of COVID-19 relief measures, enhancements to the Company's low-income assistance programs and other customer protections, as summarized below.

1. COVID-19 Relief Measures (Joint Petition, Paragraphs 34-39 and 68)

The Settlement provides a number of important measures to assist customers in dealing with the economic impact of the COVID-19 emergency, consisting of the following:

- PAWC will waive reconnection fees for customers at or below 200% of the Federal Poverty Level ("FPL") for one year from the date of the final Order in this case.
- PAWC will waive the good faith payment requirement for PAWC's H2O Help to Others Hardship Fund for one year from the date of the final Order in this proceeding.
- PAWC will permit customers to self-certify income for purposes of qualifying for the PAWC's H2O Help to Others Hardship Fund until the earlier of: (1) March 31, 2021; or (2) the date on which Governor Wolf's Executive Order is rescinded.
- PAWC will expand community outreach to communities in need within PAWC service territories, including developing a community outreach plan to target communities significantly impacted as a result of the COVID-19 emergency. Through the creation of a low-income advisory group, PAWC will seek input from interested parties and stakeholders to target areas with the most need. The community outreach plan will include an overall strategy and tactics to educate and enroll eligible and interested customers at or below 50% of the FPL.

- PAWC’s annual contribution to its H2O Help to Others hardship grant program will be increased from its current level of \$400,000 to \$500,000 for water operations and from \$50,000 to \$100,000 for wastewater operations.
- COVID-19 related financial impacts will be deferred and a regulatory asset established consistent with the Commission’s final Order on the Company’s Petition filed on October 15, 2020.⁵⁸

2. PAWC’s Low Income Programs (Joint Petition, Paragraphs 40-44 and 69)

The Settlement includes a number of enhancements to the Company’s programs to assist low-income customers, which take on added importance during the pendency of the COVID-19 emergency, as summarized below.

- PAWC will delete “To remain eligible for this rate, such customer must continually make timely payments on the discounted bills” from its water and wastewater tariff low-income rate provisions.
- PAWC will enhance its training materials and call scripts to specifically address how customers who call PAWC and its Customer Service Center indicating that they are having trouble paying their bills or are seeking financial assistance are directed to PAWC’s customer assistance programs.
- PAWC will continue to promote charitable contributions and donations to its H2O Help to Others Hardship Fund and expand its outreach channels to include working with the low-income advisory group to identify new sources of funding for the Hardship Fund.
- Within 90 days of a Commission’s final Order in this proceeding, PAWC will establish a low-income advisory group to include community based organizations within the Company’s service territory, a representative from the Commission’s Bureau of Consumer Services, interested stakeholders and interested parties in this case for the purpose of soliciting input to enhance the H2O Help to Others Program. The group will meet on a quarterly basis, with the first meeting of the advisory group to be held within 90 days of a Commission’s final Order in this proceeding.

⁵⁸ *Petition of Pennsylvania-American Water Company for Authorization to Defer, and Record as Regulatory Assets for Future Recovery: (1) Incremental Expenses Incurred Because Of The Effects of The COVID-19 Emergency; (2) Revenue Reductions Attributable to the Effects of the COVID-19 Emergency; and (3) Carrying Charges on the Amounts Deferred*

3. Winter Moratorium (Joint Petition, Paragraph 45)

PAWC will track low-income customers protected from winter moratorium termination as provided for under 52 Pa. Code §§ 56.100(a) and 56.251.

4. Discontinuance of Service to Leased Premises (Joint Petition, Paragraphs 46-49)

The Settlement includes additional protections for occupants of leased premises where water service is in the name of the landlord, as summarized below:

- Within 60 days of a final Order in this proceeding, PAWC will create and implement a standard form that a landlord will submit, with a notarized signature, swearing under penalty of law that the unit is unoccupied, that will be used when a landlord requests voluntary discontinuance of service. PAWC will modify internal policies to incorporate all the voluntary discontinuance requirements of the Discontinuance of Services to Leases Premises Act (“DSLPA”).
- PAWC will accept a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency that contains the name and address of the tenant as acceptable identification to establish tenancy for purposes of the DSLPA.
- PAWC will utilize the procedures under 66 Pa. C.S. § 1532 to require landlord ratepayers to provide the names and addresses of tenants of dwelling units and will notify those tenants of any impending termination in accordance with the DSLPA.
- PAWC will revise its policies, procedures, and associated training materials, as follows:
 - a. To indicate that, if PAWC terminates service to tenant-occupied landlord-ratepayer units without providing correct notice under the DSLPA, PAWC will restore service, deliver the required notice, and provide the time required under DSLPA for the tenant to make payment.
 - b. To incorporate the voluntary discountenance requirements of the DSLPA; and
 - c. To ensure that tenants are not required to appear in person to demonstrate tenancy or exercise their rights under DSLPA.

5. Language Access (Joint Petition Paragraphs 50-57)

The Settlement includes a number of provisions to address customers who do not speak English, including:

- Reviewing and modifying customer communications materials;
- Providing written documents in Spanish if requested and assuring such a customer's account is coded to provide customer correspondence in Spanish in the future;
- Translation of billing information (after consultation with the low-income advisory group);
- Modifying termination notices to accommodate Spanish speaking customers and provide notice of translation services;
- Training customer service representatives to contact third-party interpreters when dealing with customers of limited English proficiency;
- Developing a language access plan within 180 days of the final Order in this case after consultation with the low-income advisory group; and
- Conducting a formal needs assessment for zones with 5% or more of individuals who speak a language other than English or Spanish.

6. Protection from Abuse Accounts (Joint Petition Paragraphs 58-67 and 69)

The Settlement includes extensive provisions designed to enhance protection for customers or members of their households who may be victims of domestic abuse. A comprehensive list of the enhancements of PAWC's programs to protect domestic abuse victims is set forth in Paragraphs 58 through 67 and 69 of the Joint Petition, which include, among a number of other things, developing written policies and procedures; additional training; dedicating a group within its Compliance and Customer Advocacy teams responsible for consulting and communicating with protection from abuse and similar court orders; and developing and furnishing out-reach materials.

