



September 2, 2016

**VIA HAND DELIVERY**

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Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: In re: Application of Pennsylvania-American Water Company for Approval of (1) the transfer, by sale, of substantially all of the Borough of New Cumberland's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania, and (3) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania; Docket No. A-2016-2544151**

**JOINT PETITION FOR APPROVAL OF UNANIMOUS SETTLEMENT OF ALL ISSUES**

Dear Secretary Chiavetta:

Enclosed for filing is the original Joint Petition for Approval of Unanimous Settlement of All Issues ("Joint Petition") in the above referenced matter. As evidenced by the attached Certificate of Service, a copy of the Joint Petition is being served upon Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas and all parties.

Thank you for your attention to this matter. If you have any questions, please direct them to me. Please date-stamp the extra copy and return it with our courier.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito

Counsel for *Pennsylvania-American Water Company*

DPZ/kmg

Enclosures

cc: Honorable Elizabeth H. Barnes (*including MS Word Versions*)  
Honorable Steven K. Haas (*including MS Word Versions*)  
Per Certificate of Service

**CERTIFICATE OF SERVICE**

**In re: Application of Pennsylvania-American Water Company for Approval of (1) the transfer, by sale, of substantially all of the Borough of New Cumberland's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania, and (3) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County Pennsylvania; Docket No. A-2016-2544151**


I hereby certify that I have this day served a true copy of Pennsylvania-American Water Company, the Office of Consumer Advocate, and the Pennsylvania Public Utility Commission's Bureau of Investigation & Enforcement's **Joint Petition for Approval of Unanimous Settlement of All Issues**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Date: September 2, 2016

Counsel for  
*Pennsylvania-American Water Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judges Elizabeth H. Barnes  
and Steven K. Haas

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In re: Application of Pennsylvania-American Water :  
Company for Approval of (1) the transfer, by sale, of :  
substantially all of the Borough of New Cumberland’s :  
assets, properties and rights related to its wastewater :  
collection and treatment system to Pennsylvania- :  
American Water Company, (2) the rights of Pennsylvania- :  
American Water Company to begin to offer or furnish :  
wastewater service to the public in the Borough of New :  
Cumberland, Cumberland County, Pennsylvania, and (3) :  
the right of Pennsylvania-American Water Company to :  
begin to offer or furnish wastewater service to three :  
residential customers in Lower Allen Township, :  
Cumberland County, Pennsylvania :  
Docket No. A-2016-2544151

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**JOINT PETITION FOR APPROVAL OF  
UNANIMOUS SETTLEMENT OF ALL ISSUES**

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**I. INTRODUCTION**

Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), and the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission (“I&E”), parties to the above-captioned proceeding, (singularly, a “Joint Petitioner” and, collectively, the “Joint Petitioners”) hereby join in this “Joint Petition for Approval of Unanimous Settlement of All Issues” (“Settlement”) and respectfully request that the Honorable

Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas (“ALJs”) recommend approval of, and the Pennsylvania Public Utility Commission (“Commission”) approve, this Settlement without modification.

As fully set forth and explained below, the Joint Petitioners have agreed to a settlement of all issues in the above-captioned proceeding. Subject to the terms and conditions contained herein, the Settlement requests approval of: (a) the transfer, by sale, of substantially all of the assets, properties and rights of the Borough of New Cumberland, Cumberland County, Pennsylvania (the “Borough”) related to its wastewater collection and treatment system (the “System”) to PAWC; (b) the rights of PAWC to begin to offer or furnish wastewater service to the public within the municipal boundaries of the Borough; (c) the right of PAWC to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania; (d) PAWC’s filing of a tariff supplement, consistent with the *pro forma* tariff supplement attached hereto as **Appendix A**, to be issued and effective on the date of closing of the sale of the Borough’s assets, properties, and rights to PAWC (the “Transaction”); (e) the issuance of Certificates of Filings for certain agreements between PAWC and a municipal corporation as required under Section 507 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 507; and, (f) issuance of any other approval or certificate appropriate, customary, or necessary under the Code to carry out the Transaction in a lawful manner.

In support of this Settlement, the Joint Petitioners state the following:

## **II. BACKGROUND**

1. On May 5, 2016, PAWC and the Borough entered into an “Asset Purchase Agreement” for the transfer, by sale, of substantially all of the Borough’s assets, properties and rights related to the System to PAWC (“APA”).

2. On May 6, 2016, PAWC filed the above-captioned application (“Application”) requesting, *inter alia*, Commission approval of the Transaction, PAWC’s provision of wastewater service in the applied-for territory, and issuance of Certificates of Filing for certain agreements with municipal corporations.

3. The Application was served on the required entities, and the Commission-directed notice of the Application was published in the May 21, 2016 edition of the *Pennsylvania Bulletin* as well as in *The Patriot News* on May 19, 2016 and May 24, 2016. Proof of publication in *The Patriot News* was filed with the Commission by PAWC on June 6, 2016.

4. OCA filed a protest to the Application on June 6, 2016. No other person protested the Application or sought to intervene in the proceeding by the June 6, 2016 deadline set by the Commission’s Secretary.

5. By “Prehearing Conference Order” dated June 30, 2016, the ALJs scheduled a Prehearing Conference for July 12, 2016 at 10:00 a.m. in Hearing Room 2 of the Commonwealth Keystone Building in Harrisburg, Pennsylvania. PAWC and OCA submitted Prehearing Memoranda in accordance with the Prehearing Conference Order. The Prehearing Conference was held as scheduled.

6. By “Procedural Order” dated July 12, 2016, the ALJs addressed certain procedural matters, including discovery rule modifications, and set the following procedural schedule for the case:

Prehearing Conference	July 12, 2016
PAWC Prepared Direct Testimony	July 22, 2016
OCA Prepared Direct Testimony	August 15, 2016
PAWC Prepared Rebuttal Testimony	August 29, 2016
OCA Prepared Surrebuttal Testimony	September 8, 2016
Hearing with Oral Rejoinder	September 19, 2016
Main Briefs	October 7, 2016
Reply Briefs	October 21, 2016.

7. In accordance with the procedural schedule, PAWC served the following prepared direct testimony and exhibits on the ALJs and other Joint Petitioners on July 22, 2016:<sup>1</sup>

PAWC Statement No. 1, Direct Testimony of Bernard J. Grundusky, Jr., PAWC Director of Business Development (including PAWC Exhibits BJG-1, BJG-2 & BJG-3);

PAWC Statement No. 2, Direct Testimony of Michael J. Guntrum, P.E., PAWC Senior Project Manager - Engineering (including PAWC Exhibit MJG-1);

PAWC Statement No. 3, Direct Testimony of Joseph F. Woodward, Jr., PAWC Senior Manager - Operations;

PAWC Statement No. 4, Direct Testimony of John R. Cox, American Water Works Service Company Manager of Rates and Regulations; and,

PAWC Statement No. 5, Direct Testimony of James S. Merante, American Water Works Service Company Director of Financial Strategy, Planning, and Decision Support for the Mid Atlantic Division.

8. I&E filed a Notice of Appearance on August 1, 2016. PAWC promptly provided I&E with copies of all previously-served testimony and exhibits.

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<sup>1</sup> By Joint Stipulation for Admission of Evidence filed on the same date as this Settlement, the Joint Petitioners seek admission of these testimonies and exhibits into the evidentiary record.

9. Following the Prehearing Conference and I&E's Notice of Appearance, the Joint Petitioners actively engaged in settlement discussions.

10. On August 12, 2016, the ALJs granted an electronic mail request by the Joint Petitioners for an extension of the due date for Non-Company Prepared Direct Testimony until August 18, 2016 in order to facilitate on-going settlement discussions.

11. On August 18, 2016, the Joint Petitioners notified the ALJs by electronic mail that the Joint Petitioners had reached a unanimous settlement of all issues and requested that the ALJs suspend the procedural schedule pending the filing of a joint petition for approval of settlement and stipulation for admission of evidence. By electronic mail on the same day, the ALJs granted the request to suspend the procedural schedule.

12. By "Order Suspending Litigation Schedule" dated August 18, 2016, the ALJs officially granted the Joint Petitioners' request to suspend the procedural schedule and directed that a joint petition for approval of settlement and a stipulation for admission of evidence (along with verified copies of testimony and exhibits) be filed with the Commission by September 2, 2016. This Settlement is submitted in conformance with such order.

