

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Pennsylvania-American	:	
Water Company Wastewater Operations for	:	
Approval of Modification of Long Term	:	P-2014-2431005
Infrastructure Improvement Plan	:	

**RECOMMENDED DECISION**

Before  
Joel H. Cheskis  
Deputy Chief Administrative Law Judge

Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

In this case, a wastewater company filed a petition seeking approval of a modification of its Long Term Infrastructure Improvement Plan (LTIIP). This Decision recommends that the Joint Petition for Settlement be approved in its entirety without modification because it is in the public interest and is supported by substantial evidence. This Decision finds that the Settlement complies with relevant Sections of the Public Utility Code regarding LTIIPs and Distribution System Improvement Charges and is consistent with Commission Regulations promoting settlements.

**HISTORY OF THE PROCEEDING**

On July 3, 2014, Pennsylvania-American Water Company (PAWC) filed with the Pennsylvania Public Utility Commission (Commission) a Petition for Approval of Wastewater Long Term Infrastructure Improvement Plan (LTIIP) and Approval to Establish and Implement a

Distribution System Improvement Charge (DSIC). The 2014 LTIIIP/DSIC Petition was assigned the Docket Number P-2014-2431005 by the Commission.

On December 4, 2014, the Commission entered an Opinion and Order, approving PAWC's 2014 LTIIIP Petition. In that Opinion and Order, the Commission also approved PAWC's 2014 DSIC Petition, subject to refund and recoupment after final resolution of the issues brought before the Office of Administrative Law Judge (OALJ) as well as the applicability of the DSIC to PAWC's Franklin and Koppel wastewater systems.

On March 30, 2015, the Presiding Administrative Law Judge (ALJ) issued a Recommended Decision recommending that the Commission approve the parties' Joint Stipulation of Settlement. On May 7, 2015, the Commission issued an Order approving the Joint Stipulation of Settlement.

On February 29, 2016, February 28, 2017 and February 27, 2018, PAWC filed its Annual Asset Optimization Plan (AAOP) and those plans were approved by the Commission.

On November 8, 2018, PAWC filed a Petition for Approval of a Major Modification to its Existing Long Term Infrastructure Improvement Plan and Approval of its Second Long Term Infrastructure Improvement Plan (2018 LTIIIP Petition). After receiving certain guidance from the Commission's Bureau of Technical Utility Services (TUS), PAWC filed a letter on December 10, 2018 withdrawing the 2018 LTIIIP Petition.

On December 12, 2018, PAWC filed its Petition for Approval of Modification of LTIIIP (2018 Petition to Modify LTIIIP or Modified LTIIIP) which is the subject of this proceeding. In the Modified LTIIIP, PAWC asserts that it is using a risk-based condition assessment approach in order to cost effectively prioritize wastewater collection system replacement and rehabilitation projects and accelerate the rehabilitation, improvement, and replacement of aging wastewater infrastructure for wastewater systems. PAWC asserts that these improvements will improve system safety and reliability, customer service and environmental compliance.

PAWC states that the Modified LTIIIP will, upon approval, replace the Company's existing LTIIIP for the Year 2019 and includes Years 2020 – 2023. PAWC states that the Modified LTIIIP includes the required elements identified in Section 1352(a) of the Public Utility Code (66 Pa. C.S.A. § 1352(a)) and the Commission's LTIIIP Regulations at 52 Pa. Code § 121.4(a). PAWC therefore requests approval of its Modified LTIIIP.

On January 2, 2019, the Commission's Bureau of Investigation and Enforcement (I&E) filed an Answer to PAWC's 2018 Petition to Modify LTIIIP. In its Answer, I&E requested that the matter be assigned to OALJ for an investigation and, if necessary, evidentiary hearings. I&E stated its intent to participate in this proceeding to ensure that the proposed Modified LTIIIP would meet the legal requirements of the Public Utility Code, the Commission's Regulations and Pennsylvania law. I&E also stated that it was participating in this proceeding to ensure that the interests of all PAWC ratepayers were protected.

On January 9, 2019, the Office of Consumer Advocate (OCA) filed Comments with the Commission in this proceeding. In its Comments, the OCA recommended that PAWC provide additional information relating to the 2018 Petition to Modify LTIIIP. OCA also recommended that PAWC take certain actions in future LTIIIP related filings.

On January 10, 2019, I&E filed an Amended Answer to the 2018 Petition to Modify LTIIIP. In the Amended Answer, I&E asserted that there were specific issues of fact that must be referred to the OALJ for disposition.

This matter was assigned to OALJ by the Commission and we were assigned as the Presiding Officers. By Notice dated February 8, 2019, the parties were notified of a Prehearing Conference scheduled for Friday, March 8, 2019 at 10:00 a.m. in Harrisburg, Pennsylvania. A Prehearing Conference Order was issued on February 14, 2019 setting forth various rules that would govern the Prehearing Conference. Pursuant to the Prehearing Conference Order, Prehearing Memoranda were received from PAWC, I&E, OCA and the Office of Small Business Advocate (OSBA) who participated in the prior LTIIIP proceeding.

The Prehearing Conference was held as scheduled on March 8, 2019. The following counsel were present: Anthony DeCusatis, Esquire, Brooke McGlenn, Esquire and Susan Simms Marsh, Esquire on behalf of PAWC; Scott Granger, Esquire on behalf of I&E; Erin Gannon, Esquire on behalf of OCA; and Erin Fure, Esquire on behalf of OSBA. The parties were informed that the Commission's service list would include these counsel only and that the parties to the prior proceeding at this docket would be removed. Such parties have had notice and an opportunity to participate in this proceeding but failed to appear at the Prehearing Conference or otherwise express an interest in participating.

During the Prehearing Conference, the parties indicated that there were ongoing settlement discussions and that resolution of this proceeding might be possible without further litigation. Accordingly, the parties requested that the proceeding be held in abeyance for a period of 30 days, after which a Joint Status Report would be filed by the parties. The Presiding Officers approved the request, and issued an Interim Order on March 8, 2019 to record the 30 day postponement in this proceeding. The parties were advised during the Prehearing Conference that any resolution of this matter, via settlement or otherwise, must address all of the criteria for Long Term Infrastructure Improvement Plans articulated by the Commission in Chapter 121 of the Commission's Regulations. *See*, Tr. 10.

In addition, PAWC proposed that a Protective Order be issued to govern the use of information alleged to be proprietary. PAWC attached a proposed Protective Order to its Prehearing Memorandum and indicated that no party opposed its usage in this proceeding. No party to this proceeding filed any documents opposing the proposed Protective Order. By Order dated March 14, 2019, we granted the Petition for a Protective Order.

Status reports were submitted on April 9, 2019 and May 9, 2019 providing an update on the state of settlement discussions.

On August 15, 2019, PAWC, OCA, I&E and OSBA (collectively, the Joint Petitioners) filed a Joint Petition for Settlement (Settlement or Joint Petition) that resolves all issues in this proceeding. Attached to the Settlement were Exhibits 1-4 and Attachments A-D.

Exhibit 1 is entitled “PAWC Modified Long-Term Infrastructure Improvement Plan for Wastewater Operations.” Exhibit 2 is entitled “Risk-Based Condition Assessment Completion Schedule.” Exhibit 3 is entitled “Detailed Schedule of Planned Replacement and Rehabilitation of Eligible Property Based on Preliminary Condition Assessment Results.” Exhibit 4 is entitled “History Annual DSIC-eligible Expenditures and Replacements (2015-2019 to date).” Attachments A-D are the individual parties’ statements in support of the Settlement.

No evidentiary hearings have been held in this proceeding, as the parties were able to resolve their outstanding issues without the need for such hearings. Therefore, it was necessary to create an evidentiary record upon which the Presiding Officer could issue a Recommended Decision in this proceeding. In that regard, in support of the Settlement, the Joint Petitioners stipulated and agreed to the facts set forth in the Joint Stipulation of Facts filed on September 30, 2019. Most notably, the joint stipulation moved for the admission of Exhibits 1-4 and Attachments A-D. By Order dated October 23, 2019, the Joint Stipulation of Facts was approved and admitted into the record.

The record in this proceeding closed on October 23, 2019, the date the Joint Stipulation of Facts was approved and admitted into the record. For the reasons set forth below, the Settlement will be recommended for approval in its entirety without modification because it is consistent with Commission regulations regarding LTIP and DSIC, as well as settlements, and is supported by substantial evidence.

