



April 17, 2020

VIA E-FILING

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

Re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the Borough of Kane Authority's assets, properties and rights related to its wastewater collection and treatment system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of Kane, and in a portion of Wetmore Township, McKean County, Pennsylvania; Docket Nos. A-2019-3014248 et al.

Joint Petition for Approval of Settlement of All Issues

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Joint Petition for Approval of Settlement of All Issues ("Settlement") between Pennsylvania-American Water Company, the Office of Consumer Advocate and the Borough of Kane Authority (together, the "Signatories"). By the Settlement, the Signatories resolve all of the issues arising in connection with this proceeding. The Office of Small Business Advocate and the Commission's Bureau of Investigation and Enforcement do not oppose the Settlement; they will file their letters of non-opposition separately.

Copies of the Settlement are being served on the Presiding Officer, Deputy Chief Administrative Law Judge Joel H. Cheskis, and on all parties, as indicated on the enclosed Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please direct them to me.

Sincerely,

COZEN O'CONNOR

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

Enclosures

cc: Hon. Joel H. Cheskis
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa. C.S. § 1102(a), for :
approval of (1) the transfer, by sale, of substantially all :
of the Borough of Kane Authority's assets, properties :
and rights related to its wastewater collection and :
treatment system to Pennsylvania-American Water :
Company, and (2) the rights of Pennsylvania- :
American Water Company to begin to offer or furnish :
wastewater service to the public in the Borough of :
Kane, and in a portion of Wetmore Township, McKean :
County, Pennsylvania :

Docket No. A-2019-3014248, *et al.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement of All Issues**, upon the parties, listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

DUE TO THE COVID-19 EMERGENCY, THIS DOCUMENT IS BEING SERVED BY E-MAIL ONLY

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Counsel for *Pennsylvania-American Water Company*

Date: April 17, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Joel H. Cheskis**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa. C.S. § 1102(a), for :
approval of (1) the transfer, by sale, of substantially all :
of the Borough of Kane Authority’s assets, properties :
and rights related to its wastewater collection and :
treatment system to Pennsylvania-American Water :
Company, and (2) the rights of Pennsylvania- :
American Water Company to begin to offer or furnish :
wastewater service to the public in the Borough of :
Kane, and in a portion of Wetmore Township, :
McKean County, Pennsylvania :

Docket No. A-2019-3014248, *et al.*

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

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), and the Borough of Kane Authority (the “Authority”) (singularly, a “Petitioner” and, collectively, the “Joint Petitioners”)¹ hereby join in this “Joint Petition for Approval of Settlement of All Issues” (“Settlement”) and respectfully request that the Honorable Deputy Chief

¹ The Office of Small Business Advocate (“OSBA”) and the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”) do not join this Settlement, but do not oppose it. The Joint Petitioners, together with I&E and OSBA, are referred to herein as the “Parties.”

Administrative Law Judge Joel H. Cheskis (the “ALJ”) recommend approval of, and the Pennsylvania Public Utility Commission (“Commission”) approve, this Settlement without modification.

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

II. BACKGROUND

1. The Settlement pertains to the application filed by PAWC on December 2, 2019, pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. §1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of the Authority (the “Transaction”), related to the Authority’s wastewater collection and treatment system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

2. On December 4, 2019, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided by December 11, 2019.

3. On December 6, 2019, PAWC filed an Amendment to the Application (the application, as amended, is referred to herein as the “Application”). Additionally, on December 10, 2019, PAWC filed the information requested by TUS following its completeness review.

4. On December 11, 2019, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would

not finally accept the Section 1329 Application until PAWC complied with certain service and notice requirements.

5. On December 20, 2019, PAWC filed proof of service of the Application on required municipal entities, public utilities, and other offices.

6. On December 27, 2019, the OSBA filed a Notice of Intervention, together with the Notice of Appearance of Sharon E. Webb, Esq. On January 31, 2020, Daniel Asmus, Esq. also entered an appearance on behalf of OSBA.

7. On January 22, 2020, PAWC filed proof of publication in local newspapers. Also on January 22, 2020, PAWC notified the Commission that it had completed providing individualized notice of the Application to customers of PAWC (water and wastewater) and Kane, and PAWC filed a verification stating that it had complied with all requirements of the Secretarial Letter of December 11, 2019.