D. Cost Allocation, Revenue Allocation And Rate Design (Joint Petition, Paragraphs 70-71)

PAWC submitted eight separate cost of service studies, two of which relate to the Company's water operations and six relate to its wastewater operations, as explained in detail in the direct testimony of PAWC witness Constance E. Heppenstall. For the water operations' cost of service studies, Ms. Heppenstall employed the well-accepted base-extra capacity method, as described in the 2017 (seventh edition) and prior editions of the Water Rates Manual published by the American Water Works Association.⁵⁹ For sanitary sewer system ("SSS") wastewater operations, Ms. Heppenstall's cost of service studies were prepared using the functional cost allocation methodology described in "Financing and Charges for Wastewater Systems," Manual of Practice No. 27, published by the Water Environment Federation. That allocation methodology was modified in order to determine the incremental cost related to handling storm water for the PAWC's CSS operations (Scranton, McKeesport and Kane).⁶⁰

No witnesses for the Joint Petitioners' took issue with the cost of service studies Ms. Heppenstall prepared and were in general agreement that they were an appropriate guide in allocating revenues among customer classes in order to move all classes closer to their indicated cost of service, recognizing that such movement should be tempered by the concept of gradualism. However, I&E witness Eshan Sakaya recommended that PAWC develop and propose separate stormwater rates for the Company's CSS operations in its next base rate case. As part of the Settlement, the Company has agreed to propose potential recovery and rate methodology options for stormwater costs of combined sewer systems in its next wastewater or combined water/wastewater base rate filing.

⁵⁹ PAWC St. 12 (Heppenstall), pp. 8-9.

⁶⁰ *Id.*, pp. 17-36.

The allocation of the revenue increase under the Settlement Rates was subject to careful consideration and detailed negotiations among the Joint Petitioners. As a result, the Joint Petitioners were able to reach agreement on the allocation among customer classes of the revenue increase under the Settlement Rates that is depicted in the tariffs provided as Appendices A and B and the proof of revenues set forth in Appendix C to the Joint Petition, which will be filed on November 6, 2020. That allocation is within the range proposed by witnesses for the Joint Petitioners and, more importantly, it provides for reasonable movement toward the system average rate of return by the various customer classes as measured by the Company's cost of service study. Accordingly, the revenue allocation effected by the Settlement Rates is consistent with the Commonwealth Court's decision in *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (Pa. Cmwlth. 2006). Moreover, as the Commonwealth Court recognized in pre-*Lloyd* decisions, which were not disturbed by its holding in *Lloyd*, "there is no single cost of service study or methodology that can be used to answer all questions pertaining to costs"⁶¹ nor is there any "set formula for determining proper ratios among rates of different customer classes."⁶² Additionally, the Settlement Rates provide for a modest allocation of total wastewater revenue requirement (\$21 million) to water operations pursuant to Section 1311(c), as described in Paragraph 69. d. of the Joint Petition.

Water Rate Structure and Rate Design

Service Charges. Under the Settlement Rates, the Rate Zone 1 service charge for residential, commercial and municipal customers with 5/8-inch meters will be \$17.00 per month (2021) and \$17.50 per month (2022) in lieu of the \$18.00 (2021) and \$18.50 (2022) service charges proposed by the Company. The 5/8-inch service charge for the Industrial class in Rate

⁶¹ *Executone of Philadelphia, Inc. v. Pa. P.U.C.*, 415 A.2d 445, 448 (Pa. Cmwlth. 1980).

⁶² *Peoples Nat. Gas Co. v. Pa. P.U.C.*, 409 A.2d 446, 456 (Pa. Cmwlth. 1979).

Zone 1 under the Settlement Rates will be \$25.40, and the same percentage increase will be applied for all other meter sizes.

Consolidation of Rate Zones. The metered rates for all classes of customers in Rate Zone 2 (Nittany, Sutton Hills, All Seasons, Balsinger and Berry Hollow) have been consolidated with Rate Zone 1 under the Settlement Rates.

Rate Design Changes to Facilitate Future Rate Zone Consolidation. The Company currently has a separate Rate Zone 3 for its McEwensville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 3 have been equalized with Rate Zone 1.

The Company currently has a separate Rate Zone 4 for its Turbotville operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 4 have been equalized with Rate Zone 1. Additionally, usage charges for the residential class in Rate Zone 4 have been equalized with Rate Zone 1 in 2022.

The Company currently has a separate Rate Zone 5 for its Steelton Water Operations. Under the Settlement, the service charges for the residential, commercial and municipal customer classes in Rate Zone 5 have been increased to move closer to Rate Zone 1 service charges.

Wastewater Rate Structure and Rate Design

Consolidation of Rate Zones. The Company currently has ten wastewater rate zones. Under the Settlement Rates, existing wastewater Rate Zone 4 and future Rate Zone 11 will be consolidated with wastewater Rate Zone 1. The other eight rates zones will consist of Rate Zone 2 (New Cumberland), Rate Zone 3 (Scranton), Rate Zone 5 (Franklin), Rate Zone 6 (McKeesport), Rate Zone 7 (Sadsbury), Rate Zone 8 (Turbotville), Rate Zone 9 (Exeter) and Rate Zone 10 (Kane).

Service Charges. Under the Settlement Rates, Rate Zones 1, 2, 4, 6, 8, and 9 service charges for the residential class will be \$11.00 per month and the service charge for non-residential classes in Rate Zones 1, 2, 6 and 9 will be \$27.50 per equivalent dwelling unit (“EDU”).

Settlement Rates by Rate Zone. The Settlement Rates for all classes of customers and classes of wastewater service for Rate Zones 1-6 and 8-10 are set forth in the applicable portions of the Wastewater Tariff attached as Appendix B.