#### FINDINGS OF FACT

##### A. Statutory and Regulatory Requirements

1. PAWC's Modified LTIP agreed to by the Stipulating Parties under the Settlement satisfies the requirements set forth in Section 1352(a) of the Public Utility Code and the Commission's regulations at 52 Pa Code § 121.1-121.8 governing long-term infrastructure improvement plans.

2. The Modified LTIIIP describes the types and age of the Distribution System Improvement Charge eligible property included in PAWC's accelerated investment totaling approximately \$115.7 million encompassed by the Modified LTIIIP. Exh. 1, pp. 5-16.

3. The Modified LTIIIP describes the Company's approach to risk-based condition assessment for analyzing, prioritizing and accelerating the renewal of aging wastewater collection system infrastructure and explains why the Company believes its approach is cost-effective. Exh. 1, pp. 16-23.

4. The Modified LTIIIP recognizes the importance of continuous renewal of aging infrastructure in order to ensure and maintain adequate, efficient, safe and reliable service to existing customers. Exh. 1, pp. 16-23.

5. The Modified LTIIIP contains a US Army Corps of Engineers condition rating scale along with recommended action based on the rating for the eligible property in question. Exh. 1, Table 6.

6. The Modified LTIIIP contains a chart representing a consequence of failure scoring system, explaining the consequences of failure of the eligible property in question. Exh. 1, Table 7.

7. The Modified LTIIIP identifies the general location of the eligible property covered by the Modified LTIIIP and contain schedules depicting the levels of investment and quantity of property targeted for accelerated repair and replacement based on the preliminary results of the Company's risk-based condition assessment. Exh. 1, pp. 24-39.

8. The Modified LTIIIP provides a summary of each wastewater system, including the types of eligible property and strategies for accelerated rehabilitation and replacement in each system. Exh. 1, pp. 24-38.

9. The Modified LTIIP provides a reasonable estimate of the quantity of eligible property to be improved, including linear feet of estimates of gravity pipe to be replaced and the estimated number of manholes, service laterals and lift stations to be replaced. Exh. 1, p. 38.

10. The Modified LTIIP provides the projected annual expenditures to implement the plan including the yearly cost estimates for the expenditures from 2019 to 2023 and the cost estimates by regulatory versus non-regulatory costs, and further includes a column indicating the total investment by year. Exh. 1, pp. 38-39 and Table 9.

11. The Modified LTIIP demonstrates that PAWC uses competitive bidding to ensure that all major capital projects are completed in a cost-effective manner. Exh. 1, pp. 38-39 and Table 9.

12. The Modified LTIIP shows the manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service. Exh. 1, pp. 39-40.

13. From 2019 to 2023, PAWC proposes to increase non-regulatory wastewater DSIC eligible spending to over \$20 million annually in order to continue making necessary improvements at an accelerated pace, a 159 percent increase in wastewater DSIC spending, excluding regulatory driven projects. Exh. 1, pp. 39-40 and Table 10.

14. PAWC will utilize a pre-qualification process to ensure all contractors are qualified to perform work in a cost-effective, safe, and reliable manner. Exh. 1, p. 40.

15. PAWC will utilize a third party entity to prequalify contractors to ensure that they will perform work safely, reliably and in a cost effective manner. Exh. 1, p. 40.

16. PAWC will coordinate with municipalities, the Department of Transportation and other utilities to ensure that LTIIP projects are properly planned, and

executed in an efficient and cost-effective manner as required by the LTIIIP Regulations, by maintaining open communication with applicable municipalities, agencies and utilities, use of technology to minimize roadway disturbance, delivery of high-speed notifications to customers when water emergencies occur, and leveraging opportunities to replace sewer and water lines simultaneously. Exh. 1, p.41.

B. Settlement Issues

17. Exhibit 2 of the Settlement outlines the projected schedule for completion of PAWC's risk-based condition assessment for each wastewater system covered by the Modified LTIIIP and is organized by three categories of systems: (1) newly acquired systems; (2) systems subject to a Pennsylvania Department of Environmental Protection or United States Environmental Protection Agency Consent Order; and (3) all other "routine" systems that do not fall under the other two categories. Exh. 2.

18. Exhibit 3 of the Settlement provides detailed information on PAWC's projected schedule for replacement and rehabilitation of DSIC-eligible property for each wastewater system based on the preliminary results of the Company's condition assessment including a breakdown of expenditures for each type of eligible property by year and by wastewater system (district), with expenditures for combined and sanitary systems displayed separately. Exh. 3.

19. For newly acquired wastewater systems that have known deficiencies in the gravity collections system (e.g., significant 1&1, pipe defects, and installation deficiencies), which were observed during the pre-acquisition due diligence process, PAWC agrees to assume the highest risk factor for these known deficiencies. Once the condition assessment is completed, the risk factor will be adjusted to reflect actual conditions. Stipulation at 5.

20. To facilitate the evaluation of PAWC's proposed Modified LTIIIP, PAWC also provided the detailed table attached hereto as Exhibit 4, which identifies historic annual

DSIC-eligible expenditures in each district, from 2015 through the latest available data for 2019 (January/February). Exh. 3.

21. In future Annual Asset Optimization plans and other LTIIIP-related filings, the Company will continue to distinguish between non-regulatory and regulatory investments, where non-regulatory investments exclude regulatory compliance costs such as projects associated with a consent order agreement or a connection management plan. Stipulation at 6.

22. Pursuant to Ordering Paragraph 7 of the Commission's October 26, 2017 Order in Docket No. A-2017-2606103, PAWC may collect a DSIC related to the Municipal Authority of the City of McKeesport system prior to the first base rate case in which the System plant-in-service is incorporated into PAWC's rate base, subject to three conditions. Stipulation at 6-7.

23. In future LTIIIP and AAOP filings, any changes in projected quantities or projected expenditures for the McKeesport system will be condition assessment-related and will not re-prioritize existing commitments in other service areas. In such filings, if projected quantities or projected expenditures are higher for the McKeesport system and lower for other service areas than the projections in its approved LTIIIP, PAWC will include an explanation why the shift was appropriate and does not reprioritize existing commitments in other service areas. Stipulation at 7.

24. In future water and wastewater LTIIIP and AAOP filings, if projected quantities or projected expenditures are higher for systems acquired under 66 Pa. C.S. § 1329 and lower for other service areas – compared to its approved LTIIIP - the Company will include an explanation why the shift was appropriate and does not reprioritize existing commitments in other service areas. Stipulation at 7.

25. Paragraph 15 of the Settlement reflects the Stipulating Parties' agreement that the Modified LTIIIP does not re-prioritize existing commitments in other service areas. Stipulation at 7.

26. PAWC will continue to administer a competitive process for soliciting contracts and will also continue to use a third party to monitor contactor safety performance through the pre-qualification process described in Section 7 of the Modified LTIP. Stipulation at 8.

27. PAWC will use only pre-qualified contractors or trained Company employees to perform work on all wastewater DSIC-eligible projects. Stipulation at 8.

28. PAWC currently uses the PA One Call "Coordinate PA" system to facilitate and track contractor pre-construction meetings. The Company agrees to utilize the PA One Call "Coordinate One Call" system to identify targeted areas of anticipated work planned over a two-year look ahead period and to facilitate better coordination with other utilities and municipalities. Stipulation at 8.

## DISCUSSION

### 1) Legal Standard

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n. v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id., citing, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

The subject matter of this proceeding is governed by Act 11 of 2012 (Act 11) which amended Chapters 3, 13 and 33 of the Public Utility Code. Act 11 provides jurisdictional water and wastewater utilities, electric distribution companies and natural gas distribution companies (NGDCs) the ability to implement a distribution system improvement charge (DSIC) to recover reasonable and prudent costs incurred to repair, improve or replace certain eligible distribution property that is part of the utility's distribution system. The term "eligible property" is defined in Section 1351 of the Public Utility Code. Of note, Section 1351 includes in the definition of "eligible property" for NGDC's "other related capitalized costs." 66 Pa.C.S. § 1351(2)(x). Section 1352 states that as a precondition to the implementation of a DSIC, a utility must file a Long-Term Infrastructure Improvement Plan (LTIIIP). 66 Pa.C.S. § 1352. The Commission established various procedures and guidelines necessary to implement Act 11. *See, e.g., Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered Aug. 2, 2012) (Final Implementation Order).

