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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Re: Application of Pennsylvania-American Water Company-Wastewater under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, for approval of the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of The Municipal Authority of the City of McKeesport's assets related to its wastewater collection and treatment system and other related transactions; Docket No. A-2017-2606103

PENNSYLVANIA-AMERICAN WATER COMPANY MAIN BRIEF

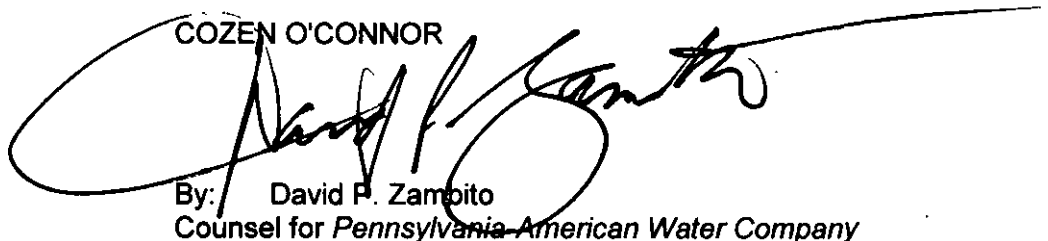
Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Main Brief of Pennsylvania-American Water Company in the above-referenced matter. Copies have been served upon the parties in accordance with the attached Certificate of Service. I have also enclosed a CD-Rom of the filing for your convenience.

Thank you for your attention to this matter. Please date-stamp the extra copy and return it with our courier. Please do not hesitate to contact me if you have any questions.

Sincerely,

COZEN O'CONNOR



By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosures

cc: Honorable Gladys M. Brown, Chairman
Honorable Andrew G. Place, Vice Chairman

Rosemary Chiavetta

August 22, 2017

Page 2

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Honorable David W. Sweet, Commissioner

Honorable Mark A. Hoyer (*via e-mail, including Word version*) and *First Class Mail*

Honorable Mary D. Long (*via e-mail, including Word version*) and *First Class Mail*

Per Certificate of Service

Susan Simms Marsh, Esq.

CERTIFICATE OF SERVICE

Application of Pennsylvania-American Water Company- :
Wastewater under Section 1329 of the Pennsylvania :
Public Utility Code, 66 Pa. C.S. § 1329, for approval of :
the use for ratemaking purposes of the lesser of the fair :
market value or the negotiated purchase price of The :
Municipal Authority of the City of McKeesport's assets :
related to its wastewater collection and treatment :
system and other related transactions :

Docket No. A-2017-2606103

I hereby certify that I have this day served a true copy of the foregoing Main Brief of Pennsylvania-American Water Company upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL:

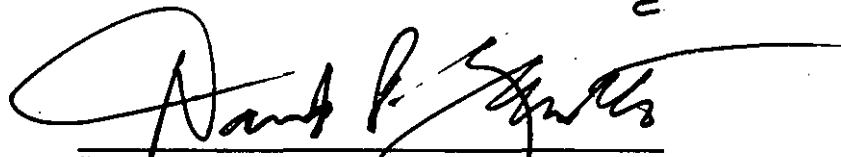
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DATED: August 22, 2017



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Mark A. Hoyer
and
Administrative Law Judge Mary D. Long**

Application of Pennsylvania-American Water Company- :
Wastewater under Section 1329 of the Pennsylvania Public Utility :
Code, 66 Pa. C.S. § 1329, for approval of the use for ratemaking :
purposes of the lesser of the fair market value or the negotiated :
purchase price of The Municipal Authority of the City of :
McKeesport's assets related to its wastewater collection and :
treatment system and other related transactions :

Docket No. A-2017-2606103

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**MAIN BRIEF OF
PENNSYLVANIA-AMERICAN
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I. INTRODUCTION

A. Procedural History

On May 24, 2017, Pennsylvania-American Water Company (“PAWC” or “Company”) filed an application pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Pennsylvania Public Utility Commission (“Commission”) issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of The Municipal Authority of the City of McKeesport (“MACM”), related to MACM’s wastewater collection and treatment system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes (the “Application”).

On June 3, 2017, the Commission’s Bureau of Technical Utility Services notified PAWC that it believed the Application did not contain certain required information. On June 8, 2017, PAWC submitted the requested information. By Secretarial Letter dated June 14, 2017, the Commission acknowledged receipt of the complete Application. The Secretarial Letter required PAWC to serve copies of the Application upon proximate municipal entities and water and wastewater providers, which was accomplished on June 16, 2017.

Notice of the filing was published in the *Pennsylvania Bulletin* on June 24, 2017. 47 Pa. Bull. 3568. That Notice established the deadline for filing protests and petitions to intervene as July 10, 2017.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) entered its appearance on June 21, 2017. The Pennsylvania Office of Consumer Advocate (“OCA”) filed a Protest on June 21, 2017. On June 28, 2017, the City of McKeesport (“City”) and MACM each filed a Petition to Intervene.

On June 26, 2017, PAWC filed a Petition for Protective Order to protect confidential and proprietary information. The other parties to this proceeding had no objection to the Protective Order. Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Mary D. Long (the "ALJs") issued the Protective Order on July 13, 2017.

By Prehearing Conference Order dated June 23, 2017, the parties were notified of a prehearing conference, which was held on July 13, 2017. The ALJs subsequently issued a Prehearing Order on July 13, 2017. Among other things, the Prehearing Order granted the Petitions to Intervene filed by the City and MACM. That order also established an expedited litigation schedule, in recognition of the December 14, 2017 statutory deadline for Commission action. 66 Pa. C.S. § 1329(d)(2).

The parties timely filed direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on August 3, 2017. Pursuant to the litigation schedule set forth in the Prehearing Order, PAWC now submits its Main Brief.

B. Overview

1. The System

MACM owns and operates an integrated wastewater system comprised of a combined wastewater collection system and three wastewater treatment plants which collect and treat wastewater from the Cities of McKeesport and Duquesne and the Boroughs of Dravosburg and Port Vue and a portion of West Mifflin Borough, Allegheny County, as well as providing bulk wastewater service via inter-municipal service agreements with the surrounding municipalities of the Boroughs of East McKeesport, Liberty, Glassport, Lincoln, Versailles, and White Oak, and the Townships of Elizabeth and North Versailles. These eight municipalities own and operate their

own collection systems, which connect to the McKeesport interceptor system. The collection systems in Duquesne and Dravosburg transport sewage from their respective communities to their own wastewater treatment plants, and are not interconnected to the other systems. PAWC St. No. 3 p. 3.

As of December 31, 2016, the System furnished wastewater services directly to 12,780 customers. PAWC St. No. 1 p. 15. Because of its bulk service agreements with surrounding municipalities, the System provides service directly or indirectly to approximately 22,000 customers. AWC St. No. 1-R p. 13.

The System is a combined system, which conveys domestic sewage and other wastewaters and stormwater in the same system of pipes to the wastewater treatment plant or a series of outfalls. PAWC St. No. 2 p. 10. There is no reasonable way of segregating the wastewater operations of the System from the stormwater operations of the System. PAWC St. No. 2 p. 12. The combined flow is all considered “wastewater” under Section 102 of the Code. 66 Pa. C.S. § 102 (regarding “Definitions”).

2. PAWC’s Wastewater Operations

PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated public utility corporation in Pennsylvania. PAWC St. No. 1 p. 13. As of December 31, 2016, PAWC furnished wastewater services to 54,691 customers in Pennsylvania and water services to 654,770 customers. PAWC St. No. 2 pp. 6-7. PAWC currently owns and operates 16 wastewater treatment plants. PAWC St. No. 2 p. 4; PAWC St. No. 3 p. 27. PAWC owns and operates water and wastewater facilities near McKeesport in Southwestern Pennsylvania. In fact, the System is located adjacent to PAWC’s MonValley/Elizabeth and

Pittsburgh operations, and PAWC provides water service to MACM's Dravosburg Borough customers. PAWC St. No. 2 p. 7.

3. Chronology of the Transaction

For years, the City and MACM have considered selling or leasing the System. Tr. 79. On February 26, 2016, the City and MACM issued a Request for Bids for either an Asset Purchase of the MACM Wastewater Treatment Facilities or Concession Lease Agreement with MACM. Bids were due on July 29, 2016. Nevertheless, on or about April 29, 2016, the City and MACM acquired the wastewater system in the Borough of Port Vue ("Port Vue System"). I&E St. No. 1 p. 4. The Port Vue System was part of the wastewater system for which MACM solicited bids, and was included in the appraisal completed by MACM's and PAWC's utility valuation experts (singularly, "UVE" or plurally, "UVEs"), pursuant to Section 1329. PAWC St. No. 1-R p. 9.

On July 29, 2016, PAWC submitted an asset purchase bid to acquire the System. On August 5, 2016, MACM notified PAWC that PAWC was selected as the successful bidder for the purchase of MACM's assets. After subsequent arms-length negotiations, on September 9, 2016, MACM, the City, and PAWC executed an Asset Purchase Agreement ("APA") for the sale by MACM, and the purchase by PAWC, of substantially all of the assets, properties, and rights of the System (the "Transaction"). PAWC St. No. 1 p. 8. The price to be paid by PAWC was the higher of (1) the purchase price stated in the APA (\$156,000,000), and (2) the average of the appraisals performed by MACM's UVE and PAWC's UVE. PAWC St. No. 1 p. 11.

In September 2016, PAWC's UVE appraised the System as having a fair market value of \$157,600,000. Application, Attachment A-5 (correspondence dated May 17, 2017, p. 2). In April 2017, PAWC was advised that MACM's UVE had appraised the System as having a fair market

value \$207,010,000. The average of this appraisal, and the appraisal performed by PAWC's UVE, produced a purchase price that was unacceptably high to PAWC ($\$157,600,000 + \$207,010,000 / 2 = \$182,305,000$). PAWC St. No. 1 p. 12. Moreover, under Section 1329, this would have resulted in a ratemaking rate base for the assets of \$182,305,000.

Accordingly, PAWC, MACM and the City negotiated the First Amendment to the APA, which modified the APA to provide for a purchase price of \$162,000,000. PAWC St. No. 1 pp. 11-12. PAWC and MACM each offered their UVE the opportunity to update their appraisals based on the First Amendment to the APA. MACM's UVE did not update its appraisal. In May, 2017, PAWC's UVE submitted a supplement to its appraisal, which found that the System had a fair market value of \$161,343,000. Application, Attachment A-5 (correspondence dated May 17, 2017 p. 1). Based on the First Amendment to the APA, the ratemaking rate base under Section 1329 was lowered from \$182,305,000 to \$162,000,000 (*i.e.*, voluntarily lowered by PAWC, MACM, and the City by \$20,305,000 before the instant proceeding even began).

4. Substance of the Transaction

Pursuant to the APA, PAWC will acquire substantially all the assets, properties and rights that MACM owns and uses in connection with the System. Upon closing, PAWC will take ownership of the System and begin rendering wastewater services to MACM's current customers and MACM will permanently discontinue providing wastewater service to the public in the City of McKeesport, the City of Duquesne, the Borough of Port Vue, the Borough of Dravosburg, and a portion of West Mifflin Borough, Allegheny County. Additionally, upon closing, MACM will assign its bulk service agreements with surrounding communities, and related corrective action agreements, to PAWC, and cease providing bulk service. PAWC St. No. 1 pp. 8-9. No municipal

authority, corporation, partnership or individual other than MACM is now furnishing, or has rights to furnish, service similar to that to be rendered by PAWC in the service territory currently served by MACM. PAWC St. No. 1 p. 19. MACM will use some of the proceeds of the Transaction to pay its outstanding indebtedness, APA Section 3.02, and will then be dissolved and terminated. PAWC Exh. MEC-2 p. 3.

Upon closing, PAWC will adopt MACM's rates existing at the time of closing. However, System customers will be subject to PAWC's prevailing rates with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4 p. 4.

The base rates that PAWC charges System customers will not increase until after the first anniversary of the closing date; provided, however, that PAWC may seek a rate change during that one-year period. Moreover, the parties to the APA recognize that ratemaking authority is vested in the Commission. PAWC St. No. 1 p. 12.

PAWC filed a base rate case on April 28, 2017 at Docket No. R-2017-2595853, and the acquisition of the System was not included as part of that filing. In light of PAWC's rate case filing history (approximately every three to four years), it is highly unlikely that rates for McKeesport area customers will be held constant pursuant to the APA for any period after the first base rate case in which MACM assets are included. The first base rate case in which the System could be included is likely not to occur until 2020 or later. PAWC St. No. 4 p. 7.

In the APA, PAWC committed to offering employment to eligible MACM employees after closing. PAWC St. No. 2 p. 15. PAWC also committed to improving the System. The ten-year capital plan for the System, currently estimated to cost \$62,730,000, includes planned projects for

Duquesne and Dravosburg, as well as anticipated improvement projects in Port Vue, together with on-going capital needs for the System. PAWC St. No. 3 p. 14.

PAWC will initially fund the transaction with short-term debt and later replace it with long-term debt and equity capital. PAWC St. No. 5 p. 5. After closing, the System will be a separate wastewater department within PAWC's Southwest Area operations. PAWC St. No. 2 p. 8. It will, however, have the support of PAWC's surrounding water and wastewater system operations, as well as PAWC's operations throughout the Commonwealth, and American Water's nationwide resources. PAWC St. No. 2 p. 7.

II. STATEMENT OF QUESTIONS PRESENTED

A. Is PAWC financially, technically, and legally fit to own and operate the System and to provide wastewater service in the applied-for service territory? *Suggested Answer: Yes.*

B. Would PAWC ownership and operation of the System and its provision of wastewater service in the applied-for service territory produce an affirmative public benefit of a substantial nature? *Suggested Answer: Yes.*

C. Should the Commission find that the ratemaking rate base of the System under 66 Pa. C.S. § 1329 is \$162,000,000? *Suggested Answer: Yes.*

D. Should the Commission permit PAWC to implement a distribution system improvement charge ("DSIC") for the McKeesport area? *Suggested answer: Yes, subject to the condition that PAWC submit, and receive Commission approval of, a long term infrastructure improvement plan for the McKeesport service territory.*

E. Should the Commission approve, as permitted by 66 Pa. C.S. § 1329, PAWC's accrual of Allowance for Funds Used During Construction ("AFUDC") for post-acquisition

improvements not recovered through DSIC for book and ratemaking purposes? *Suggested answer: Yes, subject to the condition that PAWC will have to make appropriate claims for such accrued AFUDC in a future base rate case in which interested parties will have an opportunity to participate and contest such claims.*

F. Should the Commission approve, as permitted by 66 Pa. C.S. § 1329, the deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes? *Suggested answer: Yes, subject to the condition that PAWC will have to make appropriate claims for such deferred depreciation in a future base rate case in which interested parties will have an opportunity to participate and contest such claims.*

G. Are the APA and PAWC's proposed agreements with municipal corporations reasonable, legal, and valid such that the Commission should issue Certificates of Filing or otherwise approve under Code Section 507, 66 Pa. C.S. § 507, in connection therewith and decline to institute a further investigation? *Suggested Answer: Yes.*

III. LEGAL STANDARDS

A. Burden of Proof

As the proponent of a rule or order in this proceeding, PAWC has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). PAWC must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). That is, PAWC's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Any finding of fact necessary to support the Commission's decision must be supported by substantial evidence that a reasonable mind might

accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa 109, 413 A.2d 1037 (1980); *Murphy v. Dept. of Public Welfare*, 480 A.2d 382 (Pa. Cmwlth. 1984); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982).