Combined Water and Wastewater Revenue Requirement. Pursuant to Section 1311(c) of the Public Utility Code and the Commission’s Implementation Order in Docket No. R-2013-2355276, the Company and the other Joint Petitioners agree that under the Settlement Rates a portion of the wastewater revenue requirement totaling \$29,296,281 (Step 1 Rate Increase) and \$21,480,685 (Step 2 Rate Increase) is being allocated to water customers, as shown in Appendix C, Water Operations Excluding Steelton).

Stormwater Rates. Witnesses for I&E, in their written testimony, recognized that it was not feasible to establish a stormwater rate for the Company’s combined sewer systems within a timeframe as short as this case, and additional study of the possibility of implementing such a rate was required. I&E had recommended that the Company propose such a rate in its next base rate case. The Company submitted extensive testimony (PAWC St. 3-R) explaining that the data collection and analysis needed to determine the feasibility of implementing a stormwater rates and reviewing possible approaches to doing so would take more time than I&E’s witnesses had anticipated. After careful consideration of this issue, I&E and the Company reached a reasonable resolution. If the Settlement is approved, the Company agrees to propose potential recovery and rate methodology options for stormwater costs of combined sewer systems in its

next general wastewater or combined water/wastewater base rate filing. The proposals will include an analysis of the recovery of such stormwater costs through various methodologies including forms of separate stormwater rates, and a description of the customers to whom the rates would apply. PAWC also agrees that, at intervals of approximately one year and two years after entry of the Commission's final Order approving the Settlement in this proceeding, unless the Company files a wastewater or combined water/wastewater general base rate case prior to either of those times, it will meet with the parties to this case to provide progress updates and discuss potential cost recovery methods under consideration.

Reasonableness of the Settlement Rate Structure and Rate Design

Every rate proceeding consists of two parts. First, the overall revenues to which a utility is entitled must be determined. The second part of the process must determine how much of the total revenue requirement each rate class should bear. The allocation of revenue responsibility can be one of the more contentious parts of a rate proceeding because it is a “zero sum” exercise among the non-utility parties – any revenue responsibility not borne by a particular rate class must be borne by one or more other rate classes. While cost of service studies are the touchstone for reasonable allocations of revenue responsibility among rate classes,⁶³ the Commission has often stated that cost of service analyses must reflect the exercise of judgment and are as much a matter of art as of science.⁶⁴ For that reason, Pennsylvania appellate courts have repeatedly held that the Commission, in crafting a reasonable rate structure, is “invested with a flexible limit of judgment” and may establish just, reasonable and non-discriminatory rates within a “range of reasonableness.”⁶⁵

⁶³ See *Lloyd v. Pa. P.U.C.*, *supra*.

⁶⁴ See *Pa. P.U.C. v. Philadelphia Suburban Water Co.*, 75 Pa. P.U.C. 391, 440 (1991).

⁶⁵ *U.S. Steel Corp. v. Pa. P.U.C.*, 37 Pa. Cmwlth., 173, 187, 390 A.2d 865, 872 (1978).

Thus, establishing a reasonable revenue allocation requires a careful balancing of the countervailing interests of the non-utility parties. Accordingly, this aspect of a rate proceeding is particularly well suited to achieving a reasonable overall outcome based on the give-and-take of the settlement process. That is what occurred in the Settlement in this case, which resolved contested issues involving revenue allocation and rate design among the Joint Petitioners, who represent, in the case of I&E, the interests of all customers, all customer classes and the public interest generally, and as to PAWLUG, the interests of non-residential customers that include members of the commercial, municipal and industrial classes. .

While settlement negotiations among parties representing an array of customer and stakeholder interests can, in itself, help to assure a reasonable outcome, the revenue allocation under the Settlement Rates also comports with well-accepted ratemaking principles. As previously explained, the Joint Petitioners are in general agreement that the Settlement Rates make appropriate progress in moving all classes closer to their cost of service consistent with the principle of gradualism.

With respect to rate design, the Settlement Rates reflect the need to recover the customer component of total cost of service in the service charge, while recognizing that increases in the service charges can impact low-usage customers. Accordingly, the Settlement Rates provide for an increase in the Company's residential water service charge, but in a lesser amount than the charge the Company originally proposed.

For all the foregoing reasons, the proposed revenue allocation and rate design are reasonable, appropriately balance the interests of all parties, and are in the public interest.

E. Effective Date (Joint Petition, Paragraphs 72 and 73)

The increase in revenues negotiated by the Joint Petitioners reflects their agreement that the Settlement Rates should become effective as of January 28, 2021. Accordingly, Paragraph

73 provides that the Joint Petitioners agree to exercise their best efforts to obtain approval of this Settlement and the implementation of the Settlement Rates on January 1, 2021, when the suspension period will expire. Upon the entry of a Commission Order approving this Joint Petition, the Company will be permitted to file a tariff for water service, in the form provided in Appendix A, and a tariff for wastewater service, in the form provided in Appendix B, which will be filed on November 6, 2020. Paragraph 72 also acknowledges that new limited liability provisions, which were outlined in Company witness Ashley E. Everette's direct and rebuttal testimony, have been reflected in the proposed tariffs provided as Appendix A and B.

In addition, in Paragraph 73, the Joint Petitioners agreed that if Commission approval of this Settlement occurs after January 28, 2021, PAWC shall be entitled to recoup the revenue increase not billed from the effective date through the date of PUC approval of new rates in the manner set forth in the Commission's final Order in this proceeding. The revenue increase not billed from the effective date through the date of PUC approval of new rates will be recovered over a six-month period that shall be applied proportionately to all customer classes.

III. SUMMARY: THE SETTLEMENT IS IN THE PUBLIC INTEREST

The Settlement, both in its specific terms and viewed holistically, is reasonable, supported by record evidence, and is in the public interest for, among others, the following principal reasons:

- The revenue requirement provisions provide for Settlement Rates that are within the "constitutional range of reasonableness"⁶⁶ and are consistent with the legal standards articulated in the *Bluefield* and *Hope* decisions. The Settlement Rates reflect a careful balance of the interests of customers with those of the Company

⁶⁶ See *Duquesne Light, supra*.

to promote the public interest. As such, the Settlement Rates protect customers from paying excessive rates while allowing the Company and its investors a reasonable opportunity to earn a fair return on their investment in property devoted to public service and to obtain additional capital needed to meet the Company's service obligations. *See* Section II.A., *supra*.