As a result, in determining whether the public interest is served by this particular Settlement, we are required to determine that the Settlement meets the specific statutory and regulatory criteria for Commission-approved LTIIIPs. Specifically, the Settlement must show that the LTIIIP meets the following requirements of Section 1352 of the Public Utility Code which provides that an LTIIIP should include the following:

- (1) Identification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter.
- (2) An initial schedule for the planned repair and replacement of eligible property.
- (3) A general description of the location of the eligible property.
- (4) A reasonable estimate of the quantity of eligible property to be improved.
- (5) Projected annual expenditures to implement the plan and measures taken to ensure that the plan is cost effective.

(6) The manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.

66 Pa. C.S.A. § 1352(a)(1)-(6). Additionally, the regulatory requirements of the Commission's Regulation at § 121.3 must be met:

(7) A workforce management and training program designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner.

(8) A description of a utility's outreach and coordination activities with other utilities, Department of Transportation and local governments regarding the planned maintenance/construction projects and roadways that may be impacted by the LTIP.

52 Pa. Code § 121.3(7)-(8).

Finally, any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

2) Terms of the Settlement

In the Settlement, the Parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the Settlement are as follows - paragraph numbers and headings are listed as they appear in the original Settlement as filed with the Commission:

## II. TERMS AND CONDITIONS OF SETTLEMENT

9. Except as provided below and in the revisions which are shown in Exhibit 1 to this Joint Petition, PAWC's Petition is approved as filed:

### A. Risk-Based Condition Assessment Methodology

10. Section 2 of the Modified LTIP describes in detail the Company's framework for analyzing, prioritizing and accelerating the renewal of aging wastewater collection system infrastructure. The Company employed a risk-based condition assessment to prioritize DSIC eligible capital improvement projects, accelerate the replacement of aging infrastructure and reduce I&I in newly acquired systems.

11. In response to the issues raised in I&E's Amended Answer and the OCA's Comments, PAWC has provided the Joint Petitioners with additional information regarding the Company's risk-based condition assessment and planned schedule for replacement and rehabilitation of eligible property. First, Exhibit 2 hereto outlines the projected schedule for completion of the Company's risk-based condition assessment for each wastewater system covered by the Modified LTIP. The information presented in Exhibit 2 is organized by three categories of systems: (1) newly acquired systems; (2) systems subject to a Pennsylvania Department of Environmental Protection or United States Environmental Protection Agency Consent Order; and (3) all other "routine" systems that do not fall under the other two categories. In addition, Exhibit 3 hereto provides detailed information on the Company's projected schedule for replacement and rehabilitation of DSIC-eligible property for each wastewater system based on the preliminary results of the Company's condition assessment. Exhibit 3 includes a breakdown of expenditures for each type of eligible property by year and by wastewater system (district), with expenditures for combined and sanitary systems displayed separately. PAWC will include an annual update of Exhibit 2 (Condition Assessment Schedule) with its AAOP filing.

12. For newly acquired wastewater systems that have known deficiencies in the gravity collections system (e.g., significant I&I, pipe defects, and installation deficiencies), which were observed during the pre-acquisition due diligence process, PAWC agrees to assume the highest risk factor for these known deficiencies. Once the condition assessment is completed, the risk factor will be adjusted to reflect actual conditions.

## **B. Annual Expenditures and Replacements**

13. To facilitate the evaluation of the Company's proposed Modified LTIP, PAWC also provided the detailed table attached hereto as Exhibit 4, which identifies historic annual DSIC-eligible expenditures in each district, from 2015 through the latest available data for 2019 (January/February). Exhibit 4 also contains a summary of historic annual replacement for DSIC eligible categories of plant for 2015 through 2018, by district.

14. In future AAOPs and other LTIP-related filings, the Company will continue to distinguish between non-regulatory and regulatory investments and will separately identify expenditures for combined and sanitary systems.

15. Pursuant to Ordering Paragraph 7 of the Commission's October 26, 2017 Order in Docket No. A-2017-2606103, PAWC may collect a DSIC related to the Municipal Authority of the City of McKeesport system prior to the first base rate case in which the System plant-in-service is incorporated into PAWC's rate base, subject to three conditions. The Joint Petitioners agree that the first of those conditions (Ordering Paragraph 7(a)) is met because PAWC's Modified LTIP incorporating the McKeesport system does not re-prioritize other existing commitments in other service areas.

16. In future LTIP and AAOP filings, any changes in projected quantities or projected expenditures for the McKeesport system will be condition assessment-related and will not re-prioritize existing commitments in other service areas. In such filings, if projected quantities or projected expenditures are higher for the McKeesport system and lower for other service areas than the projections in its approved LTIP, PAWC will include an explanation why the shift was appropriate and does not re-prioritize existing commitments in other service areas.

17. In addition, in future water and wastewater LTIP and AAOP filings, if projected quantities or projected expenditures are higher for systems acquired under 66 Pa. C.S. § 1329 and lower for other service areas – compared to its approved LTIP – the Company will include an explanation why the shift was appropriate and does not re-prioritize existing commitments in other service areas.

### C. Qualified Contractors

18. PAWC will continue to administer a competitive process for soliciting contracts and will also continue to use a third party to monitor contractor safety performance through the pre-qualification process described in Section 7 of the Modified LTIIP.

19. PAWC will use only pre-qualified contractors or trained Company employees to perform work on all wastewater DSIC-eligible projects.

### D. Coordination of Planned Projects

20. PAWC currently uses the PA One Call “Coordinate PA” system to facilitate and track contractor pre-construction meetings. The Company agrees to utilize the PA One Call “Coordinate One Call” system to identify targeted areas of anticipated work planned over a two year look ahead period and to facilitate better coordination with other utilities and municipalities.

Furthermore, the Settlement is conditioned upon the standard terms and conditions found in most settlements submitted to the Commission (Settlement at ¶¶ 23-27). This includes that the parties may elect to withdraw from the Settlement and proceed with litigation if the Commission modifies the terms and conditions. *Id.* The parties also reserved their procedural rights to argue their respective positions if the Commission does not approve the Settlement and the proceeding continues. *Id.* The parties also noted that the Settlement is made without any admission against, or prejudice to, any position that any party may adopt in the event of subsequent litigation and that the Settlement may not be cited as precedent in any future proceeding unless required for implementation. *Id.*

### 3) Analysis of the Settlement

#### a) Introduction

As noted above, it is the policy of the Commission to promote settlements. 52 Pa. Code § 5.231(a). The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See, Lancaster, Warner,*

*supra*. In the Settlement, the parties noted that the Settlement is in the public interest because it was achieved after a number of discussions between the parties and following the exchange of discovery materials between the Parties. Issues were narrowed and ultimately agreed to by the Parties to the Settlement. The Parties also noted that the Settlement is in the public interest because approving the Settlement would avoid the time, expense and uncertainty for the parties and the Commission that would occur if the case was fully litigated. The Parties further stated that the Settlement terms as outlined represent reasonably negotiated compromises on the issues addressed therein and that the Settlement is consistent with Commission rules, regulations and procedures encouraging and promoting negotiated settlements. As discussed further below, the Parties also attached to the Settlement separate Statements in Support of the Settlement, articulating their individual arguments and reasons why approving the Settlement without modification is appropriate and in the public interest.

In determining whether the public interest is served by this particular Settlement, we are first required to determine that the Settlement meets the specific statutory and regulatory criteria for Commission-approved LTIIPs. Specifically, the Settlement must show that the LTIIP meets the requirements set forth in Section 1352 of the Public Utility Code and Section 121.3 of the Commission's Regulations (66 Pa. C.S.A. § 1352; 52 Pa. Code § 121.3).