Once the applicant establishes a *prima facie* case by presenting substantial record evidence in support of the proposed action, the burden of production shifts to the opponent. If the opponent presents evidence of co-equal value or weight, the burden of going forward with some additional evidence to rebut the opposing party's evidence then shifts back to the applicant. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd* 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts; the burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. Legal Standard for Section 1103 Approvals

Section 1103 of the Code, 66 Pa. C.S. § 1103, provides that 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.” That is, PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the System will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). The “substantial public interest” standard is satisfied by a preponderance of the evidence. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

Additionally, Section 1103 of the Code, 66 Pa. C.S. § 1103, requires that PAWC demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). However, as a currently certificated public utility, PAWC is entitled to a rebuttable presumption that it is technically, financially and legally fit. *See, e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

C. Legal Standard for Section 1329 Approvals

PAWC, MACM, and the City agreed to use the procedure set forth in Section 1329 of the Code, 66 Pa. C.S. § 1329, for this transaction. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-approved UVE. The ratemaking rate base of the selling utility is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs' appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case. In this proceeding, PAWC bears the burden of establishing that the requirements of Section 1329 have been satisfied.

D. Legal Standard for Distribution Service Improvement Charge

Section 1329(d) of the Code, 66 Pa. C.S. § 1329(d), permits an acquiring public utility to collect a DSIC from the date of the closing on the Transaction until new rates are approved in the

utility's next base rate case. In *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012) ("Act 11 Final Implementation Order"), the Commission established procedures for the implementation of a DSIC by a wastewater utility. In order to qualify for DSIC recovery, a utility must submit a long term infrastructure investment plan ("LTIIIP") to, and receive approval from, the Commission.

PAWC has previously received Commission approval of a LTIIIP plan, and received Commission approval of a DSIC tariff, for other portions of its wastewater system. In this proceeding, PAWC is requesting conditional approval to implement a DSIC for the McKeesport service territory. Specifically, PAWC would file an amended LTIIIP for the McKeesport service territory. Following Commission approval of that amended LTIIIP, PAWC will make a tariff supplement compliance filing, which would include the McKeesport service territory in PAWC's existing DSIC tariff. Since PAWC's existing DSIC tariff has already been approved by the Commission, it has the force and effect of law, and there should be a presumption that the requirements of a DSIC for the McKeesport service territory (other than the approval of an amended LTIIIP) have been satisfied.

E. Legal Standard for Allowance for Funds Used During Construction and Deferred Depreciation

Section 1329(f)(1) of the Code, 66 Pa. C.S. § 1329(f)(1), permits an acquiring public utility to accrue AFUDC on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following events: the asset has been in service for a period of four years, or the asset is included in the acquiring utility's next base rate case. In this proceeding, PAWC is simply requesting permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. The parties to PAWC's next base rate case would

have the right to contest any claim for AFUDC, and the Commission would adjudicate that claim in PAWC's next base rate case.

Similarly, Section 1329(f)(2) of the Code, 66 Pa. C.S. § 1329(f)(2), permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In this proceeding, PAWC is simply requesting permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. The parties to PAWC's next base rate case would have the right to contest any claim for deferred depreciation, and the Commission would adjudicate that claim in PAWC's next base rate case.

F. Legal Standard for Section 507 Approvals

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

IV. SUMMARY OF ARGUMENT

PAWC has demonstrated by a preponderance of the evidence that it is technically, legally, and financially fit to own and operate the System in the public interest. In fact, no party has

challenged PAWC's fitness. PAWC has also met its burden of proof in demonstrating that the Transaction will result in affirmative public benefits of a substantial nature. These benefits include, but are not limited to, regionalization and consolidation of wastewater operations within the Commonwealth and remediation of environmental problems within the Commonwealth. Accordingly, the Commission should issue certificates of public convenience evidencing its approval of PAWC's acquisition of the MACM assets and PAWC's commencement of wastewater service in the McKeesport area.

PAWC has likewise demonstrated by a preponderance of the evidence that the requirements of 66 Pa. C.S. § 1329 have been properly followed and, accordingly, it should be permitted to incorporate a ratemaking rate base of \$162,000,000 for the acquired property, implement a DSIC for the McKeesport area, accrue AFUDC, and defer depreciation related to post-acquisition improvements. I&E has not challenged the UVE appraisals. While OCA has challenged the UVE appraisals, OCA has failed to satisfy its burden of persuasion that the UVE appraisals should be modified in any manner. The UVE appraisals enjoy a presumption of legitimacy and accuracy, and OCA has not presented clear and convincing evidence of a factual error, abuse of discretion, fraud, illegality, or bad faith. As required by 66 Pa. C.S. § 1329, the UVEs were pre-approved by the Commission and performed their appraisals in conformity with USPAP.

Finally, PAWC has demonstrated that the APA and related agreements with municipal corporations are reasonable and otherwise satisfy the requirements of 66 Pa. C.S. § 507. Certificates of filing or other approvals should be issued for the agreements.

V. ARGUMENT

A. Section 1102 Approvals (transfer of assets and rights, service territory)

1. Fitness

As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness.¹ *South Hills Movers, Inc., supra*. In this proceeding, no party has challenged PAWC's fitness. Nevertheless, PAWC has introduced extensive evidence demonstrating its technical, financial, and legal fitness.

With respect to technical fitness, PAWC must demonstrate that it has sufficient staff, facilities and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. PUC 661 (1982); *Merz White Ways Tours v. Pa. Pub. Util. Comm'n*, 201 A.2d 446 (Pa. Super. 1964). PAWC is the Commonwealth's largest water and wastewater provider. It furnishes service to more than 400 communities in 36 counties, serving a combined population in excess of 2,300,000. PAWC St. No. 1 pp. 13-14. PAWC employs approximately 1,000 professionals with expertise in all areas of water and wastewater utility operations. PAWC St. No. 1 p. 14. In addition, as a subsidiary of American Water, PAWC has available to it the resources of American Water Works Service Company, Inc. ("Service Company"), which provides access to highly-trained professionals with expertise in specialized areas. When operational issues arise at facilities owned by PAWC, the company mobilizes engineering talent from its central engineering team, drawing on resources from the Service Company team, to identify problems, recommend options, and develop action plans. PAWC St. No. 2 p. 5.

¹ Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager et al.*, 49 Pa. P.U.C. 138 (1975). No party has contested the need for service in the McKeesport area.

Significantly, in the context of the System, which has infrastructure problems in areas including, but not limited to, the Port Vue, Davosburg and Duquesne portions of the system, PAWC St. No. 3 p. 12-14, PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC St. No. 3 p. 18. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. PAWC St. No. 3-R p. 7.

PAWC maintains cyber security, physical security, business continuity and emergency plans. PAWC St. No. 2 p. 16. It participates in the Pennsylvania One Call system. PAWC St. No. 2 p. 18. It also has strong relationships with Commission Emergency Response Staff, the Pennsylvania Emergency Management Agency, and local first responders. PAWC St. No. 2 p. 17.

With respect to legal fitness, PAWC must demonstrate that it obeys the Code and the Commission's regulations. *Re Perry Hassman, supra*. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 p. 17. PAWC has a record of environmental compliance, a commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable sewer service to the residents of the McKeesport area. PAWC St. No. 1 pp. 14, 15.

With respect to financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. *Re Perry Hassman, supra*. PAWC had total assets of approximately \$4.35 billion as of December 31, 2016. It had a net income of approximately \$153 million for the 12 months ending December 31, 2016. PAWC St. No. 1 p. 18. In addition to positive operating cash flows, PAWC has a \$400 million line of credit, long term debt financing, and equity investments. PAWC St. No. 5 p. 4.

In short, PAWC has introduced evidence sufficient to make out a *prima facie* case that it is fit to operate the MACM System. This *prima facie* case has not been rebutted. The preponderance of the evidence clearly establishes that PAWC satisfies the fitness requirement of Section 1103.

2. Public Benefit

In order for the Commission to approve the proposed transaction under Section 1102 and 1103 of the Code, PAWC must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York, supra*, 449 Pa. at 141, 295 A.2d at 828. The Supreme Court of Pennsylvania explained the *City of York* standard as follows:

[T]he appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission’s finding that a merger will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky, supra, 594 Pa. at 611, 937 A.2d at 1057: An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950.

When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. The primary objective of the law in this regard is to serve the interests of the public. *Middletown Township v. Pa. Pub. Util. Comm’n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

PAWC respectfully submits that the preponderance of the evidence shows that the Transaction will promote the service, accommodation, convenience or safety of the public in a substantial way. The Transaction will benefit: members of the public-at-large, MACM, the City, MACM's existing customers, and PAWC's existing customers. Of course, these are not mutually exclusive categories. For example, PAWC's existing customers benefit from the Transaction as both members of the public-at-large and as customers of PAWC.

a. Benefits to Members of the Public-at-Large

Initially, the Transaction would benefit members of the public-at-large by promoting the Commission's policy favoring regionalization and consolidation of water and wastewater systems. PAWC St. No. 1 p. 16. The Commission's Statement of Policy on Acquisitions of Viable Water and Wastewater System states in pertinent part:

The Commission believes that further consolidation of water and wastewater systems within this Commonwealth may, with appropriate management, result in greater environmental and economic benefits to customers. The regionalization of water and wastewater systems through mergers and acquisitions will allow the water industry to institute better management practices and achieve greater economies of scale.

BJG-2 (52 Pa. Code § 69.721(a)). PAWC respectfully submits that, in adopting this Policy Statement, the Commission intended to promote the public interest generally, rather than promoting the interest of a particular segment of the public.² Thus, to the extent that an acquisition promotes these environmental and economic benefits, it promotes the interests of the public-at-large.³

² Just as the legislature is presumed to favor the public interest over a private interest in enacting a statute, *Commonwealth v. Harmar Coal Company*, 306 A.2d 308, 321 (Pa. 1973), the Commission should be presumed to favor the public interest over a private interest in adopting a policy statement.

³ OCA witness Everette alleges that "there is no indication that MACM could not undertake the necessary improvements." OCA St. No. 1-SR 6. PAWC disagrees with this statement; there is ample evidence in the record

The evidence in this case clearly demonstrates that the Transaction will in fact result in substantial affirmative environmental and economic benefits. In terms of environmental benefits, although PAWC will operate the System as a stand-alone system post-closing, the System will have the support of PAWC's surrounding water and wastewater system operations, as well as PAWC's operations throughout the Commonwealth and American Water's nationwide resources. PAWC St. No. 2 p. 7. It is significant to note, in this regard, that the System is located adjacent to PAWC's Mon Valley/Elizabeth and Pittsburgh Operations and that PAWC currently provides water service to MACM's Dravosburg Borough customers. PAWC St. No. 2 p. 7. In addition, as a subsidiary of American Water, PAWC has available to it the resources of the Service Company, which provides additional access to highly-trained professionals with expertise in specialized areas. PAWC St. No. 2 p. 5.

PAWC has experience with the types of treatment technologies employed in the System, which involve activated sludge and other units similar to existing PAWC plants. PAWC St. No. 2 pp. 4-5. PAWC also has experience operating a combined sewage overflow system, due to its purchase of the Scranton wastewater system. Moreover, PAWC has experience operating a system that has substantial wet weather challenges due to high rates of infiltration and inflow. PAWC St. No. 2 pp. 11, 26. The consolidation of MACM with PAWC will give MACM access to this experience and-expertise. These benefits are not capable of precise measurement, but they are real, supported and not generalized. The Commission does not require benefits to be quantifiable. PAWC St. No. 1-R p. 4; *Popowsky, supra*.

regarding the financial challenges faced by the City, its surrounding communities, and MACM's ratepayers. PAWC St. No. 6 pp. 4-6; Tr. 71-73. Nevertheless, PAWC notes that the Commission's policy statement pertains to *viable* water and wastewater systems. There should be no need to prove that the current owner of a viable system is incapable of making the improvements.

Portions of the System are in a state of disrepair. Tr. 44. PAWC has made commitments to improve the System. For example, PAWC is in the process of identifying the improvements necessary to address existing deficiencies in the Port Vue portion of the System. PAWC St. No. 3-R p. 2. These deficiencies probably would not have been addressed if Port Vue had remained a stand-alone system. PAWC St. No. 1-R p. 11. PAWC will also make substantial capital investments to address deficiencies in the Dravosburg and Duquesne portions of the System (including an evaluation of ways to economically extend service to homes that are currently not served by the System and, consequently, discharge sanitary-only flows untreated into mine holes). PAWC St. No. 3 pp. 11-15.

While these environmental deficiencies are present in the System, the resulting impact of the contamination and pollution obviously will not be limited to the McKeesport area. In this regard, PAWC notes that Article I, Section 27 of the Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

PA. CONST. Art. I, § 27 ("Environmental Rights Amendment"). The record evidence in this proceeding unquestionably demonstrates that PAWC is better capable of making the necessary improvements to the System to protect Pennsylvania's "pure water" and the "natural, scenic, historic and esthetic values of the environment." As such, there is an over-arching public interest (*i.e.*, "for the benefit of all the people") in correcting the System's environmental deficiencies as promptly and efficiently as possible and approval of the Transaction would be consistent with the Commission's obligation under the Environmental Rights Amendment.⁴

⁴ "[T]he Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties." *Pa.*

PAWC is in a better position than MACM to make the necessary improvements and operate the system going forward. This is partly due to PAWC's having greater financial resources than MACM. PAWC has a better credit rating than MACM and has access to equity markets that are unavailable to MACM. PAWC St. No. 3-R pp. 7-8. In addition, MACM is reaching its debt capacity as a result of recent expansions required by Act 537, and it has the burden of meeting employee benefits and pension obligations. PAWC St. No. 6 p. 8.