### **III. SETTLEMENT TERMS**

#### **A. Approval of Application**

13. The Application shall, subject to the other terms and conditions contained in this Settlement, be approved as being in the public interest and the Commission shall issue a Certificate of Public Convenience pursuant to 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3) evidencing the rights requested by PAWC in the Application.

**B. Rates**

14. Upon closing of the Transaction, PAWC shall issue, to become effective on the same date as issuance, a tariff supplement consistent with the *pro forma* tariff supplement contained in PAWC Exhibit BJK-2 to PAWC Statement No. 1 (Direct Testimony of Bernard J. Grundusky, Jr.) and labeled as Revised Exhibit J. A copy of the *pro forma* tariff supplement is attached hereto as **Appendix A**.

15. PAWC shall propose base rate increases for System customers consistent with one of the following two options, subject to challenge in the base rate case by a Party and subject to the Commission's approval:

a. To the extent PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect in the year 2018 or 2019, PAWC shall propose a maximum rate increase for System customers consistent with the terms set forth in Section 6.7 of the APA. In PAWC's second and third base rate filings following closing of the Transaction, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the respective second and third base rate filings following closing of the Transaction. Nothing contained in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.

b. To the extent PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect no earlier than January 1, 2020, PAWC shall propose revenue allocations and rate structures which equalize, in a

gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the first and second base rate filings following closing of the Transaction. Nothing in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.

16. In order to include the plant-in-service of the System in PAWC's rate base, PAWC shall perform an original cost plant-in-service study of the System in compliance with the Commission's statements of policy at 52 Pa. Code § 69.711, 69.721 (whichever may apply). Nothing in this agreement is intended to prohibit I&E, OCA or any other party in any future proceeding from contesting the ratemaking claims made by PAWC as a result of the original cost plant-in-service study of the System.

17. No acquisition adjustment is proposed or approved in this proceeding. In the event that PAWC makes a claim in its next base rate proceeding that the acquisition price for ratemaking purposes should be higher than book value, or that any increment above book value should be included in rates as an acquisition adjustment, such claim will be addressed in the base rate proceeding. OCA and I&E reserve their respective rights to oppose such claim.

18. Except as explicitly agreed upon in this Settlement Term Sheet, nothing contained herein or in the Commission's approval of the Joint Application shall preclude any Party from asserting any position or raising any issue in a future base rate proceeding.

**C. Capital Improvements**

19. The \$2 million in capital improvements promised by PAWC in Section 6.8 of the APA shall be in addition to and shall not reprioritize any capital improvements to which PAWC committed in its Long Term Infrastructure Improvement Plan for its Wastewater Operations (“LTIIIP”), as approved by Commission order entered May 7, 2015 at Docket No. P-2014-2431005.

20. PAWC shall not seek to recover eligible capital expenses associated with the System through its wastewater Distribution System Improvement Charge (“DSIC”) until the plant-in-service of the System is incorporated into PAWC’s rate base through a base rate case following closing of the Transaction.

21. PAWC shall not seek to include revenues associated with System customers in the calculation of its wastewater DSIC until the plant-in-service of the System is incorporated into PAWC’s rate base through a base rate case following closing of the Transaction.

22. PAWC shall not charge a wastewater DSIC to System customers until after Commission disposition of PAWC’s first base rate filing following closing of the Transaction in which the plant-in-service of the System is incorporated into PAWC’s rate base.

**D. Agreements with Municipal Corporations**

23. The Commission shall issue Certificates of Filing under Section 507 of the Code, 66 Pa. C.S. § 507, for the APA and all agreements with a municipal corporation identified therein as either having been entered into or to be entered into or assumed by PAWC, to include:

a. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);

b. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and PAWC as of the closing date of the transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the APA will be assigned from the Borough to PAWC at closing;

c. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application) (to be assigned to PAWC at closing per the Assignment of Contracts Agreement described in subsection (b) above); and,

d. Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date (to be assigned to PAWC at closing per the Assignment of Contracts Agreement described in subsection (b) above).

#### **IV. CONDITIONS OF SETTLEMENT**

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

25. This Settlement is proposed by the Joint Petitioners to this Settlement to settle all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

27. Attached hereto as **Appendices B, C, and D** are the Joint Petitioners' Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs, respectively.

28. Attached hereto as **Appendices E, F, and G** are the respective Statements in Support of the Joint Petition for Approval of Unanimous Settlement of All Issues submitted by PAWC, OCA, and I&E setting forth the bases upon which each Joint Petitioner believes the Settlement to be fair, just and reasonable and, therefore, in the public interest.

29. If the ALJs recommends approval of the Settlement without modification, the Joint Petitioners waive their rights to file Exceptions.

**V. REQUEST FOR RELIEF**

WHEREFORE, Pennsylvania-American Water Company, the Office of Consumer Advocate and the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission, by their respective counsel, respectfully request that:

(a) The Honorable Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas recommend approval of, and the Commission approve, this Settlement as submitted including all terms and conditions thereof without modification;

(b) The Commission's proceeding at Docket No. A-2016-2544151 be terminated and marked closed and all protests at such docket be dismissed consistent with this Settlement;

(c) The Commission issue a Certificate of Public Convenience, pursuant to Sections 1102(a)(1) and 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3), evidencing the Commission's approval of (i) the transfer, by sale, of substantially all of the Borough of New Cumberland, Cumberland County, Pennsylvania's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (ii) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania; and, (iii) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania;

(d) The Commission permit Pennsylvania-American Water Company to file a tariff supplement, consistent with the *pro forma* tariff supplement attached hereto as **Appendix A**, to be issued and become effective on the date of closing of the Transaction;

(e) The Commission issue Certificates of Filing under Section 507 of the Pennsylvania

Public Utility Code, 66 Pa. C.S. § 507, for the “Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company,” dated May 5, 2016, and all agreements with a municipal corporation identified therein as either having been entered into or to be entered into or assumed by Pennsylvania-American Water Company, to include:

i. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);

ii. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and Pennsylvania-American Water Company as of the closing date of the Transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the “Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company,” dated May 5, 2016, will be assigned from the Borough of New Cumberland to Pennsylvania-American Water Company at closing of the Transaction;

iii. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application) (to be assigned to Pennsylvania-American Water Company at closing of the Transaction); and,

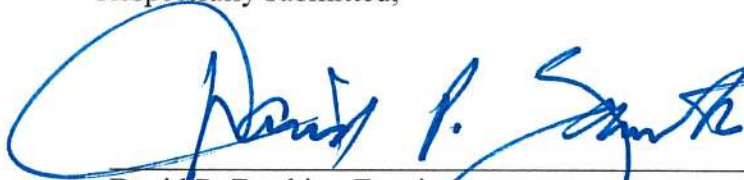
iv. Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date (to be assigned to Pennsylvania-American Water Company at closing of the Transaction).

(f) The Commission issue any other approval or certificate appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the Transaction in a lawful

manner.

- (g) The Commission enter an order consistent with this Settlement.

Respectfully submitted,



Date: \_\_\_\_\_

9/2/16

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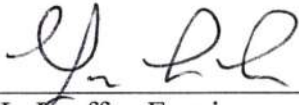
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Date: 09-02-2016

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**APPENDIX A**

**PRO FORMA TARIFF SUPPLEMENT**

**RATES FOR RATE ZONE 12** - The rates as set forth below will be in effect for all Borough of New Cumberland wastewater customers. (C)

Service Charges:

All metered customers shall be subject to a monthly service charge of \$25.54.

Usage Charge For All Bill Classes:

First	2,100 gallons per month	Service Charge
Next	900 gallons per month	\$1.201 per hundred
Next	3,000 gallons per month	\$1.022 per hundred
Next	16,300 gallons per month	\$0.818 per hundred
Next	52,300 gallons per month	\$0.615 per hundred
All over	74,600 gallons per month	\$0.514 per hundred

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Issued:

Effective:

## APPENDIX B

### PROPOSED FINDINGS OF FACT<sup>2</sup>

1. Following a request for bids process conducted by the Borough, PAWC and the Borough entered into the APA on March 5, 2016. Under the APA, PAWC will acquire substantially all of the Borough's assets, properties and rights related to the System. The negotiated purchase price is \$23 million, subject to certain adjustments. PAWC St. No. 1, 4:13-5:2.

2. PAWC, a subsidiary of American Water Works Company, Inc. ("American Water"), is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. PAWC St. No. 1, 9:20-10:3; PAWC St. No. 2, 10:9-20.

3. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York. Overall, PAWC serves a combined population of over 2,300,000 across the Commonwealth and is American Water's largest subsidiary with nearly 21 percent of American Water's regulated customer base. PAWC St. No. 1, 10:3-10.

4. PAWC has a Call Center with extended hours and a low-income customer assistance program. PAWC St. No. 3, 10:5-12:5.

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<sup>2</sup> These Proposed Findings of Fact use the defined terms as set forth in the Joint Petition for Approval of Unanimous Settlement of All Issues to which they are appended.

5. PAWC currently employs approximately 1,000 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting and, most importantly, customer service. PAWC St. No. 1, 10:9-14; PAWC St. No. 2, 10:4-8.

6. American Water has a 50-person team of corporate engineers which has handled a wide variety of system evaluations, selected treatment processes, and established critical design criteria for water and wastewater treatment systems in order to improve operations and prioritize capital improvements. PAWC St. No. 2, 10:21-11:2.

7. PAWC, and its predecessor, Riverton Consolidated Water Company, have been providing local water service to the Borough and the Township of Lower Allen, Cumberland County, PA since 1904. PAWC St. No. 10:22-23.

8. As of June 30, 2016, PAWC furnishes wastewater services to 21,302 customers in Pennsylvania, inclusive of 20,144 residential customers, 1,085 commercial customers, seven industrial customers, and four bulk customers. PAWC St. No. 1, 11:15-17.

9. PAWC currently operates 15 wastewater treatment plants. Treatment processes include state-of-the-art biological nutrient removal (“BNR”) systems, sequential batch reactors, and oxidation ditches. PAWC St. No. 2, 9:20-10:3.

10. PAWC has specific experience in treatment technologies involving BNR. PAWC operates three BNR facilities in Pennsylvania. On a nationwide basis, American Water affiliates

operate 54 wastewater treatment plants utilizing BNR technology and processes. PAWC St. No. 2, 11:3-9.

11. PAWC furnishes water services to 653,549 customers, inclusive of 601,147 residential customers, 45,074 commercial customers, 520 industrial customers, 4,350 fire protection customers and 2,458 municipal, resale and other customers. PAWC St. No. 1, 11:17-20.

12. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$275 million to \$300 million per year for the next five years. PAWC St. No. 2, 11:12-17.

13. In the proximity of the Borough, PAWC owns, operates, and maintains two water treatment plants, providing service to more than 39,000 customers in 12 communities in Cumberland County, including PAWC's water customers located within the Borough limits. PAWC St. No. 1, 11:1-3.

14. PAWC has a good compliance history. There are currently no legal proceedings which would suggest that PAWC is not legally fit to provide service to System customers in the public interest. PAWC St. No. 1, 14:1-3.

15. PAWC had total assets of approximately \$3.9 billion and annual revenues of approximately \$613 million as of December 31, 2015. PAWC St. No. 1, 14:11-13; PAWC St. No. 5, 3:19-20.

16. For 2015, PAWC had operating income of approximately \$307 million and net income of approximately \$143 million. PAWC's operating results produced cash flows from operations of approximately \$308 million. PAWC St. No. 1, 14:12-13.

17. PAWC presently has liquidity through a \$220 million line of credit through American Water Capital Corp. ("AWCC"), a wholly-owned subsidiary of American Water. PAWC's strong credit ratings allow PAWC to obtain additional capacity on this line of credit. PAWC St. No. 5, 4:7-10.

18. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 5, 4:12-17.

19. PAWC may also obtain additional equity investments through American Water. PAWC St. No. 5, 4:19-20.

20. PAWC has strong operating cash flows and net income and, therefore, a strong balance sheet. PAWC's strong operating and financial performance allows it to obtain competitive interest rates for long-term debt financing and access to equity investments from its parent company. PAWC St. No. 5, 5:1-6.

21. PAWC will initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 5, 10-12.

22. As of March 31, 2016, the Borough furnishes wastewater services to 3,158 customers, inclusive of 2,890 residential customers, 258 commercial customers and 10 municipal customers. PAWC St. No. 1, 11:13-14.

23. The System is a typical sanitary sewer system with a collection system consisting of approximately 27 miles of pipe ranging from 6 to 21-inch diameter, three lift stations (or sewer pumping stations) and a wastewater treatment plant (“WWTP”). The majority of the collection system was constructed in the 1950’s with terra cotta (vitrified clay pipe) mains and brick manholes. The lift stations are all float controlled and are locally operated. PAWC St. No. 2, 2:15-3:15.

24. The WWTP appears to be well-designed and maintained, be in good physical condition, and have sufficient capacity. PAWC St. No. 2, 3:15-4:7.

25. The System has had no violations or compliance issues with the Pennsylvania Department of Environmental Protection (“DEP”) or the United States Environmental Protection Agency in the past five years. PAWC St. No. 2, 4:11-16.

26. There currently are no industrial waste dischargers in the Borough nor is the WWTP experiencing any treatment difficulties commonly associated with industrial waste discharges in a primarily domestic wastewater system. PAWC St. No. 2 4:17-5:1.

27. Pursuant to the APA, the Borough has agreed to retain ordinances that prohibit stormwater system facilities from being connected to, or from causing stormwater flows into, the System. PAWC St. No. 2, 5:1-3.

28. The Borough currently has four employees who operate the System. PAWC intends to maintain those four employees and manage the System in conjunction with PAWC’s existing operations in Central Pennsylvania. PAWC St. No. 3, 4:4-13, 9:6-17.

29. PAWC intends to regionalize the wastewater operations of its Fairview Township system and the System for purposes of emergency response and shared equipment, which will give PAWC greater flexibility and efficiencies to operate the System. PAWC St. No. 3, 7:9-22.

30. PAWC's Central Pennsylvania operations include resources from more than 100 operational, engineering, and administrative staff. These resources will be available to assist with operation of the System. The resources of PAWC's other operating divisions and of American Water will also be available. PAWC St. No. 3, 8:1-9:5.

31. PAWC has assembled a transition team to manage the transition of existing staff and operations of the System from the Borough to PAWC. PAWC St. No. 3, 4:14-5:4.

32. PAWC, in conjunction with the Borough, has committed to educate System customers regarding the transition of ownership and operation -- including an announcement letter to customers following closing of the Transaction which will provide information regarding rates, billing, and customer service center hours and phone number. PAWC St. No. 3, 9:18-10:4.

33. PAWC maintains cyber security, physical security, business continuity, and emergency plans and has strong working relationships with the Commission's Emergency Response Staff. PAWC also coordinates closely with local first responders and participates in emergency exercises. PAWC St. No. 3, 14:12-16:11.

34. PAWC participates in the Pennsylvania One-Call System. Each of PAWC's operating districts has at least one member of its personnel dedicated to completing dig notifications. PAWC St. No. 3, 16:12-19.

35. PAWC maintains an employee health and safety program. PAWC St. No. 3, 16:20-18:3.

36. PAWC has a customer compliance team located in its Hershey Office responsible for ensuring that customer disputes are resolved in compliance with the Commission's regulations. PAWC also has a customer advocacy team located in the Hershey Office responsible for addressing customer disputes and escalated concerns. PAWC St. No. 3, 18:4-15.

37. PAWC has a program to protect customers against utility employee imposters. PAWC informs customers of the dangers of imposter-related crimes, and the precautions that can be taken, through bill inserts, news releases, social media posts, and website information. PAWC helped to form the Keystone Alliance to Stop Utility Imposters and to launch the Alliances' public awareness campaign. PAWC St. No. 3, 18:16-19:4.

38. PAWC's applied for service territory complies with the Borough's DEP-approved Act 537 Plan. PAWC St. No. 2, 5:6-13.

39. PAWC has committed to \$2,000,000 in capital improvements in water and wastewater infrastructure located in the Borough over the first five years of PAWC ownership of the System. PAWC St. No. 2, 5:15-9:10.

40. No municipal authority, corporation, partnership or individual other than the Borough is now furnishing or has corporate or franchise rights to furnish service similar to that to be rendered by PAWC in service territory applied for by PAWC, and no competitive condition will be created. PAWC St. No. 1, 15:13-16.

41. Upon closing of the Transaction, the Borough will permanently discontinue all wastewater service to the public. PAWC St. No. 1, 15:16-17.