With the above legal parameters in mind, we will review the Settlement along with its supporting materials.

b) PAWC's Position

In its statement in support, PAWC notes that it requested approval to replace the 2014 LTIIP for the year 2019 and include four additional years (2020-2023) (Modified LTIIP). PAWC Statement in Support of Settlement p. 3. PAWC noted that the Modified LTIIP, like the 2014 LTIIP, is designed to accelerate the rehabilitation, improvement and replacement of aging wastewater infrastructure, particularly for troubled systems acquired by PAWC, and continues to focus on reducing inflow and infiltration ("I&I"). *Id.* The Modified LTIIP reflects the following principal changes: (1) the Company's use of a more detailed risk-based condition assessment to

prioritize projects; (2) increased spending of \$20 million annually to maintain an accelerated rate of investment; (3) addition of 11 wastewater districts, including both combined and sanitary sewer systems acquired since 2014; and (4) expansion of DSIC-eligible property to include assets associated with combined sewer systems and the entire customer service lateral on gravity wastewater collection systems. Id. pp. 3-4.

PAWC notes that, under the Settlement, the accelerated investment totaling approximately \$115.7 million encompassed by the Modified LTIIIP consists entirely of “eligible property,” as defined in 66 Pa.C.S. § 1351, including a variety of wastewater facilities, including collection mains, manholes, lift stations, service laterals, combined sewer overflow (“CSO”) structures, diversion chambers and inlets/catch basins. Id. p. 4. PAWC also notes that, in their Comments on the Company’s proposed Modified LTIIIP, both the OCA and I&E asserted that additional information was necessary to assist the Commission in determining that the Modified LTIIIP will accelerate PAWC’s wastewater infrastructure repair and replacement in a cost-effective manner, with OCA specifically recommending that the Company provide a breakdown of historic annual replacement and retirement for categories of plant for 2015 through 2018 to date, by district. Id. pp. 4-5. Under the Settlement, PAWC provided the specific information requested by the OCA in a detailed spreadsheet attached to the Joint Petition as Exhibit 3; Exhibit 3 shows the Company’s projected schedule for replacement and rehabilitation of DSIC eligible property by category of plant and district based on the preliminary results of the Company’s risk-based condition assessment. Id. p. 5.

PAWC also states that the Settlement is in the public interest because it addresses I&E’s request for additional data that is necessary to support the risk-based condition approach employed by the Company to prioritize wastewater collection system replacement and rehabilitation projects and accelerate the associated investments included in the Modified LTIIIP. Id. p. 6. To address I&E’s Comments, under the Settlement, PAWC provided detailed tables outlining the projected schedule for completion of the Company’s condition assessment for each wastewater system covered by the Modified LTIIIP, as well as estimates of the DSIC-eligible property to be improved and the projected schedule for the associated replacement and repair work identified by the Company’s condition assessment to date. Id. (citing Joint Petition, ¶ 11;

Exhibits 2 and 3). PAWC further states that the Settlement also clarifies that PAWC will assume the highest risk factor for newly acquired wastewater systems that have known deficiencies, such as significant I&I, at the outset of the condition assessment, which will be adjusted to reflect actual conditions. Id. pp. 6-8 (citing Joint Petition, ¶ 12).

Also in its Statement of Support, PAWC notes that under the Settlement, the Company agreed to the OCA's recommendation to continue distinguishing between regulatory and non-regulatory projects in PAWC's future LTIP-related filings. PAWC Statement p. 7. In response to the OCA's Comments, the Settlement also confirms that the Modified LTIP does not re-prioritize existing infrastructure improvement commitments to the Company's McKeesport wastewater division from other service areas consistent with Ordering Paragraph 7(a) of the Commission's October 26, 2017 Order in Docket No. A-2017-2606103. Id. (citing Joint Petition, ¶ 15). In future LTIP and AAOP filings, if projected expenditures or quantities are higher for the McKeesport system or systems acquired under 66 Pa. C.S. § 1329, the Company also agreed to explain why the shift is appropriate and does not reprioritize existing commitments. Id. (citing Joint Petition, ¶¶ 16-17).

PAWC states that the Settlement is in the public interest because the Modified LTIP proposes to increase the Company's historic annual wastewater DSIC-eligible spending, on average, from approximately \$7.8 million annually (2015-2018) to over \$20 million annually, representing a 159 percent increase, to continue making necessary system upgrades at an accelerated pace. Id. p. 8. To facilitate the evaluation of the Company's proposed Modified LTIP, PAWC provided additional information in Exhibit 4 to the Joint Petition, which identifies historic annual DSIC-eligible expenditures from 2015 through the latest available data for 2019 (January/February). Id. (citing Joint Petition, ¶ 13).

PAWC further states that, under the Settlement, to ensure system reliability and public safety, PAWC's contractor workforce will be fully qualified, in accordance with the standards set forth in Section 1359 of the Public Utility Code. Id. p. 9. In that regard, PAWC will continue to administer a competitive process for soliciting contracts and uses a third party to monitor contractor safety performance through a pre-qualification process described in Section 7

of the Modified LTIIIP. Id. During the pre-qualification screening process, contractors are required to submit documentation, including safety history, technical capabilities, staffing information and Worker’s Compensation Experience Ratings. Under the Settlement, PAWC agreed to continue to use all pre-qualified contractors or trained PAWC employees to perform work on all wastewater DSIC-eligible projects. Id.

PAWC also notes that under the Settlement, PAWC will continue to coordinate with municipalities, the Department of Transportation and other utilities to ensure that LTIIIP projects are properly planned, and executed in an efficient and cost-effective manner as required by the LTIIIP Regulations, by maintaining open communication with applicable municipalities, agencies and utilities, use of technology to minimize roadway disturbance, delivery of high-speed notifications to customers when water emergencies occur, and leveraging opportunities to replace sewer and water lines simultaneously. Id. p. 9. The Settlement also addresses I&E’s concern regarding the Company’s current use of the PA One Call “Coordinate PA” system. Specifically, PAWC agreed to utilize the PA One Call “Coordinate One Call” system to identify targeted areas of anticipated work planned over the next two years and to facilitate better coordination with other utilities and municipalities. Id.

PAWC concludes its Statement in Support by stating that the Joint Petitioners agree that the accelerated investment included in the Modified LTIIIP will enable the Company to upgrade collection system infrastructure, reduce I&I levels to minimize overflow issues, and address deficiencies in certain newly acquired wastewater systems. Id. p. 10. These infrastructure improvements will improve safety and reliability, customer service and environmental compliance. Id. Accordingly, PAWC states that the Commission should approve the Modified LTIIIP that contains all of the elements required by Section 1352 of the Public Utility Code and the LTIIIP Regulations. Id.

c) OCA’s Position

In its Statement in Support of Settlement, OCA notes that on January 9, 2019, it filed Comments on the proposed LTIIIP, in which OCA submitted that supplemental information

may be needed by the Commission and its staff in their review of PAWC's proposed LTIIIP for compliance with the requirements of Act 11. OCA Statement p. 2. OCA recommended that the Company provide a breakdown of historic annual replacement and retirement for categories of plant for 2015 through 2018 to date, by district, and a table showing the projected annual expenditures by eligible plant categories and by district, with expenditures separately identified for combined and sanitary systems. Id. In addition, in future AAOPs and other LTIIIP-related filings, OCA submitted that PAWC should continue to distinguish between non-regulatory and regulatory investment and to the extent that, relative to the projections in this LTIIIP, quantities of property improved or annual expenditures are higher for McKeesport and lower for other service areas, explain why the shift was appropriate and consistent with Ordering Paragraph 7(a) of the Commission's October 26, 2017 Order in Docket No. A-2017-2606103. Id.

OCA notes that the Settlement is in the public interest because, consistent with its recommendations, Exhibit 3 to the proposed Settlement provides a breakdown of proposed expenditures for each type of eligible property by year and by wastewater system (district) and highlights the expenditures for combined systems to distinguish them from expenditures for sanitary systems. Id. p. 4. Further, in Paragraph 14 of the proposed Settlement, PAWC commits that it will separately identify expenditures for combined and sanitary systems in future AAOPs and LTIIIP-related filings. Id.

OCA also notes that PAWC's filing did not initially provide a breakdown of its historic annual replacement and retirement by categories of eligible plant, for each district, to demonstrate how the DSIC will accelerate infrastructure repair and replacement across all of its districts and rate zones. Id. OCA notes that Exhibit 4 to the Settlement provides this information; specifically, the chart on the first page identifies historic DSIC-eligible expenditures in each district, from 2015 through early 2019. The chart on pages 2 through 10 provides a detailed summary of historic annual replacement for DSIC-eligible categories of plant for 2015 through 2018, by district. Id.