Moreover, PAWC is in a better position to make the necessary improvements and operate the System due to its greater expertise in operating wastewater systems. PAWC St. No. 3-R pp. 2, 5, 6-8. For example, PAWC has recently acquired two wastewater systems that experienced environmental deficiencies, until PAWC completed improvements to address those deficiencies. When PAWC acquired the Clarion Wastewater System in October 2008, the system was experiencing sanitary sewer overflows ("SSOs") at multiple locations, which resulted in a prohibition of new sewer connections. PAWC entered into a Consent Order and Agreement ("COA") with the Pennsylvania Department of Environmental Protection ("DEP") and completed a capital improvement plan. Prior to the improvements being made, the Clarion System experienced 17-37 SSOs per year, but from the date that the improvements were completed in February 2015 to the date that the Application was filed, there were no SSO events in the Clarion system. PAWC St. No. 3-R pp. 2-3.

Similarly, when PAWC acquired the Claysville/Donnegal wastewater system, that system was experiencing excessive flows and SSOs due to inflow/infiltration associated with the condition of the wastewater system. PAWC entered into a COA and implemented a corrective action plan.

Environmental Defense Foundation v. Cmwth. of Pa., No. 10 MAP 2015 (Pa., Slip Op. issued Jun. 20, 2017), p. 32 (citing *Robinson Twp. v. Cmwth. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

From the date that the improvements were completed to the date that the Application was filed, there were no SSOs in the Claysville/Donegal system. PAWC St. No. 3-R p. 3.

In terms of economic benefits, the Transaction will not involve any duplication of services, so it will not reduce PAWC's existing efficiency. PAWC St. No. 2 p. 8. The Transaction will not harm PAWC's financial status in any manner. PAWC St. No. 5 p. 3. In fact, the Transaction will have an affirmative benefit because spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings. PAWC St. No. 1-R p. 2. Moreover, because of its size, expertise, and economies of scale, PAWC will be able to improve efficiencies and lower costs that would otherwise be incurred to operate the MACM system and fund necessary improvements. These efficiencies will keep rates lower for the MACM system customers than would be the case if the Transaction were disapproved. PAWC St. No. 3-R p. 8.

b. Benefits to MACM

As the seller of the System under the APA, MACM will benefit from the Transaction.⁵ MACM will receive a portion of the purchase price under the APA. APA Section 3.02. Some of these proceeds will be used to pay off debt. APA Section 3.02(c). MACM will then be dissolved and terminated. PAWC St. No. 6. Exh. MEC-3.

c. Benefits to the City

The Transaction will also benefit the City. The City will receive a portion of the purchase price. APA Section 3.02. Mayor Cherepko described the Transaction as the City's "lifeline." Tr.

⁵ It is significant to note, in this regard, that the Transaction is a voluntary agreement reached via arm's length negotiations between unaffiliated parties. In short, MACM and the City want to sell the System and get out of the utility business. Tr. 73. The Commission should not stand in the way of the political and economic decision making of MACM and the City.

74, 77. The Transaction will provide proceeds that are expected to be used to balance the City's budget, invest in infrastructure improvements, market the City and improve services to existing businesses and residents. PAWC St. No. 6 p. 9. The Transaction will also benefit the City because, as a private entity, PAWC will be a taxpayer paying additional property taxes that increase revenues to the City. PAWC St. No. 6 p. 9. As a municipal entity, MACM is not subject to tax.

If the Commission would disapprove the Transaction, the City would go into Act 47 (the Municipalities Financial Recovery Act, 53 P.S. §§ 11701.101 *et seq.*). Tr. 81. When the City issued a Request for Bids, it received two bids. PAWC St. No. 6 p. 9. Although the City conceivably could solicit new bids, in the event the instant Application is disapproved, the time required to do so would result in the City going into Act 47. Tr. 81.

The Transaction benefits the City in other, more indirect ways. For example, the Transaction promotes the City's interest in the employment of its citizens because PAWC has committed to offer employment to eligible MACM employees following closing. PAWC St. No. 1 p. 13; PAWC St. No. 2 p. 15.

d. Benefits to Other Municipalities

The Transaction also benefits municipalities other than the City. The System is located in the City of Duquesne, the Boroughs of Port Vue and Dravosburg, and a portion of West Mifflin Borough. The System also has bulk service interconnection points allowing the provision of service indirectly to residents of other municipalities. OCA Witness Everette claims that the residents of Duquesne and Dravosburg will not benefit from the Transaction because those two municipalities will not receive any of the proceeds of the Transaction. OCA St. 1 p. 14. PAWC respectfully disagrees. The residents of those two municipalities may not receive the exact same

benefits from the Transaction as do residents of the City, but they will still receive many benefits from the Transaction because those residents, like the residents of the City, are customers of the System. Moreover, given the state of disrepair of the Duquesne and Dravosburg portions of the System, it is clear that the citizens of Duquesne and Dravosburg have benefitted from the cost savings associated with years of deferred maintenance. In the future, they will benefit from PAWC's regular maintenance and infrastructure investment programs.

e. Benefits to MACM's Existing Customers

Customers of the System will benefit from the Transaction in many ways. The Transaction will provide rate stability. MACM's rates have increased "tremendously." Tr. 72. In fact, MACM's most recent rate increase took effect on January 1, 2017. Tr. 44. Upon closing, PAWC will adopt MACM's base rates existing at the time of closing on the Transaction. The base rates that PAWC charges System customers will not increase until after the first anniversary of the closing date; provided, however, that PAWC may seek a rate change during that one-year period. Moreover, the parties to the APA recognize that ratemaking authority is vested in the Commission. PAWC St. No. 1 p. 12.

PAWC filed a base rate case on April 28, 2017 at Docket No. R-2017-2595853, and the acquisition of the System was not included as part of that filing. In light of PAWC's rate case filing history (approximately every three to four years), it is highly unlikely that rates for McKeesport area customers will be held constant pursuant to the APA for any period after the first

base rate case in which MACM assets are included. The first base rate case in which the System could be included is likely not to occur until 2020 or later. PAWC St. No. 4 p. 7.⁶

Rates will be lower under PAWC than they would be if the System remained separate and had to deal with its environmental and other issues on its own. PAWC St. No. 1-R p. 15. Although MACM has been able, so far, to keep up with unfunded mandates and other increasing expenses, its ability to do so in the future is doubtful because its “customers’ ability to shoulder these burdens alone is nearing its threshold.” PAWC St. No. 6 p. 8. PAWC has the resources to stabilize rates better than MACM. Tr. 76.

Another significant benefit of the Transaction for MACM’s existing customers is that those customers are not currently protected by the Code, the Commission, I&E, OCA and the Office of Small Business Advocate. PAWC St. No. 2 p. 23. If PAWC is permitted to acquire the System, customers will gain the protection of Section 1501 (requiring a utility to provide reasonable and adequate service), Chapter 14 (relating to responsible utility customer protection), and Chapter 13 (requiring rates to be just and reasonable), as well as other provisions of the Code.

A final noteworthy benefit of the Transaction to MACM’s existing customers is access to PAWC’s enhanced and proven customer service, including PAWC’s customer assistance program (H2O Help to Others) and PAWC’s customer dispute resolution process. PAWC St. No. 1 p. 16; PAWC St. No. 2 p. 20.

I&E witness Cline concedes that the Transaction benefits the current customers of the MACM System. I&E St. No. 2 p. 6. OCA witness Everette, in contrast, contends that the Transaction does not benefit MACM’s existing customers because the Transaction “results in a

⁶ For this reason, the instant Section 1329 application filing does not include a “rate stabilization plan,” as that term is defined by Section 1329. 66 Pa. C.S. § 1329(g) (“ ‘Rate stabilization plan.’ A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.”).

loss of ratepayer benefit from [Pennsylvania Infrastructure Investment Authority (“PENNVEST”) grant funds.” OCA St. No. 1 p. 8. It is PAWC’s understanding that a PENNVEST grant, which MACM received in 2011, will need to be repaid, and that PAWC cannot assume the PENNVEST loan, which MACM also received in 2011. PAWC St. No. 1-R p. 14. Nevertheless, PAWC submits that MACM and its ratepayers benefitted from those grants/loans during the period 2011-2017 because that money enabled MACM to improve its wastewater system. If the Transaction is approved, MACM will use some of the proceeds to pay off the loans and re-pay the grant money. PAWC disagrees with OCA that it is in the public interest to disapprove the Transaction so MACM can continue to be burdened by debt in the future.⁷

Additionally, OCA witness Everette contends that the Transaction is not in the interest of MACM’s existing ratepayers because, according to her calculations, PAWC’s cost of ownership is higher than MACM’s cost of ownership. OCA St. No. 1 p. 10. PAWC respectfully submits that the General Assembly’s public policy decisions outweigh Ms. Everette’s calculations. PAWC St. 4-R p. 16.

OCA’s arguments fail to recognize the substantial public benefits of private -- but highly-regulated -- ownership of utility operations. These benefits include, but are not limited to:

- Shrinking the overall size of government by dissolving and terminating MACM;
- Boosting the efficiency and quality of remaining government activities by freeing up available tax revenue; cutting wasteful spending, including local government patronage jobs, in order to increase profitability;
- Increasing customer satisfaction in order to maintain a favorable business reputation and promote business expansion;
- Focusing subsidies on customers who are actually in need through customer assistance programs, as opposed to broad-based public subsidies of utility services;

⁷ As noted by PAWC witness Grundusky in his Rebuttal Testimony, OCA witness Everette also ignores the fact that PENNVEST loans and grants represent a form of subsidy. The grants and loans are subsidized by state and federal taxpayers and OCA has offered no quantification of those broader societal costs. PAWC St. No. 1-R p. 17.

- Ceasing unprofitable activities;
- Effectively negotiating contracts for services and benefitting from larger-scale regional and national contracts;
- Providing a heightened level of accountability to the public through Commission regulation instead of the local political process;
- Ensuring that rates are just and reasonable but also adequate to make necessary improvements to the System, instead of relying upon local political decision-making to increase rates in order to raise sufficient revenue;
- Utilizing existing in-house expertise instead of contracting with outside engineering, law, and consulting firms in order to perform basic functions; and,
- Allowing municipalities to monetize assets to address municipal funding needs, including mounting pension liabilities.

As PAWC witness Grundusky summarizes: “In short, OCA fails to recognize the broader societal costs associated with government ownership, operation, and subsidization of utility operations. At least in the context of PAWC ownership, the costs of operating the MACM system will be shared with other customers who receive similar services and who will likewise benefit themselves from inclusion of the MACM system in PAWC’s operations.” PAWC St. No. 1-R pp. 17-18. While local government ownership of a utility operation may be cheaper, it does not necessarily follow that it is better.

OCA’s calculations regarding the cost of MACM ownership versus PAWC ownership of the System are based, in large part, on the fact that Section 1329 would establish a ratemaking rate base of \$162 million for the System. Section 1329, however, was passed to enable municipalities to maximize the value of their assets, Tr. 74, and thereby enable them to sell their water and wastewater systems so they could use the proceeds for other public purposes. *See, Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Section 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township and the*

New Garden Township Sewer Authority, Docket No. A-2016-2580061 (Opinion and Order entered June 29, 2017) (“*Aqua/New Garden Order*”)⁸ p. 68 (“[A]pproval of the transaction is consistent with the General Assembly’s clear support and encouragement of municipal wastewater acquisitions at valuation levels higher than traditional original cost measures”).⁹

The policy established in Section 1329 should not be the reason for denying the Application pursuant to Section 1103. Rather than undermining the Legislature’s policy decision set forth in Section 1329, the Commission should effectuate that policy. 1 Pa. C.S. § 1921(a) (“[T]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly”); *see also Susquehanna Regional Airport Auth. v. Pa. Pub. Util. Comm’n*, 911 A.2d 612 (Pa. Cmwlth. 2006) (explaining that, as creatures of statute, administrative agencies have authority to exercise such powers as the General Assembly has granted expressly or by necessary implication). The Legislature made a policy determination that enabling the sale of municipal

⁸ PAWC notes that a Petition for Reconsideration was subsequently filed in this matter, which remains pending as of this date.

⁹ PAWC did not perform an original cost study of the System and it was not required to do so because the instant application is filed under 66 Pa. C.S. § 1329. Tr. 42. Nevertheless, PAWC’s UVE estimated the original cost of the System to be \$108,231,570, and estimated the original cost less depreciation to be \$80,085,602 -- based upon the property inventory performed by KLH Engineers. Application, Attachment A-5 p. 2. PAWC witness Grundusky, however, testified that when the Company performs a detailed original cost study after closing on an acquisition, the result is generally higher than the pre-acquisition estimate of original costs. For example, when PAWC recently acquired the Scranton wastewater system, the pre-acquisition estimate of the depreciated original cost of the system was approximately \$74.5 million, whereas the post-acquisition detailed original cost study found that the depreciated original cost of the system was approximately \$101 million (an increase of more than 35%). Tr. 31-37. In conducting a full-fledged depreciated original cost study (as opposed to relying solely upon municipal records -- as done by KLH Engineers), the acquiring utility may -- among other things -- rely upon: accounting records and other related documentation and agreements of donations of contributions, services, property from states, municipalities or other government agencies, individuals, and others for construction purposes; records of unrefunded balances in customer advances for construction; records of customer tap-in fees and hook-up fees; prior original cost studies; records of local, State and Federal grants used for construction of utility plant; relevant PennVEST or Department of Environmental Protection records; any Commission records; summary of depreciation schedules from all filed Federal tax returns; and, other accounting records supporting plant-in-service. *See* PAWC Exh. BJG-2 (Commission Statement of Policy on Acquisitions of Viable Water and Wastewater Systems, 52 Pa. Code § 69.721(e)(1)); *see also id.* § 69.721 (“An acquiring utility may use various methods to support its valuation of the original cost of the acquired system when first devoted to the public service less the applicable accrued depreciation and related contributions.”). For these reasons, it is inappropriate to assume that the actual depreciated original cost of the System would be limited to \$80,085,602. It could be substantially higher if a full-fledged depreciated original cost study were to be performed.

assets at a higher valuation would promote the public interest. This policy determination outweighs the calculations of OCA's witness.