8. By Secretarial Letter dated February 6, 2020, the Commission notified PAWC that it had finally accepted the Application for filing.

9. Notice of the Application was published in the *Pennsylvania Bulletin* on February 22, 2020. 50 *Pa. B.* 1229. The Notice established March 9, 2020 as the deadline for filing Protests and Notices to Intervene.

10. On February 6, 2020, the OCA filed a Protest and Public Statement, together with the Notices of Appearance of Christine Maloni Hoover, Esq., Erin L. Gannon, Esq., Santo G. Spataro, Esq., and Harrison W. Breitman, Esq.

11. On February 10, 2020, Carrie B. Wright, Esq. and Erika L. McLain, Esq. entered their appearance on behalf of I&E.

12. On February 7, 2020, the Commission notified the parties that a prehearing conference would be held on March 11, 2020, and the ALJ issued his Prehearing Conference Order.

13. On February 18, 2020, the Authority filed a Petition to Intervene in this proceeding.

14. On March 2, 2020, the Parties filed a Stipulation Regarding Discovery Rule Modifications.

15. On March 11, 2020, a Prehearing Conference was held, during which the ALJ adopted a schedule and granted the OCA's request to hold a public input hearing. By e-mail of March 19, 2020, the ALJ sent the Scheduling Order to the Parties; that Order has not yet been served by the Commission due to the COVID-19 pandemic state of emergency.

16. On March 27, 2020, PAWC and I&E filed a Joint Stipulation.

17. Also on March 27, 2020, PAWC and OSBA filed a Joint Stipulation.

18. Also on March 27, 2020, in accordance with the litigation schedule, the OCA served Direct Testimony.

19. Evidentiary hearings were scheduled for April 20 and 21, 2020. On April 3, 2020, the ALJ informed the Parties that, due to the state of emergency, it would not be possible to hold a telephonic public input hearing for an indeterminable period. On April 6, 2020, the Parties advised the ALJ they had reached an agreement to request that the customer objections filed in the public comment folder be admitted into the evidentiary record, in lieu of a public input hearing. The Parties also advised the ALJ that they had reached an agreement in principle to resolve this proceeding. Consequently, the ALJ cancelled the hearings scheduled for April 20 and 21, 2020. The ALJ directed the Parties to file a Petition for Settlement and Statements in Support on or before May 8, 2020.

20. On April 17, 2020, the Parties filed a Joint Stipulation for Admission of Evidence.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Approval of Application

21. The Application shall, subject to the other terms and conditions contained in the Settlement, be approved as being in the public interest and the Commission shall issue such Certificates of Public Convenience as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of the Authority's assets, properties and rights related to its wastewater collection and treatment system to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish and supply wastewater service in the areas served by the Authority as indicated in the Application.

B. Tariff

22. The *pro forma* tariff supplement attached to the Application as **Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service, shall be permitted to become effective immediately upon closing of the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

23. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$17,560,000 for ratemaking rate base purposes for the acquired assets.

24. The Parties agree that the adjustments to the appraisals reflect a compromise of the various positions of the Parties. All Parties reserve the right to present adjustments and oppose adjustments to appraisals and methodologies, inputs and assumptions in appraisals in future cases and proceedings, whether or not raised in this proceeding. The Parties further agree, however, for the purposes of this proceeding, that the following adjustments are explicitly accepted by the Parties:

(a) Market Approach: If “comparable acquisitions” are used in determining market value, the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order.

(b) Cost Approach: If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified.

D. Rates

25. Except as explicitly stated herein, nothing contained in the Settlement or in the Commission’s approval of the Application shall preclude any Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding.

26. In the first base rate case that includes the Authority’s wastewater system assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the Authority’s system.

27. In the first base rate case that includes the Authority’s wastewater system assets, PAWC will also provide a separate cost of service study for the Authority’s system.

