



September 5, 2017

VIA E-FILE

David P. Zambito

Direct Phone 717-703-5892
Direct Fax 215-989-4216
dzambito@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

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 REPLY BRIEF

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply 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

Thank you for your attention to this matter. 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
Honorable John F. Coleman, Commissioner

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 Reply 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:

Gina Miller, Esquire
Erika McLain, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
Counsel for *Bureau of Investigation & Enforcement*

Thomas S. Wyatt, Esquire
Dilworth Paxson LLP
1500 Market Street
Suite 3500E
Philadelphia, PA 19102
Counsel for *Municipal Authority of the City of McKeesport and the City of McKeesport*

Christine Maloni Hoover, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Counsel for *Office of Consumer Advocate*

DATED: September 5, 2017



David P. Zambito, Esquire
Counsel for
Pennsylvania-American Water Company

**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 : Docket No. A-2017-2606103
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 :

**REPLY BRIEF OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

David P. Zambito, Esq. (PA ID No. 80017)
Jonathan P. Nase, Esq. (PA ID No. 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101

Susan Simms Marsh, Esq. (PA ID No. 44689)
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Counsel for Pennsylvania-American Water Company

Dated: September 5, 2017

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATEMENT OF QUESTIONS PRESENTED.....	1
III.	LEGAL STANDARDS.....	2
IV.	SUMMARY OF ARGUMENT.....	2
V.	ARGUMENT.....	4
A.	Section 1102 Approvals.....	4
1.	Fitness.....	4
2.	Public Benefit.....	4
a.	Members of the Public-at-Large.....	5
b.	MACM.....	8
c.	The City.....	9
d.	Other Municipalities.....	10
e.	MACM’s Existing Customers.....	11
f.	PAWC’s Existing Wastewater Customers.....	15
g.	PAWC’s Existing Water Customers.....	21
h.	Summary – The Transaction has Affirmative Public Benefits of a Substantial Nature.....	22
3.	Cost of Service Studies.....	22
B.	Section 1329 Approvals.....	23
1.	Ratemaking Rate Base.....	23
a.	Section 1329 – Legal Issues.....	23
(1)	Challenges to UVE Appraisals.....	24
(2)	Imposition of a Six-Month Deadline.....	33
b.	Appraisals.....	35
c.	The System’s Value for Ratemaking Rate Base Purposes is \$162,000,000.....	37
2.	Distribution System Improvement Charge, Allowance for Funds Used During Construction, Deferred Depreciation, and Transaction Costs.....	38
a.	DSIC.....	38

b.	Allowance for Funds Used During Construction and Deferred Depreciation	39
c.	Transaction and Closing Costs	40
3.	No Rate Stabilization Plan	40
4.	Revised <i>pro forma</i> tariff supplement	41
C.	Section 507 Approvals	42
VI.	CONCLUSION	42

TABLE OF AUTHORITIES

	Page(s)
State Cases	
<i>City of York v. Pa. Pub. Util. Comm'n</i> , 449 Pa. 136 (1972).....	4
<i>Cmwlth., Dep't of Env'tl. Res. v. Butler County Mushroom Farm</i> , 499 Pa. 509 (1982).....	25
<i>Consulting Engineers v. Licensure Bd.</i> , 522 Pa. 204 (1989).....	25
<i>Green v. Milk Control Comm'n</i> , 340 Pa. 1 (1940).....	25
<i>Guinn v. Alburtis Fire Co.</i> , 531 Pa. 500 (1992).....	25
<i>Kurtz v. Erie</i> , 133 A.2d 172 (Pa. 1957).....	34
<i>Kusza v. Maximonis</i> , 363 Pa. 479, 482, 70 A.2d 329, 331 (1950).....	25
<i>Meier v. Maleski</i> , 670 A.2d 755 (Pa. Cmwlth. 1996).....	24, 25
<i>O'Donoghue v. Laurel Savings Ass'n</i> , 556 Pa. 349 (1999).....	25
<i>Pa. Environmental Defense Foundation v. Cmwlth. of Pa.</i> , No. 10 MAP 2015 (Pa., Slip Op. issued Jun. 20, 2017)	7
<i>Pa. School Bds. Ass'n, Inc. v. Cmwlth., Public School Employees' Retirement Bd.</i> , 863 A.2d 432 (Pa. 2004).....	25
<i>Popowsky v. Pa. Pub. Util. Comm'n</i> , 594 Pa. 583 (2007).....	6
<i>West Mifflin Area Sch. Dist. v. Zahorchak</i> , 4 A.3d 1042 (Pa. 2010).....	34

Pennsylvania Public Utility Commission Cases

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) *passim*

Pa. Pub. Util. Comm'n v. Pennsylvania-American Water Company, Docket No. R-2017-2595853 3

Pennsylvania Constitution

PA. CONST. Art. I, § 27.....7

State Statutes

1 Pa. C.S. § 604.....34

1 Pa. C.S. § 1921.....24, 25

18 Pa. C.S. §§ 4902 and 4904.....28

66 Pa. C.S. § 507.....42, 43

66 Pa. C.S. § 1102(a)1, 43

66 Pa. C.S. § 1311(c)21, 22

66 Pa. C.S. § 1329..... *passim*

Act 47 - Municipalities Financial Recovery Act, 53 P.S. §§ 11701.101 *et seq.*.....10

Regulations

52 Pa. Code § 5.361(b)23

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”) files this Reply Brief in response to the Main Briefs of the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”) (collectively, the “Public Advocates”), and the joint brief filed by the City of McKeesport (“City”) and the Municipal Authority of the City of McKeesport (“MACM”). Most of the arguments raised by the Public Advocates have already been addressed in PAWC’s Main Brief. Accordingly, for the sake of brevity and convenience, PAWC will cross-reference several portions of its Main Brief in response to arguments offered by the Public Advocates. Also, for ease of reference, this brief will use the same outline as the parties used for their Main Briefs.

Upon consideration of the substantial record evidence developed in this case and applicable law, the Commission should grant, without modification (except as noted in PAWC’s Main Brief), the application filed by PAWC at this docket (“Application”), requesting (among other things) that the Pennsylvania Public Utility Commission (“Commission”) issue Certificates of Public Convenience to PAWC pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of MACM (“Transaction”), 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 pursuant to Section 1329.

II. STATEMENT OF QUESTIONS PRESENTED

Several of the questions that were addressed in PAWC’s Main Brief were not contested in the other parties’ Main Briefs. This Reply Brief focuses on the contested issues. Therefore, this

Reply Brief only addresses the following questions presented (using the same outline as used in the Main Brief):

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, the Commission should approve the Transaction with only the conditions specified in PAWC's Main Brief.*

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, an amended wastewater long term infrastructure improvement plan ("LTIIP") which includes the McKeesport service territory. No additional conditions, such as a time limitation within which PAWC must submit an amended LTIIP, should be required.*

III. LEGAL STANDARDS

There is no material dispute among the parties as to the applicable legal standards. As a result, this Reply Brief incorporates by reference the discussion of legal standards set forth in PAWC's Main Brief.

IV. SUMMARY OF ARGUMENT

The parties agree that PAWC must demonstrate that the proposed acquisition will affirmatively benefit the public in some substantial way. The parties further agree that an acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse

impacts of the transaction. Comparing the benefits to the alleged detriments for each group impacted by the Transaction, it is clear that the benefits outweigh the detriments for each group. The Transaction has many benefits for the public-at-large, MACM, the City, other municipalities, MACM's existing customers, PAWC's existing wastewater customers, and PAWC's existing water customers. The "detriments" alleged by the OCA are generally not detriments at all or are based on the OCA's disagreement with Section 1329. Section 1329 is the law of the Commonwealth; arguments against it should be addressed to the Legislature, not the Commission.

The Commission should not order PAWC to complete a cost of service study as a condition of approval of the Application. The Commission will be examining issues related to I&E's underlying reasons for requesting a cost of service study (namely, the rate treatment of costs associated with the stormwater component of wastewater service) in PAWC's current base rate case, *Pa. Pub. Util. Comm'n v. Pennsylvania-American Water Company*, Docket No. R-2017-2595853 ("*PAWC's 2017 Base Rate Case*"). The resolution of that case may mitigate the need for a separate cost of service study and, accordingly, it would be premature (and an unnecessary increase to future rate case expense) to require a cost of service study as a condition of Application approval. Moreover, I&E could request PAWC to complete a cost of service study pursuant to Commission discovery rules in PAWC's next base rate.