Finally, even if the Commission finds that PAWC's cost of ownership would be higher than MACM's, PAWC submits that the Commission should not disapprove the Transaction on that basis. As stated previously, an acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc., supra*. PAWC submits that the numerous benefits listed on the previous pages, including -- but not limited to -- regionalization, consolidation and environmental protection, far outweigh this prematurely-alleged detriment to MACM's ratepayers. The actual rate impact on MACM ratepayers will not be known until future PAWC base rate cases are resolved by the Commission.

f. Benefits to PAWC's Existing Customers

The final group that needs to be considered in determining the substantial public benefits of the Transaction is PAWC's existing ratepayers. Rates for PAWC's existing customers will not increase in the short term due to the Transaction, PAWC St. No. 4 p. 8-9, because MACM's assets have not been included in PAWC's current base rate proceeding. *Pa. Pub. Util. Comm'n v. Pennsylvania-American Water Company*, Docket No. R-2017-2595853 ("*PAWC 2017 Rate Case*"). PAWC St. No. 1-R p 6.

The Transaction will affirmatively benefit existing customers by adding a substantial number of new customers to PAWC's customer base. Significantly, there is no disagreement or speculation about this point. The System provides service to 12,780 direct customers and it provides service directly or indirectly to approximately 22,000 customers. PAWC St. No. 1-R p.

13. This is an increase of approximately 41% in PAWC's existing wastewater customer base of 54,691. PAWC St. No. 2 p. 6-7; PAWC St. No. 4-R p. 3.

The expansion of PAWC's customer base will affirmatively benefit PAWC's existing customers because there will be more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers (such as MACM's existing customers) who benefit from current improvements, in the future, will help pay for improvements on behalf of other customers on other parts of the PAWC system (such as the City of Scranton). Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base is essential to the continued success of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 pp. 16-17; PAWC St. No. 1-R p. 5.

The Parties to this proceeding have introduced considerable evidence about net plant investment and the impact that the Transaction will have on this statistic. *See, e.g.*, I&E St. No. 2 pp. 9-11; OCA St. No. 1 p. 16-17; PAWC St. No. 1-R pp. 6-7; PAWC St. No. 4-R pp. 16-17; Tr. 59-62. The final calculation of this statistic in the record demonstrates that PAWC's average net plant investment per customer is currently \$5,748, whereas MACM's average net plant investment per customer is currently \$7,364. PAWC Exh. RPN-4.¹⁰ By comparison, in the recent proceeding in which the Commission approved Aqua Pennsylvania Wastewater, Inc.'s acquisition of the New Garden Township wastewater system, the average net plant investment for the selling municipality

¹⁰ PAWC Exhibit RPN-4 also demonstrates that, when the total number of customers of the System (*i.e.*, direct customers and indirect bulk service customers) is taken into consideration, PAWC's net plant per customer increases from \$5,748 to \$6,167 (*i.e.* only \$419 or 7.3%). By comparison, Aqua's acquisition of the New Garden Township system would have increased Aqua's net plant per customer from \$3,714 to \$4,704 (*i.e.*, \$990 or 27%). *Aqua/New Garden Order* p. 66. Thus, acknowledging that the *Aqua/New Garden Order* is currently under reconsideration on other issues, the net plant per customer impact in that acquisition (which the Commission was willing to approve) was greater than the net plant per customer impact in the instant acquisition. The Commission should accordingly give very little weight to OCA's argument regarding the net plant per customer increase in this case.

was nearly four times the comparable figure for the acquiring utility (\$14,007 compared to \$3,714). *Aqua/New Garden Order* p. 69.

OCA focuses on the impact that the Transaction might have on the rates of PAWC's customers after PAWC's next base rate case, when the costs of the Transaction are captured in PAWC's rates. Rate impacts may be considered in a Section 1329 proceeding, *Aqua/New Garden Order* p. 69, but they should be given limited weight, because future rate impacts are necessarily speculative. PAWC St. No. 4-R pp. 3-4. No one can reasonably predict, at this time, the rate impact of the Transaction on PAWC's current customers. PAWC St. No. 4-R p. 3. Many variables must be taken into consideration, including the extent to which PAWC might attempt to use § 1311(c) to spread wastewater costs among its water customers.¹¹ PAWC St. No. 4-R pp. 3-4.

More importantly, to the extent that the rate impact of the Transaction is ascertainable at this time, it is because of the provisions of Section 1329, which creates a valuation methodology that will almost always result in a higher value for a water or wastewater system than will the traditional methodology using depreciated original cost. PAWC St. No. 4-R p. 19; *Aqua/New Garden Order* p. 68 (“[A]pproval of the transaction is consistent with the General Assembly’s clear support and encouragement of municipal wastewater acquisitions *at valuation levels higher than traditional original cost measures*”) (emphasis added)). The OCA essentially argues that the acquisition should be disapproved as against the public interest because Section 1329 would allow PAWC to place an additional \$162,000,000 into its rate base in the future, and existing PAWC

¹¹ Section 1311(c) of the Code, 66 Pa. C.S. § 1311(c), permits the Commission, when setting rates for a utility that provides both water and wastewater service, to allocate a portion of the wastewater revenue requirement to water customers if the Commission determines that such an allocation is “in the public interest.” The Transaction should not be disapproved today on the basis that it might, in the future, cause an increase in rates for PAWC’s water customers, because rates for water customers will not increase unless and until the Commission determines that such a result is in the public interest. In other words, it is illogical to argue that the Transaction is not in the public interest because it might produce a certain event in the future, which event can only happen if the Commission finds that it is, in fact, in the public interest.

customers would pay some of this expense. PAWC respectfully submits that OCA is asking the Commission to apply Section 1329 in such a way as to prevent the underlying acquisition, pursuant to Section 1103, which violates the rule that related statutes are to be construed *in pari materia*. 1 Pa. C.S. § 1932(b); *cf.*, *Commonwealth v. Leonhart*, 517 A.2d 1342, 1344 (Pa. Super. 1986) (“Statutes in a scheme covering the same subject matter should be construed, whenever possible, as one harmonious component of the entire statutory structure.”). Section 1329 explicitly references Section 1102. Therefore, the two provisions should be construed as one harmonious whole.

The Commission should not take away with the left hand, what the Legislature has given with the right hand. The Commission should apply Section 1103 consistent with Section 1329, so as to implement (rather than undermine) the Legislature’s intent. Section 1329 provides a new methodology for valuing municipal water and wastewater systems, in order to allow municipalities to maximize the value of their assets and to encourage the regionalization and consolidation of water and wastewater systems. That very methodology should not be the reason for finding that a Section 1329 transaction fails the public benefits test in Section 1103, due to the potential rate impact of the acquisition.

One additional point about Section 1329 is significant to note in the context of this case. Section 1329 promotes the public interest by providing a tool for addressing an issue of great importance throughout the Commonwealth (and indeed the country) – the need to maintain public infrastructure. PAWC has introduced extensive evidence of the infrastructure problems in Port Vue, Dravosburg, Duquesne, and other portions of the MACM System. Solving this problem clearly would be a substantial affirmative public benefit; but how is it to be solved? By leaving the citizens of a financially-challenged area like McKeesport to fend for themselves? Section

1329, together with Section 1311(c), clearly rejects that approach. Those statutory provisions enable municipalities to sell their water and wastewater systems to public utilities, and enable those public utilities to spread the costs of infrastructure upgrades among a large base of water and wastewater customers. The Commission should implement the Legislature's policy and achieve the public benefit of addressing the infrastructure problems in the McKeesport area – before they get worse.

g. Summary – The Transaction has Affirmative Public Benefits of a Substantial Nature

PAWC has satisfied its burden of introducing evidence demonstrating that the Transaction has affirmative public benefits of a substantial nature. This evidence has not been rebutted. Even if the OCA and I&E did introduce enough evidence to rebut PAWC's *prima facie* case, PAWC subsequently introduced enough evidence to demonstrate, by a preponderance of the evidence, that the Transaction has substantial affirmative public benefits. Consequently, the Commission should approve the Application, approve the transfer of MACM's wastewater system assets and rights to PAWC, and authorize PAWC to provide service to the territory presently served by MACM.¹²

3. Cost of Service Studies

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

¹² In this regard, PAWC notes that three of MACM's existing interconnections are located slightly outside the applied-for service territory. PAWC St. No. 1 p. 19. PAWC specifically requests that the Commission permit it to continue providing bulk service at these points of interconnection.

direct testimony, I&E witness Cline recommended that, if the Commission were to approve the Transaction, it should impose a condition requiring PAWC to provide a cost of service study for the System that separates capital expenses and operating costs for the sanitary and storm water functions. I&E St. No. 2 p. 20. He also recommended that the plant in service costs of the Port Vue portion of the System be identified separately within the overall MACM cost of service study. *Id.* p. 22.

PAWC respectfully submits that these conditions would not be reasonable in this case. The Commission has required cost of service studies in some recent acquisition cases. *Aqua/New Garden Order; In re: Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton for Approval of (1) the transfer, by sale, of substantially all of the Sewer Authority of the City of Scranton's Sewer System and Sewage Treatment Works assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Scranton and the Borough of Dunmore, Lackawanna County, Pennsylvania, Docket No. A-2016-2537209 (Order entered October 19, 2016) ("PAWC/Scranton Order")*. Nevertheless, the Commission should not necessarily order a cost of service study for every acquisition, not even every acquisition involving a combined sewer overflow system. After the *PAWC/Scranton Order*, the Legislature amended the Code to clarify that combined sewer overflow service is jurisdictional service. Act of Nov. 4, 2016, P.L. 1180, No. 154; 66 Pa. C.S. § 102 (regarding definition of "Wastewater"). Consequently, there is little to be gained by requiring a cost of service study as a result of this proceeding. What little value there is to such a study would be outweighed by the cost of such a study – a cost that would be passed on to ratepayers as rate case expense. PAWC St. No. 4-R p.

11-12 (estimating the cost of preparation of a cost of service by an outside consultant to be \$75,000).

This cost may appear insignificant in the context of one case, but PAWC anticipates many more Section 1329 acquisitions. If the Commission establishes a policy of requiring a cost of service study for each and every Section 1329 acquisition, the result will be burdensome for the Company and costly for ratepayers. PAWC St. No. 1-R pp. 11-12. It would be more efficient for parties to request cost of service information through discovery during a rate case if they believe that there is a need at that time. It is simply premature to mandate a cost of service study at the acquisition stage.

In addition, the anticipated use of the cost of service study would be inconsistent with the Commission's policy favoring single tariff pricing. PAWC St. No. 4-R p. 11-12. A cost of service study would presumably be used as a basis to establish separate rate zone -- rather than moving all customers to system average rates.

Finally, requiring PAWC to track expenses for the Port Vue portion of the System -- a small part of the System -- would be particularly burdensome. PAWC St. No. 4-R p. 12. Port Vue is part of the System and there is no rational basis to believe that the Commission would entertain a separate rate zone for such a small portion of the System. If parties want to argue in a future base rate case for a separate Port Vue rate zone, they are free to do so. However, it makes no sense to preemptively require a separate identification of Port Vue expenses where parties will have an opportunity to conduct discovery on the subject during the rate case.

PAWC respectfully requests that the Commission deny I&E's request for cost of service study conditions to the Commission's approval of PAWC's Application. Such requirements are premature, unnecessary, and would result in unnecessary rate case expense.

B. Section 1329 Approvals

1. Ratemaking Rate Base

In pertinent part, Section 1329(c) provides:

(1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

66 Pa. C.S. § 1329(c). Section 1329 defines fair market value as “the average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g).

In this case, the negotiated purchase price, as set forth in the First Amendment to the Asset Purchase Agreement, is \$162,000,000. In September 2016, PAWC's UVE appraised the System as having a fair market value of \$157,600,000. Application, Attachment A-5 (correspondence dated May 17, 2017 p. 2). After the parties to the APA executed the First Amendment to the APA, PAWC advised its UVE of this development. According to AUS: “Since nearly eight months has passed since the ‘as of date’ of our original appraisal, we undertook additional appraisal investigations intended to determine if we needed to revise our original appraisal conclusions.” Application, Attachment A-5 (correspondence dated May 17, 2017 p. 1). In May, 2017, PAWC's UVE appraised the System as having a fair market value of \$161,343,000. Application, Attachment A-5 (correspondence dated May 17, 2017 p. 5).

MACM's UVE initially appraised the System as worth \$207,010,000. During the course of informal discovery in this proceeding, it was determined that MACM's UVE understated the age of the collection system. Upon further review, MACM's UVE appraised the System as worth \$190,840,000. MACM St. No. 1 p. 67.

The average of these two appraisals ($\$161,343,000 + \$190,840,000 / 2$) is \$176,091,500, which is higher than the agreed-to purchase price of \$162,000,000. Consequently, pursuant to Section 1329, PAWC requests that its ratemaking rate base be increased by \$162,000,000, in PAWC's next rate case, due to the Transaction.

The OCA has argued for adjustments in the appraisals submitted by MACM and PAWC. In the *Aqua/New Garden Order*, at page 34, the Commission rejected Aqua's argument that the Commission cannot consider proposed adjustments to a UVE's appraisal. PAWC submitted an *Amicus Curiae* Main Brief and Reply Brief in that proceeding, but -- because it was not a party -- could not submit Exceptions (or request reconsideration of the Commission's decision). The Commission ultimately agreed with the OCA in that proceeding, but PAWC notes that the Commission's decision is currently on reconsideration and this holding could be vacated or modified.

Moreover, PAWC believes the Commission should reconsider its decision that there are no limits to the adjustments that a party may propose to a UVE's appraisal. Considering that the *Aqua/New Garden* case was the first case to be decided pursuant to Section 1329, PAWC submits that many issues of interpretation are yet to be settled and it is appropriate for PAWC to urge the Commission to re-visit an issue at this time.

PAWC submits that the Commission should adopt a limited scope and standard of review of UVEs' appraisals submitted under Section 1329. Specifically, appraisals submitted by

Commission-approved UVEs that comply with the requirements of Section 1329 and the Commission's guidelines (set forth in the Final Implementation Order in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Order entered October 27, 2016) ("Section 1329 Final Implementation Order"), and the Commission's registration requirements for UVEs embodied in the Commission's application form)) are presumptively valid as a matter of law unless a party challenging the appraisal rebuts the presumption by clear and convincing evidence of factual error, abuse of discretion, fraud, illegality or bad faith. This is the appropriate scope and standard of review to contest UVE appraisals under Section 1329 and it should be explicitly adopted by the Commission in order to alleviate confusion in this and future Section 1329 application proceedings.