28. In the first base rate case that includes the Authority's wastewater system assets, PAWC will propose to move the Authority's system to its cost of service or 1.46x the current Authority rate, whichever is lower, based on a separate cost of service study for the Authority's system; provided, however, that PAWC will not be obligated to propose Authority wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. The Parties acknowledge, however, that PAWC may agree to rates other than those proposed for Authority customers in the context of a settlement of the base rate case. OCA, I&E and OSBA reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case.

29. The current average Authority rate is \$51.87 per month based on 3,630 gallons of monthly usage.

E. Distribution System Improvement Charge

30. If PAWC proposes to modify its Long-Term Infrastructure Improvement Plan ("LTIIIP") to include the Authority's wastewater system, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIIIP, PAWC shall be permitted to collect a Distribution System Improvement Charge ("DSIC") related to the Authority's wastewater system prior to the first base rate case in which the Authority's assets are incorporated into rate base.

F. Claims for Allowance for Funds Used During Construction and Deferred Depreciation

31. The Parties acknowledge that the Application includes a request that (i) PAWC be permitted to accrue Allowance for Funds Used During Construction ("AFUDC") for post-

acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (ii) PAWC be permitted to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes the Authority's wastewater system assets. The Parties reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Parties' assent to this term should not be construed to operate as their preapproval of PAWC's requests.

G. Transaction and Closing Costs

32. The Parties acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the Transaction. The Parties agree that they will not contest this request in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Parties' assent to this term should not be construed to operate as their preapproval of PAWC's request.

33. The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Asset Purchase Agreement between PAWC and the Authority shall be separately identified in PAWC's next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

H. Low Income Program Outreach

34. In the first full billing cycle commencing within 30 days after closing of the Transaction, PAWC shall include a bill insert or onsert to former Authority customers regarding

PAWC's low income programs and shall also include such information in a welcome letter to the Authority's customers. The bill insert or onsert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information.

I. Report on Status of Missing Easements

35. One year after closing on the Transaction, PAWC shall file a report at this docket number regarding the status of any missing easements for the Authority's system. The report will include the dollar value of each easement obtained during the year after closing.

J. Approval of Section 507 Agreements

36. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:²

(a) the Asset Purchase Agreement By and Among the Borough of Kane Authority, as Seller, together with the Borough of Kane and Wetmore Township, and Pennsylvania-American Water Company, as Buyer, dated as of November 4, 2019, and

(b) the Agreement by and between the Borough of Kane Authority, the Township of Wetmore and the Borough of Kane, dated July 8, 1992.

² The OCA does not join in this paragraph but does not oppose PAWC's request.

K. Other Necessary Approvals

37. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transaction contemplated in the Application in a lawful manner.

L. Standard Settlement Conditions

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

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

40. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Petitioner's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future

proceeding, except to the extent required to implement this Settlement.

41. Attached as **Appendix A** are Proposed Ordering Paragraphs, which have been prepared jointly by the Joint Petitioners.

42. Each Petitioner shall prepare a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be fair, just and reasonable and, therefore, in the public interest.

43. If the ALJ recommends approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, the Office of Consumer Advocate, and the Borough of Kane Authority, by their respective counsel, respectfully request that:

(a) The Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.

(b) The Application filed by PAWC on December 2, 2019, and amended on December 6, 2019, be approved.

(c) The Commission issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of the Authority's assets, properties and rights related to its wastewater collection and treatment system to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish

and supply wastewater collection and treatment service in the areas served by the Authority as indicated in the Application.

(d) The Commission permit PAWC, upon closing of the Transaction, to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Application as **Appendix A-12**, to be effective upon closing of the Transaction.

(e) The Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$17,560,000 associated with the acquisition of the System.

(f) Although the Parties reserve the right to present adjustments and oppose adjustments to appraisals in future cases, for purposes of this proceeding, the Parties request that the Commission accept the following adjustments:

(1) Market Approach: If “comparable acquisitions” are used in determining market value, the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order.

(2) Cost Approach: If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified.

(g) At the time of filing the first base rate case that includes the Authority’s wastewater system assets, PAWC shall submit a cost of service study that removes all costs and revenues associated with the operation of the Authority’s system.

(h) PAWC will also provide a separate cost of service study for the Authority’s system at the time of filing PAWC’s first base rate case that includes the Authority’s wastewater system assets.