42. In addition to the service territory within the limits of the Borough, PAWC will provide wastewater service to three residential customers located in the Township of Lower Allen, Cumberland County ("Lower Allen"). The Borough currently provides wastewater services to the three customers pursuant to an existing agreement which will be assumed by PAWC. PAWC St. No. 1, 15:18-16:5.

43. Service to the customers located in Lower Allen will overlap with the wastewater service territory of Lower Allen; however, Lower Allen supports PAWC's continued service to such customers. PAWC St. No. 1, 16:6-16; PAWC Exh. BJK-1 (Exh. N.).

44. The initial rates to be applied to System customers following closing of the Transaction will be the Borough's current customer charge and consumption charge; provided, however, that the customer charge and consumption charges will be divided and billed monthly instead of quarterly as the Borough currently bills. Following closing, System customers will be subject to all rates other than the customer charge and consumption charge, including capacity reservation fees, tapping fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4, 3:19-4:11.

45. As part of the request for bids process conducted by the Borough for the sale of the System, PAWC entered into an Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016. PAWC Exh. BJK-1 (Exh. A to APA).

46. Pursuant to the APA, PAWC will assume contracts in accordance with a Form of Assignment of Contracts Agreement to be entered into by and between the Borough and PAWC as of the closing date of the transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the APA will be assigned from the Borough to PAWC. PAWC St. No. 1, 17:11-18:4; PAWC Exh. BJK-1 (Exh. B to APA).

47. PAWC will assume the Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland. Assumption of this agreement is necessary in order to continue wastewater service to the three customers located in Lower Allen

following the close of the Transaction. PAWC St. No. 1, 17:11-18:4; PAWC Exh. BJG-1 (Exh. M to Application).

48. PAWC will assume the Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date of the Transaction. Assumption of this agreement is necessary in order for PAWC to receive a necessary waste hauling service related to the operation of the System. PAWC St. No. 1, 17:11-18:4; PAWC Exh. BJG-1 (Exh. B, Sch. 5.1(c), and Sch. 4.1(k) to APA); PAWC St. No. 2, 4:4-7.

## APPENDIX C

### PROPOSED CONCLUSIONS OF LAW<sup>3</sup>

1. Commission policy promotes settlement. *See* 52 Pa. Code § 5.231.
2. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401.
3. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).
4. The Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.
5. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a) (“Procedure to obtain certificates of public convenience”).
6. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized . . . .” 66 Pa. C.S. § 1102(a)(1).

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<sup>3</sup> These Proposed Conclusions of Law use the defined terms as set forth in the Joint Petition for Approval of Unanimous Settlement of All Issues to which they are appended.

7. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

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

9. PAWC ownership and operation of the System, consistent with the terms and conditions of the Settlement, will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way.

10. An applicant for a certificate of public convenience public must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d. 240, 243 (Pa. Super. 1958).

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

12. Financial fitness means that the applicant should possess the financial ability to give reliable and respectable service to the public. The applicant should own or should have sufficient financial resources to obtain the equipment needed to perform the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661, 662-63 (1982); *Re: O’Connor*, 54 Pa. P.U.C. 547 (1980); *Merz White Way Tours v. Pa. Pub. Util. Comm’n*, 201 A.2d 446 (Pa. Super. 1964).

13. Technical fitness means that the applicant has the technical capacity to meet a public need in a satisfactory fashion. It must possess sufficient staff, facilities, and operating skills to make the proposed service feasible, profitable, and a distinct service to the public. *Re Perry Hassman*, 55 Pa. P.U.C. 661, 662-63 (1982); *Re: O'Connor*, 54 Pa. P.U.C. 547 (1980); *Pa. Pub. Util. Comm'n v. Pa. Radio Tele. Corp.*, 342 A.2d 489 (Pa. Cmwlth. 1975); *Merz White Way Tours v. Pa. Pub. Util. Comm'n*, 201 A.2d 446 (Pa. Super. 1964).

14. Legal fitness means a public utility's propensity to operate safely and legally. *Seaboard Tank Lines, Inc.*, 502 A.2d at 764. The lack of legal fitness is demonstrated by persistent disregard for, flouting, or defiance of the Code and the Commission's orders and regulations. For applicants that already possess operating authority, past performance should be analyzed to determine whether the applicant has obeyed the Code and Commission regulations, particularly those regulations dealing with public safety. *Re Perry Hassman*, 55 Pa. P.U.C. 661, 662-63 (1982); *Re: O'Connor*, 54 Pa. P.U.C. 547 (1980).

15. PAWC is technically, financially, and legally fit to own and operate the System in the public interest.

16. Issues relating to rates are properly reserved for a future PAWC rate proceeding.

17. Public utility rates must be just and reasonable. 66 Pa. C.S. § 1301.

18. The rates set forth in the *pro forma* tariff supplement attached to the Settlement as **Appendix A** do not appear to be unjust or unreasonable and, therefore, should be adopted as PAWC's initial rates for System customers.

19. The Settlement preserves the rights of interested parties to raise rate-related issues in a future PAWC rate proceeding and does not restrict the Commission from adjudicating rate-related issues in a future rate proceeding.

20. A contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date. 66 Pa. C.S. § 507 (“Contracts between public utilities and municipalities”).

21. The Commission will initiate proceedings regarding a contract between a public utility and a municipal corporation only if the Commission has a concern regarding the reasonableness, legality or any other matter affecting the validity thereof. 66 Pa. C.S. § 507.

22. The following agreements between PAWC and a municipal corporation do not appear to be unreasonable, illegal, or otherwise invalid and, accordingly, the Commission should issue Certificates of Filing for such agreements pursuant to Section 507 of the Code, 66 Pa. C.S. § 507:

i. “Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company,” dated May 5, 2016;

ii. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);

iii. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and Pennsylvania-American Water Company as of the closing date of the Transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the APA will be assigned from the Borough to PAWC at closing;

iv. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application) (to be assigned to PAWC at closing of the Transaction); and,

v. Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18, effective date September 30, 2015, as may be renewed or reissued prior to the closing date (to be assigned to PAWC at closing of the Transaction).

23. The Transaction is in the public interest and, consistent with the terms and conditions of the Settlement, should be approved.

## APPENDIX D

### PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED THAT:

1. The Joint Petition for Approval of Unanimous Settlement of All Issues, filed by Pennsylvania-American Water Company, the Office of Consumer Advocate, and the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission on September 2, 2016 at Docket No. A-2016-2544151, including all terms and conditions thereof, is approved without modification.
2. The proceeding at Docket No. A-2016-2544151 is terminated and marked closed and all protests at such docket are dismissed consistent with this Order.
3. The Commission's Secretary shall issue a Certificate of Public Convenience, pursuant to Sections 1102(a)(1) and 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3), evidencing the Commission's approval of (i) the transfer, by sale, of substantially all of the Borough of New Cumberland, Cumberland County, Pennsylvania's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, (ii) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of New Cumberland, Cumberland County, Pennsylvania, and (iii) the right of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania.
4. Pennsylvania-American Water Company shall file a tariff supplement, consistent with the *pro forma* tariff supplement attached to the Joint Petition for Approval of Unanimous

Settlement of All Issues as Appendix A, to be issued and become effective on the date of closing of the Transaction.

5. The Commission's Secretary shall issue Certificates of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 507, for the "Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company," dated May 5, 2016, and all agreements with a municipal corporation identified therein as either having been entered into or to be entered into or assumed by Pennsylvania-American Water Company, to include:

a. Escrow Agreement by and among the Borough of New Cumberland, Pennsylvania-American Water Company and Johnson, Duffie, Stewart & Weidner, P.C., dated April 13, 2016 (Exhibit A to APA);

b. Form of Assignment of Contracts Agreement (Exhibit B to APA) to be entered into by and between the Borough of New Cumberland and Pennsylvania-American Water Company as of the closing date of the Transaction pursuant to which the contracts identified in Schedules 5.1(c) and 4.1(k) of the "Asset Purchase Agreement Between the Borough of New Cumberland and Pennsylvania-American Water Company," dated May 5, 2016, will be assigned from the Borough of New Cumberland to Pennsylvania-American Water Company ("Assignment Agreement");

c. The Agreement, dated March 29, 1995, by and among Lower Allen Township, Melvin K. Johnson and Helen S. Johnson, Grace Margaret Swift, Richard M. Spohn, Jr. and Renee Spohn, and the Borough of New Cumberland (Exhibit M to the Application), as will be assigned to Pennsylvania-American Water Company at closing of the Transaction; and,

d. Capital Regional Water Contract Waste Hauling Permit No. WH-0916-18,

effective date September 30, 2015, as may be renewed or reissued prior to the closing date, as will be assigned to Pennsylvania-American Water Company at closing of the Transaction.