The General Assembly has decided that the fair market value determination should be based on the professional discretion of the UVEs and not subject to the non-expert discretion of parties to the proceedings (including the statutory advocates) or the Commission. 66 Pa. C.S. § 1329(a)(3). As long as the UVEs are pre-qualified by the Commission, and the appraisals meet statutory and Commission requirements, the UVEs are free to exercise their professional discretion when evaluating utility property to determine the fair market value. If the competing appraisals submitted separately by the buyer and seller are within the scope of a UVE's professional discretion, the fair market value determination in those appraisals must be presumed valid and adopted for purposes of Section 1329 without modification.

Absent clear and convincing evidence of factual error or abuse of discretion, or that bad faith, fraud or illegality tainted the UVE appraisals, neither the parties nor the Commission may go behind the appraisals and supplant the professional judgment of the UVEs as long as the UVEs are qualified and the appraisals meet statutory and Commission standards. OCA has not alleged

that the UVEs here are unqualified; that they failed to apply uniform standards; that they failed to apply the cost, income or market approaches; or that factual error, abuse of discretion, bad faith, illegality or fraud undermined their appraisals. Nor are there any allegations that the UVEs abused their professional discretion in making their fair market value determinations. Under these circumstances, Section 1329 dictates that there is no basis for any of the parties or the Commission to question the professional judgment of the UVEs and the appraisals should be presumed conclusive. The ratemaking rate base for the System under the law is \$162,000,000 (*i.e.*, the lower of the stated purchase price and the average of the UVE fair market value appraisals).

If the Commission nonetheless considers the adjustments proposed by the OCA's witnesses in this case, PAWC respectfully submits that the Commission should not make the proposed adjustments based on the facts of this specific case. In pertinent part, Section 1329(a) states:

Upon agreement by both the acquiring public utility or entity and the selling utility, the following procedure shall be used to determine the fair market value of the selling utility:

(1) The commission will maintain a list of utility valuation experts from which the acquiring public utility or entity and selling utility will choose.

(2) Two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.

(3) Each utility valuation expert shall determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.

66 Pa. C.S. § 1329(a). This is the statutory language by which the Commission is bound. *See generally Susquehanna Regional Airport Auth., supra* (explaining that the Commission has only such powers as are expressly or impliedly granted by the General Assembly).

PAWC hired AUS, which is a Commission-approved utility valuation expert. PAWC St. No. 7 p. 7. Jerome C. Weinert, who prepared the fair market appraisal for AUS, has been an

Accredited Senior Appraiser since 1982 (*i.e.* nearly 35 years). PAWC St. No. 7 p. 7. His appraisal complies with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Application, Attachment A-5 (correspondence dated May 17, 2017 p. 7); Tr. 88.

Similarly, MACM hired HRG, which is a Commission-approved utility valuation expert. MACM St. No. 1 p. 2. HRG prepared an appraisal that complies with USPAP. MACM St. No. 1 p. 9.

Of particular note, I&E did not challenge the appraisals submitted by MACM and PAWC. The OCA introduced the testimony of Ashley E. Everette. Ms. Everette did not propose any adjustments in the appraisal prepared by AUS; her testimony regarding AUS’s appraisal merely incorporated the adjustment proposed by OCA witness Watkins. OCA St. No. 1 p. 25; OCA St. No. 1-R p. 11, She did, however, propose changes in the appraisal prepared by HRG. OCA St. No. 1 pp. 24.

The Commission should reject Ms. Everette’s proposed adjustments to the HRG appraisal because HRG is more credible. Ms. Everette is not a licensed appraiser, Tr. 160, and she did not visit the System or talk to management in the preparation of her proposed adjustments. Tr. 180. The Commission can take official notice of its own records and find that Ms. Everette is not a Commission-registered UVE. In addition, Section 1329 requires an appraisal to be based on USPAP standards and employ the cost, market and income approaches. 66 Pa. C.S. § 1329(a)(2). Ms. Everette’s recommended adjustments are not based on USPAP, Tr. 161, and she did not consider the income approach. In contrast, HRG is a Commission-registered UVE, MACM St. No. 1 p. 2, HRG personnel visited the System in connection with the appraisal, Tr. 108, the appraisal was performed in compliance with USPAP standards, Tr. 111, and the appraisal considered the cost, market, and income approaches.

The OCA also introduced the testimony of Glenn A. Watkins. Mr. Watkins proposed one adjustment to the appraisal prepared by AUS and several adjustments to the appraisal prepared by HRG. These adjustments also should be rejected on the grounds of credibility. Mr. Watkins is neither a licensed appraiser, PAWC St. No. 7-R, Exh. JCW-3 (answer to Interrogatory No. 14); Tr. 140; nor a Commission-registered UVE. Tr. 140. Mr. Watkins' proposed adjustments were not based on USPAP, but rather were based on his expertise as an economist and his knowledge of accepted financial theory and practice. Tr. 141; PAWC St. No. 7-R, Exh. JCW-3 (answer to Interrogatory No. 9). In fact, Mr. Watkins admitted at the hearing that he did not even review USPAP until after he submitted his direct testimony proposing an adjustment in AUS' appraisal. Tr. 145. Mr. Watkins did not employ the cost, market and income approaches to value the System; he only used the income approach.

In contrast, AUS Consultants is a Commission-registered UVE. PAWC St. No. 7 p. 6-7. Its appraisal was completed by and under the direction of Jerome C. Weinert, ASA, PE, CDP. PAWC St. No. 7 p. 12. Mr. Weinert is an Accredited Senior Appraiser in the American Society of Appraisers, PAWC St. No. 7 p. 3. AUS' appraisal was completed in compliance with USPAP, PAWC St. No. 7 p. 13, and employed the cost, market and income approaches, as required by Section 1329. For these reasons, the testimony of Mr. Weinert, and the appraisal report completed by him and his staff, are more credible than the testimony of Mr. Watkins with regard to the value of the System.

HRG's credentials were summarized above. The testimony of Adrienne M. Vicari, P.E., who led the team completing the HRG appraisal, and the appraisal report completed by her and her staff, is more credible than the testimony of Mr. Watkins, with regard to the value of the System.

If the Commission considers the merits of Mr. Watkins' proposed adjustment to the AUS appraisal, the Commission should reject it. An appraiser must exercise a certain degree of discretion in completing his appraisal, Tr. 152, and there is no credible evidence that Mr. Weinert's approach falls outside a reasonable range of discretion for a professional appraiser. PAWC St. No. 7-R p. 11; Tr. 151-152.

Second, Mr. Watkins recommended adjustments to HRG's income approach valuation of the System, yielding a valuation of \$165,550,000. This figure was similar to AUS's income approach valuation of the System (\$162,455,017). However, Mr. Watkins also proposed an adjustment to AUS's income approach valuation of the System. With this adjustment, Mr. Watkins valued the System at \$134,359,000. Mr. Watkins never reconciled these two valuations, as is required by USPAP. PAWC St. No. 7-R p. 9. Valuing the same property twice, using the same approach (the income approach), should not produce results that differ by almost \$30,000,000. PAWC St. No. 7-SR p. 4. Mr. Watkins' proposed adjustment to AUS's appraisal should be rejected on this basis.

Third, the only adjustment that Mr. Watkins proposed for the AUS appraisal was to suggest the use of an alternative to the terminal value used by AUS. Mr. Watkins instead advocates for the use of a 50-year model. OCA St. No. 2 pp. 23 and 27. Mr. Weinert explained that the AUS approach is a recognized income approach model, consistent with USPAP. PAWC St. No. 1-R pp. 5-6. Mr. Weinert also explained why he disagreed with Mr. Watkins' assertion that the terminal value model used by Mr. Weinert included inadequate capital expenditures. According to Mr. Weinert, the System's treatment plants have recently undergone improvements, and many of the System's assets have long useful lives. In addition, mains will be relined and repaired, rather than replaced. PAWC St. No. 1-R pp. 6-7. He concluded as follows:

In short, OCA Witness Watkins' use of a 50-year terminal life of all assets is inconsistent with standard appraisal practices and severely undercuts the appraised value of the MACM wastewater system and related service rights.

PAWC St. No. 1-R p. 7. As a result, the Commission should reject Mr. Watkins' proposed adjustment on the merits.

In short, the Commission should reject the OCA's proposed adjustments in the appraisals prepared by HRG and AUS. The average of those two appraisals is greater than the purchase price of the System, as set forth in the First Amendment to the APA. In accordance with Section 1329(c)(2), the Commission should find that the ratemaking rate base for the System, in PAWC's next base rate case, is the agreed-upon purchase price: \$162,000,000.

2. Distribution System Improvement Charge, Allowance for Funds Used During Construction, Deferred Depreciation, and Transaction Costs

a. DSIC

In pertinent part, Section 1329(d) provides:

(4) The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. *The acquiring public utility may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.*

66 Pa. C.S. § 1329(d)(4) (emphasis added). In the Act 11 Final Implementation Order, the Commission established procedures for the implementation of a DSIC by a wastewater utility. In order to qualify for DSIC recovery, a utility must submit an LTIIP to, and receive approval from, the Commission. In its Application, PAWC requested that the Commission approve the collection of a DSIC related to the System prior to the first base rate case in which the System's plant-in-service is incorporated into rate base. Application ¶ 2.

OCA witness Everette noted that an LTIIIP must be in place before the costs of post-acquisition projects can be included in a DSIC. OCA St. No. 1 p. 3. PAWC acknowledges that an LTIIIP must be submitted to, and approved by, the Commission before the DSIC can be implemented. 66 Pa. C.S. §§ 1352-1353, 52 Pa. Code §§ 121.3-121.4. Through this proceeding, PAWC seeks conditional approval to implement a DSIC for the McKeesport service territory. A condition of approval would be PAWC's filing of an amended wastewater LTIIIP to incorporate the McKeesport service territory and Commission approval thereof. PAWC St. No. 4-R p. 14.

PAWC proposes that the DSIC for McKeesport would be governed by PAWC's existing DSIC tariff and all of the stated customer safeguards would be applicable. Because implementation of the DSIC is conditioned on Commission approval of an amended LTIIIP, the *pro forma* tariff supplement submitted in this proceeding does not list Rate Zone 13 (the McKeesport service territory) as one of the rate zones to which the DSIC will be applicable. In conjunction with the LTIIIP filing, PAWC will request permission to amend its existing DSIC tariff to include Rate Zone 13. Upon Commission approval of the LTIIIP amendment, PAWC will make a tariff supplement compliance filing to include Rate Zone 13 as part of the existing DSIC tariff. PAWC St. No. 4-R p. 15.

PAWC's existing DSIC tariff was approved by the Commission. *Petition of Pennsylvania-American Water Company Wastewater Operations for Approval of Long Term Infrastructure Improvement Plan and Approval to Establish and Implement a Distribution System Improvement Charge*, Docket Nos. P-2014-2431005, *et al.* (Order entered May 7, 2015). It is part of PAWC's Commission-approved tariff and therefore has the force and effect of law. Accordingly, there should be a presumption that the requirements of a DSIC for the McKeesport service territory

(other than the subsequent approval of an amended LTIIP) have been satisfied. PAWC St. No. 4-R p. 16.

Consequently, PAWC respectfully requests that the Commission approve the implementation of a DSIC for the McKeesport service territory, subject to the condition that PAWC file an amended LTIIP to incorporate the McKeesport service territory, and the Commission approves that filing. PAWC will then make a compliance tariff supplement filing to incorporate the McKeesport service territory into the DSIC section of PAWC's wastewater tariff.

b. Allowance for Funds Used During Construction and Deferred Depreciation

In pertinent part, Section 1329(f) provides:

(f) Postacquisition projects.--The following apply:

(1) An acquiring public utility's postacquisition improvements that are not included in a distribution improvement charge shall accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier.

(2) Depreciation on an acquiring public utility's postacquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes.

66 Pa. C.S. § 1329(f). In its Application, PAWC made appropriate requests for permission to use these legislatively-permitted ratemaking tools.

First, PAWC requested that the Commission approve the accrual of AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Application ¶ 2. PAWC witness Kaufman indicated that PAWC will be making improvements to the System. PAWC St. No. 3 pp. 11-14; PAWC St. No. 3-R pp. 3-6. Some of these improvements will not be eligible to be included in PAWC's DSIC. As such, PAWC will likely accrue AFUDC

consistent with what is permitted under Section 1329. Rate claims related to AFUDC can then be adjudicated in the context of a future PAWC rate proceeding.

Similarly, PAWC requested that the Commission approve the deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Application ¶ 2. In his direct testimony, Rod P. Nevirauskas, the Senior Director of Rates and Regulations for the Mid Atlantic Division of the American Water Service Company, stated that PAWC intends to defer depreciation on non-DSIC eligible post-acquisition improvements for book and ratemaking purposes. He explained that, although Section 1329 appears to allow deferral without specific Commission approval, out of an abundance of caution, PAWC is specifically petitioning the Commission for permission to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. PAWC St. No. 4 p. 10.

OCA witness Everette discussed PAWC's request for the accrual of AFUDC and the deferral of depreciation in her direct testimony, but did not appear to disagree with those proposals. She suggested that the accrual of AFUDC should be adjudicated in PAWC's *next* base rate case, rather than in a *future* base rate case, as was stated by PAWC's witness Nevirauskas. PAWC has no objection to this clarification of its testimony. PAWC will address AFUDC in the base rate case following the currently-pending base rate case, because the next base rate case will be the first case in which the MACM acquisition is incorporated into PAWC's rates. PAWC St. No. 4-R pp. 13-14.

Consequently, consistent with Section 1329, PAWC respectfully requests that the Commission (i) approve the accrual of AFUDC for post-acquisition improvements not recovered through DSIC for book and ratemaking purposes; and (ii) approve the deferral of depreciation

related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. These are ratemaking tools that the General Assembly has explicitly permitted and PAWC should not be restricted in its use of them -- recognizing that claims for such items will be adjudicated in base rate case.

c. Transaction and Closing Costs

In pertinent part, Section 1329(d) provides:

(d) Acquisitions by public utility.--The following apply:

(1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), the acquiring public utility shall include the following as an attachment to its application for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

(iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.