(i) PAWC shall, in the first base rate case that includes the Authority's wastewater system assets, propose to move the Authority's system to its cost of service or 1.46x the current Authority rate, whichever is lower, based on a separate cost of service study for the Authority's system; provided, however, that PAWC will not be obligated to propose Kane wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.

(j) The Commission permit PAWC to propose to modify its LTIP to include the Authority's wastewater system, subject to the condition that PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIP, PAWC shall be permitted to collect a DSIC related to the Authority's wastewater system prior to the first base rate case in which the Authority's assets are incorporated into rate base.

(k) The Commission, pursuant to 66 Pa. C.S. § 1329(f), permit PAWC to accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Parties reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Parties' assent to this term to operate as their preapproval of PAWC's request.

(l) The Commission, pursuant to 66 Pa. C.S. § 1329(f), permit PAWC to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Parties reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Parties' assent to this term to operate as their preapproval of PAWC's request.

(m) The Commission, pursuant to 66 Pa. C.S. § 1329(d)(iv), permit PAWC to include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the

Authority's system. Outside legal fees, if any, shall be separately identified in PAWC's next base rate case. The Commission recognizes that the Parties reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Parties' assent to this term to operate as their preapproval of PAWC's request.

(n) In the first full billing cycle commencing within 30 days after closing of the Transaction, PAWC shall include a bill insert or onsert to former Authority customers regarding PAWC's low income programs and shall also include such information in a welcome letter to Authority customers. The bill insert or onsert and welcome letter shall include, at a minimum, a description of the available low income programs, the eligibility requirements for participation in the programs, and PAWC's contact information.

(o) One year after closing on the Transaction, PAWC shall file a report at this docket number regarding the status of any missing easements for the Authority's system. The report will include the dollar value of each easement obtained during the year after closing.

(p) The Commission issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:

(1) the Asset Purchase Agreement By and Among the Borough of Kane Authority, as Seller, together with the Borough of Kane and Wetmore Township, and Pennsylvania-American Water Company, as Buyer, dated as of November 4, 2019, and

(2) the Agreement by and between the Borough of Kane Authority, the Township of Wetmore and the Borough of Kane, dated July 8, 1992.

(q) The Commission 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.



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Respectfully submitted,

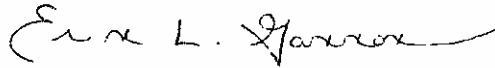
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Counsel for *Office of Consumer Advocate*

Appendix A

Proposed Ordering Paragraphs

Proposed Ordering Paragraphs

IT IS ORDERED:

(a) That the Joint Petition for Approval of Settlement of All Issues, submitted by Pennsylvania-American Water Company, the Office of Consumer Advocate, and the Borough of Kane Authority, including all terms and conditions thereof, is approved without modification.

(b) That the Application filed by PAWC on December 2, 2019, and amended on December 6, 2019, is approved.

(c) That the Commission's Secretary's Bureau shall issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of the Authority's assets, properties and rights related to its wastewater collection and treatment system to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish and supply wastewater collection and treatment service in the areas served by the Authority as indicated in the Application.

(d) That PAWC, upon closing of the Transaction, shall issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Application as **Appendix A-12**, to be effective upon closing of the Transaction.

(e) That, pursuant to 66 Pa. C.S. § 1329(c), the Commission approves a rate base addition of \$17,560,000 associated with the acquisition of the System.

(f) That, although the Parties may present adjustments and oppose adjustments to appraisals in future cases, for purposes of this proceeding, the Commission accepts the following adjustments:

(1) Market Approach: If “comparable acquisitions” are used in determining market value, the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order.

(2) Cost Approach: If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified.

(g) That, at the time of filing the first base rate case that includes the Authority’s wastewater system assets, PAWC shall submit a cost of service study that removes all costs and revenues associated with the operation of the Authority’s system.

(h) That, at the time of filing its next base rate case, PAWC shall also provide a separate cost of service study for the Authority’s system.