The Commission should reject OCA's proposed adjustments to the utility valuation expert ("UVE") fair market evaluations which were prepared independently by Herbert, Rowland & Grubic, Inc. ("HRG") on behalf of MACM and by Associated Utility Services, Inc. ("AUS") on behalf of PAWC. OCA has failed to satisfy its burden of persuasion that the UVE appraisals should be modified in any manner. The ratemaking rate base attributable to the System should be \$162,000,000.

The Commission should permit PAWC to implement a DISC for the McKeesport service territory, subject to the condition that PAWC submit, and receive Commission approval of, an amended wastewater LTIP which includes the McKeesport service territory. The Commission, however, should reject OCA's proposed 30-day deadline for PAWC to file that LTIP as arbitrary and unreasonable. OCA has submitted no evidence as to why a 30-day deadline is necessary or appropriate.

V. ARGUMENT

A. Section 1102 Approvals

1. Fitness

As a certificated public utility, PAWC enjoys a rebuttable presumption that it is legally, technically, and financially fit. PAWC nonetheless introduced substantial evidence of its fitness. *See*, PAWC Main Brief pp. 14-16 and citations therein. No party has challenged PAWC's fitness. *See*, I&E Main Brief p. 12, OCA Main Brief p. 11, MACM Brief p. 9. The ALJs should therefore find that PAWC is fit to provide wastewater service in the applied-for service territory.

2. Public Benefit

The parties agree that PAWC must demonstrate that the proposed acquisition will affirmatively benefit the public in some substantial way. *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136 (1972). The parties also agree that an acquisition provides an affirmative benefit if the benefits of the transaction outweigh its detriments. PAWC Main Brief p. 16, OCA Main Brief p. 14, and I&E Main Brief 12.

OCA's and I&E's Main Briefs, however, do not weigh the alleged benefits of the Transaction against the alleged detriments. When the alleged benefits and detriments are carefully considered, it becomes clear that some of the alleged detriments of the Transaction are not detriments at all. Other alleged detriments have nothing to do with the facts of the Transaction, but flow inevitably from policy decisions made by the General Assembly, which the Commission is bound to follow. When considered in this manner, it is clear that the benefits of the Transaction outweigh the detriments, for every impacted group.¹

a. Members of the Public-at-Large

In its Main Brief pp. 17-21, PAWC argued that the Transaction benefits the public-at-large, for the following reasons:

- The Transaction is beneficial because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In their Main Briefs, none of the other parties alleged any detriments of the Transaction to the public-at-large. OCA, however, disputes PAWC's argument that the Transaction is beneficial

¹ As noted in PAWC's Main Brief, the groups that will benefit from the Transaction are not mutually exclusive. To clarify how the Transaction will benefit each group, therefore, this brief will list some benefits multiple times.

by promoting regionalization and consolidation. OCA claims that PAWC has only offered unsupported generalizations about regionalization and economies of scale. OCA Main Brief pp. 14, 24. PAWC submits that the benefits that flow from economies of scale are difficult to measure prior to closing on the Transaction. The Commission, however, does not require benefits to be quantifiable. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583 (2007). The benefits of economies of scale are real, supported and not generalized.

In any event, there is considerable evidence of the economic benefits of the Transaction. The City will receive a financial “lifeline” and avoid Act 47. Tr. 74, 77, 81. It will use some of the proceeds of the Transaction for economic development – improving infrastructure and marketing the City. PAWC St. No. 6 p. 9. These activities will have a ripple effect, promoting economic activity in the McKeesport area. In addition, none of the present employees of MACM will lose their jobs. PAWC St. No. 1 p. 13. In addition, after closing, PAWC will undertake improvements to rectify environmental deficiencies in the System. PAWC Main Brief p. 19. There will be a further economic benefit of the Transaction in that the System will become taxable property as a result of a transfer to a private entity. PAWC St. No. 6 p. 9.

OCA also questions whether the Transaction is beneficial from an environmental perspective, claiming there is no evidence that MACM could not undertake the necessary improvements, or that PAWC could complete them at lower cost than MACM. OCA Main Brief pp. 19, 24. PAWC respectfully disagrees for several reasons. First, there is record evidence demonstrating that PAWC will improve the Port Vue portion of the System to address environmental deficiencies, which probably would not have occurred if Port Vue had remained a stand-alone system and not become part of the Transaction. PAWC St. No. 1-R p. 11. It is significant to note, in this regard, that I&E questions whether MACM ever had any intention of rectifying the problems in the Port Vue portion of the System. I&E Main Brief pp. 27-28. Finally,

the City and MACM state in their Main Brief p. 12 that the anticipated upcoming capital expenditures could exhaust the MACM's resources.

Second, the record contains ample evidence of the financial constraints facing MACM. For example, MACM is nearing its debt capacity, PAWC St. No. 6 p. 8, and ratepayers have a limited ability to pay ever-increasing MACM rates. PAWC St. No. 6 p. 8.

Third, the record clearly demonstrates that PAWC is in a better position to address environmental deficiencies. PAWC has greater expertise in environmental matters, particularly considering that PAWC has available to it the resources of the Service Company. *See*, PAWC Main Brief pp. 14-15, 18 and citations therein. Moreover, from a financial perspective, PAWC is in a better position than MACM to finance these environmental projects, due to PAWC's better credit rating, its superior access to capital markets, and its ability to access equity markets. PAWC Main Brief pp. 15, 18.

Fourth, to put the issue in its simplest terms, the record clearly establishes that MACM presently owns the System, and that portions of the System are in disrepair. Tr. 44. In contrast, PAWC has a good record of compliance with applicable environmental laws and regulations and has demonstrated its commitment to investing in necessary capital improvements and resources. PAWC St. No. 1 pp. 14, 15. The public interest would clearly be furthered by a transaction, such as this, which transfers a system to a new owner with a better record of environmental stewardship.²

² As discussed in greater detail in PAWC's Main Brief (pp. 19-20), the Commission, as a trustee of the Commonwealth's environmental resources, has an affirmative duty under the Environmental Rights Amendment of the Pennsylvania Constitution to take the superior ability of PAWC to address environmental deficiencies into consideration in weighing public benefits and deciding the Application. PA. CONST. Art. I, § 27; *see generally Pa. Environmental Defense Foundation v. Cmwlth. of Pa.*, No. 10 MAP 2015 (Pa., Slip Op. issued Jun. 20, 2017), p. 32 (*citing Robinson Twp. v. Cmwlth. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

Weighing the benefits and detriments of the Transaction to the public-at-large, there can be little doubt that the benefits outweigh the detriments. The Application should accordingly be granted.

b. MACM

PAWC submits that MACM will enjoy the same benefits of the Transaction as any other member of the public-at-large:

- The Transaction is beneficial because it promotes the Commission’s policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company’s credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In addition, PAWC argued, in its Main Brief p. 21, that the Transaction has specific benefits for MACM:

- MACM will receive a portion of the purchase price, pay off its debt, and then be dissolved and terminated.
- MACM voluntarily entered into the Asset Purchase Agreement (“APA”) because it wants to get out of the utility business.

No party has identified any detriments of the Transaction for MACM, nor have they disputed the benefits delineated by PAWC. Accordingly, weighing the benefits and detriments of the Transaction to MACM, there can be little doubt that the benefits outweigh the detriments.

c. The City

PAWC submits that the City will enjoy the same benefits of the Transaction as any other member of the public-at-large:

- The Transaction is beneficial because it promotes the Commission’s policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company’s credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In addition, PAWC argued, in its Main Brief pp. 21-22, that the Transaction has specific benefits for the City, including:

- The City will receive a portion of the purchase price, which it will use to promote other public purposes (balancing the City’s budget, investing in infrastructure improvements, and improving services to City residents).³
- The System will become taxable property.
- City residents who are employees of the System will keep their jobs.

³ The public purpose of this voluntary transaction is significant. As the City/MACM state in their Main Brief p. 10: “These are assets owned by the public, and the City and the Authority are compelled to achieve the true value for its citizens and surrounding communities.”

- The City will avoid going into Act 47 (the Municipalities Financial Recovery Act, 53 P.S. §§ 11701.101 *et seq.*).