66 Pa. C.S. § 1329(f). In its Application, PAWC included an estimate of \$1,110,000 to \$1,310,000 for transaction and closing costs that will become a part of its rate base in a future base rate proceeding. PAWC St. No. 4 p. 4. The precise figure was unknowable at the time of the Application and remains unknowable at this time. It will depend on many factors, including whether this case is fully litigated, but PAWC notes that approximately \$500,000 of this expense is for transfer taxes and \$150,000 is for title insurance – both of which are standard costs and unavoidable. PAWC St. No. 4-R pp. 12-13.

In the Section 1329 Final Implementation Order, at page 14, the Commission stated that there will be no Commission preapproval of the reasonableness of recovery of these costs in a Section 1329 proceeding. PAWC does not seek preapproval. Out of an abundance of caution, PAWC is simply requesting permission to include, in its next base rate request filed after its

currently-pending base rate proceeding, the transaction and closing costs incurred in this proceeding. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time.

3. No Rate Stabilization Plan

Section 1329(d)(1)(iv) of the Code, 66 Pa. C.S. § 1329(d)(1)(iv), requires an application to contain a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition, together with a rate stabilization plan, if applicable to the acquisition. A rate stabilization plan is defined as "a plan that will hold rates constant or phase rates in over a period of time after the next base rate case." 66 Pa. C.S. § 1329(g).

PAWC's application included the required tariff, but did not include a rate stabilization plan because the Transaction does not involve a "rate stabilization plan" as defined in Section 1329(g). Pursuant to Section 7.05(b) of the APA, PAWC will charge MACM's current rates as its base rates within the service territory, and such base rates will not be increased until after the first anniversary of the closing date of the Transaction. PAWC filed a base rate case on April 28, 2017 at Docket No. R-2017-2595853, and the acquisition of the System was not included as part of that filing. In light of PAWC's rate case filing history (approximately every three to four years), it is highly unlikely that rates for McKeesport area customers will be held constant pursuant to the APA for any period after the first base rate case in which MACM assets are included. The first base rate case in which the System could be included is likely to occur in 2020 or later. PAWC St. No. 4 p. 7.

Additionally, under the APA, rates for other pass-through costs or charges permitted by the General Assembly (including but not limited to, a DSIC or a state tax adjustment surcharge),

may be subject to increase. Only the base rates shall remain constant during the one-year period after closing of the Transaction. PAWC St. No. 4 p. 7.

Finally, it is worth noting that even during the one-year period in which MACM rates are to be in place, PAWC may *seek approval* from the Commission to increase rates. The APA respects the statutory authority of the Commission to set just and reasonable rates. PAWC St. No. 4 p. 7.

None of the Parties to this proceeding have argued that this proceeding involves a rate stabilization plan. The Commission should therefore find that this proceeding does not involve a rate stabilization plan as that term is defined in 66 Pa. C.S. § 1329(g).

4. Revised *pro forma* tariff supplement

As stated above, a Section 1329 application is to include a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition. 66 Pa. C.S. § 1329(d)(1)(iv). PAWC included such a *pro forma* tariff with its application. Application, Appendix A-13.

As also explained above, PAWC will initially adopt MACM's rates at the time of closing. PAWC St. No. 1 p. 12. MACM's customers will be governed by rates for new Rate Zone 13. After PAWC closes on the Transaction, System customers will be subject to PAWC's prevailing wastewater tariff with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4 p. 4.

MACM's customers are currently billed monthly, with the exception of Port Vue Borough customers, and will continue to be billed monthly. PAWC expects that Port Vue Borough-area customers will continue to be billed quarterly immediately after closing. PAWC St. No. 4 p. 4.

The *pro forma* tariff supplement was drafted in such a way as to give PAWC the flexibility to bill these customers monthly in the future. PAWC would like to have the ability to switch Port Vue customers from quarterly billing to monthly billing in the future, because all of PAWC's other customers are billed monthly. PAWC St. No. 4-R p. 8. In the event that Port Vue customers are billed monthly in the future, the present 4,000 gallon quarterly allowance would be changed slightly, to 1,400 gallons per month, because PAWC's billing system requires the allowance to be expressed in hundreds of gallons. *Id.*

The *pro forma* tariff supplement includes a Section T, for an Industrial Pretreatment Program (McKeesport-Area) ("IPP-M") that would require industrial customers discharging into the System to comply with the industrial pretreatment program and to pay certain fees. PAWC St. No. 3 p. 20. At present, no customers are regulated by MACM's industrial pretreatment program. The tariff would apply to any new user who, in the future, qualifies as an industrial user (as defined in the IPP-M). PAWC St. No. 3 p. 21. The fees are designed to recover actual costs associated with permit review, inspections, monitoring, sampling, and analysis, as well as treatment costs that may result from an industrial customer's failure to pretreat its wastewater. PAWC St. No. 3 p. 23. The IPP-M language was modeled after the tariff language that was recently approved by the Commission for the industrial pretreatment program of PAWC's Scranton wastewater system. *PAWC/Scranton Order.*

During discovery, PAWC became aware of a discrepancy between the *pro forma* tariff, as filed with the Application, and the existing rates of MACM. Specifically, Section 2 of the uniform service agreements between MACM and its municipal bulk customers currently states that, if a municipality's wastewater volume exceeds 350% of the aggregate quantity of water used by the municipality's water users during any billing period, the municipality must pay MACM's

prevailing rates and charges for handling such excess, in addition to the typical sewage charges. See Application, Appendices B-1 through B-16. No similar provision was in the *pro forma* tariff that was filed with the Application.

No revenues have ever been collected by MACM pursuant to Section 2 of the uniform service agreements, due to the fact that no flow meters are installed on the interconnections with the municipal bulk service customers. MACM therefore has no way of determining if and when the municipal bulk service customers are required to pay the excess wastewater handling charges.

Consistent with PAWC's commitment in the APA to charge MACM's existing rates, PAWC proposed a change in its *pro forma* tariff supplement through PAWC St. No 4-R, Exhibit RPN-1. This change would make the *pro forma* tariff supplement consistent with MACM's existing municipal bulk service agreements. PAWC anticipates installing flow meters at some point in the future. When sewage meters are installed, PAWC intends to charge municipalities for the handling of excess wastewater, pursuant to its revised *pro forma* tariff supplement, consistent with Section 2 of the uniform service agreements.

PAWC therefore respectfully requests that the Commission approve the *pro forma* tariff supplement, as modified. PAWC further requests that the Commission permit PAWC, upon closing of the Transaction, to issue a compliance tariff supplement consistent with the *pro forma* tariff supplement, to become effective on the date of issuance.

C. Section 507 Approvals

PAWC seeks a Certificate of Filing for the APA under Code Section 507, 66 Pa. C.S. § 507 (regarding public utility contracts with a municipal corporation). Because the Transaction is in

the public interest (as explained above), the APA is reasonable, legal and otherwise valid, and the Commission should issue a Certificate of Filing for the APA.

PAWC also seeks additional Certificates of Filing through this proceeding. MACM currently has two agreements with each of eight municipal corporations, which will be assumed by PAWC upon the closing of the Transaction.¹³ PAWC St. No. 1 p. 20. These agreements are contained in Appendices B-1 through B-16. The agreements are:

1. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2010;
2. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2008;
3. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Lincoln Borough, Dated as of September 15, 2009;
4. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Lincoln Borough, Dated as of September 15, 2009;
5. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Elizabeth Township, Dated as of October 14, 2008;
6. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Elizabeth Township, Dated as of October 14, 2008;
7. Service Agreement By and Among The Municipal Authority of the City of McKeesport and The Municipal Authority of Westmoreland County for White Oak Borough, Dated as of August 2009;

¹³ The Application, as filed, indicates that PAWC is assuming contracts with nine municipalities. One of those municipalities was Port Vue, which is now part of the MACM System. Consequently, PAWC is no longer seeking to assume those contracts.

8. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and The Municipal Authority of Westmoreland County for White Oak Borough, Dated as of August 2009;

9. Service Agreement By and Among The Municipal Authority of the City of McKeesport, North Versailles Township, and The North Versailles Township Sanitary Authority, Dated as of October 1, 2008;

10. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport, North Versailles Township, and The North Versailles Township Sanitary Authority, Dated as of August 21, 2008;

11. Service Agreement By and Among The Municipal Authority of the City of McKeesport and East McKeesport Borough, Dated as of September 11, 2008;

12. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and East McKeesport Borough, Dated as of August 2008;

13. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Versailles Borough, Dated as of October 22, 2008;

14. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Versailles Borough, Dated as of October 22, 2008;

15. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Glassport Borough, Dated as of August 19, 2008; and,

16. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Glassport Borough, Dated as of August 19, 2008.

PAWC's witness Grundusky explained that Commission approval of the continuation of these contracts is necessary in order for PAWC, after closing on the Transaction, to provide bulk

service to surrounding communities, as MACM has previously done. Approval is reasonable and serves an important public purpose because the bulk services provided under the contracts are essential to the provision of wastewater service in neighboring communities. PAWC St. No. 1 pp. 20-21. No party has challenged the reasonableness, legality, or validity of the municipal agreements. Accordingly, PAWC respectfully requests that the Commission issue Certificates of Filing for the APA and the municipal agreements.

VI. CONCLUSION

PAWC has demonstrated by a preponderance of the evidence that it is technically, legally, and financially fit and that the Transaction will result in affirmative public benefits of a substantial nature. These benefits include, but are not limited to, regionalization and consolidation of wastewater operations within the Commonwealth and remediation of environmental problems within the Commonwealth. Moreover, PAWC has demonstrated that the requirements of 66 Pa. C.S. § 1329 have been properly followed and, accordingly, it should be permitted to incorporate a ratemaking rate base of \$162,000,000 for the acquired property, implement a DSIC for the McKeesport service territory, accrue AFUDC, and defer depreciation related to post-acquisition improvements. Finally, PAWC has demonstrated that the APA and related agreements with municipal corporations are reasonable and otherwise satisfy the requirements of 66 Pa. C.S. § 507.

WHEREFORE, for the reasons set forth above and in the evidentiary record of this matter, PAWC respectfully requests that the Commission:

1. Grant the Application that PAWC filed on May 24, 2017.

2. Issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (a) the transfer, by sale, of substantially all of MACM's assets, properties and rights related to the System to PAWC; and (b) PAWC's right to begin to offer, render, furnish and supply wastewater service in the areas served by MACM in the City of McKeesport, the City of Duquesne, Port Vue Borough, and the Borough of Dravosburg, and a portion of West Mifflin Borough, Allegheny County, Pennsylvania and to three bulk service interconnection points located in Liberty Borough, White Oak Borough, and North Versailles Borough, Allegheny County, Pennsylvania.

3. Permit PAWC, upon closing of the Transaction, to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement contained as Appendix A-13 of the Application (as modified by PAWC Exhibit RPN-1), to be effective on the date of issuance.

4. Approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$162,000,000 associated with the acquisition of the System.

5. Approve, under 66 Pa. C.S. § 1329(d), the collection of a DSIC related to the System prior to the first base rate case in which the System plant-in-service is incorporated into rate base, subject to the conditions that PAWC file, and the Commission approve, an amended wastewater LTIIP incorporating the McKeesport area and that, upon Commission approval of the amended LTIIP, PAWC make a compliance tariff supplement filing incorporating the McKeesport service territory into PAWC's existing wastewater DISC tariff provisions.

6. Approve, under 66 Pa. C.S. § 1329(f), the accrual of AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.

7. Approve, under 66 Pa. C.S. § 1329(f), the deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.

8. Issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:

a. Asset Purchase Agreement By and Among the City of McKeesport, The Municipal Authority of the City of McKeesport, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of September 9, 2016, as amended by First Amendment to the Asset Purchase Agreement, Dated as of May 15, 2017, along with related City of McKeesport General Obligation Note, Series of 2016, No. R-1, related Intercept Agreement, Dated November 30, 2016, and related Second Deposit Note, which is yet to be executed;

b. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2010;

c. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2008;

d. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Lincoln Borough, Dated as of September 15, 2009;

e. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Lincoln Borough, Dated as of September 15, 2009;

f. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Elizabeth Township, Dated as of October 14, 2008;

g. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Elizabeth Township, Dated as of October 14, 2008;

h. Service Agreement By and Among The Municipal Authority of the City of McKeesport and The Municipal Authority of Westmoreland County for White Oak Borough, Dated as of August 2009;

i. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and The Municipal Authority of Westmoreland County for White Oak Borough, Dated as of August 2009;

j. Service Agreement By and Among The Municipal Authority of the City of McKeesport; North Versailles Township, and The North Versailles Township Sanitary Authority, Dated as of October 1, 2008;

k. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport, North Versailles Township, and The North Versailles Township Sanitary Authority, Dated as of August 21, 2008;

l. Service Agreement By and Among The Municipal Authority of the City of McKeesport and East McKeesport Borough, Dated as of September 11, 2008;

m. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and East McKeesport Borough, Dated as of August 2008;

n. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Versailles Borough, Dated as of October 22, 2008;

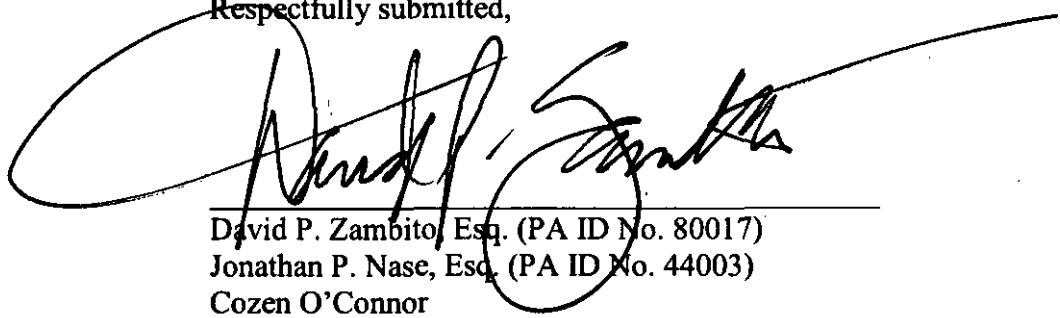
o. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Versailles Borough, Dated as of October 22, 2008;

p. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Glassport Borough, Dated as of August 19, 2008; and,

q. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Glassport Borough, Dated as of August 19, 2008.

9. Issue any other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "David P. Zambito". The signature is written over a horizontal line that separates it from the typed name below.