- The Settlement includes robust commitments from PAWC to protect its customers amid the COVID-19 public health and economic crisis. *See* Section II.C, *supra*.
- The rate structure and rate design provisions of the Settlement resolve a number of contentious issues in a manner that is acceptable to parties representing the major customer classes and service classifications. The Joint Petitioners are in general agreement that the Settlement Rates provide for reasonable progress in moving all major customer classes closer to their cost of service consistent with the Commission-approved principle of gradualism. *See* Section II.D., *supra*.
- In reaching this Settlement, the Joint Petitioners thoroughly considered all issues, including those raised in the testimony and evidence presented by the Joint Petitioners and the impact of the COVID-19 emergency on PAWC customers. As a result of that consideration, the Joint Petitioners believe that the Settlement meaningfully addresses all such issues and, therefore, should be approved without modification.

IV. CONCLUSION

For the reasons set forth above and in the Joint Petition, PAWC submits that the Settlement is a fair and reasonable compromise that is fully supported by the record evidence. Accordingly, the Company respectfully requests that the Administrative Law Judge recommend, and the Commission: (1) approve the Settlement without modification; (2) find that the Settlement Rates are just and reasonable; and (3) grant the Company permission to file the tariffs

to be submitted on November 6, 2020, to accompany the Joint Petition as Appendices A and B to become effective for service rendered on and after January 28, 2021.

Respectfully submitted,



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Dated: October 30, 2020

Statement B

I&E Statement in Support

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility
Commission

v.

Pennsylvania American Water
Company

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Docket Nos.: R-2020-3019369
R-2020-3019371

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

TO ADMINISTRATIVE LAW JUDGE CONRAD A JOHNSON:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its Prosecutor Carrie B. Wright, hereby submits that the terms and conditions of the foregoing *Joint Petition Non-Unanimous Settlement* (Joint Petition or Settlement) are in the public interest and represent a reasonable and equitable balance of the interests of Pennsylvania American Water Company (PAWC or Company) and PAWC's customers. I&E has conducted extensive formal and informal discovery and has participated in numerous settlement conferences. The extensive and open

discussions culminated in the carefully negotiated attached Settlement Agreement. I&E requests approval of the Joint Petition based on I&E's determination that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."¹ The Commission has recognized that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."² As a product of negotiation and compromise between multiple parties, this Settlement Agreement reflects concessions from PAWC's original rate request as well as concessions from I&E's direct testimony positions. Accordingly, the Bureau of Investigation and Enforcement believes that the terms and conditions of the Joint Petition are in the public interest.

In support of this position, I&E offers the following:

I. INTRODUCTION

A. Legal Landscape Regarding Public Utilities

A business may acquire "public utility status" when that business is the sole organization that maintains the infrastructure utilized in providing an essential service to the public for compensation.³ As duplicating the vast and costly fixed physical infrastructure (e.g., substations, poles, lines, etc.) and allowing multiple businesses to provide the essential service would be wasteful, the public utility obtains a natural

¹ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

² *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

³ James C. Bonbright, *Principles of Public Utility Rates*, Columbia University Press: New York (1961), at 3-14; 66 Pa. C.S. § 102.

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monopoly as the sole service provider in the extended geographic service territory.⁴ In order to protect consumers, the public utility's rates and services are regulated.⁵ Price regulation strives to replicate the results of effective competition.⁶

As a public utility, a water or wastewater company shall provide just and reasonable rates to customers receiving service in the Commonwealth of Pennsylvania.⁷ A public utility is entitled to a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers and allows the utility an opportunity to obtain a reasonable rate of return on its investment.⁸ A public utility shall also provide safe and reliable service by furnishing and maintaining adequate facilities and reasonable services and by making the necessary improvements thereof.⁹

B. I&E's Role

Through its bureaus and offices, the Commission has the authority to take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders.¹⁰ The Commission established I&E to serve as the prosecutory bureau to represent the public interest in ratemaking and utility service matters, and to enforce compliance with the Public Utility Code.¹¹ By representing the public interest in rate proceedings before the Commission, I&E works to

⁴ See *id.*; 66 Pa. C.S. § 2802 (it is in the public interest for the distribution of electricity to be regulated as a natural monopoly by the Commission).

⁵ See *id.*; 66 Pa. C.S. §§ 1301, 1501.

⁶ See *Cantor v. Detroit Edison*, 428 U.S. 579, 595-6, fn. 33 (1976).

⁷ 66 Pa. C.S. §§ 102, 1301; *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-603 (1944).

⁸ *City of Lancaster v. Pa. P.U.C.*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002); see *Hope*, 320 U.S. at 602-603.

⁹ 66 Pa. C.S. § 1501.

¹⁰ Act 129 of 2008, 66 Pa. C.S. § 308.2(a)(11); 66 Pa. C.S. §§ 101 *et seq.*; 52 Pa. Code §§ 1.1 *et seq.*

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

balance the interest of customers, utilities, and the regulated community as a whole to ensure that a utility's rates are just, reasonable, and nondiscriminatory.¹²

C. History of the Proceeding

On April 29, 2020, PAWC filed field Supplement No. 19 to Tariff Water – Pa. PUC No. 5 and Supplement No. 19 to Tariff Wastewater – Pa. PUC No. 16, requesting an increase in total annual operating revenues totaling \$138.6 million. The rate request was intended to become effective June 28, 2020, with \$92.4 million of the rate increase intended to go into effect in 2021, and \$46.2 million intended to go into effect in 2022.

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency in the Commonwealth of Pennsylvania as a result of the coronavirus pandemic (COVID-19). Because of the difficulties that arose from the COVID-19 pandemic, OCA filed a Motion to Extend the Statutory Suspension Period of the instant proceeding.