In its Comments on the proposed LTIIIP, the OCA submitted that, to the extent that, relative to the projections in this LTIIIP, quantities or expenditures are higher for

McKeesport and lower for other service areas, PAWC should explain why the shift was appropriate and consistent with the McKeesport Order. Id. p. 5. OCA notes that Paragraph 15 of the Settlement reflects the Parties' agreement that PAWC's proposed LTIP does not re-prioritize other existing commitments in other service areas. Id. Paragraph 16 provides PAWC's commitment that, in its future LTIP and AAOP filings, any changes in projected quantities or expenditures for the McKeesport system will not re-prioritize other existing commitments in other service areas. Id. Further, if projections are higher for McKeesport and lower for other service areas relative to the approved LTIP, PAWC will include an explanation in the filing as to why the shift was appropriate. Id. This will facilitate review of the Company's compliance with this condition of the McKeesport Order. Id.

Additionally, OCA states that Paragraph 17 contains PAWC's agreement that it will meet the requirements of Paragraph 16, not only with regard to the acquired McKeesport system, but with regard to all wastewater and water systems acquired under Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329. Id. pp. 5-6. OCA states that the benefit of this provision is that, each time PAWC files a new or modified LTIP or AAOP that plans to increase improvements or spending in a system acquired under Section 1329 and decrease improvements or spending for other PAWC service areas (compared to the levels projected in PAWC's approved LTIP), the Company will provide an explanation, as part of the filing, why the shift was appropriate. Id. p. 6. This information will help to facilitate review of PAWC's filings and may avoid the need for the OCA and other interested parties to investigate or raise an issue in Comments each time there is an apparent shift in levels. Id.

OCA further states that in its LTIP, the Company provided separate projections for (1) the quantity of property to be improved and annual expenditures related to the McKeesport Order and (2) "nonregulatory" quantities/expenditures. Id. OCA states that PAWC qualified its projections by stating that "[a]ctual quantities and scheduling may change depending on the outcome of sewer system evaluation or other planning studies." Id. To assist the Commission and stakeholders in monitoring PAWC's prioritization during the LTIP period, OCA recommended that the Company continue to distinguish between McKeesport quantities/expenditures and non-regulatory quantities/expenditures in its future AAOPs and

LTIIIP filings. Id. The Company's agreement with this recommendation is reflected in Paragraph 14 of the Settlement. Id.

OCA concludes its Statement in Support of Settlement by noting that the Settlement effectively resolves the issues raised by OCA. Therefore, OCA submits that the terms and conditions of the Settlement are in the public interest and should be approved. Id. p. 7.

d) I&E's Position

In its Statement in Support of Settlement, I&E notes that in the Settlement, the Joint Petitioners agree that Section 2 of the Modified LTIIIP describes in detail the Company's framework for analyzing, prioritizing and accelerating the renewal of aging wastewater collection system infrastructure. I&E Statement p. 7. I&E notes that the Company employed a risk-based condition assessment to prioritize DSIC-eligible capital improvement projects, accelerate the replacement of aging infrastructure and reduce I&I in newly acquired systems. Id.

Further, in response to the issues raised in I&E's Amended Answer and the OCA's Comments, I&E notes that the Settlement is in the public interest because PAWC provided the Joint Petitioners with additional information regarding the Company's risk-based condition assessment and planned schedule for replacement and rehabilitation of eligible property. Id. I&E notes that Exhibit 2 attached to the Joint Petition outlines the projected schedule for completion of the Company's risk-based condition assessment for each wastewater system covered by the Modified LTIIIP. Id. In addition, Exhibit 3 attached to the Joint Petition provides detailed information on the Company's projected schedule for replacement and rehabilitation of DSIC-eligible property for each wastewater system based on the preliminary results of the Company's condition assessment. Id.

I&E also notes that the Parties agree that for newly acquired wastewater systems that have known deficiencies in the gravity collections system (e.g., significant I&I, pipe defects, and installation deficiencies), which were observed during the pre-acquisition due diligence

process, PAWC agrees to assume the highest risk factor for these known deficiencies; once the condition assessment is completed, the risk factor will be adjusted to reflect actual conditions. Id. p. 8.

I&E had raised concerns in its Amended Answer regarding PAWC's proposed Modified LTIP utilizing a risk-based condition assessment approach in order to cost effectively prioritize wastewater collection system replacement and rehabilitation projects and accelerate the rehabilitation, improvement, and replacement of aging wastewater infrastructure for wastewater systems. Id. p. 8. I&E noted that PAWC failed to provide a baseline risk assessment, that would demonstrate the "ordinary" (base rate) infrastructure improvement, schedule, cost and risk before applying the "additional recovery" associated with the Modified LTIP/DSIC; the absence of a baseline risk assessment by PAWC eliminates the ability of I&E and the Commission to project an annual risk reduction and a total risk reduction for the accelerated infrastructure improvement schedule when applying the additional recovery mechanism ("ARM"). Id. p. 9.

I&E had also raised concerns that PAWC failed to provide data to support a risk-based condition assessment approach in its filing, in that PAWC's filing failed to provide the necessary pipe/conveyance data variables to properly assess conditions (material, install date, type, actual length, combined system, average depth, etc.) and no data currently exists for approximately 21.1 miles of pipe. Id. p. 10. I&E also noted that the filing failed to provide pipe/conveyance material breakdowns within the PAWC gravity system for approximately 54% of all pipe and for approximately 9% of all pressurized sanitary sewer pipe, and that the filing failed to provide pipe/conveyance installation dates for approximately 34% of the PAWC wastewater system. Id.

Given the terms and conditions contained in the Settlement, I&E supports the risk-based condition assessment methodology settlement terms as reflecting a full and fair compromise of the issues raised by the Parties. Id. I&E notes that the Parties reached this compromise after lengthy informal discovery and negotiations, and I&E believes the agreed upon Settlement terms reflect the amicable agreement among the Joint Petitioners. Id. I&E therefore submits that these Settlement terms are in the public interest. Id.

I&E further notes that it raised concerns regarding the projected annual expenditures and replacements, and whether any changes in projected quantities or changes in expenditures would result in the re-prioritizing existing commitments in other service territories. Id. p. 12. I&E noted that PAWC failed to clearly separate (within all the appropriate areas of the Modified LTIIIP and applicable DSIC) the “ordinary” pipeline segment replacement and maintenance costs (associated with the appropriate base rates for each system) from the “additional recovery mechanism” associated with the accelerated LTIIIP/DSIC asset replacement proposed in the Modified LTIIIP. Id. pp. 12-13. I&E also raised concerns that PAWC failed to provide, for each individual PAWC wastewater system, the proposed DSIC charge as a function of percent billed to customers as described in the Public Utility Code, Section 1358, and the relevant limitations. Id. p. 13. Additionally, I&E noted PAWC failed to provide a description of the improvements covered by the base rates and DSIC in sufficient detail and incorporated into the Modified LTIIIP, and that PAWC failed to break down the proposed wastewater infrastructure improvements further into the eligible property as defined in the Public Utility Code, Section 1351 “Eligible property.” Id.

I&E notes that in the Settlement, the Joint Petitioners acknowledge that, to facilitate the evaluation of the Company's proposed Modified LTIIIP, PAWC provided the detailed table attached to the Joint Petition as Exhibit 4, which identifies historic annual DSIC eligible expenditures in each district, from 2015 through the latest available data for 2019 (January/February). Id. p. 11. I&E further notes that Exhibit 4 also contains a summary of historic annual replacement for DSIC-eligible categories of plant for 2015 through 2018, by district, and that, in future AAOPs and other LTIIIP-related filings, the Company agrees to continue to distinguish between non-regulatory and regulatory investments and will separately identify expenditures for combined and sanitary only systems. Id.