6. Within 30 days following closing of the Transaction, PAWC shall, as a matter of compliance with this Order, file executed versions of the Assignment Agreement.

7. All other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the Transaction in a lawful manner are granted.

**APPENDIX E**

**PENNSYLVANIA-AMERICAN WATER COMPANY STATEMENT IN SUPPORT**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Administrative Law Judges  
Elizabeth H. Barnes  
Steven K. Haas

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In re: Application of Pennsylvania-American Water :  
Company for Approval of (1) the transfer, by sale, of :  
substantially all of the Borough of New Cumberland's :  
assets, properties and rights related to its wastewater :  
collection and treatment system to Pennsylvania-American :  
Water Company, (2) the rights of Pennsylvania-American :  
Water Company to begin to offer or furnish wastewater :  
service to the public in the Borough of New Cumberland, :  
Cumberland County, Pennsylvania, and (3) the right of :  
Pennsylvania-American Water Company to begin to offer or :  
furnish wastewater service to three residential customers in :  
Lower Allen Township, Cumberland County, Pennsylvania :

Docket No. A-2016-2544151

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**STATEMENT OF PENNSYLVANIA-AMERICAN WATER COMPANY  
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF  
UNANIMOUS SETTLEMENT OF ALL ISSUES**

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**I. INTRODUCTION**

Pennsylvania-American Water Company ("PAWC") hereby files this Statement in Support of the Joint Petition for Approval of Unanimous Settlement of All Issues ("Settlement") entered into by PAWC, the Office of Consumer Advocate ("OCA"), and the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission ("I&E") (hereinafter, collectively the "Joint Petitioners") in the above-captioned proceeding. PAWC respectfully requests that the Honorable Administrative Law Judges Elizabeth H. Barnes and

Steven K. Haas recommend approval of, and that the Pennsylvania Public Utility Commission (“Commission”) approve, the Settlement, including all terms and conditions thereof, without modification.

The Settlement, if approved, will resolve all of the issues raised in this proceeding. The Settlement is in the best interest of PAWC, its existing customers and its prospective customers and is otherwise in the public interest. It should, accordingly, be approved.

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

As an initial matter, the fact that the Settlement is unopposed by any active party in this acquisition proceeding is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest -- particularly given the diverse interests of the Joint Petitioners and the active role that they have taken in this proceeding. Moreover, the Settlement was achieved only after a comprehensive investigation of the proposed transaction through voluntary and cooperative informal discovery. PAWC filed its direct testimony and accompanying exhibits and the matter was settled before OCA and I&E had to expend the time and resources to prepare and serve its direct testimony and exhibits. The Joint Petitioners participated in numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.

Finally, it should be noted that the Joint Petitioners, and their counsel and experts, have considerable experience in acquisition proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the settled issues.

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners. For these reasons and the reasons set forth below, the Settlement is in the public interest and should be approved without modification.

## **II. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

The Joint Petitioners have agreed to a settlement of all issues in the above-captioned proceeding. Subject to certain terms and conditions, the Settlement requests approval of: (a) the transfer, by sale, of substantially all of the assets, properties and rights of the Borough of New Cumberland, Cumberland County, Pennsylvania (the “Borough”) related to its wastewater collection and treatment system (the “System”) to PAWC; (b) the rights of PAWC to begin to offer or furnish wastewater service to the public within the municipal boundaries of the Borough; (c) the right of PAWC to begin to offer or furnish wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania; (d) PAWC’s filing of a tariff supplement, consistent with the *pro forma* tariff supplement attached to the Settlement as Appendix A, to be issued and effective on the date of closing of the sale of the Borough’s assets, properties, and rights to PAWC (the “Transaction”); (e) the issuance of Certificates of Filings for certain agreements between PAWC and a municipal corporation as required under Section 507 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 507; and, (f) issuance of any

other approval or certificate appropriate, customary, or necessary under the Code to carry out the Transaction in a lawful manner.

An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The applicant must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). The fitness of a currently certificated public utility is presumed. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

As demonstrated by the evidence stipulated by the Joint Petitioners into the record, PAWC ownership and operation of the System, consistent with the terms and conditions of the Settlement, will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way. PAWC is technically, financially, and legally fit and the Transaction will produce affirmative public benefits of a substantial nature.

**A. PAWC is Technically, Financially, and Legally Fit**

PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. PAWC St. No. 1, 9:20-10:3; PAWC St. No. 2, 10:9-20.

PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York. In the proximity of the Borough, PAWC owns, operates, and maintains two water treatment plants, providing service to more than 39,000 customers in 12 communities in Cumberland County, including PAWC's water customers located within the Borough limits. PAWC St. No. 1, 11:1-3.

Overall, PAWC serves a combined population of over 2,300,000 across the Commonwealth and is American Water's largest subsidiary with nearly 21 percent of American Water's regulated customer base. PAWC St. No. 1, 10:3-10. PAWC currently employs approximately 1,000 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting and, most importantly, customer service. PAWC St. No. 1, 10:9-14; PAWC St. No. 2, 10:4-8.

As of June 30, 2016, PAWC furnishes wastewater services to 21,302 customers in Pennsylvania, inclusive of 20,144 residential customers, 1,085 commercial customers, seven industrial customers, and four bulk customers. PAWC St. No. 1, 11:15-17. PAWC currently operates 15 wastewater treatment plants. Treatment processes include state-of-the-art biological nutrient removal systems, sequential batch reactors, and oxidation ditches. PAWC St. No. 2, 9:20-10:3.

PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and

wastewater infrastructure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$275 million to \$300 million per year for the next five years. PAWC St. No. 2, 11:12-17.

With regard to financial fitness, PAWC had total assets of approximately \$3.9 billion and annual revenues of approximately \$613 million as of December 31, 2015. PAWC St. No. 1, 14:11-13; PAWC St. No. 5, 3:19-20. For 2015, PAWC had operating income of approximately \$307 million and net income of approximately \$143 million. PAWC's operating results produced cash flows from operations of approximately \$308 million. PAWC St. No. 1, 14:12-13. PAWC presently has liquidity through a \$220 million line of credit through American Water Capital Corp., a wholly-owned subsidiary of American Water. PAWC's strong credit ratings allow PAWC to obtain additional capacity on this line of credit. PAWC St. No. 5, 4:7-10.

PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 5, 4:12-17. PAWC may also obtain additional equity investments through American Water. PAWC St. No. 5, 4:19-20.

PAWC has strong operating cash flows and net income and, therefore, a strong balance sheet. PAWC's strong operating and financial performance allows it to obtain competitive interest rates for long-term debt financing and access to equity investments from its parent company. PAWC St. No. 5, 5:1-6.

PAWC will initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 5, 10-12. PAWC clearly has the financial capabilities to fund the Transaction.

With regard to legal fitness, PAWC has a good compliance history. There are currently no legal proceedings which would suggest that PAWC is not legally fit to provide service to System customers in the public interest. PAWC St. No. 1, 14:1-3.

For the foregoing reasons, there is substantial record evidence to support the Settlement and approval of the Transaction. It is clear that PAWC is technically, financially, and legally fit to own and operate the System in the public interest.

**B. The Transaction Will Produce Substantial Public Benefits**

The Transaction will produce affirmative public benefits of a substantial nature. These benefits include, but are not limited to: further regionalization of wastewater operations in Pennsylvania; greater access to technical resources for operation of the System; greater access to capital for necessary investments to the System; and, improved customer service for System customers.

As noted above, PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties, including Cumberland County and neighboring counties of Dauphin and York. PAWC St. No. 1, 10:3-10. As of June 30, 2016, PAWC furnishes wastewater services to 21,302 customers in Pennsylvania, inclusive of 20,144 residential customers, 1,085 commercial customers, seven industrial customers, and four bulk customers. PAWC St. No. 1, 11:15-17. Approval of the Transaction would enable PAWC to continue to regionalize its operations. Regionalization permits PAWC to pursue

economies of scale and spread costs over a larger customer base for the benefit of all of its ratepayers.

