



THOMAS, NIESEN & THOMAS, LLC

*Attorneys and Counsellors at Law*

THOMAS T. NIESEN  
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January 21, 2021

*Via Electronic Filing*

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

In re: Docket No. I-2016-2526085  
Section 529 Investigation of the Public Utility Commission – Delaware Sewer Company

Dear Secretary Chiavetta:

We are counsel to Delaware Sewer Company in the above matter and are submitting, via electronic filing with this letter, the Company's Petition to Order Pennsylvania-American Water Company to Close the Transaction by March 1, 2021. Copies of the Petition are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

Encl.

cc: The Honorable Steven K. Haas (via email, w/encl.)  
Certificate of Service (via email, w/encl.)  
Scott F. Linde (via email, w/encl.)  
ra-OSA@pa.gov (via email, w/encl.)

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PETITION OF DELAWARE SEWER COMPANY TO ORDER  
PENNSYLVANIA-AMERICAN WATER COMPANY TO  
CLOSE TRANSACTION BY MARCH 1, 2021**

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AND NOW, comes Delaware Sewer Company (“DSC” or “Company”), by its attorneys, and, pursuant to 52 Pa. Code Section 5.572,<sup>1</sup> petitions the Public Utility Commission to Order Pennsylvania-American Water Company to Close the Transaction by March 1, 2021. In support thereof, DSC submits as follows:

**I. Background**

1. This proceeding concerns the Public Utility Commission’s (“Commission”) Investigation under Section 529 of the Public Utility Code (“Code”), 66 Pa. C.S. § 529, into whether the Commission should order a capable public utility to acquire DSC. DSC provides wastewater service to 39 residential locations in Sections 19 through 22 of Wild Acres, Delaware Township, Pike County.

2. The Commission instituted the Investigation by Opinion and Order entered January 28, 2016, in *Petition of Delaware Sewer Company for the Opening of an Investigation into*

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<sup>1</sup> Section 5.572 of Title 52 of the Pennsylvania Code provides for the filing of petitions for relief following a final decision including petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or “the like.”

*Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa. C.S. § 529* (“Petition Proceeding”).

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

4. On October 12, 2018, Pennsylvania-American Water Company (“PAWC”), DSC, the Commission’s Bureau of Investigation & Enforcement (“I&E”) and the Office of Consumer Advocate (“OCA”) (collectively, “Joint Petitioners”) filed a *Joint Petition for Approval of Settlement of All Issues* (“*Settlement of All Issues*”).

5. Under the *Settlement of All Issues*, PAWC agreed, *inter alia*, to acquire substantially all of DSC’s wastewater system together with approximately 140 acres of land, owned by Forest City Partnership, LLC (“FCP”), that will be used and useful in the provision of wastewater service to the public in the entirety of DSC’s existing certificated service territory.

6. Pertinent to the foregoing and to this Petition, appended to the *Settlement of All Issues* is an Appendix B. Appendix B is an executed Land Transfer Agreement, dated August 31, 2018, between PAWC and FCP providing for the transfer of the 140 acres. The Land Transfer Agreement includes an Exhibit “A,” Form of Land Indenture, to effect the transfer of the 140 acres from FCP to PAWC at closing. The Land Transfer Agreement, approved by the Commission, is attached as Appendix A.

7. Significantly, in regard to this Petition, the Form of Land Indenture specifically provides that it is “Excepting and Reserving Therefrom:”

“ ... all right, title and interest in an to any and all of the oil, gas, natural gas, petroleum or other products, including all carbon-related and hydrocarbon products, and other minerals in and under, and that may be produced from, the lands

*as conveyed to Linde NGS, Inc. by Deed dated May 29, 2018 and recorded June 7, 2018 in Pike County Record Book 2551 at page 1949. (emphasis added).*

8. Thus, when executing the Land Transfer Agreement on August 31, 2018, PAWC not only had knowledge that FCP had conveyed the mineral rights under the 140-acre parcel by Deed to Linde NGS, Inc. but the Deed from FCP to Linde NGS, Inc. was recorded of record on June 8, 2018 in the Recorder of Deeds Office in Pike County Record Book 2551 at page 1949.

9. Following the excepting and reserving clause, the Form of Land Indenture, between FCP and PAWC, then provides as follows:

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

9. By Recommended Decision, dated March 19, 2019, Administrative Law Judge Haas recommended that the *Settlement of All Issues* be approved, without modification.