(i) That PAWC shall, in the first base rate case that includes the Authority’s wastewater system assets, propose to move the Authority’s system to its cost of service or 1.46x the current Authority rate, whichever is lower, based on a separate cost of service study for the Authority’s system; provided, however, that PAWC will not be obligated to propose Kane wastewater rates in excess of PAWC’s proposed Rate Zone 1 system-average rates. The Commission recognizes that the Office of Consumer Advocate, Bureau of Investigation & Enforcement and Office of Small Business Advocate reserve their rights to fully address this proposal and to make other rate proposals in the base rate case.

(j) That PAWC may propose to modify its LTIIP to include the Authority’s wastewater system, subject to the condition that PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIIP, PAWC shall be permitted to collect

a DSIC related to the Authority's wastewater system prior to the first base rate case in which the Authority's assets are incorporated into rate base.

(k) That PAWC may accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Parties reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Parties' assent to this term to operate as their preapproval of PAWC's request.

(l) That PAWC may defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Parties reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Parties' assent to this term to operate as their preapproval of PAWC's request.

(m) That PAWC may include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Authority's system. Outside legal fees, if any, shall be separately identified in PAWC's next base rate case. The Commission recognizes that the Parties reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Parties' assent to this term to operate as their preapproval of PAWC's request.

(n) That, in the first full billing cycle commencing within 30 days after closing of the Transaction, PAWC shall include a bill insert or onsert to former Authority customers regarding PAWC's low income programs and shall also include such information in a welcome letter to Authority customers. The bill insert or onsert and welcome letter shall include, at a minimum, a

description of the available low income programs, the eligibility requirements for participation in the programs, and PAWC's contact information.

(o) That, one year after closing on the transaction, PAWC shall file a report at this docket number regarding the status of any missing easements for the Authority's system. The report will include the dollar value of each easement obtained during the year after closing.

(p) That the Secretary's Bureau issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:

(1) the Asset Purchase Agreement By and Among the Borough of Kane Authority, as Seller, together with the Borough of Kane and Wetmore Township, and Pennsylvania-American Water Company, as Buyer, dated as of November 4, 2019, and

(2) the Agreement by and between the Borough of Kane Authority, the Township of Wetmore and the Borough of Kane, dated July 8, 1992.

(q) That 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 are hereby granted.

Appendix B

Statement in Support of Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Deputy Chief Administrative Law Judge
Joel H. Cheskis**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa. C.S. § 1102(a), for :
approval of (1) the transfer, by sale, of substantially all :
of the Borough of Kane Authority's assets, properties :
and rights related to its wastewater collection and : Docket No. A-2019-3014248, *et al.*
treatment system to Pennsylvania-American Water :
Company, and (2) the rights of Pennsylvania- :
American Water Company to begin to offer or furnish :
wastewater service to the public in the Borough of :
Kane, and in a portion of Wetmore Township, :
McKean County, Pennsylvania :

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

Pennsylvania-American Water Company ("PAWC") files this Statement in Support of the Joint Petition for Approval of Settlement of All Issues ("Settlement") entered into by PAWC, the Borough of Kane Authority ("Authority") and the Office of Consumer Advocate ("OCA") (hereinafter, collectively, the "Joint Petitioners") in the above-captioned proceeding.¹ PAWC respectfully requests that the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis

¹ The Office of Small Business Advocate ("OSBA") and the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") do not oppose the Settlement. OSBA, I&E, PAWC, OCA and the Authority are referred to individually herein as a "Party" and collectively as the "Parties."

(the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

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

The instant Settlement pertains to the application (as amended, the “Application”) filed by PAWC pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of the Authority (the “Transaction”), related to the Authority’s wastewater collection and treatment system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes. PAWC also seeks authority to provide service to the public in the same service territory currently served by the Authority.

The Settlement, if approved, will resolve all of the issues raised in this proceeding. The Settlement is reasonable and in the public interest and, accordingly, should be approved.

As an initial matter, the fact that the Settlement resolves all of the issues in this proceeding is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest – particularly given the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329, despite the COVID-19 pandemic and the resulting closure of state offices.

It should be noted that the Joint Petitioners, and their counsel and experts, have considerable experience in acquisition proceedings. Their knowledge, experience and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the issues. The Joint Petitioners, their counsel and experts fully explored all the issues in this case.