The Borough currently has only four employees who operate the System. PAWC St. No. 3, 4:4-13, 9:6-17. In contrast, PAWC's Central Pennsylvania operations include resources from more than 100 operational, engineering, and administrative staff. These resources will be available to assist with operation of the System. The resources of PAWC's other operating divisions and of American Water will also be available. PAWC St. No. 3, 8:1-9:5. Moreover, PAWC intends to regionalize the wastewater operations of its Fairview Township system and the System for purposes of emergency response and shared equipment, which will give PAWC greater flexibility and efficiencies to operate the System. PAWC St. No. 3, 7:9-22.

As explained above, PAWC has significant access to capital and that access will be used to ensure that necessary investment is made in the System and that the System is operated in the public interest. This capability is demonstrated by PAWC's commitment to invest \$2,000,000 in capital improvements in water and wastewater infrastructure located in the Borough over the first five years of PAWC ownership of the System. PAWC St. No. 2, 5:15-9:10.

Under PAWC ownership, System customers will experience improved and broadened customer service -- including extended call center hours, rapid response to emergency situations, additional bill payment options, enhanced customer information and education programs, and access to PAWC's low-income customer assistance program. PAWC St. No. 3, 10:5-12:5. These benefits are possible because of PAWC's larger customer base, expertise, and financial capabilities.

For the foregoing reasons, there is substantial record evidence to support the Settlement and approval of the Transaction. It is clear that the Transaction will produce a public benefit of a substantial nature.

**C. The Settlement Ensures a Gradual Phase In of Rates**

The Settlement will ensure that PAWC implements rates for System customers in a gradual manner and that System customers will not be unreasonably subsidized by other PAWC customers. Under Paragraphs 15.a. and 15.b. of the Settlement, PAWC has committed to increase rates for System customers in a gradual manner over the course of PAWC's next two to three base rate cases and to bring such rates in line with PAWC's system average rates (Rate Zone 1) over that time period. *See* Settlement, ¶¶ 15.a., 15b. These Settlement provisions are consistent with the Commission's policies of rate gradualism and single tariff pricing.

**D. The Settlement Preserves the Rights of Parties in Future Rate Proceedings**

The Settlement makes clear that approval of the Transaction would not infringe upon the rights of OCA, I&E, and other interested parties to participate in, and advocate their positions in, future PAWC rate proceedings. *See, e.g.,* Settlement, ¶¶ 15.a., 15.b., 16, 17 ("Except as explicitly agreed upon in this Settlement Term Sheet, nothing contained herein or in the Commission's approval of the Joint Application shall preclude any Party from asserting any position or raising any issue in a future base rate proceeding.").

**E. Capital Commitment is Consistent with PAWC's LTIP and DSIC**

As part of the Settlement, PAWC has affirmed that its promised \$2 million in capital improvements will be consistent with its Long Term Infrastructure Improvement Plan for its

Wastewater Operations (“LTIP”) and its wastewater Distribution System Improvement Charge (“DSIC”). Specifically, PAWC has agreed that: (a) the promised \$2 million in capital improvements shall be in addition to and shall not reprioritize any capital improvements to which PAWC committed in its LTIP; (b) PAWC shall not seek to recover eligible capital expenses associated with the System through its wastewater DSIC until the plant-in-service of the System is incorporated into PAWC’s rate base through a base rate case following closing of the Transaction; (c) PAWC shall not seek to include revenues associated with System customers in the calculation of its wastewater DSIC until the plant-in-service of the System is incorporated into PAWC’s rate base through a base rate case following closing of the Transaction; and, (d) PAWC shall not charge a wastewater DSIC to System customers until after Commission disposition of PAWC’s first base rate filing following closing of the Transaction in which the plant-in-service of the System is incorporated into PAWC’s rate base. *See* Settlement, ¶¶ 18-21.

**F. Certificates of Filing Should be Issued for Municipal Agreements**

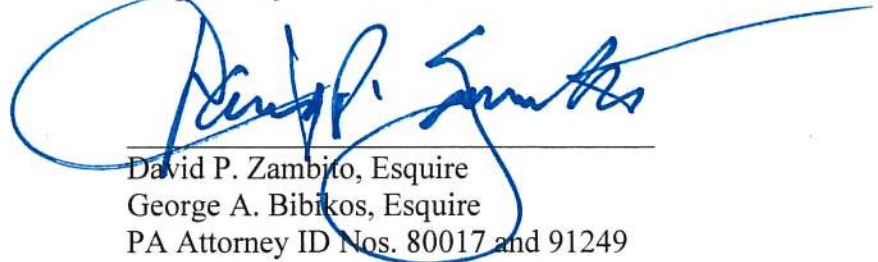
As part of the Settlement, the Joint Petitioners have agreed that that Commission should issue Certificates of Filing under Section 507 of the Code, 66 Pa. C.S. § 507, for certain agreements between PAWC and municipal corporations. Such agreements include the Asset Purchase Agreement for the Transaction, the escrow agreement pursuant to which PAWC participated in the Borough’s request for bids process, and other agreements regarding PAWC’s assumption of Borough responsibilities in order to operate the System in the public interest upon closing of the Transaction. The agreements, or forms of the agreements, have been provided to the Commission and the parties in conjunction with this proceeding. They are reasonable and, therefore, Certificates of Filing should be issued.

### III. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all issues in the proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, PAWC's direct testimony and accompanying exhibits, informal discovery responses, and extensive settlement negotiations. A fair and reasonable compromise has been achieved in this case, as is evident by the fact that all active parties to this proceeding have agreed to the resolution of the issues. PAWC fully supports this Settlement and respectfully requests that the Honorable Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas recommend approval of, and the Commission approve, the Settlement in its entirety, without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, and that the Commission enter an order consistent with the Settlement.

Respectfully submitted,



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Dated: September 2, 2016

*Counsel for Pennsylvania-American Water Company*

**APPENDIX F**

**OFFICE OF CONSUMER ADVOCATE STATEMENT IN SUPPORT**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American	:	
Water Company for Approval of (1) the	:	
transfer, by sale, of substantially all of the	:	
Borough of New Cumberland's assets,	:	
properties and rights related to its	:	
wastewater collection and treatment system	:	
to Pennsylvania-American Water Company,	:	
and (2) the rights of Pennsylvania-American	:	Docket No. A-2016-2544151
Water Company to begin to offer or furnish	:	
wastewater service to the public in the	:	
Borough of New Cumberland, Cumberland	:	
County, Pennsylvania and (3) the right of	:	
Pennsylvania-American Water Company to	:	
begin to offer or furnish wastewater service	:	
to three customers in Lower Allen	:	
Township, Cumberland County,	:	
Pennsylvania	:	

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STATEMENT OF THE  
OFFICE OF CONSUMER ADVOCATE  
IN SUPPORT OF THE PROPOSED SETTLEMENT

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The Office of Consumer Advocate of the Commonwealth of Pennsylvania (OCA), one of the signatory parties to the Joint Petition for Settlement (Settlement), finds the terms and conditions of the proposed Settlement to be in the public interest for the following reasons:

**I. INTRODUCTION**

On May 6, 2016, Pennsylvania-American Water Company (PAWC) filed an Application at the above-referenced docket to transfer substantially all of the Borough of New Cumberland's sewer system and treatment works assets to PAWC. On June 6, 2016, the Office of Consumer Advocate (OCA) filed a Protest. On June 29, 2016, the parties received notice that a Prehearing

Conference would be held on July 12, 2016. On June 30, 2016, the presiding Administrative Law Judges issued a Prehearing Order directing the parties to provide prehearing memoranda by July 8, 2016.

On July 12, 2016, following the Prehearing Conference, the parties began settlement discussions. I&E filed a Notice of Appearance on August 1, 2016. On August 12, 2016, the ALJs granted the request by the parties for an extension of the due date for Non-Company Prepared Direct Testimony until August 18, 2016 in order to continue settlement discussions.

On August 18, 2016, PAWC, OCA and I&E (Joint Petitioners) notified the ALJs that a unanimous settlement had been reached and requested the ALJs to suspend the procedural schedule pending the filing of a settlement and stipulation for admission of evidence. On August 18, 2016, the ALJs issued a Suspension of Litigation Order and directed the parties to make their filings by September 2, 2016.

The OCA submits that the proposed Settlement is in the public interest for the reasons discussed below.

## **II. SETTLEMENT PROVISIONS**

The OCA filed a Protest in this proceeding because the OCA identified issues that it submitted needed to be resolved prior to Commission approval of the Application.