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Dated: August 22, 2017

APPENDIX A. PROPOSED FINDINGS OF FACT

1. Parties

- a. PAWC, a subsidiary of American Water Works Company, Inc., is the largest regulated public utility corporation in Pennsylvania. It provides water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties. It serves a combined population of over 2,300,000. PAWC St. No. 1 p. 13-14.
- b. As of December 31, 2016, PAWC furnished wastewater services to 54,691 customers in Pennsylvania and water services to 654,770 customers. PAWC St. No. 1 p. 15.
- c. The City is a city of the third class under the Constitution and laws of the Commonwealth of Pennsylvania and the City's Home Rule Charter. APA p. 1.
- d. The City is located in Allegheny County. PAWC St. No. 6 p. 4. It had 19,731 residents in 2010. PAWC St. No. 6 p. 4.
- e. MACM is a body corporate and politic, duly organized under the Pennsylvania Municipal Authorities Act. APA p. 1.
- f. MACM is run by a board, independent of the City. Tr. 80.
- g. I&E is the prosecutory bureau within the Public Utility Commission for purposes of representing the public interest in ratemaking and service matters.

- h. OCA is an agency created by Act 161 of 1976 to represent the interests of consumers before the Pennsylvania Public Utility Commission.

2. The System

- a. The System is an integrated wastewater collection system comprised of a combined wastewater collection system and three wastewater treatment plants. It provides bulk wastewater service to eight municipalities via inter-municipal service agreements. PAWC St. No. 3 p. 3.
- b. The eight municipalities that have inter-municipal service agreements with MACM own and operate their own collection systems, which connect to the McKeesport interceptor system. PAWC St. No. 3 p. 3.
- c. The collection systems in Duquesne and Dravosburg transport sewage from their respective communities to their own wastewater treatment plants, and are not interconnected to the other systems. PAWC St. No. 3 p. 3.
- d. As of December 31, 2016, MACM furnished wastewater services directly to 12,780 customers. PAWC St. No. 1 p. 15. It provided service directly or indirectly to approximately 22,000 customers, because of the bulk service agreements with surrounding municipalities. PAWC St. No. 1-R p. 13.
- e. The MACM System is a combined system, which conveys domestic sewage and other wastewaters and stormwater in the same system of pipes. PAWC St. No. 2 p. 10.

- f. There is no reasonable way to segregate the wastewater operations from the stormwater operations. PAWC St. No. 2 p. 12.
 - g. MACM accepts and treats bulk sewage from eight communities via direct or adjoining municipal sewer systems. Three of these interconnections are located slightly outside of the applied-for service territory, and PAWC has requested Commission approval to continue providing bulk service at these points of interconnection. PAWC St. No. 1 p. 19.
3. The Asset Purchase Agreement and the First Amendment to the Asset Purchase Agreement
- a. The City and MACM have considered selling or leasing the System for years. PAWC St. No. 6 p. 6.
 - b. On February 26, 2016, MACM issued a Request for Bids for either an Asset Purchase Agreement of the MACM Wastewater Treatment Facilities or Concession Lease Agreement. PAWC St. No. 1 p. 8.
 - c. In April 2016, MACM purchased the Borough of Port Vue's wastewater system. I&E St. No. 1 p. 4.
 - d. The Port Vue portion of the System was considered in both the negotiations for the APA and the UVEs' appraisals. PAWC St. No. 1-R p. 9-11.
 - e. On July 29, 2016, PAWC submitted an Asset Purchase bid to acquire MACM's assets. PAWC St. No. 1 p. 8.

- f. On September 9, 2016, MACM and PAWC entered into the APA for the sale of substantially all of the assets, properties and rights of the System to PAWC for an agreed-upon price. PAWC St. No. 1 p. 8.
- g. The purchase price for the MACM System, as set forth in the APA, was the higher of \$156,000,000 or the average of the two UVE's appraisals. PAWC St. No. 1 p. 11.
- h. In September 2016, PAWC's UVE appraised the System as having a fair market value of \$157,600,000. Application, Attachment A-5 (correspondence dated May 17, 2007, p. 2).
- i. When PAWC was advised that MACM's UVE had appraised the System as having a fair market value of \$207,010,000, PAWC, the City and MACM negotiated the First Amendment to the APA. PAWC St. No. 1 p. 11-12; PAWC St. No. 1-R p. 9.
- j. On May 15, 2017, the City, MACM and PAWC entered into the First Amendment to the APA, which revised the purchase price of the System to be \$162,000,000. PAWC St. No. 1 p. 8.
- k. Following the execution of the First Amendment to the APA, the UVEs were advised of the new purchase price, and were given an opportunity to adjust their appraisals, as appropriate, in their independent discretion. PAWC St. No. 1 p. 12.
- l. In May, 2017, PAWC's UVE subsequently re-appraised the System. At that time, he found that the System has a fair market value of \$161,343,000. Application, Attachment A-5 (correspondence dated May 17, 2017 p. 1).

- m. MACM's UVE did not re-appraise the System following the negotiation of the First Amendment to the APA. During discovery, however, it was determined that MACM's UVE understated the age of the collection system. Upon further review, MACM's UVE appraised the System as having a fair market value of \$190,840,000. MACM St. No. 1 p. 67.
- n. MACM will receive a portion of the purchase price under the APA. APA Section 3.02. Some of these proceeds will be used to pay off debt. APA Section 3.02(c). MACM will then be dissolved and terminated. PAWC. St. No. 6 Exh. MEC-3.
- o. The City will receive a portion of the purchase price under the APA. APA Section 3.02. The City will use these funds to balance the budget, invest in infrastructure improvements, market the City and improve services to existing businesses and residents. PAWC St. No. 6 p. 9.

4. The Application and the UVEs' Appraisals

- a. The Application was filed May 24, 2017. Application (correspondence dated May 24, 2017).
- b. On June 3, 2017, the Commission's Bureau of Technical Utility Services notified PAWC that it believed the Application did not contain certain information. PAWC Response to Bureau of Technical Utility Service's Deficiency Letter (Correspondence dated June 8, 2017 p. 2).

- c. PAWC responded to TUS's "Deficiency Letter" on June 8, 2017. PAWC Response to Bureau of Technical Utility Service's Deficiency Letter (Correspondence dated June 8, 2017 p. 2).
- d. The Commission acknowledged receipt of the complete Application on June 14, 2017. Secretarial Letter dated June 14, 2017.
- e. Notice of the Application was published in the *Pennsylvania Bulletin* on June 24, 2017. 47 Pa. Bull. 3568.
- f. As required by Section 1329, the parties to the APA engaged an engineer (KLH Engineers) to conduct an assessment of the tangible assets of the System. PAWC St. No. 7 pp. 13, 16.
- g. As required by Section 1329, the Application included the appraisals of PAWC's UVE and MACM's UVE. Application, Attachment A-5.

5. Witness Qualifications

- a. PAWC's UVE is Associated Utility Services, Inc. ("AUS"). PAWC St. No. 7 p. 13.
- b. AUS is on the Commission's registry of UVEs. PAWC St. No. 7 p. 6-7.
- c. Jerome C. Weinert, ASA, PE, CDP, is a Principal and Director in AUS's consulting operation. PAWC St. No. 7 p. 2. He has been an Accredited Senior Appraiser in the American Society of Appraisers since 1982. PAWC St. No. 7 p. 3.

- d. AUS's appraisal of the System was prepared by, or under the supervision of, Mr. Weinert. PAWC St. No. 7. P. 12.
- e. MACM's UVE is Herbert, Rowland & Grubic, Inc. ("HRG"). MACM St. No. 1 p. 1.
- f. HRG is on the Commission's registry of UVE's. MACM St. No. 1 p. 2.
- g. HRG's appraisal was prepared by staff under the direction of Adrienne M. Vicari, P.E. MACM St. No. 1 pp. 5-6.
- h. OCA introduced the testimony of Ashley E. Everette, who is not registered with the Commission as a UVE. Tr. 156.
- i. Ms. Everette is not a licensed appraiser. Tr. 160.
- j. OCA introduced the testimony of Glenn A. Watkins, who is not registered with the Commission as a UVE. Tr. 140.
- k. Mr. Watkins is not a licensed appraiser. Tr. 140; PAWC St. No. 7-R, Exh. JCW-3 (answer to Interrogatory No. 14).

6. PAWC's Financial Fitness

- a. As of December 31, 2016, PAWC had total assets of approximately \$4.35 billion. PAWC St. No. 1 p. 18.
- b. For 2016, PAWC had net income of approximately \$153 million. PAWC St. No. 5 p. 4.

- c. In addition to positive cash flows, PAWC may obtain financing from a line of credit, long term debt financing, and equity investments. PAWC St. No. 5 p. 4.
- d. PAWC is a large, financially sound company that has the capability to finance necessary capital additions. Given its size, access to capital and recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned financially to provide wastewater service meeting all federal and state requirements. PAWC St. No. 5 p. 3.
- e. PAWC will initially fund the transaction with short-term debt and later replace it with long-term debt and equity capital. PAWC St. No. 5 p. 5.

7. PAWC's Technical Fitness

- a. PAWC is the largest water and wastewater provider in Pennsylvania. PAWC St. No. 1 p. 17. PAWC currently operates 16 wastewater treatment plants in Pennsylvania. PAWC St. No. 2 p. 4; PAWC St. No. 3 p. 27.
- b. PAWC employs approximately 1,000 professionals with expertise in all areas of water and wastewater utility operations. PAWC St. No. 1 p. 14.
- c. As a subsidiary of American Water, PAWC has available to it the resources of American Water Works Service Company, Inc., which provides access to highly-trained professionals with expertise in specialized areas. When operational issues arise and facilities owned by PAWC, the company mobilizes engineering talent from its central engineering team, drawing on resources from the Service Company

team, to identify potential problems, recommend options, and develop action plans.

PAWC St. No. 2 p. 5.

- d. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and other infrastructure. PAWC St. No. 3 p. 18. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. PAWC St. No. 3-R p. 7.
- e. PAWC has experience working through transitions, and has already implemented a plan to integrate MACM employees, customers, and the MACM system into PAWC's operations. PAWC St. No. 2 p. 10.
- f. PAWC maintains cyber security, physical security, business continuity and emergency plans. PAWC St. No. 2 p. 16.
- g. PAWC has strong relationships with PUC Emergency Response Staff, PEMA and local first responders. PAWC St. No. 2 p. 17.
- h. PAWC participates in the PA One Call system. PAWC St. No. 2 p.18.

8. PAWC's Legal Fitness

- a. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 p. 17.
- b. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and experienced managerial and operating personnel necessary to provide safe and reliable sewer

services to the residents of MACM and the surrounding area. PAWC St. No. 1 p. 14, 15.

9. Affirmative Public Benefits of a Substantial Nature

- a. The Transaction fosters the Commission goal of regionalizing wastewater systems to provide greater environmental and economic benefits to customers. PAWC St. No. 1 p. 16.
- b. After Closing, the System will be operated as a standalone system. PAWC St. No. 2 at 7. It will, however, have the support of PAWC's surrounding water and wastewater system operations, as well as PAWC's operations throughout the Commonwealth and American Water's nationwide resources. PAWC St. No. 2 p. 8.
- c. PAWC owns and operates water and wastewater facilities near McKeesport in the Pittsburgh Area and Southwestern Pennsylvania. PAWC St. No. 2 p. 6-7. The System is located adjacent to PAWC's MonValley/Elizabeth and Pittsburgh operations. PAWC provides water service to MACM's Dravosburg Borough customers. PAWC St. No. 2 p. 7.
- d. PAWC has experience with the types of treatment technologies employed in the System, which involve activated sludge and SBR units similar to existing PAWC plants. PAWC St. No. 2 p. 4-5.

- e. PAWC has experience operating a CSO system – the Scranton wastewater system. PAWC also has experience operating a system that has substantial wet weather challenges due to high rates of infiltration and inflow. PAWC St. No. 2 pp. 11, 26.
- f. Although some public benefits are not capable of precise measurement, they are nevertheless real, supported, and not generalized. The Commission does not require benefits to be quantifiable. PAWC St. No. 1-R p. 4.
- g. Portions of the System are in disrepair, Tr. 44, and PAWC has made commitments to improve the System, including extensions of the System to eliminate sanitary flows discharged untreated into mine holes. PAWC St. No. 1 p. 13; PAWC St. No. 3 p. 11-15.
- h. PAWC is identifying improvements necessary to address environmental deficiencies in the Port Vue portion of the System. PAWC St. No. 3-R p. 2. These deficiencies probably would not have been addressed if Port Vue had remained a stand-alone system. PAWC St. No. 1-R p. 11.
- i. PAWC is better positioned than MACM to deal with environmental problems of the System. PAWC St. No. 3-R p. 5, 6-8
- j. PAWC has a better credit rating than MACM and has access to equity markets that are unavailable to MACM. PAWC St. No. 3-R p. 7-8
- k. MACM is reaching its debt capacity as a result of recent expansions required by Act 537. MACM also has the burden of meeting employee benefits and pension obligations. PAWC St. No. 8.

- l. PAWC is in a better situation than MACM to address the deficiencies and operate the system going forward, due to PAWC's greater financial resources, including access to capital, and greater expertise in operating wastewater systems. PAWC St. No. 3-R p. 2.
- m. The Transaction involves no duplication of services, so there is no adverse impact on PAWC's existing efficiency. PAWC St. No. 2 p. 8.
- n. The Transaction will not harm PAWC's financial status in any way. PAWC St. No. 5 p. 3.
- o. Because of its large size and expertise and economies of scale, PAWC will be able to improve efficiencies and lower costs that would otherwise be incurred to operate the System and fund necessary improvements to the System. These efficiencies will keep rates lower for System customers than would be the case if they were forced to go it alone. PAWC St. No. 3-R p. 8.
- p. PAWC has committed to offer employment to eligible MACM employees following closing. PAWC St. No. 1 p. 13; PAWC St. No. 2 p. 15.
- q. MACM's rates increased January 1, 2017. Tr. 44. The System's customers' ability to shoulder costs alone is nearing its threshold. PAWC St. No. 6 p. 8.
- r. Costs and liabilities keep getting passed on to the ratepayers in small communities. Those ratepayers are in a much better situation if a large organization like PAWC can take over the system. MACM has kept up with unfunded mandates and other

costs, but rates have increased tremendously. Higher future rates is a concern for local officials. Tr. 72-73.