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

II. BACKGROUND

A. The Transaction

PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. It furnishes water and wastewater service to the public in

a service territory encompassing more than 400 communities in 36 counties, including McKean County. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. No. 1 p. 11. As of October 31, 2019, PAWC furnished wastewater services to approximately 74,425 customers in Pennsylvania, inclusive of 68,899 residential customers, 5,273 commercial customers, 44 industrial customers, and 199 municipal customers and 10 bulk customers. As of October 31, 2019, PAWC furnished water services to 665,731 customers, inclusive of 613,052 residential customers, 45,513 commercial customers, 534 industrial customers, 2,318 municipal customers, 4,290 fire protection customers, 22 sales for resale customers and 2 other customers. PAWC St. No. 1 p. 12.

The Authority is a municipal authority formed under the Municipalities Authorities Act of 1945. Authority St. 1 p. 2. It has offices located at 112 Bayard Street, Kane, Pennsylvania. Application ¶ 7. It is governed by a board comprised of representatives of the Borough of Kane (the “Borough”) and Wetmore Township (the “Township”). Authority St. 1 p. 2.

The Authority’s System is comprised of two combined wastewater collection systems and their associated two wastewater treatment plants. It is a combined wastewater system, which collect, transports, and treats wastewater consisting of any used water and water-carried solids collected or conveyed by a sewer. It does not include stormwater collected in a municipal separate storm sewer system (“MS4”). PAWC St. 2 pp. 2-4.

The Authority’s System provides wastewater collection and treatment service to customers in the Borough and portions of the Township. Authority St. No. 1 p. 2. As of November 18, 2019, the Authority provided wastewater services to approximately 2,019 customers. PAWC St. No. 1 p. 12. The System is owned by the Authority but is operated by the Borough pursuant to the

Management Agreement from the Borough of Kane Authority to the Borough of Kane dated as of September 21, 1994. Authority St. No. 1 p. 2.

On November 4, 2019, after arm's length negotiations, PAWC, the Authority, the Borough and the Township entered into an Asset Purchase Agreement ("APA") by which PAWC would acquire substantially all assets, properties and rights of the System. PAWC St. No. 1 p. 7. The APA provided for a purchase price of \$17,560,000, but the signatories agreed to use the fair market valuation process of Section 1329 of the Code, 66 Pa. C.S. § 1329. PAWC St. No. 1 p. 6. After closing on the Transaction, the Authority will cease providing wastewater service to the public. PAWC St. No. 1 p. 8.

B. The Application and the UVE Appraisals

The Application seeks to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the System's assets and the ratemaking rate base of those assets. PAWC St. No. 1 pp. 5-6. As required by Section 1329, PAWC and the Authority jointly retained the services of Gannett Fleming, Inc. to complete an engineer's assessment of the System (the "Wastewater System Original Cost of Inventory/Assets dated September 19, 2019"). PAWC Exhibit DPB-1 Appendix A-15-a.

As also required by Section 1329, the Application included the appraisals of PAWC's utility valuation expert ("UVE") and the Authority's UVE. PAWC Exhibit DPB-1 Appendix A-5. PAWC retained the services of AUS Consultants ("AUS") to complete an appraisal of the System. PAWC St. No. 4 p. 1. AUS is registered as a UVE with the PUC. PAWC St. No. 4 p. 1. AUS issued a fair market valuation report entitled "Fair Market Appraisal Report of The Borough of Kane Authority, Pennsylvania's Sanitary Wastewater System, as of September 30, 2019." PAWC St. No. 5 p. 3. AUS's fair market value report utilized the cost approach, the income

approach, and the market approach. AUS filed a verification that states the fair market value report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). PAWC Exhibit DPB-1 Appendix A-9. AUS’s fair market value report concluded that the value of the Authority’s System was \$24,491,405. PAWC St. No. 4 p. 3.