I&E also notes that the Parties agreed that pursuant to Ordering Paragraph 7 of the Commission's October 26, 2017 Order in Docket No. A-2017-2606103, PAWC may collect a DSIC related to the Municipal Authority of the City of McKeesport system prior to the first base rate case in which the System plant-in-service is incorporated into PAWC's rate base, subject to three conditions. Id. The Joint Petitioners agree that the first of those conditions (Ordering

Paragraph 7(a)) is met because PAWC's Modified LTIP incorporating the McKeesport system does not re-prioritize other existing commitments in other service areas. Additionally, the Parties agreed in future LTIP and AAOP filings, any changes in projected quantities or projected expenditures for the McKeesport system will be condition assessment-related and will not re-prioritize existing commitments in other service areas. Id. In such filings, if projected quantities or projected expenditures are higher for the McKeesport system and lower for other service areas than the projections in its approved LTIP, PAWC will include an explanation why the shift was appropriate and that the shift does not re-prioritize existing commitments in other service areas. Id. pp. 11-12. I&E also notes that the Parties agreed in future water and wastewater LTIP and AAOP filings, if projected quantities or projected expenditures are higher for systems acquired under 66 Pa.C.S. § 1329 and lower for other service areas — compared to its approved LTIP — the Company will include an explanation why the shift was appropriate and why the shift does not re-prioritize existing commitments in other service areas. Id. p. 12.

Given the terms and conditions contained in the Settlement, I&E supports the projected annual expenditures and replacements settlement terms as reflecting a full and fair compromise of the issues raised by the Parties. Id. p. 14. I&E notes that the Parties reached this compromise after lengthy informal discovery and negotiations, and I&E believes the agreed upon Settlement terms reflect the amicable agreement among the Joint Petitioners. Id. I&E therefore submits that these Settlement terms are in the public interest. Id.

Also in its Statement in Support of Settlement, I&E notes that it had raised concerns regarding the definition of "qualified contractor" and the methodology used to compile PAWC's list of qualified contractors. Id. p. 15. I&E notes that in response to I&E's concerns, PAWC provided details regarding its processes for evaluating contractors during the informal discovery and settlement negotiations, and confirmed that it uses a third-party risk management company that monitors and certifies safety performance of the PAWC contractors in a centralized database. Id. PAWC asserted that these processes establish the basis of PAWC's "qualified contractors." PAWC also affirmed that it continuously maintains and updates the list of approved qualified contractors based upon satisfactory job performance and maintaining

acceptable certification with the third-party risk management company; PAWC concluded this list of pre-qualified contractors fosters competitive bidding. Id.

I&E notes that in the Settlement, the Joint Petitioners agreed that PAWC will continue to administer a competitive process for soliciting contracts and will also continue to use a third party to monitor contractor safety performance through the pre-qualification process described in Section 7 of the Modified LTIP. Id. p. 14. Further, PAWC will use only pre-qualified contractors or trained Company employees to perform work on all wastewater DSIC eligible projects. Id. pp. 14-15.

Given the terms and conditions contained in the Settlement, I&E supports the qualified contractor Settlement terms as reflecting a full and fair compromise of the issues raised by the Parties. Id. p. 14. I&E notes that the Parties reached this compromise after lengthy informal discovery and negotiations, and I&E believes the agreed upon Settlement terms reflect the amicable agreement among the Joint Petitioners. Id. pp. 14-15. I&E therefore submits that these Settlement terms are in the public interest. Id.

I&E further discussed, in its Statement in Support of Settlement, that it had expressed concerns regarding the coordination of planned projects and activities and raised the issue of PAWC's use of the PA One Call "Coordinate PA" ("Coordinate PA") system. Id. p. 16. I&E argued that the Modified LTIP should include provisions that PAWC create and initiate newly written procedures and orders to contractors, engineers, etc., to utilize the design notification system in PA One Call without exception, since I&E noted that it could not find a single event where PAWC utilized the PA One Call design notification system in the past. Id.

I&E requested that the Modified LTIP reflect this process and demonstrate, via PAWC procedures, the methodology through which this will be achieved and measured to ensure a successful implementation and continued practice. Id. pp. 16-17.

I&E states that in the Joint Petition for Settlement, the Joint Petitioners acknowledge that PAWC currently uses the PA One Call "Coordinate PA" system to facilitate

and track contractor pre-construction meetings. Id. p. 16. In the Settlement, the Company agrees to utilize the PA One Call "Coordinate One Call" system to identify targeted areas of anticipated work planned over a two-year look ahead period and to facilitate better coordination with other utilities and municipalities. Id.

Given the terms and conditions contained in the Settlement, I&E supports the coordination of planned projects Settlement terms as reflecting a full and fair compromise of the issues raised by the Parties. Id. p. 17. I&E notes that the Parties reached this compromise after lengthy informal discovery and negotiations, and I&E believes the agreed upon Settlement terms reflect the amicable agreement among the Joint Petitioners. Id. I&E therefore submits that these Settlement terms are in the public interest. Id.

I&E concludes its Statement in Support of Settlement by stating that all issues raised in the pleadings, in informal discovery, and in the settlement negotiations have been amicably resolved and are incorporated or considered in the resolution proposed in the Settlement. Id. I&E states that the very nature of a settlement requires compromise on the part of all parties, and that the Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. Id. I&E further submits that the acceptance of this Settlement negates the need for evidentiary hearings, which would compel the extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of Main and Reply Briefs, the preparation of Exceptions and Replies, and the potential of filed appeals, all yielding substantial savings for all parties and ultimately all customers. Id. p. 18. I&E also states that the Settlement provides regulatory certainty with respect to the disposition of issues and final resolution of this case which all parties agree benefits their discrete interests. Id. I&E therefore supports adoption of the Settlement because acceptance of this Settlement is in the public interest. Id.

e) OSBA's Position

In its Statement in Support of Settlement, OSBA notes that the Settlement is in the public interest because, pursuant to the Settlement, the parties agreed that the Company should be permitted to implement its Modified LTIP with certain revisions, including the obligations for PAWC to use only pre-qualified contractors or trained company employees to perform work on all wastewater DSIC-eligible projects, and for PAWC to continue to use a competitive process for soliciting contracts as well as continuing to use a third party to monitor contractor safety performance throughout the pre-qualification process outlined in Section 7 of its Modified LTIP. OSBA Statement p. 4.

OSBA also notes that the Settlement is in the public interest because PAWC agrees to assume the highest risk factor for newly acquired wastewater systems with known deficiencies in their gravity collection system when conducting its risk based condition assessment to prioritize DSIC-eligible capital improvement projects. Id. OSBA states that these commitments will benefit small commercial and industrial (C&I) customers of the Company because such measures will likely promote safety and should minimize service disruptions for Small C&I customers. Id.

OSBA additionally supports the commitment by PAWC to use the PA One Call "Coordinate One Call" system to identify targeted areas of anticipated work over a two-year look ahead period and to facilitate better coordination with other utilities and municipalities. Id. In that regard, OSBA notes that construction projects can deter customers from patronizing small businesses if access to small businesses is disrupted by such projects, and that patrons may avoid streets where construction is ongoing and may even believe that businesses are not open while construction occurs. Id. pp. 4-5. In order to minimize impact on small business, the OSBA believes that construction projects should be coordinated to the extent possible, and that PAWC's commitments toward this goal will have a beneficial impact on the Company's Small C&I customers. Id. p. 5. The OSBA has concluded that the Settlement is reasonable and in the interests of the Company's Small C&I customers. Id.

OSBA concludes its Statement in Support of Settlement by stating that the Settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Id. Such costs are borne not only by the Joint Petitioners, but ultimately by the Company's customers as well. Id. Avoiding further litigation of this matter will serve judicial efficiency and will allow the OSBA to more efficiently employ its resources in other areas. Id. Therefore, for the reasons set forth in the Settlement, as well as the reasons enumerated in OSBA's Statement in Support of the Settlement, the OSBA supports the proposed Settlement and respectfully requests that the Commission approve the Settlement in its entirety without modification. Id. pp. 5-6.

4) Disposition

C. Statutory and Regulatory Requirements

In determining whether the public interest is served by this particular Settlement, we are required to determine that the Settlement meets the specific statutory and regulatory criteria for Commission-approved LTIIPs. Specifically, the Settlement must show that the LTIIP meets the requirements set forth in Section 1352 of the Public Utility Code and Section 121.3 of the Commission's Regulations (66 Pa. C.S.A. § 1352; 52 Pa. Code § 121.3). As discussed below, we find that the Settlement does meet these requirements.

(1) Identification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery under this subchapter (66 Pa. C.S.A. § 1352(a)(1)).