As set forth in the Application, PAWC seeks approval to charge customers the base rates charged by the Borough at the time of closing. PAWC Exh. BJG-1, Exhs. I, J. In addition, PAWC proposed that rates for acquired customers will not increase before January 1, 2018 and will not increase by more than 2.5% in 2018 and 2.5% in 2019. APA, § 6.7. The OCA raised concerns whether the proposed rates and rate increase limitations are reasonable, given that

PAWC's current wastewater rates for Zone 1 are approximately \$10 per month higher for a customer using 3,000 gallons per month. PAWC Exh. BCG-1, Exh. I.

The proposed Settlement addresses these issues by ensuring that PAWC will begin moving rates for the acquired customers toward PAWC's system-average wastewater base rates in its first or second base rate case post-closing. Settlement, ¶15.a, b. It also preserves the right of OCA and other parties to propose further movement in those cases. *Id.* These terms help to limit the rate impact of the acquisition on PAWC's existing customers. As an added measure, the Settlement specifies that no acquisition adjustment will be approved as part of this application proceeding and reserves the right of the OCA to challenge any such claim in PAWC's next base rate proceeding. Settlement, ¶17.

The OCA also raised concerns with how PAWC's proposal to spend \$2 million for capital improvements to the water and wastewater infrastructure located within the Borough over the five year-period immediately following the closing date fit with the existing Long Term Infrastructure Improvement Plan approved by the Commission on December 4, 2014 in Docket No. P-2014-2431005. APA, § 6.8. The proposed Settlement ensures that spending will be in addition to, and will not reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers. Settlement, ¶19. The Settlement further provides that capital spent on the New Cumberland system will not factor into the calculation of the wastewater Distribution System Improvement Charge (DSIC) unless and until the assets are incorporated into PAWC's rate base. *Id.* at ¶¶20-21. This will help to mitigate the rate impact of the proposed improvements to the acquired system on existing customers until the acquired customers begin paying a wastewater DSIC. Settlement, ¶22.

In the OCA's view, the imposition of these conditions on the proposed transaction will help to ensure that PAWC's existing customers are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations.

### III. CONCLUSION

The terms and conditions of the proposed Settlement of this Application proceeding represent a fair and reasonable resolution of the issues and claims arising in this proceeding. Finally, the Commission and all parties would benefit by the reduction in litigation expense and the conservation of resources made possible by adoption of the Settlement in lieu of full litigation.

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate submits that the proposed Settlement is in the best interests of the public and of PAWC's prospective customers.

Respectfully submitted,

  
Erin L. Gannon  
Senior Assistant Consumer Advocate

Christine Maloni Hoover  
Senior Assistant Consumer Advocate

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

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Dated: September 2, 2016

225479

**APPENDIX G**

**BUREAU OF INVESTIGATION & ENFORCEMENT STATEMENT IN SUPPORT**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American :  
Water Company for Approval of (1) the :  
transfer, by sale, of substantially all of the :  
Borough of New Cumberland's assets, :  
properties and rights related to its wastewater :  
collection and treatment system to :  
Pennsylvania-American Water Company, (2) :  
the rights of Pennsylvania-American Water :     Docket No. A-2016-2544151  
Company to begin to offer or furnish :  
wastewater service to the public in the :  
Borough of New Cumberland, Cumberland :  
County, Pennsylvania, and (3) the right of :  
Pennsylvania-American Water Company to :  
begin to offer or furnish wastewater service to :  
three residential customers in Lower Allen :  
Township, Cumberland County, :  
Pennsylvania :

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

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**TO ADMINISTRATIVE LAW JUDGES ELIZABETH H. BARNES AND STEVEN  
K. HAAS:**

The Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission"), by and through its Prosecutor Gina L. Lauffer, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Settlement ("Joint Petition" or "Settlement") are in the public interest and represent a fair and just balance of the interests of Pennsylvania-American Water

Company (“PAWC” or “Applicant”), the Borough of New Cumberland (“Borough”) and their customers.

## **I. BACKGROUND**

1. On May 5, 2016, PAWC and the Borough entered into an Asset Purchase Agreement (“APA”) for the transfer, by sale, of substantially all of the Borough’s assets, properties and rights related to its wastewater collection and treatment system to PAWC (“the acquisition”).

2. On May 6, 2016, the Applicant filed with the Commission the Application requesting all necessary approvals authorizing: (1) PAWC's acquisition of substantially all of the assets, properties and rights of The Borough’s wastewater system related to, or used in connection with, its wastewater collection, treatment and disposal system; (2) PAWC's right to offer, render, furnish and supply wastewater service in the areas served by the Borough, pursuant to the Borough's Act 537 Plan as filed and approved on June 30, 2009 by the Pennsylvania Department of Environmental Protection; and (3) PAWC's right to offer, render, furnish and supply wastewater service to three residential customers in Lower Allen Township, Cumberland County, Pennsylvania.

3. On June 6, 2016, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement. In addition, the Bureau of Investigation & Enforcement (“I&E”) filed a notice of appearance on August 1, 2016.

4. Administrative Law Judges Elizabeth H. Barnes and Stephen K. Haas (the “ALJs”) convened a Prehearing Conference on July 12, 2016. At that time, a litigation schedule was developed that provided for the service of testimony, hearings, and briefs.

5. On July 22, 2016, Pennsylvania American served direct testimonies and accompanying exhibits.

6. On August 2, 2016, PAWC, OCA, and I&E (collectively “the Joint Petitioners”) convened settlement discussions of a continuing nature.

7. The parties engaged in formal and informal discovery during this proceeding.

8. On August 18, 2016, the Joint Petitioners reached a unanimous settlement-in-principle of all issues, and they informed the ALJs of the settlement.

9. As a result of the settlement, on August 18, 2016, the ALJs issued an Order suspending the litigation schedule in this case and cancelling the September 19, 2016 hearing date.

10. In accordance with Commission policy favoring settlements,<sup>1</sup> the signatory parties to the Joint Petition were successful in achieving a settlement of all issues utilizing the discovery and settlement negotiation process.

## **II. LEGAL STANDARD**

11. The Public Utility Code mandates that Commission approval, in the form of a certificate of public convenience, must be obtained prior to offering or abandoning public utility service or transferring certain property.<sup>2</sup> Under the Public Utility Code,<sup>3</sup> a certificate of public convenience is necessary:

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<sup>1</sup> 52 Pa. Code § 5.231.

<sup>2</sup> 66 Pa. C.S. § 1102(a).

<sup>3</sup> 66 Pa. C.S. § 1102(a)(3)

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

12. To obtain a certificate of public convenience, the evidence must show that the acquisition is “necessary or proper for the service accommodation, convenience, or safety of the public.”<sup>4</sup> This standard was interpreted by the Supreme Court, which found that there must be a showing that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.”<sup>5</sup> Additionally, when granting a certificate of public convenience the Commission “may impose such conditions as it may deem to be just and reasonable.”<sup>6</sup> Furthermore, as the party to whom the assets and service obligations are being transferred, PAWC must be technically, legally, and financially fit.<sup>7</sup>

13. For the reasons discussed herein, I&E maintains that Commission approval of the Settlement will provide substantial public benefits for the Applicant, the Borough, and their respective customers. Accordingly, I&E maintains that the Settlement satisfies the legal requirements necessary for Commission approval, as explained below.

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<sup>4</sup> 66 Pa. C.S. § 1103(a).

<sup>5</sup> *City of York v. Pa. PUC*, 295 A. 2d 825, 828 (Pa. 1972).

<sup>6</sup> 66 Pa. C.S. § 1103(a).

<sup>7</sup> *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d. 240, 243 (Pa. Super. 1958).

### III. TERMS AND CONDITIONS OF SETTLEMENT

14. It is the policy of the Commission to encourage settlements.<sup>8</sup>

15. All signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the course of the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJ and the Commission without modification:

#### A. APPROVAL OF THE APPLICATION (Joint Petition ¶13)

Subject to all of terms of the Settlement, the Joint Petitioners opine that the Application should be approved as being in the public interest and that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). In this case, PAWC seeks to provide wastewater services to the areas served by the Borough, consisting of approximately 3,158 wastewater customers (“System customers”),<sup>9</sup> including 2,890 residential customers, 258 commercial customers and 10 municipal customers.<sup>10</sup> Notably, PAWC has already been providing local water service

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<sup>8</sup> 52 Pa. Code § 5.231.