- s. Rates will be much lower under PAWC then they would be if the System remained separate, and tried to deal with its environmental issues on its own. PAWC St. No. 1-R p. 15.
- t. PAWC has the wherewithal to stabilize rates better than MACM. Tr. 76.
- u. If the Commission would disapprove the Transaction, the City would go into Act 47 (the Municipalities Financial Recovery Act, 53 P.S. §§ 11701.101 *et seq.*). Tr. 81.
- v. When the City issued a Request for Bids, it received two bids. PAWC St. No. 6 p. 9. Although the City conceivably could solicit new bids, in the event the instant Application is disapproved, the time required to do so would result in the City going into Act 47. Tr. 81.
- w. Current customers of MACM are not protected by the Pennsylvania Public Utility Code, the Commission, the Bureau of Investigation and Enforcement, the Office of Small Business Advocate and the Office of Consumer Advocate. MACM does not need to comply with the Code. Chapter 14 does not apply to MACM. That would all change as a result of the Transaction. PAWC St. No. 2 p. 23.

- x. PAWC provides enhanced and proven customer service, including access to PAWC's customer assistance program and PAWC's customer dispute resolution process. PAWC St. No. 1 p. 16; PAWC St. No. 2 p. 20.
- y. I&E witness Cline admitted that the transaction benefits the customers of the MACM system. I&E St. No. 2 p. 6.
- z. Rates for PAWC's existing customers will not increase in the short term due to the Transaction. PAWC St. No. 4 p. 8-9.
- aa. MACM assets have not been included in PAWC's current base rate proceeding. PAWC St. No. 1-R p 6.
- bb. The Transaction would add 22,000 direct or indirect customers to PAWC's existing wastewater customer base of 54,691. PAWC St. No. 1-R p. 13 and PAWC St. No. 2 p. 6-7.
- cc. By adding additional connections to the entire PAWC system, there are more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. PAWC St. No. 1 p. 16-17. PAWC St. No. 1-R p. 5.
- dd. PAWC's average net plant investment per customer is currently \$5,748, whereas MACM's average net plant investment per customer is currently \$7,364. PAWC Exh. RPN-4.

ee. By enacting Section 1329 and Section 1311(c), the Pennsylvania General Assembly intended to facilitate the acquisition of municipal water and wastewater systems by investor-owned utilities. PAWC St. No. 1 p. 17.

10. Ratemaking Rate Base

- a. The Purchase price of the System, pursuant to the First Amendment to the APA, is \$162,000,000, which is lower than the average of the two UVE's appraisals (\$176,091,500). PAWC St. No. 4 p. 3.
- b. AUS' appraisal was prepared in compliance with USPAP. PAWC St. No. 7 p. 13.
- c. In compliance with Section 1329, AUS's appraisal used three approaches to value the System: cost, market and income approaches. PAWC St. No. 7 p. 14.
- d. HRG's appraisal was prepared in compliance with the USPAP. MACM St. No. 1 p. 9.
- e. In compliance with Section 1329, HRG's appraisal used three approaches to value the System: cost, market and income approaches. MACM St. No. 1 p. 6.
- f. Ms. Everett's proposed adjustments to HRG's appraisal are not based on USPAP. Tr. 161.
- g. Ms. Everett did not use the cost, income and market approaches to value the System. She only considered HRG's market and cost approaches. OCA St. No. 1 pp. 19-24.

- h. Mr. Watkins' proposed adjustments to the appraisals prepared by HRG and AUS were not based on USPAP. Tr. 141; PAWC St. No. 7-R, Exh. JCW-3 (answer to Interrogatory No. 9).
- i. Mr. Watkins did not review USPAP prior to recommending adjustments in the appraisals prepared by AUS and HRG. Tr. 145.
- j. Mr. Watkins did not use the cost, income and market approaches to value the System. He only reviewed the income approaches of PAWC's UVE and MACM's UVE.
- k. The income approach used by AUS is a recognized income approach model, consistent with USPAP. PAWC St. No. 1-R pp. 5-6.
- l. The income approach model used by AUS included adequate amounts for capital expenditures because the System's treatment plants have recently undergone improvements, and many of the System's assets have long useful lives. In addition, mains will be relined and repaired, rather than replaced. PAWC St. No. 1-R pp. 6-7.
- m. PAWC is purchasing an on-going concern, not just assets. PAWC St. No. 7-R p. 3-4.
- n. Section 1329 valuation methods almost always result in a higher valuation than depreciated original cost. PAWC St. No. R-4 p. 19; Tr. 176-177; 182.

- o. Professional discretion was exercised in developing the appraisal. PAWC St. No. 7 p. 17. An appraiser/UBE has a reasonable range of discretion. PAWC St. No. 7-R p. 11.

11. Rate Stabilization Plan

- a. Upon closing, PAWC will charge MACM's current rates as its base rates within the service territory, and such base rates will not be increased until after the first anniversary of the closing date of the Transaction. APA Section 7.05(b).
- b. In light of PAWC's rate case filing history (approximately every three to four years), it is highly unlikely that rates for McKeesport area customers will be held constant pursuant to the APA for any period after the first base rate case in which MACM assets are included. The first base rate case in which the System could be included is likely to occur in 2020 or later. PAWC St. No. 4 p. 7.
- c. The Transaction does not involve a rate stabilization plan. PAWC St. No. 4. p. 6.

12. DSIC, AFUDC and Deferred Depreciation

- a. An amended wastewater LTIP must be filed and approved by the Commission before a DSIC can be implemented for the McKeesport service territory. PAWC St. No. 4-R p. 14.
- b. PAWC's DSIC for McKeesport would be governed by its existing DSIC tariff and all of the stated customer safeguards would be applicable. PAWC St. No. 4-R p. 15.

- c. PAWC's existing DSIC tariff was approved in Docket Nos. P-2014-2431005, *et al.* It is part of PAWC's Commission-approved tariff and therefore has the force and effect of law. PAWC St. No. 4-R p. 16.
- d. In conjunction with the LTIIP filing, PAWC will request permission to amend its existing DSIC tariff to include Rate Zone 13. Upon Commission approval of the LTIIP amendment, PAWC will make a tariff supplement compliance filing to include Rate Zone 13 (McKeesport Area) as part of the existing DSIC tariff. PAWC St. No. 4-R p. 15.
- e. PAWC will make improvements to the System after closing. PAWC St. No. 3 pp. 11-14. Some of these improvements will not be eligible for inclusion in PAWC's DSIC. PAWC St. No. 4 p. 10.
- f. PAWC intends to accrue AFUDC for non-DSIC eligible post-acquisition improvements for book and ratemaking purposes. PAWC St. No. 4 p. 9-10.
- g. PAWC also intends to defer depreciation on non-DSIC eligible post-acquisition improvements for book and ratemaking purposes. PAWC St. No. 4 p. 10.
- h. At the time of filing its Application, PAWC estimated transaction costs to be in the range of \$1,110,000 to \$1,310,000. PAWC St. No. 4 p.4. \$500,000 of this amount is for transfer taxes and \$150,000 is for title insurance. PAWC St. No. 4-R pp. 12-13.

13. Rates

- a. As required by Section 1329, PAWC included a *pro forma* tariff supplement in its Application. Application, Appendix A-13.
- b. During discovery, PAWC revised the *pro forma* tariff supplement to reflect a rate that is established in MACM's existing bulk service agreements with municipalities. PAWC St. No. 4-R, Exhibit RPN-1.
- c. Under the *pro forma* tariff (as revised), MACM's customers will be governed by rates for new PAWC Rate Zone 13. After PAWC closes on the Transaction, System customers will be subject to PAWC's prevailing wastewater tariff with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4 p. 4.
- d. System customers will continue to be billed monthly after closing, except that Port Vue Borough customers will continue to be billed quarterly. PAWC St. No. 4 p. 4.
- e. Industrial Pretreatment Program (McKeesport) provisions in the *pro forma* tariff supplement would require industrial users discharging to the MACM system to comply with the industrial pretreatment program and establish fees. PAWC St. No. 3 p. 20.
- f. The *pro forma* tariff supplement's language for the industrial pretreatment program was modeled after the tariff language for Scranton's industrial pretreatment

program, which was approved by the Commission in Docket No. A-2016-2537209.
PAWC St. No. 4 p. 5.

14. Municipal Agreements

- a. MACM currently has two agreements each, with eight municipalities, which PAWC would assume as part of the Transaction, in order to provide bulk service to surrounding communities following closing. PAWC St. No. 1 p. 20.
- b. Approval of these contracts is reasonable and serves an important public purpose because the bulk services provided under the contracts are essential to the provision of wastewater service in neighboring communities. PAWC St. No. 1 p. 20.

15. Cost of Service Study

- a. PAWC anticipates many more Section 1329 acquisitions. Requiring the Company to complete a separate cost of service study for each such acquisition is burdensome and costly. A typical cost of service study, as prepared by an outside consultant, costs approximately \$75,000. These are costs passed on to ratepayers as rate case expense. The parties to a rate case could ask for the information through discovery, if they see a need for it. PAWC St. No. 1-R p. 11-12.
- b. Requiring a cost of service study for the System, to use in the next rate case, would be contrary to the Commission's long-standing policy of moving toward single tariff pricing. PAWC St. No. 4-R pp. 11-12.

- c. Requiring PAWC to track expenses for the Port Vue system (a small portion of the MACM system) would be particularly burdensome. PAWC St. No. 1-R p 12.

APPENDIX B. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. §§ 1102, 1103, 1329.
2. PAWC has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).
3. PAWC must prove its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).
4. To meet its burden of proof, PAWC must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
5. As the party to whom the assets and service obligations would be transferred, PAWC must demonstrate by a preponderance of the evidence that it is technically, legally, and financially fit. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985).
6. PAWC has sufficient staff, facilities and operating skills to provide the proposed service.
7. PAWC has complied with the Pennsylvania Public Utility Code and the Commission's regulations, thereby rendering it legally fit to provide the proposed service.
8. PAWC has sufficient financial resources to provide the proposed service.
9. PAWC must demonstrate, by a preponderance of the evidence, that the proposed transaction will also promote the service, accommodation, convenience and safety of the public in a substantial way. *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

10. The Commission, as a trustee under the Environmental Rights Amendment, has an affirmative duty in its adjudications to consider the degradation, diminution, and depletion of the Commonwealth's public natural resources. PA. CONST. Art. I, § 27; *see also Pa. Environmental Defense Foundation v. Cmwlt. of Pa.*, No. 10 MAP 2015 (Pa., Slip Op. issued Jun. 20, 2017), p. 32 (*citing Robinson Twp. v. Cmwlt. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

11. PAWC is better capable than MAWC to prevent the degradation, diminution, and depletion of the Commonwealth's public natural resources.

12. The preponderance of the evidence demonstrates that the proposed transaction will promote the service, accommodation, convenience and safety of the public in a substantial way.

13. PAWC must demonstrate by a preponderance of the evidence that the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the parties or the fair market value of the selling utility. 66 Pa. C.S. § 1329.

14. PAWC's proposed rate base value of \$162,000,000 is reasonable and in compliance with 66 Pa. C.S. § 1329.

15. PAWC must submit an amended long term infrastructure improvement plan, and receive Commission approval, before including the McKeesport service territory in its DSIC. 66 Pa. C.S. §§ 1352-1353, 52 Pa. Code §§ 121.3-121.4.

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

17. There is no reason to institute proceedings to further review the agreements to be assigned from MACM to PAWC.

APPENDIX C. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Application filed by PAWC on May 24, 2017 is granted.
2. That the Secretary's Bureau shall issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (a) the transfer, by sale, of substantially all of MACM's assets, properties and rights related to the System to PAWC; and (b) PAWC's right to begin to offer, render, furnish and supply wastewater service in the areas served by MACM in the City of McKeesport, the City of Duquesne, Port Vue Borough, and the Borough of Dravosburg, and a portion of West Mifflin Borough, Allegheny County, Pennsylvania and to three bulk service interconnection points located in Liberty Borough, White Oak Borough, and North Versailles Borough, Allegheny County, Pennsylvania.
3. That PAWC shall, upon closing of the Transaction, be permitted to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement contained as Appendix A-13 of the Application (as modified by PAWC Exhibit RPN-1), to be effective on the date of issuance.
4. That, under 66 Pa. C.S. § 1329(c), a rate base addition of \$162,000,000 associated with the acquisition of the System is approved.
5. That, under 66 Pa. C.S. § 1329(d), PAWC may collect a DSIC related to the System prior to the first base rate case in which the System plant-in-service is incorporated into rate base, subject to the conditions that PAWC file, and the Commission approve, an amended wastewater LTIP incorporating the McKeesport area and that, upon Commission approval of the amended LTIP, PAWC make a compliance tariff supplement filing incorporating the McKeesport area into PAWC's existing wastewater DISC tariff provisions.

6. That, under 66 Pa. C.S. § 1329(f), PAWC may accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.

7. That, under 66 Pa. C.S. § 1329(f), PAWC may defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.

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

a. Asset Purchase Agreement By and Among the City of McKeesport, The Municipal Authority of the City of McKeesport, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of September 9, 2016, as amended by First Amendment to the Asset Purchase Agreement, Dated as of May 15, 2017, along with related City of McKeesport General Obligation Note, Series of 2016, No. R-1, related Intercept Agreement, Dated November 30, 2016, and related Second Deposit Note, which is yet to be executed;

b. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2010;

c. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2008;

d. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Lincoln Borough, Dated as of September 15, 2009;

e. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Lincoln Borough, Dated as of September 15, 2009;

f. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Elizabeth Township, Dated as of October 14, 2008;

g. Corrective Action Agreement By and Among The Municipal Authority of

the City of McKeesport and Elizabeth Township, Dated as of October 14, 2008;

h. Service Agreement By and Among The Municipal Authority of the City of McKeesport and The Municipal Authority of Westmoreland County for White Oak Borough, Dated as of August 2009;

i. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and The Municipal Authority of Westmoreland County for White Oak Borough, Dated as of August 2009;

j. Service Agreement By and Among The Municipal Authority of the City of McKeesport, North Versailles Township, and The North Versailles Township Sanitary Authority, Dated as of October 1, 2008;

k. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport, North Versailles Township, and The North Versailles Township Sanitary Authority, Dated as of August 21, 2008;

l. Service Agreement By and Among The Municipal Authority of the City of McKeesport and East McKeesport Borough, Dated as of September 11, 2008;

m. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and East McKeesport Borough, Dated as of August 2008;

n. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Versailles Borough, Dated as of October 22, 2008;

o. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Versailles Borough, Dated as of October 22, 2008;

p. Service Agreement By and Among The Municipal Authority of the City of McKeesport and Glassport Borough, Dated as of August 19, 2008; and,

q. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Glassport Borough, Dated as of August 19, 2008.

9. That all other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner are granted.