No party has identified any detriments of the Transaction for the City, nor have they disputed the benefits delineated by PAWC. In fact, the OCA admits that the Transaction is beneficial for the City. OCA Main Brief pp. 13, 14-15. Weighing the benefits and detriments of the Transaction to the City, there can be little doubt that the benefits outweigh the detriments.

d. Other Municipalities

PAWC submits that municipalities other than the City will enjoy the same benefits of the Transaction as any other member of the public-at-large:

- The Transaction is beneficial because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In addition, PAWC argued, in its Main Brief pp. 22-23, that the Transaction benefits municipalities other than the City in the sense that residents of these municipalities will remain customers of the System. As a result, those residents will enjoy the same benefits of the Transaction as do any other customers of the System (see Section V.A.2.e. of this Reply Brief, *infra*).

OCA argues that the Transaction has an adverse impact on the residents of Duquesne and Dravosburg, because those municipalities will not share in the proceeds of the Transaction. OCA St. 1 p. 14. PAWC submits that this is not an adverse impact. It is simply an acknowledgement that the Transaction does not benefit all groups in the same way. It is unreasonable to expect the Transaction to benefit all impacted stakeholders in the same way. No one expects PAWC's existing wastewater customers will benefit from the Transaction in the same way that MACM will benefit from the Transaction, yet both stakeholders will benefit from the Transaction. To determine if the Transaction provides substantial affirmative benefits to a particular group, one must consider the benefits and detriments to that group, not a different group.

No party has alleged any other detriment specific to other municipalities. Consequently, weighing the benefits and detriments of the Transaction to municipalities other than the City, there can be little doubt that the benefits outweigh the detriments.

e. MACM's Existing Customers

PAWC submits that MACM's existing customers will enjoy the same benefits of the Transaction as any other members of the public-at-large:

- The Transaction is beneficial because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In addition, PAWC argued, in its Main Brief pp. 23-28, that the Transaction specifically benefits MACM's existing customers for the following reasons:

- The Transaction will promote rate stability, in part, because PAWC will adopt MACM's base rates existing at the time of closing on the Transaction, will not increase rates until after the first anniversary of the closing date,⁴ and is unlikely to include MACM customers in its rates until at least 2020.
- Rates will be lower under PAWC than they would be if the System remained separate and had to deal with its infrastructure and environmental issues on its own.
- The System would become a Commission-regulated utility, and its customers would gain the protection of the Code, the Commission, I&E, OCA, and the Office of Small Business Advocate.
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance program (H2O Help to Others) and customer dispute resolution process.

I&E's Main Brief p. 13 concedes that the Transaction has "substantial benefits to customers in the MACM service area." In contrast, OCA's Main Brief p. 15-16 claims that the Transaction adversely impacts MACM's existing customers because they lose the benefit of grants from the Pennsylvania Infrastructure Investment Authority (PENNVEST), which will need to be repaid. OCA St. No. 1 p. 8. PAWC submits that this aspect of the Transaction is neither a detriment nor a benefit to MACM's existing customers. Since the grant funds were used to construct improvements to the System, which will remain part of the System after closing, ratepayers will continue to receive the benefit of those funds. To the extent that the grant funds will be repaid, there will be no impact on ratepayers whatsoever. At closing, PAWC will pay MACM, which will use some of those proceeds to re-pay PENNVEST's grant. Thus, this aspect of the Transaction is neither a detriment nor a benefit to MACM's customers.

⁴ PAWC, MACM and the City acknowledged in the APA that the Commission has ratemaking authority.

To the extent that MACM will use some of the proceeds of the Transaction to pay off an outstanding PENNVEST loan, the Transaction is actually a benefit to MACM's ratepayers. At closing, funds will go from PAWC to MACM, which will use some of those funds to pay off a PENNVEST loan that would otherwise be paid off by ratepayers. This aspect of the Transaction is clearly another benefit for MACM's ratepayers.

OCA's Main Brief pp. 16-17 claims that the Transaction is a detriment to MACM's existing customers because PAWC's cost of ownership is greater than MACM's cost of ownership. OCA St. No. 1 p. 10. PAWC respectfully disagrees with the OCA's analysis for several reasons. First, the OCA's analysis is incomplete; it only considers a few of the costs of operating a utility (cost of capital, taxes and depreciation).

Second, OCA contends that MACM's existing revenues are insufficient to cover the costs of PAWC's ownership. The OCA overlooks the fact that MACM's rates have increased tremendously, Tr. 72, despite the infrastructure and environmental issues that remain in the System. If the System remains under MACM's ownership, and MACM is forced to borrow money to address those issues -- and increase rates even further to cover these costs -- the results of OCA's analysis might be very different.

Third and most importantly, the OCA's analysis has little to do with this case; it produces the same result in every Section 1329 proceeding. OCA witness Everette states: "The cost of capital of an investor-owned utility is *inherently higher* than the cost of capital of a municipal corporation." OCA St. 1 p. 10 (emphasis added). She then considers taxes, which a public utility pays and a municipal entity does not. She then considers the depreciation and rate of return on the rate base that applies when a private entity purchases a municipal system pursuant to Section 1329. Focusing solely on these costs, she concludes that this Transaction is a detriment to MACM's existing ratepayers. OCA St. No. 1 pp. 10-11.

The problem with OCA witness Everette’s analysis is that it leads to the conclusion that no public utility acquisition of a municipal system pursuant to Section 1329 is ever in the public interest. This is because (1) cost of capital of a public utility (according to the OCA) is always more than the cost of capital of a municipality; (2) public utilities will always pay more in taxes than municipal entities; and (3) depreciation and rate of return will always be higher after an acquisition, compared to before the acquisition, because the rate base established through Section 1329 is almost always going to be higher than the depreciated original cost of the municipality’s existing system.

The OCA’s conclusion flies in the face of the public policy established in Section 1329. Section 1329 was adopted to allow municipalities to sell their assets to public utilities and other entities and to get a fair price for the true value of the assets. Moreover, as the Commission acknowledged in *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*”),⁵ Section 1329 provides a new method for valuing these acquisitions for rate base purposes, and that method that will almost always produce a higher result than will depreciated original cost.

Section 1329 was passed to further a policy goal of enabling municipalities to monetize their assets for a higher value than they could obtain if the acquiring public utility was bound by traditional rate-making principles. That is exactly what happened in this case. To the extent that this Transaction furthers the policy goals embodied in Section 1329, it should be considered a public benefit, not a detriment.

⁵ PAWC recognizes that this decision is currently being reconsidered by the Commission with regard to different issues.

OCA's Main Brief p. 15 contends that current customers of MACM will see potentially higher rate increases than if MACM continued to provide service. The OCA, however, failed to cite anything in the record to support this assertion. PAWC, on the other hand, introduced testimony that rates under PAWC will probably be lower than the rates of MACM if MACM was forced to deal with its infrastructure and environmental issues on its own. PAWC St. No. 1-R p. 15.

Considering all of the above, PAWC submits that a careful weighing of the benefits and alleged detriments of the Transaction to MACM's existing customers compels the conclusion that the benefits to MACM's existing customers outweigh the detriments. The Application should accordingly be granted.

f. PAWC's Existing Wastewater Customers

PAWC submits that PAWC's existing wastewater customers will enjoy the same benefits of the Transaction as any other member of the public-at-large:

- The Transaction is beneficial because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In addition, PAWC argues, in its Main Brief pp. 28-32, that the Transaction will benefit PAWC's existing wastewater customers for the following reasons:

- In the short term, the Transaction will have no impact on the rates paid by PAWC's existing customers. In terms of PAWC's next base rate case, the rate impacts for PAWC's existing wastewater customers are unclear because so many variables must be considered when predicting future rates.
- In the long term, the Transaction will benefit PAWC's existing wastewater customers because it will add a substantial number of new customers to PAWC's wastewater customer base, who can share the cost of operating the entire PAWC wastewater system.
- The Transaction will promote the public policy goals embodied in Section 1329.
- The Transaction will promote the public policy goal of maintaining public infrastructure.

I&E argues that the Transaction offers "tentative benefits" for PAWC's existing customers. I&E Main Brief p. 14. Consequently, I&E argues that conditions should be attached to the Commission's approval of the Application. PAWC will address these suggested conditions in Section IV.A.3. of this Reply Brief, *infra*.