Administrative Law Judge Conrad A. Johnson was assigned to preside over the proceeding. A call-in telephonic prehearing conference was held as scheduled on June 4, 2020. On June 4, 2020, the Chief Administrative Law Judge Charles Rainey issued an Order granting OCA's Motion to extend the Section 1308(d) suspension period by forty-five days, until March 15, 2021. At the prehearing conference, a schedule was also memorialized, identifying filing dates for the parties' testimony, setting dates for public input hearings, and scheduling dates for evidentiary hearings.

¹² See 66 Pa. C.S. §§ 1301, 1304.

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On June 24, 2020, PAWC filed a Petition for Reconsideration of CALJ Rainey's Order granting the 45-day extension. On August 6, 2020 the Commission adopted an Order granting in part and denying in part PAWC's Petition for Reconsideration. The Commission granted the 45-day extension, but required ALJ Johnson to issue an Recommended Decision by December 24, 2020, thus necessitating changes to the agreed upon procedural schedule.

Eight public input hearings were held electronically on August 18, 25, 26, and 27, 2020, at 1:00 p.m. and 6:00 p.m. each day.

Pursuant to the procedural schedule altered as a result of the Commission's Order related to PAWC's Petition for Reconsideration, the parties submitted direct and rebuttal testimony on September 8, 2020 and September 29, 2020 respectively. Surrebuttal testimony was served on October 20, 2020.

On October 27, 2020 and October 28, 2020, evidentiary hearings were held for the purpose of admitting testimony and cross examination of rejoinder testimony of certain PAWC witnesses. The active parties, however, largely waived cross-examination with limited exception, and all of their testimony and exhibits were admitted into the record.

II. DISCUSSION

The Commission encourages settlements, which generally eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion.¹³ The Commission issued the

¹³ *Pa. PUC v. Venango Water Co.*, Docket No. R-2014-2427035, 2015 WL 2251531, at *3 (Apr. 23, 2015 ALJ Decision) (adopted by Commission via Order entered June 11, 2015); *See* 52 Pa. Code §5.231.

following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission’s judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission’s judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.¹⁴

The above-referenced policy statement highlights the importance of settlement in Commission proceedings. Here, the Company and I&E successfully achieved a Settlement Agreement of all the issues, with certain other parties joining or not opposing various issues.

The Settlement Agreement is a “Black Box” agreement, which does not specifically identify the resolution of certain disputed issues.¹⁵ Instead, an overall increase to base rates is agreed to and Joint Petitioners retain all rights to further challenge all issues in subsequent proceedings. A “Black Box” settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses.¹⁶

While not all parties entered into this settlement and hearings ultimately still had to be held, additional days of litigious hearings, briefing, and further involvement of the ALJ would have been required and added time and expense to an already cumbersome and

¹⁴ 52 Pa. Code § 69.401.

¹⁵ *Pa. PUC v. Venango Water Co.*, Docket No. R-2014-2427035, 2015 WL 2251531, at *11 (Apr. 23, 2015 ALJ Decision) (adopted by Commission via Order entered June 11, 2015); *See* 52 Pa. Code §5.231.

¹⁶ *See id.*

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complex proceeding would have been incurred had this settlement not been achieved. The request for approval of the *Joint Petition for Non-Unanimous Settlement* is based on I&E's conclusion that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."¹⁷ The Commission has recognized that a settlement "reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest."¹⁸ The Settlement Agreement in the instant proceeding protects the public interest in that a comparison of the original filing submitted by the Company and the negotiated agreement demonstrates that compromises are evident throughout the Joint Petition, both on behalf of I&E and on behalf of the Company.

REVENUE REQUIREMENT (Joint Petition ¶¶ 23-32)

Revenue Number and Excess Accumulated Deferred Income Tax (EADIT) Credit

The revenue increase agreed to by I&E and the Company recognizes that while PAWC may be entitled to a rate increase, the COVID-19 pandemic is still occurring and, thus, steps must be put in place to ease the burden on ratepayers. The Settlement Agreement provides for an increase of \$70.5 million to the Company's annual overall revenue in total with a rate credit of \$10.5 million (the EADIT credit) for a net increase of \$60 million. In addition, PAWC has agreed to increase rates over a two-step process in an effort to mitigate the impact on customers. The \$70.5 million increase will be offset, as

¹⁷ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

¹⁸ *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

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noted above, by an EADIT credit of \$10.5 million in each of years 2021 and 2022 beginning on the effective date of Settlement rates for a total net increase of \$60 million. This total net increase will be implemented in two phases as follows: (1) a net increase of \$40 million (this includes a \$50.5 million increase in base rates that is offset by the \$10.5 million credit noted above) on the effective date of the Settlement rates; and (2) a second phase to become effective on January 28, 2022 that increases base rates up to the \$70.5 million which will be off-set by a credit of \$10.5 million, for a net total increase of \$60 million for the twelve months ending January 28, 2023. The credit will, however, cease to apply after January 28, 2023. This increase is approximately \$68 million less than the \$138.6 million initially requested by PAWC and is further mitigated by the rate credit. In arriving at the Settlement Rates, I&E, analyzed the ratemaking claims contained in PAWC's base rate filings including its operating and maintenance expenses, debt service coverage ratio, and rate structure, among other things. I&E agreed to settlement in the amount of \$70.5 million with a \$10.5 million rate credit only after I&E conducted an extensive investigation of PAWC's filing and related information obtained through the discovery process to determine the amount of revenue PAWC needs to provide safe, effective, and reliable service to its customers. Further, the nature of the stepped increase serves to benefit customers in these uncertain economic times resulting from the COVID-19 pandemic. The EADIT credit provides another important reduction to this rate increase.