Exhibit 1 to the Joint Petition for Settlement, which was admitted into the record as part of the Joint Stipulation of Facts approved on October 23, 2019, addresses the types and ages of eligible property for which PAWC seeks recovery in its Modified LTIIP. In that Exhibit 1, PAWC delineates all wastewater systems that it owns and operates (Exhibit 1, Table 1). PAWC also provides an inventory of all eligible property for which it seeks recovery in the Modified LTIIP (Exhibit 1, pp. 5-16). The inventory also includes a detailed narrative description of the property for which PAWC seeks recovery, including an analysis of the types,

ages and conditions of the property listed in Exhibit 1. Id. PAWC also explains the various types of sewer collection systems it owns as either gravity, low-pressure or force main, as well as the main breakdown by length and pipe installation breakdown by length. Id. We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently identified the types and ages of eligible property for which it seeks recovery under 66 Pa. C.S.A. § 1352(a)(1). We conclude that PAWC has met this particular statutory requirement.

(2) An initial schedule for the planned repair and replacement of eligible property (66 Pa. C.S.A. § 1352(a)(2)).

Exhibit 1 to the Joint Petition for Settlement addresses the initial schedule for the planned repair and replacement of eligible property. (Exhibit 1, pp. 16-23). PAWC recognizes the importance of continuous renewal of aging infrastructure in order to ensure and maintain adequate, efficient, safe and reliable service to existing customers. PAWC added that, within a five-year strategic capital expenditure plan, PAWC has established longer term funding levels for main replacement and rehabilitation based on program needs. PAWC explained that the first step of the planning process is to conduct a macro-level overview of each wastewater systems and dividing properties into general categories based on various factors. Id. The next step in the planning process is to conduct a more detailed, micro-level planning analysis based on a comprehensive sewer system evaluation study. Id. Strategic improvements are identified in the micro-level planning process based on additional factors. Id. Local conditions may also impact individual projects. PAWC explained that a risk score will be assigned to each project based on the likelihood of failure and the consequence of failure. PAWC concluded that, among other things, preference will be given to the systems with high I&I and older systems with aging lift stations, brick manholes and vitrified clay pipe.

In addition, Table 6 to Exhibit 1 contains a US Army Corps of Engineers condition rating scale along with recommended action based on the rating for the eligible property in question. Table 7 to Exhibit 1 is a chart representing a consequence of failure scoring system, explaining the consequences of failure of the eligible property in question. PAWC states that it will utilize these charts as aids in determining repair and replacement of eligible property, with higher priority being given to items that are more likely to fail given their

condition rating, or more likely to have greater consequences in the event of failure. We again note that the Parties to the Settlement do not dispute that PAWC has sufficiently explained its initial schedule for the planned repair and replacement of eligible property under 66 Pa. C.S.A. § 1352(a)(2). We conclude that PAWC has met this particular statutory requirement.

(3) A general description of the location of the eligible property (66 Pa. C.S.A. § 1352(a)(3)).

Exhibit 1 to the Joint Petition for Settlement provides a summary of each wastewater system, including the types of eligible property and strategies for accelerated rehabilitation and replacement in each system. (Exhibit 1 pp. 24-38). Specifically, Exhibit 1 provides the counties and municipalities in which the eligible property is located. *Id.* Exhibit 1 further provides detail regarding the number of customers served in the various service areas, along with a general description of the age, type and service volume capabilities of the eligible property in the various services areas, among other things. *Id.* We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently described the location of the eligible property in this case under 66 Pa. C.S.A. § 1352(a)(3). We conclude that PAWC has met this particular statutory requirement.

(4) A reasonable estimate of the quantity of eligible property to be improved (66 Pa. C.S. A. § 1352(a)(4)).

Exhibit 1 to the Joint Petition for Settlement provides a reasonable estimate of the quantity of eligible property to be improved. Table 8 to Exhibit 1 contains the linear foot estimates of gravity pipe to be replaced. (Exhibit 1, p. 38). Table 8 also contains the estimated number of manholes, service laterals and lift stations to be replaced. Table 8 gives the figures on a yearly basis from 2019 to 2023. We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently estimated the quantity of eligible property to be replaced under 66 Pa. C.S.A. § 1352(a)(4). We conclude that PAWC has met this particular statutory requirement.

(5) Projected annual expenditures to implement the plan and measures taken to ensure that the plan is cost effective (66 Pa. C.S.A. § 1352(a)(5)).

Exhibit 1 to the Joint Petition for Settlement addresses the projected annual expenditures to implement the plan. Table 9 to Exhibit 1 provides the yearly cost estimates for the expenditures from 2019 to 2023 (Exhibit 1, pp. 38-39). Table 9 also breaks down the cost estimates by regulatory versus non-regulatory costs, and further includes a column indicating the total investment by year. Table 9 also states that PAWC uses competitive bidding to ensure that all major capital projects are completed in a cost-effective manner. PAWC noted that some quantities may change depending on the results of the sewer system evaluation and engineering studies and whether a replacement or rehabilitation methods was selected during the final design. Id. PAWC added that, for all projects, the most prudent and cost-effective method will be selected. Id. We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently explained its annual expenditures to implement the plan or has taken adequate measures to ensure that the plan is cost effective under 66 Pa. C.S.A. § 1352(a)(5). We conclude that PAWC has met this particular statutory requirement.

(6) The manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service (66 Pa. C.S. § 1352(a)(6)).

Exhibit 1 to the Joint Petition for Settlement demonstrates that PAWC has continuously invested in its wastewater infrastructure to maintain safe, reliable service to its customers. (Exhibit 1, pp. 39-40). Table 10 to Exhibit 1 shows that, from 2015 to 2018 PAWC spent an average of \$7.39 million annually on wastewater DSIC eligible infrastructure improvements (regulatory driven projects shown separately). From 2019 to 2023, PAWC proposes to increase non-regulatory wastewater DSIC eligible spending to over \$20 million annually in order to continue making necessary improvements at an accelerated pace. Id. The proposed spending for 2019 to 2023 represents a 159 percent increase in wastewater DSIC spending, excluding regulatory driven projects. Id. We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently explained the manner in which replacement of infrastructure will be accelerated or that PAWC's repair and replacement efforts

will ensure that PAWC's customers receive adequate, safe, efficient and reliable service under 66 Pa. C.S.A. § 1352(a)(6). We conclude that PAWC has met this particular statutory requirement.

(7) A workforce management and training program designed to ensure that the utility will have access to a qualified workforce to perform work in a cost-effective, safe and reliable manner (52 Pa. Code § 121.3(7)).

Exhibit 1 to the Joint Petition for Settlement addresses workforce management. the projected annual expenditures to implement the plan. (Exhibit 1, p. 40). PAWC states that it utilizes a pre-qualification process to ensure all contractors are qualified to perform work in a cost-effective, safe, and reliable manner. Exhibit 1, p. 43. PAWC utilizes a third party entity to prequalify contractors to ensure that they will perform work safely, reliably and in a cost effective manner. Id. Specifically, PAWC's third party workforce monitor requires contractors to submit pertinent documentation, such as:

- Safety: company policy, designated safety inspector, OSHA lost workdays and recordable incidents, OSHA violations
- Worker's Compensation Experience Ratings (Experience Modifier)
- Staffing information
- Annual value of work and percentage of work relevant to bid project
- Work experience schedule
- Bonding capacity
- Liability Insurance coverage
- References

Id. PAWC also ensures that all construction projects are properly inspected, and that PAWC employees are actively engaged in the direct supervision of project inspections. We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently explained its workforce management plan under 52 Pa. Code § 121.3(7). We conclude that PAWC has met this particular regulatory requirement.

(8) A description of a utility’s outreach and coordination activities with other utilities, Department of Transportation and local governments regarding the planned maintenance/construction projects and roadways that may be impacted by the LTIIIP 52 Pa. Code § 121.3(8).

Exhibit 1 to the Settlement demonstrates that PAWC will coordinate with municipalities, the Department of Transportation and other utilities to ensure that LTIIIP projects are properly planned, and executed in an efficient and cost-effective manner as required by the LTIIIP Regulations, by maintaining open communication with applicable municipalities, agencies and utilities, use of technology to minimize roadway disturbance, delivery of high-speed notifications to customers when water emergencies occur, and leveraging opportunities to replace sewer and water lines simultaneously. (Exhibit 1, p.41). Exhibit 1 provides specific details of PAWC’s coordination activities, including PAWC’s commitment to utilizing the PA One Call “Coordinate PA” system, along with maintaining communication with PennDOT, municipalities and customers within those municipalities where LTIIIP-related construction will take place. *Id.* We also note that the Parties to the Settlement do not dispute that PAWC has sufficiently explained its workforce management plan under 52 Pa. Code § 121.3(8). We conclude that PAWC has met this particular regulatory requirement.