OCA's Main Brief p. 20 alleges that the Transaction is a detriment to PAWC's existing wastewater customers because, according to the OCA, PAWC did not support its claims that an expanded customer base will mitigate the level of net plant investment per customer and lower or slow the increase in the cost of operating the System. Even if this allegation were true (which it is not), PAWC submits that this allegation is not a detriment to existing PAWC customers. Rather, this allegation simply challenges one of the benefits that flow from the Transaction to PAWC's existing wastewater customers. Thus, even if the ALJs would agree with the OCA on this point (which they should not), it would only undermine one benefit of the Transaction for PAWC's existing wastewater customers. Many other benefits would remain.

PAWC, however, submits that the ALJs should not agree with the OCA on this point; PAWC in fact has shown that an expanded customer base will benefit existing wastewater customers. PAWC has introduced extensive testimony on the benefits to all ratepayers that flow from an expanded customer base. For example, as stated above, spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings, which facilitates borrowing at lower interest rates. PAWC St. No. 1-R p. 2. In addition, customers who today contribute toward improvements elsewhere in PAWC's system will benefit from similar contributions by other customers toward improvements in the future. It may not be possible to predict precisely when the pendulum will swing back and forth, but there can be no doubt that it will happen over time.⁶ *See also* PAWC Main Brief pp. 28-30 and citations therein.

The only detriment of the Transaction that OCA alleges, with regard to PAWC's existing wastewater customers, is that the Transaction would increase rates to those customers. OCA Main Brief p. 24. The OCA suggests that PAWC paid too much for the System, alleging that PAWC paid twice the book value of the System. OCA Main Brief p. 19. In fact, OCA's Main Brief contains numerous references to the book value of the System, the depreciated original cost of the System, or traditional ratemaking principles.⁷

The problem with OCA's analysis, of course, is that those traditional ratemaking principles do not apply to the new world of Section 1329 transactions. As the Commission recognized in the

⁶ I&E's Main Brief pp. 15-16 notes that PAWC cannot quantify when operational efficiencies will benefit PAWC's existing customers, but admits "[t]o the extent that the identified benefits materialize, I&E does not dispute their value to existing customers."

⁷ As explained in PAWC's Main Brief, reliance on the book value as reflected in a municipal entity's records is highly unreliable. The calculation of the true depreciated original cost of a system involves a much more extensive analysis and typically results in a higher value than that reflected in the municipality's books. PAWC Main Brief p. 27 n.9.

Aqua/New Garden Order,⁸⁸ Section 1329 created a new method of valuing municipal systems, specifically to increase the value that municipalities can obtain for their assets. The law would be completely undermined if public utilities had to pay greater amounts for municipal systems, but could only put a fraction of that amount into rate base. The Commission should not implement Section 1329 in a way that discourages parties from using it, because that approach would frustrate the will of the Legislature. Instead, the Commission should implement the law in a way that carries out the obvious policy goals of the Legislature. OCA may not agree with Section 1329, but those arguments should be addressed to the Legislature rather than the Commission.

OCA alleges that the Transaction will cause rates for PAWC's wastewater customers to increase by 17%. OCA Main Brief p. 25. The OCA reaches this conclusion because it calculates that the Transaction will cause PAWC's net plant investment per customer to increase by 17%. OCA Main Brief p. 21. This is error because there is no direct relationship between net plant investment per customer and rates for PAWC's existing wastewater customers. No one knows, at this time, what the impact of the Transaction will be on PAWC's existing wastewater customers; there are too many variables to predict, including the extent (if any) to which the Commission permits PAWC to spread the costs of the Transaction to PAWC's water customers. PAWC St. No. 4-R p. 3. As I&E's Main Brief p. 17 states, the acquisition will have an "uncertain rate impact" on PAWC's existing customers. Due to the speculative nature of evidence about future rates, PAWC argued in its Main Brief that future rates should be considered, but given limited weight. PAWC Main Brief p. 30.

⁸⁸ "[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." *Aqua/New Garden Order* p. 68.

Moreover, OCA's calculation of net plant investment per customer is misleading. The difficulty in calculating net plant investment per customer in this case comes from the statistical treatment of bulk customers. The bulk connections in the System allow MACM to provide service indirectly to approximately nine thousand individual customers. Treating a bulk customer the same as a typical residential household is obviously misleading, but that is what OCA has done. OCA St. No. 1 pp. 16-17.

To provide a more statistically sound measure, PAWC witness Nevirauskas re-calculated net plant investment per customer by counting each indirect customer receiving service as one customer (rather than counting each bulk connection as one customer). Thus, in PAWC Exh. RPN-4, Mr. Nevirauskas took the total number of customers in PAWC's wastewater system, subtracted the number of bulk customers, and added the number of indirect customers, to determine the number of existing wastewater customers in PAWC's system. Mr. Nevirauskas then used this figure to calculate PAWC's net plant investment per customer before the Transaction, and found that the result was \$5,748. To provide an apples-to-apples comparison, Mr. Nevirauskas then calculated the net plant investment per customer for the MACM System using the number of direct and indirect customers (*i.e.*, 22,000 customers) rather than the number of individual direct customers plus the number of bulk customers. PAWC Exh. RPN-4. Using this methodology, Mr. Nevirauskas calculated the net plant investment for the MACM System is currently \$7,364. He then calculated PAWC's post-acquisition net plant investment per customer using this same methodology (using total direct and indirect customers, rather than direct customers plus bulk

connections), and found the result was \$6,167 (an increase of \$419 or 7.3%).⁹ Tr. 59-61. PAWC contends this methodology provides a more accurate measure of the impact of the Transaction.

PAWC submits that its revised methodology is also a more meaningful measure of the impact of the Transaction. As a practical matter, PAWC, in deciding whether or not to enter into the Transaction, and in negotiating the purchase price for the System, considered the number of indirect customers to be a significant factor. That number affects the size of the necessary wastewater treatment facilities, rates for direct and bulk customers, and many other factors. As a result, PAWC submits that the calculation of net plant investment per customer should include these indirect customers to reflect their importance in this Transaction. The OCA's approach, in contrast, produces results that are misleading in the context of this Transaction. Public policy decisions should not be based on misleading statistics.

PAWC contends that the Commission should use its methodology, rather than the OCA's methodology, to calculate net plant investment per customer. If it does, the Commission should approve the Transaction. In the *Aqua/New Garden Order* p. 66, the Commission approved a public utility company's application to acquire a wastewater system that was calculated to increase the utility's net plant investment per customer from \$3,714 to \$4,704 (\$990 or 27%). In this case, just as in the *Aqua/New Garden* proceeding, the many benefits of the Transaction to the public utility's existing wastewater customers, outweigh the alleged detriments of the Transaction for these customers.

⁹ It is interesting to note, in this regard, that I&E's witness Cline also calculated PAWC's net plant investment per customer. Although PAWC disagreed with his calculations, PAWC St. No. 1-R pp. 6-8, Mr. Cline determined that the Transaction would cause PAWC's net plant investment per customer to rise from \$7,479 to \$8,264 (an increase of \$785 or approximately 10.5%). I&E Main Brief p. 17.

g. PAWC's Existing Water Customers

PAWC submits that PAWC's existing water customers will enjoy the same benefits of the Transaction as any other member of the public-at-large:

- The Transaction is beneficial because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems.
- The Transaction is beneficial from an environmental perspective because PAWC is in a better position to address environmental deficiencies and operate the System in an environmentally-friendly manner due to its greater expertise and financial resources.
- The Transaction is beneficial from an economic perspective. Spreading fixed costs across a larger asset platform and customer base is positive toward the company's credit and credit ratings, which facilitates borrowing at lower interest rates. 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 System and fund necessary improvements.

In its Main Brief pp. 17 and 21, OCA argues that the Transaction will have an adverse impact on PAWC's existing water customers because some of the costs of the Transaction might be spread to PAWC's water customers pursuant to 66 Pa. C.S. § 1311(c). PAWC showed the fallacy of this argument in its Main Brief p. 30 n. 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.

Consequently, the adverse impact alleged by OCA is illusory and should be ignored.