The additional revenue in this proceeding is base rate revenue and has been agreed to in the context of a "Black Box" settlement with limited exceptions. The prior Chairman of

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the Commission has explained that black box settlements are beneficial in this context because of the difficulties in reaching an agreement on each component of a company's revenue requirement calculation, when he stated, the "[d]etermination of a company's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company's cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. Black box settlements are an integral component of the process of delivering timely and cost-effective regulation."¹⁹

This increased level of "Black Box" revenue adequately balances the interests of ratepayers and PAWC. PAWC will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting increase minimizes the impact of the initial request. Mitigation of the level of the rate increase benefits ratepayers and results in "just and reasonable rates" in accordance with the Public Utility Code, regulatory standards, and governing case law.²⁰ I&E notes that the provisions contained in this settlement contain important protections for ratepayers. PAWC is under obligation to provide customers with safe and reliable service at reasonable rates. As such, I&E submits that the revenue increase agreed to is in the public interest as it allows PAWC to implement the provisions of the settlement while mitigating the impact on customers, and

¹⁹ See, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662. See also, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens' Electric Company of Lewisburg, PA*, Docket No. R-2010-2172665.

²⁰ 66 Pa. C.S. § 1301.

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still allowing for protections related to COVID-19 and low-income concerns. Based on the current caselaw and statutes, I&E has found nothing that would prevent a utility from implementing a rate increase during a pandemic. It is important that utilities are able at all times to provide safe and reliable service and the efforts a utility puts forth to provide this service are not without costs. I&E acknowledges the need for a mitigated rate increase, while also noting that financially healthy utilities are beneficial to customers who rely on them to provide safe and reliable service. The rate increase agreed upon in the instant settlement balances those interests.

COMBINED SEWER SYSTEM REVENUE REQUIREMENT (Joint Petition ¶ 28)

Per the settlement PAWC has agreed that in future rate filings the it will submit one or more separate stormwater and wastewater cost-of-service studies for each of its combined sewer systems (CSS) currently consisting of McKeesport, Scranton and Kane and including any other CSS acquired by the time of each of the future rate filings. To establish just and reasonable rates, it is critical that the parties have the information necessary to determine what the Company's cost to serve is. The information the Company has agreed to provide in its next rate filing is important for the establishment of just and reasonable rates as it will alert the parties to the appropriate cost of service. Therefore, I&E submits this term is in the public interest as it will provide the parties information necessary for setting rates.

STORM WATER RATE (SWR) (Joint Petition ¶ 71)

The Company has agreed to propose potential recovery and rate methodology options for storm water costs of CSSs in its next general wastewater or combined

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water/wastewater base rate filing. The proposals will include an analysis of the recovery of such storm water costs through various methodologies including forms of separate storm water rates, and a description of to whom the rates would apply. The Company has also agreed to meet with interested parties at different intervals to discuss updates and potential cost recovery mechanisms under consideration.

As explained by I&E witness Eryan Sakaya, a storm water rate is designed to recover the cost of providing stormwater service and could be a flat rate, a rate based upon land area, a rate based upon impervious area, or some other factor usually associated with land area.²¹ I&E recommend the establishment of an SWR or rates because of the long-standing rate making concept of cost causation. This concept dictates that the customers that cause a cost should be charged rates that recover those costs.

The instant provision is in the public interest as it acknowledges that there is a need to further explore this issue. It recognizes that time is involved in establishing an accurate SWR. It further recognizes that there are other mechanisms apart from a SWR that might be appropriate for the recovery of these costs while still adhering to the principle that the one who caused a cost is the one who should be responsible for that cost. In addition, it allows for the parties to meet and discuss these options between rate cases so that the parties have an opportunity to explore the various options in a less constrained timeframe that a base rate case affords. Therefore, I&E submits that this provision is in the public interest.

²¹ I&E St. No. 5

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC) (Joint Petition ¶ 31)

PAWC has agreed not to implement a DSIC any earlier than April 1, 2022. Furthermore, the Company will not be eligible to include plant additions in the DSIC until the Company's total net plant balances reach the levels established in the PAWC 2020 Base Rate Case using the adjusted utility plant in service balances for December 31, 2021 as referenced in Exhibit CEC-1R, Sch. A.

I&E notes that this provision is in the public interest and benefits both PAWC and its ratepayers. First, PAWC benefits because it will have access to DSIC funding for necessary infrastructure improvements which helps to ensure PAWC is able to meet its obligation to provide its customers with safe and reliable service. Second, customers will benefit because they will not need to fund the DSIC any earlier than April 1, 2022. In sum, ratepayers will have a defined period of time during which they will be relieved from paying any DSIC costs which affords some level of rate stability, and, in addition, even when the DSIC charge becomes effective, the customers will benefit from the assurance that improved infrastructure will allow the Company to continue to provide safe and reliable service.

COVID-19 ASSISTANCE (Joint Petition ¶¶ 34-39)

PAWC will assistance to customers impacted as a result of COVID-19 relief plan. This assistance plan consists of, among other things, a waiver of the good faith payment requirement for PAWC's H2O Help to Others Hardship Fund for one year from the date of the final order; permitting customers to self-certify income for purposes of qualifying

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for the PAWC's H2O Help to Others Hardship Fund through either March 31, 2021, or until the date on which the Governor's Proclamation of Disaster Emergency is rescinded; expanded, targeted community outreach; and Company has agreed to increase its annual contribution to its H2O Help to Others hardship grant program from its current level of \$400,000 to \$500,000 for water operations and from \$50,000 to \$100,000 for wastewater operations.

I&E did not submit testimony regarding COVID-19 relief. However, the general concern regarding rate increases in the midst of a pandemic was raised by parties in this proceeding, and in these tenuous economic times caused by the COVID-19 pandemic, it may be necessary to provide relief, that would not otherwise be available, to certain ratepayers. I&E shares these concerns. Therefore, after extensive negotiations, I&E supports the implementation of the proposed COVID-19 assistance measures as a full and fair compromise that provides regulatory certainty for all parties, which facilitates the Commission's stated preference favoring negotiated settlements as in the public interest.