<sup>9</sup> Application at ¶¶1,7.

<sup>10</sup> PAWC St. No. 1 at 11.

to communities within the Borough<sup>11</sup> and now seeks to provide wastewater service to those customers.

I&E agrees that the acquisition is in the public interest because System customers will benefit from PAWC's technical and financial fitness in the form of enhanced service and facilities. At the same time, PAWC's existing ratepayers will benefit from the increase in PAWC's customer base, leading to the development of cost efficiencies over time,<sup>12</sup> without being subject to any onerous rate implications.

I&E agrees that PAWC is financially and legally fit to offer wastewater service to the Borough. PAWC is Pennsylvania's largest water and wastewater provider, and it has total assets of 3.9 billion and annual revenues of \$413 million for 2015.<sup>13</sup> Furthermore, PAWC has access to a \$220 million line of credit through its American Water Works Company, Inc., and it holds investment-grade corporate credit ratings.<sup>14</sup> These facts support PAWC's conclusion that it can "support the acquisition of the BNC's [Borough] assets as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public."<sup>15</sup> Additionally, I&E does not dispute that PAWC is legally fit to offer wastewater service to the Borough.

Additionally, I&E also agrees that PAWC is technically fit to offer wastewater service to the Borough. PAWC is already operating fifteen wastewater treatment plants that serve approximately 50,000 people and 750 commercial and industrial customers

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<sup>11</sup> PAWC St. No. 1 at 10.

<sup>12</sup> PAWC St. No. 4 at 6.

<sup>13</sup> PAWC St. No. 5 at 3.

<sup>14</sup> PAWC St. No. 5 at 4.h

<sup>15</sup> PAWC St. No. 5 at 5.

in 27 Pennsylvania municipalities.<sup>16</sup> PAWC also represents that it employs state-of-the-art treatment processes and that it has access to a 50-person team of American Water corporate engineers who evaluate systems, select treatment processes and establish design criteria for wastewater treatment systems.<sup>17</sup> Furthermore, PAWC has experience in responding to environmental standards for wastewater treatment and in managing long-term infrastructure issues.<sup>18</sup> Additionally, PAWC will be able to provide additional customer service benefits to System customers. These benefits include access to extended call center hours, rapid response to emergency situations, bill payment options, customer education programs, and access to PAWC's low-income customer assistance program.<sup>19</sup> With these facts in mind, I&E opines that System customers will benefit from PAWC's experience, technology, personnel, and programming, and PAWC is technically fit to provide wastewater service to the Borough.

**B. RATES (Joint Petition ¶¶ 14-18)**

**1. BASE RATE INCREASES FOR BOROUGH CUSTOMERS**

Pursuant to the APA, PAWC has committed to proposing base rate increases for Borough customers consistent with one of the two options below, depending on the timing of PAWC's next base rate case, subject to challenge in the base rate case by a party, and subject to the Commission's approval. According to PAWC, the commitments benefit System customers because they "provide a mechanism by which the rates of

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<sup>16</sup> PAWC St. No. 2 at 10.

<sup>17</sup> PAWC St. No. 2 at 11.

<sup>18</sup> PAWC St. No. 2 at 11-12.

<sup>19</sup> PAWC St. No. 3 at 10-12.

System customers could gradually come in line with PAWC's Rate Zone 1 of PAWC's wastewater tariff."<sup>20</sup>

(a). If PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect in the year 2018 or 2019, PAWC shall propose a maximum rate increase for System customers consistent with the terms set forth in Section 6.7 of the APA. Under that section, PAWC agrees to propose a rate increase no greater than two and a half percent (2.5%) in the year 2018 and a subsequent maximum rate increase of two and a half percent (2.5%) in the year 2019, which rate increase limitation shall be subject to the PUC's approval.<sup>21</sup> In PAWC's second and third base rate filings following closing of the Transaction, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the respective second and third base rate filings following closing of the Transaction; or

(b). If PAWC's first base rate case following closing of the Transaction is filed by PAWC proposing wastewater base rates to take effect no earlier than January 1, 2020, PAWC shall propose revenue allocations and rate structures which equalize, in a gradual manner, the wastewater base rates for System customers with PAWC's system average wastewater base rates (Rate Zone 1) by the effective date of rates resulting from the first and second base rate filings following closing of the Transaction.

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<sup>20</sup> PAWC St. No. 4 at 5.

<sup>21</sup> Application, Exhibit C at 18, Section 6.7.

Regardless of the terms of the APA, PAWC has acknowledged that nothing in the APA is intended to prohibit I&E, OCA or any other party in any future proceeding from opposing PAWC's proposals or proposing increases that are different than what PAWC proposes.<sup>22</sup> From I&E's perspective, this is an essential element of the Settlement because it ensures protection for PAWC's existing ratepayers. Specifically, PAWC's rate commitments under the APA will not restrict other parties from recommending, or the Commission from approving, higher rates for System customers than now contemplated in the APA. This reservation of rights respects the Public Utility Code because the Commission is obligated to set just and reasonable rates in every PAWC base rate case filed,<sup>23</sup> regardless of the APA's terms. Along the same lines, other parties, including I&E and OCA, must be able to participate in base rate cases without being constrained by the terms of the APA. Accordingly, the Settlement in no way prejudices any party's right to make recommendations in PAWC's base rate cases, it protects ratepayers, and it is therefore in the public interest.

## 2. ORIGINAL COST STUDY

Alongside provisions for future base rate increases, the Joint Applicants have also agreed that PAWC will perform an original cost plant-in-service study of the System before including it in PAWC's rate base. Specifically, PAWC has agreed to perform this study in compliance with the applicable Commission policy statement.<sup>24</sup> Furthermore, PAWC has also agreed that neither I&E, OCA, nor any other party in the future will be

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<sup>22</sup> Joint Petition at ¶15.

<sup>23</sup> 66 Pa. C.S. § 1301.

<sup>24</sup> Either in compliance with 52 Pa. Code § 69.711, 69.721, as appropriate.

prohibited from contesting PAWC's future ratemaking claims made resulting from the original cost plant-in-service study of the System. I&E opines that while the original cost plant-in-service study should be performed, it is of paramount importance that parties will not be bound by its results for ratemaking purposes.

Additionally, the Settlement also clearly specifies that PAWC is not proposing an acquisition adjustment in this proceeding, and therefore one is not ripe for approval. To that end, both I&E and OCA have reserved their rights to address any claim that PAWC may make in its next base rate proceeding regarding its acquisition price. These claims include any claims by PAWC that its acquisition price for ratemaking purposes is higher than book value or that any increment above book value should be included in rates as an acquisition adjustment.<sup>25</sup> The public interest is served by ensuring that parties have an avenue in the future to address these potential claims, which could have a substantial rate impact for all PAWC customers.

### **C. CAPITAL IMPROVEMENTS (Joint Petition ¶¶ 19-22)**

Pursuant to the APA, PAWC has committed to spending \$2 million dollars on capital improvements to the water and wastewater infrastructure located within the Borough over the five year period following the acquisition.<sup>26</sup> Additionally, as part of the Settlement, PAWC has agreed not to reprioritize any of the capital improvements that PAWC committed to in its Long Term Infrastructure Improvement Plan for its Wastewater Operations. In I&E's view, this term benefits System customer while

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<sup>25</sup> Joint Petition at ¶17.

<sup>26</sup> PAWC St. No. 2 at 6.

protecting existing PAWC ratepayers. System customers will benefit from improved water and wastewater infrastructure, promoting safer and more reliable service. At the same time, the capital improvements already identified and planned for existing PAWC ratepayers will not be jeopardized by PAWC's commitment to the Borough. Therefore, I&E opines that this term is in the public interest.

#### **IV. CONCLUSION**

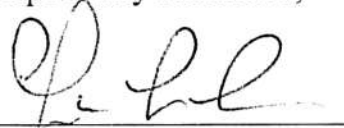
16. Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

17. 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 in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding.

18. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJ in the Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

**WHEREFORE**, the Commission's Bureau of Investigation and Enforcement represents that it supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judges Elizabeth H. Barnes and Steven K. Haas and the Commission approve the terms and conditions contained in the foregoing Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gina L. Lauffer', written over a horizontal line.

Gina L. Lauffer  
Attorney I.D. #313863

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Dated: September 2, 2016