OCA's Main Brief p. 21 argues that PAWC's water customers should not have to pay increased rates as a result of the Transaction because they already have to pay for wastewater disposal, whether to PAWC, another provider, or their own wastewater system. The problem with this argument is that it applies any time a wastewater provider attempts to take advantage of 66 Pa. C.S. § 1311(c). Consequently, this is not an argument against the Transaction; it is an argument against the policy embodied in 66 Pa. C.S. § 1311(c). As a result, this argument is better addressed to the Legislature than the Commission.

Weighing the benefits and detriments of the Transaction to PAWC's existing water customers, there can be little doubt that the benefits outweigh the detriments. The Application accordingly should be approved.

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

PAWC has carried its burden of proving, by a preponderance of the evidence, that the Transaction has affirmative public benefits of a substantial nature for every impacted group. 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.

3. Cost of Service Studies

In its Main Brief p. 16, I&E recommends that PAWC be required to complete a cost of service study for the System that separates capital expenses and operating costs for sanitary and storm water functions for the McKeesport service territory. I&E also recommends that Port Vue-

specific plant in service costs of the System be identified separately within that study. PAWC opposes this request, for all of the reasons stated in Section V.A.3. of its Main Brief.

In addition, PAWC respectfully submits that an order granting such relief would be premature at this time. PAWC has filed a base rate case, which remains pending. The Commission's rate treatment of costs related to the stormwater component of wastewater service in that case could eliminate the need for the requested cost of service study. Rather than preemptively ordering a study that may not be necessary and may unnecessarily increase future rate case expense (which is passed back to ratepayers), it would be prudent to see how related issues are resolved in *PAWC's 2017 Base Rate Case*.

Additionally, an order requiring PAWC to complete a cost of service study is unnecessary at this time because I&E could request PAWC to complete a cost of service study during PAWC's next base rate case -- if I&E still believes that such a study would be helpful in resolving that proceeding. The Commission's regulation at 52 Pa. Code § 5.361(b) permits a party, in rate proceedings, to request a special study or analysis. Again, rather than having the Commission issue an order now that requires PAWC to undertake a costly study that may not be useful several years from now, the Commission should preserve its options by not issuing an order now requiring the study, but allowing I&E to request a cost of service study later in the context of PAWC's next base rate filing -- if that is still desired.

B. Section 1329 Approvals

1. Ratemaking Rate Base

a. Section 1329 – Legal Issues

The OCA's Main Brief pp. 27-32, includes a discussion of several threshold legal issues pertaining to Section 1329. PAWC will address those issues *seriatim*.

(1) Challenges to UVE Appraisals

The OCA correctly notes that the parties disagree about the extent to which the UVEs' appraisals may be challenged in this proceeding, but the OCA incorrectly states PAWC's position. As a result, much of the OCA's argument misses the mark.

The OCA states "PAWC appears to argue that the non-applicant parties cannot challenge the appraisals on any basis other than whether the USPAP standards were met." OCA Main Brief p. 28. PAWC's position is much more nuanced than described by the OCA. PAWC submits that appraisals submitted by Commission-approved UVEs that comply with Section 1329 requirements and the Commission's guidelines are presumptively valid as a matter of law, unless a party challenging the appraisal rebuts the presumption by clear and convincing evidence of an abuse of discretion, fraud, illegality or bad faith.¹⁰

The resolution of the Commission's proper scope and standard of review of a UVE's appraisal turns on basic rules of statutory construction. Section 1921(a) of the Pennsylvania Statutory Construction Act, 1 Pa. C.S. § 1921(a), provides that the object of all statutory interpretation is to determine the General Assembly's intent based on the express words used in the statute. In making that determination, courts and agencies must apply the express words in a statute and cannot ignore them. *See* 1 Pa. C.S. § 1921(b); *Meier v. Maleski*, 670 A.2d 755 (Pa. Cmwlth. 1996). When the words of a statute are not explicit, a court attempting to ascertain legislative intent may consider such matters as the occasion and necessity for the statute, the object

¹⁰ As noted in PAWC's Main Brief p. 36, PAWC acknowledges that the Commission addressed this issue in the *Aqua/New Garden Order*, which is currently under reconsideration.

to be obtained, the consequences of a particular interpretation and administrative interpretations of the statute. 1 Pa. C.S. § 1921(c); *Meier, supra*.

In addition, courts and agencies must interpret individual provisions in a statute in a way that gives effect to all the provisions in the statute. *Consulting Engineers v. Licensure Bd.*, 522 Pa. 204, 560 A.2d 1375 (1989) (explaining that individual provisions of a statute are to be interpreted, whenever possible, in a manner that gives effect to the entire statute). Neither the courts nor agencies may insert exceptions to statutory provisions that are not there. *Pa. School Bds. Ass'n, Inc. v. Cmwlth., Public School Employees' Retirement Bd.*, 863 A.2d 432 (Pa. 2004) (“It is not this Court’s function to read a word or words into a statute that do not actually appear in the text where, as here, the text makes sense as it is, and the implied reading would change the existing meaning or effect of the actual statutory language.”); *Guinn v. Alburtis Fire Co.*, 531 Pa. 500, 503 n.4, 614 A.2d 218, 220 n.4 (1992) (“[I]t is not within the province of this court to second-guess the legislature and to add words to a statute where the legislature has failed to supply them.”) (citing *Kusza v. Maximonis*, 363 Pa. 479, 482, 70 A.2d 329, 331 (1950)); *see also O’Donoghue v. Laurel Savings Ass’n*, 556 Pa. 349, 357-58, 728 A.2d 914, 917-18 (1999).

Finally, the Commission is an administrative agency charged with the regulation of public utilities under the provisions of the Code and Commission regulations. As an administrative agency, however, the Commission has authority to exercise only those powers as the General Assembly has granted expressly or by necessary implication, and it cannot exercise discretion when the General Assembly has taken it away by statute. *Cmwlth., Dep’t of Env’tl. Res. v. Butler County Mushroom Farm*, 499 Pa. 509, 454 A.2d 1 (1982); *Green v. Milk Control Comm’n*, 340 Pa. 1, 16 A.2d 9 (1940).

With those standards in mind, Section 1329 expressly provides that “[t]he *ratemaking rate base*¹¹ 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)(2) (emphasis added). In turn, Section 1329(a)(2) provides that “[t]wo utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.” 66 Pa. C.S. § 1329(a)(2) (emphasis added). Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g) (emphasis added). If the Commission issues an order approving the Section 1329 application, “the order shall include: (i) [t]he ratemaking rate base of the selling utility, as determined under subsection (c)(2).” 66 Pa. C.S. § 1329(d)(3)(i) (emphasis added).

These provisions are clear and unambiguous. The General Assembly has made the policy determination that the acquiring utility’s ratemaking rate base shall be either the actual costs of acquisition or the fair market value based on the average of competing UVE appraisals. The statute leaves no room for a contrary interpretation, nor does it suggest that the parties or the Commission may inquire beyond the appraisals submitted by UVEs in support of Section 1329 applications that otherwise comply with statutory requirements.

In addition, the Commission has established in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered August 2, 2012) (“*Section 1329 Final Implementation Order*”) and UVE registration requirements a pre-

¹¹ Defined as “[t]he dollar value of a selling utility which, for postacquisition ratemaking purposes, is incorporated into the rate base of the acquiring public utility or entity.” 66 Pa. S.C. § 1329(f).

application review of UVE qualifications to assure the validity of appraisals submitted during Section 1329 application proceedings. To illustrate, both Section 1329 and the Section 1329 Final Implementation Order contain a variety of pre-application safeguards to assure the accuracy and appropriateness of UVE appraisals. Section 1329:

- Requires that the Commission maintain a list of UVEs. 66 Pa. C.S. § 1329(a)(1).
- Mandates that UVEs perform their work in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), employing the cost, market and income approaches. 66 Pa. C.S. § 1329(a)(3).
- Prohibits UVEs for public utilities that have conflicts of interest. 66 Pa. C.S. § 1329(b)(1)-(3).

Likewise, the Section 1329 Final Implementation Order requires that UVEs establish their qualifications, have utility valuation experience, and conduct their evaluations in accordance with accepted standards and free of conflicts of interests. Section 1329 Final Implementation Order, at 9-15.