The Authority retained the services of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”) to complete an appraisal of the System. Authority St. No. 2 p. 3. Gannett Fleming is registered as a UVE with the PUC. Authority St. No. 2 p. 2. Gannett Fleming issued the “Kane Borough Authority Wastewater System Assets Fair Market Value Appraisal at June 30, 2019.” Authority St. No. 2 p. 3. Gannett Fleming’s fair market value report utilized the cost approach, the income approach, and the market approach. Gannett Fleming filed a verification that states the report was prepared in compliance with USPAP. PAWC Exhibit DPB-1 Appendix A-9. Gannett Fleming’s fair market value report concluded that the value of the Authority’s System was \$22,885,000. Authority St. No. 2 p. 11.

C. Procedural History

Much of the procedural history of this case is summarized in the Joint Stipulation for Admission of Evidence. As noted there, after the Application was conditionally accepted for filing purposes, PAWC provided individualized notice of the filing of the Application to the Authority’s existing wastewater customers and to PAWC’s existing water and wastewater customers. This notice included a nonbinding estimate of the potential rate impacts of the acquisition. PAWC St. No. 3 p. 9. In response, eighteen written comments were submitted, including one comment signed by fifteen customers. Joint Exhibit 1.

On March 11, 2020, ALJ Cheskis directed that a telephonic public input hearing be held in this proceeding. Subsequently, due to the COVID-19 pandemic and resulting statewide closures,

the ALJ advised the Parties that it would not be possible to schedule public input hearings for an indeterminable period. In consideration of these extraordinary circumstances, the Parties agreed that, in lieu of a telephonic public input hearing, the customer comments filed in the public folder for this case would be admitted into the evidentiary record. Joint Stipulation for Admission of Evidence ¶ 20. Consequently, customers were given adequate notice of and opportunity to be heard on the Application, and in fact have been heard because all public comments have been entered into the record.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST

The Joint Petitioners have agreed to a settlement of all the issues in this proceeding. This includes issues arising under Sections 1103(a), 1329 and 507 of the Code. 66 Pa. C.S. §§ 1103(a), 1329, and 507. The following sections explain why PAWC believes the settlement is in the public interest and should be approved.

A. Section 1103 Approvals

1. Fitness

PAWC must demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness.² *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308,

² Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager et al.*, 49 Pa. P.U.C. 138 (1975). No Party has contested the continued need for wastewater collection and treatment service in the Borough or the Township.

1310 (Pa. Cmwlth. 1992). Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its technical, financial, and legal fitness.

With respect to technical fitness, PAWC employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations. *Id.* In addition, as a subsidiary of American Water, PAWC has available to it additional highly-trained professionals with expertise in specialized areas. These operations and process experts have deep experience in the operation and maintenance of different types of wastewater technologies. PAWC St. No. 2 p. 11. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. PAWC St. No. 2 p. 11.

PAWC currently provides water service in the Borough and the Township. PAWC St. No. 2 p. 8. PAWC's Kane operations office is located less than one mile from the Kinzua Road wastewater treatment plant and houses both the local operations team and operations support staff. PAWC St. No. 2 p. 8. After closing, the System will be managed as a separate wastewater department within PAWC's Northwest Area operations. The Northwest Area provides a range of shared support services. The water and wastewater operations in the Kane area will both be supported by common shared support services. PAWC St. No. 2 p. 8.

With respect to financial fitness, PAWC had total assets of approximately \$4.9 billion and annual revenue of approximately \$689 million in 2018. In addition, for 2018, it had operating income of approximately \$335 million and net income of approximately \$189 million. PAWC St. No. 3 p. 4. In addition to generating positive operating cash flows, PAWC may also obtain financing through: (i) equity investments, (ii) a \$400 million line of credit through American Water Capital Corp. ("AWCC"); and (iii) long term debt financing at favorable rates from AWCC,

the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 3 p. 5.

PAWC is a financially-sound business that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public. PAWC St. No. 3 p. 4. Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to the Authority's customers and maintained for PAWC's existing customers. PAWC St. No. 3 p. 6.

PAWC will initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 3 p. 5. PAWC does not anticipate that the acquisition of the Authority's System will have a negative impact on PAWC's cash flows, credit ratings or access to capital. Therefore, the Transaction will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. No. 3 p. 9.

With respect to legal fitness, PAWC has a good compliance history with the Commission and there are currently no legal proceedings that would suggest that PAWC is not legally fit to provide service in the Authority's service territory. PAWC St. No. 1 p. 15. PAWC has a record of environmental compliance, a commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable sewer service to the existing customers of the Authority. PAWC St. No. 1 pp. 11-12.