REVENUE ALLOCATION AND RATE DESIGN (Joint Petition ¶¶ 70.a-70.e)

Allocation

A public utility shall not establish or maintain unreasonable differences in rates among rate classes.²² While there may exist sound justification for some discrepancies in rates, this alone does not justify allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time. The revenue

²² 66 Pa. C.S. § 1304.

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allocation set forth in this settlement not only reflects a compromise of the Joint Petitioners, but it also produces an allocation that moves each class closer to its actual cost of service.

In the instant proceeding, I&E was particularly concerned about certain divisions subsidizing other divisions. I&E witness Ethan Cline explained that PAWC was proposing to allocate a subsidy almost \$34.6 million in costs across water customers, with approximately \$32.9 million coming from wastewater and approximately \$1.7 million coming from Steelton water operations.²³ Mitigating this subsidy was important to I&E because for while most PAWC wastewater customers also receive water service from PAWC, only 9.2% of PAWC water customers also receive wastewater service from PAWC.²⁴ The customers who are receiving only water service from PAWC receive no discernable benefit from subsidizing wastewater customers. Therefore, it is reasonable and in the public interest to mitigate the subsidy paid for by these customers. Further, as explained above, the Company's proposal was that water operations other than Steelton would subsidize approximately \$1.7 million for Steelton water operations. I&E also recommended that this subsidy be mitigated.²⁵ The instant settlement has achieved I&E's goal of limiting the subsidies paid for by PAWC water customers.

This movement is resulting from the settlement that mitigates the subsidies proposed in this rate case and moves the divisions closer to their cost to serve is consistent with the principles of *Lloyd*. Accordingly, this revenue allocation proposed in the instant

²³ I&E St. No. 4, p. 26.

²⁴ I&E Ex. No. 4, Sch. 5.

²⁵ I&E St. No. 4, p. 12

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settlement is in the public interest because it is designed to limit customer class subsidies, and to place costs upon the classes responsible for causing those costs.

Rate Design

The Joint Petition provides that the residential customer charge for water customers with 5/8- inch, 3/4-inch, 1-inch and 1 1/2-inch meters will be increased modestly and will be increased by a cumulative total of \$0.50 for the first step of the increase and an additional \$0.50 for the second step of the increase. This results in a customer charge of \$17.00 for the initial step of the increase and a customer charge of \$17.50 for the second step of the increase. Most parties in this proceeding opposed PAWC's proposal to raise the residential customer charge from \$16.50 per month to \$18.00 per month for water customers for Rate Year 1, and \$18.50 for Rate Year 2. This resolution represents an important compromise by PAWC as a customer charge is a source of guaranteed revenue for a utility. The ultimate resolution is in the public interest because it protects ratepayers mitigating the increase to the customer charge while still providing PAWC with adequate revenue and more accurately matching the cost to serve.

Under the Settlement Rates, Rate Zones 1, 2, 4, 6, 8, and 9 service charge for the residential class will be \$11.00 per month and the service charge for non-residential classes in Rate Zones 1, 2, 6 and 9 will be \$27.50 per equivalent dwelling unit ("EDU").

Any customer charges, not specifically noted here, in the Company's proposed tariff will be modified to reflect the mitigated level of the overall increase. A utility must be allowed to recover the fixed portion of providing service through the implementation of the

proper customer charge.²⁶ This fixed charge provides PAWC with a steady, predictable level of income which will allow PAWC to recover certain fixed costs such as metering, billing, and payment processing.²⁷ However, limiting the requested increase benefits ratepayers by allowing them to save more money through conservation. Shifting costs to the volumetric portion of a customer's bill allows for the immediate realization of the benefit of conserving usage. Designing rates to allow customers to have greater control of their utility bills is in the public interest. Therefore, this provision is in the public interest.

LOW INCOME CUSTOMER ISSUES (Joint Petition ¶¶ 40-45)

While I&E reviewed the customer issues in this proceeding, I&E took no specific positions on the provisions outlined in this portion of the Settlement. I&E however supports the ultimate outcome of these provisions. These issues are particularly important when coupled with the current tumultuous state of the economy resulting from the COVID-19 pandemic, it is clear that assistance to low-income customers is necessary. At this juncture, access to clean water is extremely important. Whatever that can reasonably be done to ease the burden on these customers and provide them with the opportunity to be able to afford their utility bills, and thus have access to clean water, is in the public interest.

Approval of the instant settlement guarantees implementation of the low-income proposals outlined therein. I&E, therefore, maintains that approval of the settlement is in the public interest.

²⁶ Jim Lazar. "Electric Utility Residential Customer Charges and Minimum Bills: Alternative Approaches for Recovering Basic Distribution Costs." Regulatory Assistance Project (Nov. 2014).

²⁷ *Id.*

PENSION AND OPEB TRACKER (Joint Petition ¶ 33)

As part of the settlement agreement reached by I&E and the Company, the Company has agreed to withdraw its proposal for a pension and OPEB tracker. This tracker mechanism was opposed by I&E. As explained by I&E witness Christine Wilson, a tracker mechanism would not be appropriate because these expenses are non-extraordinary, routine business expenses.²⁸ Regarding pension trackers, the Commission has recognized that:

...pension expense is a standard ratemaking item and, accordingly, ongoing pension liabilities are neither extraordinary nor nonrecurring, and thus should not be the subject of...proposed reconciliation through a “true-up” mechanism. Approval of this item would clearly violate the rule against single issue ratemaking, and would connote the propriety of future claims for “true-ups” of virtually any traditional base ratemaking expense.²⁹

As such, I&E believes that withdrawing the Pension and OPEB tracker is in the public interests. I&E’s willingness to enter into this settlement, hinged in large part on the withdrawal of this tracker. Such trackers should only be used for extraordinary circumstances, not for routinely incurred operating expenses such as pensions and OPEBs, since cost trackers can lessen the regulatory scrutiny of evaluating the prudence of related costs.³⁰

REGIONALIZATION AND CONSOLIDATION SURCHARGE (RCS) (Joint Petition ¶ 33)

²⁸ I&E St. No. 1-SR, p. 26.