Consistent with Section 1329 requirements and the Section 1329 Final Implementation Order, the Commission has established a vetting process before a UVE may be authorized to conduct and submit appraisals for fair market value determinations in Section 1329 application proceedings. To illustrate:

- UVEs must submit an application, under oath, requesting authorization from the Commission to be included on the Commission’s official list of UVEs that may provide appraisals for fair market value determinations in Section 1329.
- UVEs must be registered to do business with the Pennsylvania Department of State and must identify any affiliated companies so that the Commission may inquire, before registering the applicant, about any potential conflicts of interests.
- UVEs must state whether they do any business with water/wastewater distribution companies. UVEs that directly or indirectly own, partner, or are in any way

affiliated with a water/wastewater distribution company are ineligible for the Commission's UVE registry.

- UVEs must demonstrate their "technical fitness" by identifying and submitting any and all professional licenses, technical certifications, and/or names of current or past clients with a description of dates and types of services provided by the UVE.
- UVE applications are subject to review by the Commission's Bureau of Technical Services ("TUS") and applicants must submit responses to any data requests or other inquiries from TUS regarding the registration request.
- UVEs must serve their completed applications on all the Public Advocates.
- UVEs must submit their applications subject to the penalty of perjury pursuant to 18 Pa. C.S. §§ 4902 and 4904.
- UVEs must complete and submit a notarized affidavit with the application and any subsequent documentation submitted to the Commission stating that to the best of the UVE's knowledge, information and belief that the facts set forth in the application and all subsequent submissions are true and correct.

As a result, the Commission's scope and standard of review of UVE appraisals in Section 1329 application proceedings should be limited to whether UVEs have met the Section 1329 requirements as implemented by the Commission and whether their appraisals comply with Section 1329 requirements and Commission guidelines.

The only appropriate questions during Section 1329 application proceedings regarding UVEs and their appraisals are as follows:

1. ***Is the UVE registered with the Commission (i.e., has the UVE passed the Commission's vetting process)?*** See 66 Pa. C.S. § 1329(a)(1); Section 1329 Final Implementation Order, at 9-15; UVE Registration Application.
2. ***Is the UVE a family member of a director, officer, or employee of the buyer or seller within a 12-month period of the date of hire to perform the appraisal?*** 66 Pa. C.S. § 1329(b)(2)(ii); Section 1329 Final Implementation Order, at 9-15; UVE Registration Application.

3. ***Is the UVE obtaining any material financial benefit from the sale other than fees for service?*** 66 Pa. C.S. § 1329(b)(2)(i); Section 1329 Final Implementation Order, at 9-15; UVE Registration Application.
4. ***Do the fees for the UVE's service exceed 5% of the fair market value of the selling utility's property?*** Section 1329 Final Implementation Order, at 9-15.
5. ***Did the UVE rely on a licensed engineer to conduct an assessment of the tangible assets of the selling utility?*** 66 Pa. C.S. § 1329(a)(4).
6. ***Did the UVE incorporate that assessment into the appraisal under the cost approach?*** 66 Pa. C.S. § 1329(a)(4).
7. ***Does the UVE's appraisal comply with uniform appraisal standards?*** 66 Pa. C.S. § 1329(a)(3).
8. ***Does the UVE's appraisal employ the cost, income, and market approach?*** 66 Pa. C.S. § 1329(a)(3).
9. ***Is the fair market value determination the lesser of the negotiated purchase price or the average of competing appraisals submitted by the UVEs of the buyer and seller?*** 66 Pa. C.S. § 1329(c)(2).

If the UVEs are qualified and submit appraisals in compliance with statutory requirements as implemented by the Commission, their appraisals are presumptively valid and not subject to inquiry from the parties or the Commission. The questions outlined above establish compliance. In order for the parties or the Commission to inquire beyond the questions outlined above, there must be clear and convincing evidence that an abuse of discretion, fraud, illegality, or bad faith has undermined the appraisal. In that rare event, the Commission would have the discretion to inquire further to assure that the fair market valuation is valid and reliable.

There are a number of reasons why the Commission's scope and standard of review in Section 1329 proceedings should be limited in this way. First, Section 1329 does not contemplate evidence or testimony other than the appraisals submitted by competing UVEs registered with the Commission. Similarly, the statute does not contemplate that the parties to a proceeding may question the appraisals submitted by the UVEs. Section 1329 essentially limits the Commission's

discretion to go beyond properly submitted appraisals based on the standards outlined in the statute as implemented by the Commission.

Second, the Commission must issue a decision on a Section 1329 application within six months of the application's filing date. *See* 66 Pa. C.S. § 1329(d)(2). The pre-application safeguards established by statute allow the Commission to complete its review in that time. The Commission has implemented these safeguards to ensure that UVE appraisals are done independently, without conflicts of interest, and in compliance with relevant professional standards. In effect, the Commission's evaluation of the UVEs and their appraisals is complete before the applicant even files because the Commission has vetted qualified UVEs and registered them after they have established their credentials. If the appraisals comply with the statute and Commission requirements, that assures a presumptively valid and reliable appraisal submitted by qualified and independent UVEs free of conflicts of interests.

If the parties were free to question the appraisals in every Section 1329 proceeding, the Commission's ability to act on applications within six months would be compromised. Every Section 1329 would likely be a contested case. The buyer and seller would submit their respective appraisals, the Public Advocates presumably would submit their appraisals (as the OCA essentially has done in this case), and all the parties would engage in full-blown discovery searching for ways to undermine the other parties' appraisals. Every Section 1329 proceeding would turn into a battle of the appraisals. That would enlarge the scope of Section 1329 proceedings unnecessarily and would undermine the expedited review envisioned by the General Assembly. Based on Section 1329 as a whole, the General Assembly must have intended to avoid that result by establishing by statute how to arrive at the fair market valuation.

Third, public utility applicants should not be placed in the position of defending the independent work of UVEs (particularly the work of the seller's UVE, because, as here, the Seller

may be a separate party from the applicant in the Commission proceedings and the seller and buyer, as parties to a business transaction, may have diverging interests). The General Assembly has decided that the fair market value determination should be based on the professional discretion of the UVEs and, as long as that discretion has not been abused, the appraisals should be respected. The statute does not contemplate a fair market valuation based on anything other than appraisals submitted by Commission-approved UVEs.

If the General Assembly intended that the UVEs' statement of fair market value would be subject to attack during the application proceedings under Section 1329 or subject to an alternative evaluation by the Commission, other parties, or the Public Advocates, the General Assembly would have said so. It did not. Instead, the General Assembly expressly stated that the average of the two appraisals "shall be" the fair market value. It would be an absurd result and inconsistent with the General Assembly's intent in enacting Section 1329 if a public utility applicant and municipal seller (as well as all of the Public Advocates) would have the ability to contest the UVE appraisals during a Section 1329 proceeding on any grounds other than an abuse of discretion, fraud, illegality, or bad faith. Likewise, parties should not be permitted to submit non-UVE appraisals to undercut the fair market valuation determination. As noted above, such a result would be contrary to the General Assembly's intent to create a streamlined Section 1329 proceeding.

The Commission maintains its discretion to go beyond the appraisals if the party challenging the appraisal demonstrates by clear and convincing evidence that an abuse of discretion, fraud, bad faith, or illegality undermined the appraisal. In that circumstance, the Commission should have the opportunity to go behind the appraisals to assure a proper fair market value determination in compliance with Section 1329. Short of that rare and extraordinary circumstance, however, the Commission's review should be limited.

In sum, the statute sets the fair market value of utility property for ratemaking purposes based on competing UVE appraisals from the buyer and seller; Section 1329 and the Commission's pre-application procedures ensure that UVEs are registered and qualified to submit proper appraisals based on statutory requirements and reliable uniform appraisal standards; and the Commission's scope and standard of review is limited to whether the UVE and appraisals meet the statutory requirements and Commission requirements for UVE qualifications and appraisals. If compliance with Section 1329 is demonstrated, the appraisals are presumptively valid and not subject to further inquiry by the parties or the Commission in a Section 1329 application proceeding absent clear and convincing evidence that an abuse of discretion, illegality, fraud, or bad faith undermined the validity of an appraisal.

This case presents an excellent illustration of the reasons for such a nuanced scope and standard of review. The OCA introduced the testimony of two witnesses, neither of whom are licensed appraisers or Commission-approved UVEs. Neither of them reviewed the UVEs' reports for compliance with USPAP. In this "battle of the experts," the OCA's witnesses are not experts. Moreover, one of the OCA's witnesses was an OCA employee, which undermines at least the perception that she provided an independent and unbiased fair market appraisal. The independence of the experts is a key part of the safeguards built into Section 1329 and the Commission's *Section 1329 Final Implementation Order*.