10. Thereafter, by Tentative Opinion and Order entered April 29, 2019, and Final Opinion and Order entered June 13, 2019, the Commission approved the *Settlement of All Issues*, with modifications not material to this Petition. Concerning the APA and Land Transfer Agreement, the Commission directed, in Ordering Paragraph 2.b of the Tentative Opinion and Order, that PAWC purchase the 140 acres "pursuant to the Land Transfer Agreement dated August 31, 2018, between PAWC and Forest City (Joint Petition, Appendix B), as follows:

That, consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Ordering Paragraph No. 6 below, Pennsylvania-American Water Company – Wastewater Operations shall:

- a. Purchase substantially all of the wastewater system assets of DSC pursuant to the Asset Purchase Agreement dated August 31, 2018, between Delaware Sewer Company and Pennsylvania American Water Company – Wastewater Operations (Joint Petition, Appendix A); and
  - b. Purchase approximately 140 acres of land, to be used and useful in the provision of wastewater service to the public in the entirety of Delaware Sewer Company’s existing certificated service territory from Forest City Partnership, LLC, pursuant to the Land Transfer Agreement dated August 31, 2018, between PAWC and Forest City (Joint Petition, Appendix B).
9. OCA filed a petition for reconsideration of the Final Opinion and Order seeking reconsideration of issues, again, not material to this Petition. The Commission denied OCA’s petition by Opinion and Order entered March 26, 2020, and ordered:

- a. That the Joint Petition for Approval of Settlement of All Issues by Pennsylvania-American Water Company, Delaware Sewer Company, the Office of Consumer Advocate, and the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, filed on October 12, 2018, at Docket Number I-2016-2526085, is hereby approved, as modified herein.
- b. That, consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Ordering Paragraph No. 4.d., below, a certificate of public convenience shall be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3):
  - (1) Evidencing Commission approval of Pennsylvania-American Water Company – Wastewater Operations’ acquisition of substantially all of the wastewater system assets of Delaware Sewer Company pursuant to the Asset Purchase Agreement dated August 31, 2018, between Delaware Sewer Company and Pennsylvania American Water Company – Wastewater Operations (Joint Petition, Appendix A);
  - (2) Evidencing Commission approval of Delaware Sewer Company’s sale of substantially all its wastewater system assets to Pennsylvania-American Water Company – Wastewater Operations; and
  - (3) Evidencing Commission approval of Pennsylvania-American Water Company – Wastewater Operations’ acquisition of approximately 140 acres of land, to be used and useful in the provision of wastewater service to the public in the entirety of Delaware Sewer Company’s existing certificated service territory from Forest City Partnership, LLC, pursuant to the Land Transfer Agreement dated August 31, 2018, between Pennsylvania-American Water Company and Forest City (Joint Petition, Appendix B).

## II. The Commission Should Order PAWC to Close the Transaction

10. DSC is ready and willing to close the transaction and, through FCP, provide PAWC, at closing, with the signed deed for the 140 acres using the Form of Land Indenture already approved by the Commission. PAWC, however, refuses to close the transaction unless and until Linde NGS, Inc., a non-party to this proceeding, as the Mineral Holder on the 140 acres, enters into a Surface Use Agreement, the proposed form of which is attached as Appendix B.

11. The Surface Use Agreement was not what was negotiated by the parties as part of the *Settlement of All Issues*. It is apart from, and beyond, what was negotiated and, ultimately, approved by the Commission to conclude this proceeding after now seven years of litigation. It was unilaterally drafted by PAWC in October 2020, without any discussion with or input from Linde NGS, Inc., as the transaction was finally moving to closing and is now the only impediment to closing.

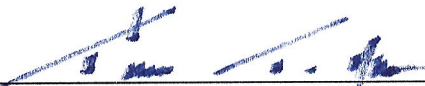
12. Linde NGS, Inc. is not a party to this Section 529 proceeding. Yet, there is no doubt that PAWC was aware of Linde NGS, Inc. as the mineral holder on the 140 acres. Again, and as set forth above, Linde NGS, Inc. and the deed for the mineral rights is specifically referenced in the Form of Land Indenture included with the Land Transfer Agreement and already approved by the Commission.

13. The proposed Surface Use Agreement is not a normal closing document confirming the terms of the Land Use Agreement. It is not a document that PAWC had any reasonable expectation would be signed and recorded. On the contrary, the reasonable expectation of DSC, based on the Tentative and Final Opinion and Order is that closing would go forward based on the executed Land Transfer Agreement and Form of Land Indenture that were part of the *Settlement of All Issues* approved by the Commission.

14. The Commission in its Tentative and Final Opinion and Order ordered PAWC to purchase the 140 acres from FCP, “pursuant to the Land Transfer Agreement dated August 31, 2018, between PAWC and Forest City (Joint Petition, Appendix B).” The directive has not been stayed or challenged and DSC submits that the Commission should Order PAWC to close the transaction by March 1, 2021 accepting the Form of Land Indenture, without more.