²⁹ PA Public Utility Commission Opinion and Order at Docket No. R-00038805, Order entered August 5, 2004, p. 39.

³⁰ “The Two Sides of Cost Trackers: Why Regulators Must Consider Both,” NRRI Teleseminar, Ken Costello, Principle, NRRI, October 27, 2009, p. 1.

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Per the settlement, the Company as agreed to withdraw its proposed Regionalization and Consolidation Surcharge (RCS). In summary, the RCS was described as an alternative rate mechanism proposed by the Company to adjust rates between rate cases for additional costs associated with acquisitions that are completed between rate cases.³¹ In testimony I&E opposed the RCS and noted it would be more appropriate for the Company to recover the increased return related to newly acquired rate base in a base rate proceeding where the parties can review the new claims for justness and reasonableness before the rates go into effect. Witness Wilson noted that PAWC prosed that the parties be able to review the amounts collected through the surcharge in a retrospective manner in the Company's next base rate case filing. However, as she explained, at that point it would be very difficult to make any adjustments for expenses the parties did not believe were prudently incurred.³² Further, I&E witness Cline noted that as the surcharge applied only to existing customers and not to the customers of acquired systems it would require existing customers to begin paying the revenue shortfall related to rate under recovery and capital investment costs while the acquired system customers continue to enjoy rates potentially well below their cost of service until a future base rate case, which occurrence could be even further delayed by the implementation of the proposed RCS

For the reasons explained by the I&E witnesses, I&E's willingness to enter into this settlement hinged, in large part, on PAWC's willingness to withdraw the RCS. I&E recognizes the withdrawal of this mechanism by PAWC as a significant concession. I&E

³¹ I&E St. No. 1, p. 18.

³² I&E St. 1, p. 19.

maintains that it is the more appropriate forum to recover the increased return related to newly acquired systems in base rate cases. Therefore, approval of the settlement, in this regard, is in the public interest as it results in withdrawal of the RCS which allows for the parties to review these items for justness and reasonableness in the context of a base rate case.

LANGUAGE ACCESS (Joint Petition ¶¶ 50-57)

It is important that customers be able to communicate with their utility provider. Per the settlement, PAWC has agreed to certain expanded language access provisions. This includes providing information in Spanish, utilizing third party interpreter services, and conduct a formal needs assessment to determine whether any of its water or wastewater rate zones are populated by 5% or more of individuals who speak a language other than English or Spanish.

While I&E did not provide testimony related to this topic, I&E submits these provisions will serve the public interest because they will allow for more meaningful communication between the utility and the customers. It is important that customers are able to understand the information being provided to them. The provisions of this settlement achieve this goal

PROTECTION FROM ABUSE ACCOUNTS (Joint Petition ¶¶ 58-67)

Per the settlement, PAWC has agreed to develop written policies and procedures related to domestic violence issues. PAWC will implement specific domestic abuse training for its Compliance and Customer Advocacy teams and implement training for customer service representatives to increase their knowledge about the availability of

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additional protections for victims of domestic violence and to actively screen for and identify customers who may be exempt from Chapter 14 of the Public Utility Code. Furthermore, PAWC will develop scripts for its employees to use in these situations and provide extra training in these areas.

I&E did not provide testimony specific to this topic, but submits that these provision are in the public interest. These provisions serve as a protection to PAWC's customers and provide training and materials necessary for PAWC employees who may be communicating with these customers. Therefore, I&E believes acceptance of these provisions is in the public interest.

OTHER SETTLEMENT PROVISIONS

The Joint Petition includes various additional terms and conditions, including that the Settlement represents a balance of Joint Petitioners interests and therefore should not be construed as approval of any Joint Petitioner's position. There are other terms not specifically addressed in this Statement in Support that would serve to improve service for customers and various other matter. I&E agrees with these terms in totality because, as noted above, this is a black box settlement, and therefore there is no resolution of individual issues except to effectuate the terms and agreements of the settlement as a whole. Therefore, I&E would note that even if an issue is not specifically addressed herein, I&E supports the entirety of the settlement as being in the public interest. Additionally, I&E agrees it will waive the filing of Exceptions if the ALJs adopt the Settlement without modifications and will otherwise support the terms and conditions of the Settlement if unmodified by the ALJs and the Commission.

The inclusion of all terms of the settlement were important for resolution of the case as a whole. In I&E's view, the settlement is in the public interest and represents a fair, just and reasonable resolution of the instant proceeding.

III. CONCLUSION

Based on I&E's analysis of the base rate revenue increase requested by Pennsylvania American Water Company, acceptance of this proposed Joint Petition is in the public interest. In sum, I&E notes the instant settlement contains important provisions that protect ratepayers, mitigate the rate increase, and provide PAWC with a level of revenue which allows it to earn a sufficient return in order to continue to provide its customer with safe and reliable service.

The Settlement Agreement is conditioned upon the Commission's approval of all terms and conditions contained therein and should the Commission fail to approve or otherwise modify the terms and conditions of the Settlement, the Joint Petition may be withdrawn by I&E or any of the signatories.

I&E agrees to settle the disputed issue as to the proper level of additional base rate revenue through a "Black Box" agreement with limited exceptions. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation or in the continuation of this litigation in the event the Settlement is rejected by the Commission or otherwise properly withdrawn by any of the Joint Petitioners.

If the ALJs recommend that the Commission adopt the Settlement Agreement as proposed, I&E has agreed to waive the right to file Exceptions. However, I&E has not

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waived its rights to file Exceptions with respect to any modifications to the terms and conditions of the Settlement Agreement, or any additional matters, that may be proposed by the presiding officers in the Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed by any active party to this proceeding.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement supports the *Joint Petition For Non-Unanimous Settlement* as being in the public interest and respectfully requests that Administrative Law Judge Conrad A. Johnson recommend, and the Commission subsequently approve, the foregoing Settlement Agreement, including all terms and conditions contained therein.

Respectfully submitted,



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