PAWC submits that its recommended scope and standard of review addresses the due process concerns expressed in the OCA's Main Brief pp. 29-31, because the parties to the Section 1329 proceeding have notice¹² and a meaningful opportunity to be heard. PAWC therefore submits

¹² OCA's Main Brief p. 29 n.14 states that PAWC did not provide direct notice of the Application to its existing customers. This is correct, because, in the *Section 1329 Final Implementation Order* p. 26 n.19, the Commission rejected OCA's suggestion that the notice requirements should be extended to the buying utility's existing customers. Unlike the Aqua/New Garden proceeding, the *Section 1329 Final Implementation Order* is a final, unappealable order.

that the Commission should adopt its suggested scope and standard for reviewing UVEs' appraisal reports.

(2) Imposition of a Six-Month Deadline

OCA's Main Brief pp. 31-32 argues that Section 1329 proceedings should be separated from the application proceeding to which it pertains. OCA claims that, as a matter of statutory interpretation, Section 1102 proceedings can and should be separated from the Section 1329 proceedings, and thereby "liberated" from the 6-month deadline for a Commission decision. OCA further argues that the limited time frame for litigating a combined Section 1329/Section 1102 proceeding violates its due process rights.

With regard to OCA's statutory analysis, PAWC's response is simple: the Commission considered this very question and correctly reached a contrary result. In the *Aqua/New Garden* proceeding, I&E filed a Petition for Expedited Interlocutory Review, Stay of Proceedings, and Answer to Material Questions, in which the Commission considered the following question:

Does Section 1329 of the Public Utility Code impose a six-month time limitation upon the Commission's consideration of an Application by an acquiring public utility for a Certificate of Public Convenience under Section 1102 where no such time limitation previously existed and the purchaser is an existing, certificated public utility?

The Commission answered this question in the affirmative based on the plain language of the statute. *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 Sewer Authority*, Docket No. A-2016-2580061 (Opinion

OCA could have appealed the Commission's decision on this point, but did not. In any event, PAWC submits that (1) the ALJs cannot reverse this Commission Order, and (2) the Commission correctly resolved the issue.

and Order on Petition for Expedited Interlocutory Review entered on February 15, 2017) (“*Order on Interlocutory Review*”). The Commission found that Section 1329 was “clear and unambiguous. It requires that once a utility applicant invokes Section 1329 and provides the information required under Section 1329(d), the Commission must issue an order within six months.” *Order on Interlocutory Review* p. 23. In addition, the Commission considered the practical effect of the relief requested by I&E: “[A]ny time constraint under Section 1329 would become ineffectual or irrelevant if another integrated proceeding under Section 1102 could be extended for an indefinite time period.” *Id.* PAWC respectfully suggests that the ALJs cannot reverse this Commission decision. In any event, it is a sound decision and should be followed.

With respect to the OCA’s constitutional claim (that a six-month time frame to litigate a combined Section 1329/Section 1102 proceeding is so short as to constitute a violation of due process, OCA Main Brief 31-32), PAWC respectfully submits that this argument is a challenge to the constitutionality of Section 1329 itself. A statute is presumed constitutional and the party challenging it has a heavy burden of proof that the enactment “clearly, palpably and plainly violates the Constitution.” *West Mifflin Area Sch. Dist. v. Zahorchak*, 4 A.3d 1042, 1048 (Pa. 2010). OCA’s brief argument does not sustain that heavy burden.

OCA’s argument on this point should be viewed in the context of its earlier argument on the proper scope and standard of review for UVE fair market valuations. On the one hand, OCA argues for an unlimited scope and standard of review for UVEs’ appraisals, yet OCA argues that reviewing an application pursuant to Section 1329 and Section 1102 simultaneously is so burdensome that it violates due process. OCA cannot have it both ways.

Statutes are to be read in such a way as to be constitutional. 1 Pa. C.S. § 604; *Kurtz v. Erie*, 133 A.2d 172, 176 (Pa. 1957). The Legislature clearly intended that Section 1329 and Section

1102 proceedings occur jointly. A limited scope and standard of review for UVEs' fair market valuations would be one way to facilitate the expeditious conclusion of Section 1329/Section 1102 proceedings, while still observing the due process rights of all involved.

Consequently, PAWC submits that the ALJs should reject OCA's challenge to the 6-month deadline for Section 1329/Section 1102 proceedings, as well as the OCA's argument for an unlimited scope and standard of review for UVEs' fair market valuations of municipal water and wastewater systems. The parties to this proceeding received the full due process rights to which they are entitled.

b. Appraisals

I&E did not propose any adjustments in AUS's appraisal of the System. I&E Main Brief p. 32. The OCA proposed changes only in the income approach of AUS. Before responding to those comments, PAWC submits that the ALJs should consider how the limited scope and standard of review of UVEs' appraisals (discussed above) should be applied to the fair market valuation completed by AUS.

There is no disagreement that AUS complied with Section 1329's requirements, and the Commission's guidelines, in preparing its evaluation. AUS is a Commission-registered UVE; AUS personnel are not related to PAWC's officers or directors; AUS did not receive any material financial benefit from the Transaction other than fees for service; AUS's fees did not exceed 5% of the fair market value of the System; AUS relied on a licensed engineer's assessment of the System property; AUS incorporated that assessment into its appraisal under the cost approach; AUS complied with USPAP in performing its valuation of the System; and AUS's appraisal employed the cost, income and market approaches. Consequently, AUS's valuation should be

presumptively valid. There is no allegation of abuse of discretion, fraud, illegality, or bad faith by AUS. Consequently, the Commission should rely on that evaluation and not consider the OCA's suggested adjustments.

Moreover, as argued in PAWC's Main Brief, the Commission should reject the adjustment suggested by OCA witness Watkins on credibility grounds. PAWC's UVE is a licensed appraiser and Commission-registered UVE, who visited the System to view the property being valued. PAWC's UVE applied USPAP standards and completed a cost, market and income valuation of the System. None of this can be said for the OCA's witness Watkins.¹³ PAWC respectfully submits that the Commission should not even reach the merits of Mr. Watkins' recommendations regarding AUS's valuation.

Finally, if the Commission does address the substance of Mr. Watkins' comments, his suggested adjustment should be rejected. His 50-year model is inappropriate because it does not treat the System as an on-going entity at the end of the analysis period. PAWC St. No. 7-R p. 2. AUS's model, in contrast, treats the System as an entity that will continue to operate in perpetuity. On its face, AUS's model is more appropriate for the System, which will continue to exist after the conclusion of the analysis period due to the continuing public need for wastewater service. Consequently, the Commission should decline to make the adjustment suggested by Mr. Watkins.

The only other adjustment that OCA witness Watkins recommends in AUS's appraisal is an adjustment in the capital expenditures used in AUS's model. An appraiser must exercise a

¹³ PAWC submits that another indicia of the credibility of AUS's approach is the consistency of results. AUS's May 2017 appraisal used the cost, market, and income approaches and yielded three valuations ranging from a low of \$160,301,491 to a high of \$162,455,017. In contrast, OCA's witnesses suggested no changes in AUS's cost valuation of the System (\$160,301,491) or its market valuation of the System (\$162,108,612); they only recommended a change in the income valuation of the System, which produced a valuation of \$134,359,000. Considering that the three approaches are valuing the same assets, consistent valuation results are more credible.

degree of professional discretion in completing an evaluation of a wastewater system, and different appraisers will agree or disagree with each exercise of discretion. Tr. 151. PAWC submits that the figure used by AUS for capital expenditures is within the acceptable range of professional discretion for an appraiser completing a fair market valuation of a wastewater system. Mr. Watkins would have exercised his discretion differently. That does not mean AUS's evaluation is wrong. The Commission should not disturb AUS's evaluation based on Mr. Watkins' statement that he would have exercised his discretion differently.