WHEREFORE Delaware Sewer Company requests that the Pennsylvania Public Utility Commission grant this Petition to Order Pennsylvania-American Water Company to Close the Transaction by March 1, 2021, as aforesaid.

Respectfully submitted,

By  \_\_\_\_\_

Thomas T. Niesen, Esquire  
PA Attorney ID No. 31379  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 302  
Harrisburg, PA 17101

Attorneys for Delaware Sewer Company

Date: January 21, 2021

**APPENDIX A**  
**LAND TRANSFER AGREEMENT**



## LAND TRANSFER AGREEMENT

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

### RECITALS

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

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

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

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

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

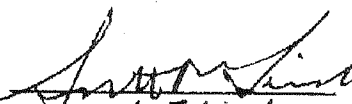
1. PAWC and FCP agree that the purchase of the FCP Property is contingent upon PAWC and DSC closing on the purchase of the System.
2. For the avoidance of doubt, in the event the APA is terminated on or after December 31, 2018 or otherwise pursuant to its Article X, then PAWC shall have no further obligation(s)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

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

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

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

**FOREST CITY PARTNERSHIP, LLC**

By:   
Name: Scott F. Linde  
Its: Manager

**PENNSYLVANIA-AMERICAN WATER  
COMPANY**

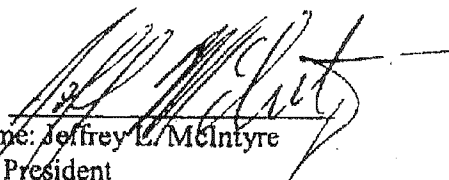
By:   
Name: Jeffrey L. McIntyre  
Its: President  
Pennsylvania-American Water Company

EXHIBIT "A"  
FORM OF LAND INDENTURE

**EXHIBIT A**

**RETURN TO:**

**Peter T. Ruth, Esq.**

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

**THIS INDENTURE** made as of the        day of        , 2018

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

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

**AND**

**Pennsylvania American Water Company, a Pennsylvania corporation**

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

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

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

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

**CONTAINING** 140 acres, more or less.

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

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

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

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

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

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

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

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

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

**FOREST CITY PARTNERSHIP, LLC**

By: \_\_\_\_\_  
Name:  
Title: Manager

Sealed and Delivered  
in the presence of us:  
Commonwealth of Pennsylvania :  
County of : SS:  
:

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

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

\_\_\_\_\_ Seal  
Notary Public

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

**GRANTOR:** Forest City Partnership, LLC

**TO**

**GRANTEE:** Pennsylvania American Water Company

**PREMISES**

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

The address of the above named Grantee is:

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On behalf of the Grantee

**APPENDIX B**  
**PROPOSED SURFACE USE AGREEMENT**



THIS INSTRUMENT PREPARED BY,  
AND PLEASE RETURN TO:

K&L Gates LLP  
210 Sixth Avenue  
Pittsburgh, PA 15222  
Attn: Pierce Richardson

**SURFACE USE AGREEMENT**

This SURFACE USE AGREEMENT (this “**Agreement**”) is dated as of \_\_\_\_\_, 2020, but shall be effective as of \_\_\_\_\_, 2020, by and among PENNSYLVANIA-AMERICAN WATER COMPANY, a Pennsylvania corporation (“**PAWC**”), and LINDE NGS, INC., a Pennsylvania corporation (the “**Mineral Holder**”) and FOREST CITY PARTNERSHIP, LLC, a Pennsylvania limited liability company (“**Forest City Partnership**”).

**RECITALS:**

A. Prior to the recording of this Agreement in the Pike County Recorder of Deeds’ Office (the “**Recorder’s Office**”), PAWC acquired from Forest City Partnership by Special Warranty Deed dated on even date herewith, a parcel of real estate located in Delaware Township, Pike County, Pennsylvania, as more particularly described on Exhibit A attached hereto and made a part hereof (the “**Property**”), which PAWC intends to use for the provision of wastewater service to the public (the “**Intended Use**”);

B. Prior to PAWC’s acquisition of the Property from the Forest City Partnership, Forest City Partnership granted to Mineral Holder all of Forest City Partnership’s interest in and to all of the oil, gas, natural gas, petroleum or other products, including all carbon-related and hydrocarbon products, and other minerals in and under, and that may be produced from, the Property by Deed Conveying Mineral Rights recorded in the Recorder’s Office at Deed Book Volume 2551, Page 1953 (Instrument No. 201900004177) (the “**Mineral Deed**”);

C. The Mineral Deed contains provisions regarding the rights of Mineral Holder, its successors and assigns, to make use of the surface of the Property (“**Deed Surface Use Provisions**”);