D. Public Interest Analysis

Having concluded that the Modified LTIIIP meets the applicable statutory and regulatory requirements, we also agree that the Settlement is in the public interest and should be approved without modification. In that regard, we note that the Modified LTIIIP, like the 2014 LTIIIP, is designed to accelerate the rehabilitation, improvement and replacement of aging wastewater infrastructure, particularly for troubled systems acquired by PAWC, and continues to focus on reducing I&I. The Modified LTIIIP reflects the following principal changes: (1) the Company’s use of a more detailed risk-based condition assessment to prioritize projects; (2) increased spending of \$20 million annually to maintain an accelerated rate of investment; (3) addition of 11 wastewater districts, including both combined and sanitary sewer systems acquired since 2014; and (4) expansion of DSIC-eligible property to include assets associated

with combined sewer systems and the entire customer service lateral on gravity wastewater collection systems.

We also note that under the Settlement, the accelerated investment totaling approximately \$115.7 million encompassed by the Modified LTIP consists entirely of “eligible property,” as defined in 66 Pa.C.S. §1351, including a variety of wastewater facilities, including collection mains, manholes, lift stations, service laterals, combined sewer overflow (“CSO”) structures, diversion chambers and inlets/catch basins.

The Settlement is in the public interest and should be approved without modification because it addresses the additional information both OCA and I&E asserted was necessary to assist the Commission in determining that the Modified LTIP will accelerate PAWC’s wastewater infrastructure repair and replacement in a cost-effective manner, with OCA specifically recommending that the Company provide a breakdown of historic annual replacement and retirement for categories of plant for 2015 through 2018 to date, by district. Under the Settlement, PAWC provided the specific information requested by the OCA in a detailed spreadsheet attached to the Joint Petition as Exhibit 3, which shows the Company’s projected schedule for replacement and rehabilitation of DSIC eligible property by category of plant and district based on the preliminary results of the Company’s risk-based condition assessment.

The Settlement also addressed I&E’s request for additional data that it deemed necessary to support the risk-based condition approach employed by the Company to prioritize wastewater collection system replacement and rehabilitation projects and accelerate the associated investments included in the Modified LTIP. Under the Settlement, PAWC provided detailed tables outlining the projected schedule for completion of the Company’s condition assessment for each wastewater system covered by the Modified LTIP, as well as estimates of the DSIC-eligible property to be improved and the projected schedule for the associated replacement and repair work identified by the Company’s condition assessment to date. The Settlement also clarifies that PAWC will assume the highest risk factor for newly acquired

wastewater systems that have known deficiencies, such as significant I&I, at the outset of the condition assessment, which will be adjusted to reflect actual conditions.

Also under the Settlement, PAWC agreed to the OCA's recommendation to continue distinguishing between regulatory and non-regulatory projects in PAWC's future LTIIIP-related filings. The Settlement also confirms that the Modified LTIIIP does not reprioritize existing infrastructure improvement commitments to the Company's McKeesport wastewater division from other service areas consistent with Ordering Paragraph 7(a) of the Commission's October 26, 2017 Order in Docket No. A-2017-2606103. The Settlement is in the public interest because, in future LTIIIP and AAOP filings, if projected expenditures or quantities are higher for the McKeesport system or systems acquired under 66 Pa. C.S. § 1329, the Company also agreed to explain why the shift is appropriate and does not reprioritize existing commitments.

The Modified LTIIIP proposes to increase the Company's historic annual wastewater DSIC-eligible spending, on average, from approximately \$7.8 million annually (2015-2018) to over \$20 million annually, representing a 159 percent increase, to continue making necessary system upgrades at an accelerated pace. Under the Settlement, to ensure system reliability and public safety, PAWC's contractor workforce will be fully qualified, in accordance with the standards set forth in Section 1359 of the Public Utility Code. Also, in carrying out projects under the Settlement, PAWC will continue to coordinate with municipalities, the Department of Transportation and other utilities to ensure that LTIIIP projects are properly planned, and executed in an efficient and cost-effective manner as required by the LTIIIP Regulations, by maintaining open communication with applicable municipalities, agencies and utilities, use of technology to minimize roadway disturbance, delivery of high-speed notifications to customers when water emergencies occur, and leveraging opportunities to replace sewer and water lines simultaneously. The Settlement also addresses I&E's concern regarding the Company's current use of the PA One Call "Coordinate PA" system, in that PAWC agreed to utilize the PA One Call "Coordinate One Call" system to identify targeted areas of anticipated work planned over the next two years and to facilitate better coordination

with other utilities and municipalities. Also, as noted by OSBA, such coordination should serve to minimize disruption to small business customers in the affected project areas.

In summary, we agree with the Joint Petitioners that the accelerated investment included in the Modified LTIP will enable the Company to upgrade collection system infrastructure, reduce I&I levels to minimize overflow issues, and address deficiencies in certain newly acquired wastewater systems. These infrastructure improvements will improve safety and reliability, customer service and environmental compliance. We also note that the Settlement calls for the use of fully qualified contractors in accordance with Section 1359 of the Public Utility Code. Further, the Settlement requires PAWC to coordinate its projects with affected municipalities in order to minimize disruptions to those areas. The Settlement also provides the additional information sought by the statutory advocates which enabled those agencies to fully evaluate the proposed Modified LTIP under the considerations set forth in Section 1352 of the Public Utility Code and the Commission's LTIP Regulations. Accordingly, the Commission should approve the Modified LTIP that contains all of the elements required by Section 1352 of the Public Utility Code and the LTIP Regulations.

Additionally, we note that the Settlement avoids the expense and burden of continued litigation in this proceeding. The Settlement will save the parties from expending substantial time and expense involved with further litigation. Had this case continued to be litigated, the parties would have incurred extensive additional costs, including the exchange of pre-served testimony, service of discovery requests and answering discovery requests, hearings, briefs, exceptions and possible appeals. Avoiding such expenditures minimizes the costs that PAWC might ultimately pass on to the ratepayers, conserves the resources of all other parties involved in these proceedings and preserves Commission resources as well.

Finally, we note that the Settlement should be approved as being in the public interest because it is supported by substantial evidence. In this proceeding, the parties have stipulated to the facts set forth in the Settlement. The parties have also engaged in discovery and have had ongoing settlement discussions throughout this proceeding. These efforts demonstrate that the initial filings of the company and the responses to the filings have been thoroughly

vetted and considered by all concerned parties. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point of the proceeding. As a result, we conclude that the Settlement is supported by substantial evidence in the record of this proceeding and that the Settlement is therefore in the public interest and should be approved without modification.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding and the parties to this proceeding. 66 Pa. C.S.A. § 1352.
  
2. Commission policy promotes settlements. 52 Pa.Code § 5.231; The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
  
3. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters; rather, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011); Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm’n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).
  
4. Any decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704; "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

5. Act 11 of 2012 provides jurisdictional water and wastewater utilities, electric distribution companies and natural gas distribution companies with the ability to implement a distribution system improvement charge to recover reasonable and prudent costs incurred to repair, improve or replace certain eligible distribution property that is part of the utility's distribution system.

6. "Eligible property" for inclusion in NGDC's DSIC includes "other related capitalized costs." 66 Pa.C.S. § 1351(2)(x).

7. The Commission established various procedures and guidelines necessary to implement Act 11. *See, e.g., Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered Aug. 2, 2012).

8. The proposed LTIIP must meet the requirements set forth in Section 1352 of the Public Utility Code. 66 Pa. C.S.A. § 1352(a)(1)-(6).

9. The proposed LTIIP must also meet the requirements set forth in Section 121.3 of the Commission's Regulations. 52 Pa. Code § 121.3.

10. Section 1353 of the Public Utility Code allows wastewater company's to timely recover reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa.C.S. § 1353(a).

11. The Joint Petition for Settlement should be adopted in its entirety without modification because it is in the public interest and is supported by substantial evidence.