OCA witness Everette suggested no changes in AUS's fair market evaluation; her testimony simply incorporated Mr. Watkins' recommendation. The Commission should not make any adjustments in AUS's fair market valuation. Instead, it should find that PAWC's UVE found that the fair market value of the System is \$161,343,000.

c. The System's Value for Ratemaking Rate Base Purposes is \$162,000,000

Section 1329 provides that "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." In this case, the purchase price is less than the average of the appraisals completed by the seller's UVE and the buyer's UVE. Therefore, the purchase price (\$162,000,000) is the amount that should be incorporated into PAWC's rate base, in its next rate case, for the System.¹⁴

¹⁴ I&E does not oppose this rate base amount. I&E Main Brief p. 31.

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

a. DSIC

In its Main Brief, PAWC explained that it already has a Commission-approved DSIC, which does not include the McKeesport service territory. In this proceeding, PAWC seeks conditional approval to implement a DSIC for the McKeesport service territory. Specifically, a condition of approval would be PAWC's filing of an amended wastewater LTIP to incorporate the McKeesport service territory and Commission approval thereof.

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. PAWC intends to submit an LTIP to the Commission, and obtain approval, before implementing a DSIC in the McKeesport service territory. Upon Commission approval of the LTIP amendment, PAWC will make a tariff supplement compliance filing to include Rate Zone 13 (the McKeesport service territory) as part of the existing DSIC tariff. PAWC Main Brief pp. 42-44.

I&E has taken no position on PAWC's request for conditional approval to implement a DSIC in the McKeesport service territory. I&E Main Brief p. 41. OCA however recommends several conditions, including the following: "[I]f MACM customers will begin paying a DSIC prior to [the] effective date of rates established in PAWC's next base rate case, the Commission should condition its approval of the transaction by requiring that PAWC file the required tariff changes and revised LTIP no later than 30 days after entry of the Commission order in this proceeding." OCA Main Brief pp. 62-63. PAWC respectfully requests that the Commission not adopt this recommendation.

First, OCA gives no reason for the 30-day deadline. It is completely arbitrary and has no support in fact or law. The Commission should reject the recommended deadline as unsupported.

Second, the 30-day deadline is unreasonable. Parties have fifteen days following entry of the Commission's order to request reconsideration and thirty days following entry of the Commission's order to file an appeal. It would be unreasonable to require PAWC to file an LTIIIP if this matter is still in litigation. Moreover, the APA contains a number of conditions precedent to closing. Asset Purchase Agreement, Articles XI and XII. Some of these conditions precedent may not be satisfied until more than thirty days after the date the Commission's order is entered. It would be unreasonable to require PAWC to file an LTIIIP for the System before PAWC owns the System.

PAWC has no objections to any of the other conditions that OCA suggests relative to PAWC's proposed DSIC for the McKeesport service territory. OCA Main Brief pp. 64-65. PAWC respectfully requests that the Commission conditionally approve the implementation of DSIC for the McKeesport service territory -- but there should be no time restriction on filing an amended LTIIIP.

b. Allowance for Funds Used During Construction and Deferred Depreciation

Pursuant to Section 1329, PAWC requests that the Commission allow it to accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. PAWC Main Brief pp. 44-45. Also pursuant to Section 1329, PAWC requests that the Commission allow it to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. PAWC Main Brief p. 45. I&E has taken no

position on these requests. I&E Main Brief pp. 40-41. The OCA has no objection, but recommends that rate claims related to AFUDC and deferred depreciation be made in the next PAWC rate case following the plant additions. PAWC has no objection to this proposal. PAWC therefore requests that the ALJs approve PAWC's request to accrue AFUDC, and defer depreciation, relating to post-acquisition improvements not recovered through the DSIC, subject to the condition that PAWC submit claims for such items in the next PAWC rate case following the plant additions.

c. Transaction and Closing Costs

Pursuant to Section 1329(d), and out of an abundance of caution, the Application included a request for permission to include, in PAWC's 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. PAWC Main Brief pp.46-47. I&E takes no position on this request; it notes that transaction and closing are not properly reviewed in the instant proceeding, and I&E will address these costs in PAWC's next base rate case. I&E Main Brief at p. 41. OCA's Main Brief does not discuss the issue. PAWC respectfully requests that the ALJs permit PAWC to include a claim for transaction and closing costs, relating to the Transaction, in its next base rate case.

3. No Rate Stabilization Plan

In its Main Brief, PAWC argued that the Transaction does not involve a "rate stabilization plan," as that term is defined in 66 Pa. C.S. § 1329(g). PAWC Main Brief pp.47-48. No party has

contested this conclusion. The ALJs should find that PAWC was not required to file a rate stabilization plan as part of the Application.

4. Revised *pro forma* tariff supplement

In its Main Brief, PAWC explained that it submitted a *pro forma* tariff supplement with the Application, which was intended to adopt MACM's rates at the time of closing. However, during discovery, it was determined that a rate provision in MACM's agreements with municipal bulk customers was inadvertently left off the tariff supplement. PAWC therefore revised its *pro forma* tariff supplement via PAWC St. No. 4-R, Exhibit RPN-1. PAWC Main Brief pp. 48-50. I&E does not oppose the *pro forma* tariff supplement. I&E Main Brief p. 43. OCA's Main Brief states that "OCA did not oppose the revised *pro forma* tariff supplement except to the extent it is inconsistent with the requirements related to charging the DSIC to MACM customers." OCA Main Brief p. 63.

The DSIC, as it pertains to the McKeesport service territory, has been addressed elsewhere in this brief. PAWC respectfully submits that there is no inconsistency between the revised *pro forma* tariff supplement and PAWC's request for conditional approval to implement a DSIC in the McKeesport service territory. OCA's brief does not explain the alleged inconsistency and it is not mentioned in OCA's witnesses' testimony. PAWC respectfully requests that the ALJs approve the revised *pro forma* tariff supplement and 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, or other approval pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, for the APA as well as sixteen agreements between MACM and municipalities that PAWC intends to assume at closing on the Transaction. I&E favors conditional approval of the APA, but the conditions are not related to Section 507. I&E Main Brief pp 43-44. OCA does not oppose the approval of the APA “so long as it is clear that such approval is not binding on any party in future cases.” OCA Main Brief p. 64.

With regard to the other 16 municipal contracts, I&E does not oppose their approval pursuant to Section 507. I&E Main Brief, pp. 43-44. OCA takes no position on whether the Commission should grant Section 507 approval of these agreements. OCA Main Brief p. 64. For the reasons set forth in PAWC’s Main Brief pp. 50-53, PAWC respectfully requests that the Commission issue Certificates of Filing, or other approvals, of the APA and the 16 municipal agreements.

VI. CONCLUSION

For the reasons detailed in PAWC’s Main Brief and this Reply Brief, the Commission should find that PAWC is technically, legally, and financially fit and that the Transaction would result in affirmative public benefits of a substantial nature. The benefits of the Transaction, as demonstrated by the record, clearly outweigh the alleged detriments of the Transaction. 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 in its next base rate case, implement a DSIC for the McKeesport area, 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 LTIP incorporating the McKeesport area and that, upon Commission approval of the

amended LTIIP, PAWC make a compliance tariff supplement filing incorporating the McKeesport area 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. Permit PAWC to submit a claim for transaction and closing costs, relating to the Transaction, in PAWC's next base rate proceeding.

9. 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;

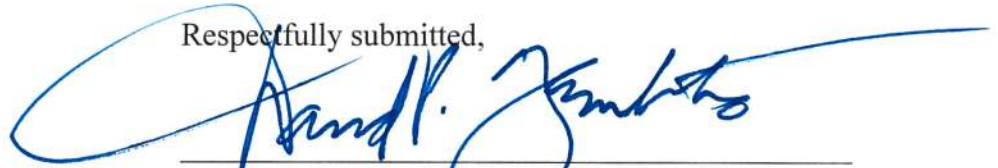
c. Corrective Action Agreement By and Among The Municipal Authority of the City of McKeesport and Liberty Borough, Dated as of July 28, 2008;

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.
10. 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,



David P. Zambito, Esq. (PA ID No. 80017)
Jonathan P. Nase, Esq. (PA ID No. 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Telephone: 717-703-5892
Facsimile: 215-989-4216
E-mail: dzambito@cozen.com
E-mail: jnase@cozen.com

Susan Simms Marsh, Esq. (PA ID No. 44689)
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033
Telephone: 717-531-3208
Facsimile: 717-531-3399
E-mail: Susan.Marsh@amwater.com

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Counsel for Pennsylvania-American Water Company