D. In connection with PAWC’s acquisition of the Property and the Intended Use, PAWC has requested that Mineral Holder agree to restrictions on its rights to use the surface of the Property in connection with the exploration, production and/or mining of oil, gas, coal and other minerals in, on and under the Property that will supersede and replace the Deed Surface Use Provisions, and the Mineral Holder has agreed to accept such restrictions on the terms and conditions set forth herein; and

E. Forest City Partnership desires to join in this Agreement to evidence its consent to the replacement of the Deed Surface Use Provisions and the provisions of this Agreement for the benefit of PAWC.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, agrees as follows:

1. Recitals. The above recitals are incorporated by reference in this Agreement.
2. Surface Use Agreement.

a. Mineral Holder, on behalf of itself and its successors and assigns, hereby covenants and agrees that neither Mineral Holder nor its successors and assigns shall disturb the surface of the Property in a way which would interfere with the Intended Use of the Property, without the written consent of PAWC. The construction of any well pad or other related surface improvements for the extraction of subsurface minerals by Mineral Holder, its successors and assigns, is prohibited unless approved in writing by PAWC. Surface access to Mineral Holder, including, without limitation, Mineral Holder's successors and assigns, shall be limited to access that is necessary to traverse the Property, at a future location, which shall be mutually agreeable to PAWC and Mineral Holder. PAWC shall not unreasonably withhold, delay or condition Mineral Holder's access to the Property.

b. Nothing herein contained shall be construed to prevent Mineral Holder or its successors and assigns, including mineral lessees, from developing or producing the oil, gas or other minerals in and under the Property by pooling, unitization or by slant, directional or horizontal drilling under the Property from well sites located on tracts other than the Property so long as there is no surface use of the Property or risk of subsidence of the surface of the Property.

3. Binding Effect. This Agreement is executed for the benefit of PAWC and its successors and assigns and shall be binding upon the Mineral Holder's heirs, legal representatives, successors and assigns. The covenants and agreements set forth herein are covenants running with the land, which touch and concern the Property, the mineral estates of the Property, and the owners of any interests therein and supersede and replace in their entirety the Deed Surface Use Provisions, which shall have no further force and effect.

4. Representation. Mineral Holder represents and warrants that it has not granted or assigned to any other party any rights to use the surface of the Property or any part thereof in connection with any oil, gas or mineral investigation, operations, exploration or development. Forest City Partnership represents and warrants that it has not granted or assigned to any other party any rights to use the surface of the Property or any part thereof in connection with any oil, gas or mineral investigation, operations, exploration or development.

5. Headings. Titles and headings in this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law provisions.

8. Recordation. The parties acknowledge and agree that this Agreement will be recorded in the Recorder's Office at the cost and expense of PAWC.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**PAWC:**

PENNSYLVANIA-AMERICAN WATER  
COMPANY, a Pennsylvania corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FOREST CITY PARTNERSHIP:**

FOREST CITY PARTNERSHIP, LLC, a  
Pennsylvania limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MINERAL HOLDER:**

LINDE NGS, INC., a Pennsylvania corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Acknowledgements on following page]*





## EXHIBIT A

### Legal Description of the Property

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

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

CONTAINING 140 acres, more or less.

### VERIFICATION

I, Scott F. Linde, President of Delaware Sewer Company, hereby state that the facts set forth in the foregoing Petition of Delaware Sewer Company to Order Pennsylvania-American Water Company to Close the Transaction by March 1, 2021 are true and correct to the best of my knowledge, information and belief and that I expect Delaware Sewer Company to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Scott F. Linde

Dated: January 21, 2021



**Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge  
Steven K. Haas, Presiding**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 21<sup>st</sup> day of January, 2021, served a true and correct copy of the foregoing Petition of Delaware Sewer Company to Order Pennsylvania-American Water Company to Close the Transaction by March 1, 2021, upon the persons and in the manner indicated below:

**VIA ELECTRONIC MAIL**

The Honorable Steven K. Haas  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, PA 17105-3265  
sthaas@pa.gov

Scott B. Granger, Prosecutor  
Allison Kaster, Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Post Office Box 3265  
Harrisburg, PA 17105-3265  
sgranger@pa.gov  
akaster@pa.gov

Christine M. Hoover, Esquire  
Erin L. Gannon, Esquire  
Lauren M. Burge, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
choover@paoca.org  
egannon@paoca.org  
lburge@paoca.org

David P. Zambito, Esquire  
Jonathan Nase, Esquire  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
dzambito@cozen.com  
jnase@cozen.com

Alexander Stahl, Esquire  
Aqua Pennsylvania Wastewater, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
astahl@aquaamerica.com

Susan Simms Marsh, Esquire  
Elizabeth Triscari, Esquire  
Pennsylvania American Water Company  
susan.marsh@amwater.com  
Elizabeth.Triscari@amwater.com



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Thomas T. Niesen  
PA ID No. 31379