2. Public Benefit

PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the Authority's System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

The Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public at-large, the Borough and the Township, the existing customers of the Authority's System, and the existing customers of PAWC.

The Transaction benefits members of the public at-large in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a); PAWC St. No. 1 p. 13. In addition, the Transaction benefits members of the public-at-large by promoting the public policy goals embodied in Section 1329. PAWC St. No. 1 p. 14.

In addition to benefiting the public at-large, the Transaction benefits the Borough and the Township. Among other things, the Transaction provides the following benefits:

- The Authority will receive the purchase price of \$17,560,000, 80% of which will be distributed to the Borough and 20% of which will be distributed to the Township. The Authority will retain \$1,000,000 for up to one year after closing to secure missing easements. Authority St. No. 1 p. 5.
- The Township and the Borough will use the proceeds for public purposes. For example, the Borough will use the proceeds to stabilize the real estate tax base,

defeas all sewer debt, fully fund pension plans and other post-employment benefits requirements, fund storm sewer improvements, fund an equipment replacement program, and provide matching funds for State and Federal grants to meet other capital needs. Authority St. No. 1 p. 3.

- The Borough will be free to focus on core functions of local government, such as police, fire, highways, code enforcement and parks and recreation. Authority St. No. 1 p. 5.
- PAWC will offer employment to each of the current wastewater treatment plant operator employees. Authority St. No. 1 p. 3.

The Transaction benefits the Authority's existing customers in the same way that it benefits all other members of the public-at-large. In addition, the Transaction has specific benefits for the Authority's existing customers, including but not limited to the following:

- As PAWC customers, the cost of service to Authority customers can be allocated among a larger group of customers, thereby mitigating the per-customer impact of capital improvements and increases in operating costs. PAWC St. No. 3 p. 8.
- During the five-year period after closing, PAWC estimates that it will invest \$11.2 million in capital improvements in the system. PAWC Exhibit MJG-1.
- The System will become a Commission-regulated utility, and its customers will gain the protection of the Code, the Commission, I&E, OCA, and OSBA. Authority St. No. 1 p. 7.
- 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. This enhanced customer service includes additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to PAWC's customer assistance program. PAWC St. No. 2 pp. 17-20.
- The System's assets would become taxable. Authority St. No. 1 p. 7.
- PAWC is currently the water service provider for many of the Authority's customers. Having the same water and wastewater provider will make things simpler for Borough residents. Authority St. No. 1 p. 7.
- Given its size, access to capital, and strengths in planning, capital budgeting and construction management, PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements continues to be provided to the Authority's customers. PAWC St. No. 1 p. 12.

The Settlement contains additional public benefits for the Authority's existing customers. It requires PAWC to provide information to the Authority's customers regarding PAWC's low-income programs twice, once in a Welcome Packet and once in a bill insert or onsert, shortly after PAWC takes ownership of the System. Settlement ¶ 34.

The Transaction benefits PAWC's existing wastewater customers in the same way that it benefits all other members of the public-at-large. In addition, the Transaction has specific benefits for PAWC's existing wastewater customers, including but not limited to the following:

- In the short term, the Transaction will have no immediate impact on the rates paid by PAWC's existing customers. PAWC St. No. 1 p. 14.
- In the long term, the Transaction will benefit PAWC's existing wastewater customers because it will add more than 2,000 customers to PAWC's wastewater customer base. Being able to spread the cost of investing in and maintaining public wastewater systems over a growing customer base is essential to the continued success of wastewater systems – particularly in a time of increased environmental requirements. PAWC St. No. 1 p. 14.

Finally, the Transaction benefits PAWC's existing *water* customers in the same way that it benefits all other members of the public at-large. It will not result in an increase in rates for these customers pursuant to 66 Pa. C.S. § 1311(c) unless, in a future rate case, the Commission determines that an allocation of PAWC's wastewater requirement to water customers is “in the public interest.”

The Settlement provides further benefits to PAWC's existing water and wastewater customers. The Settlement requires PAWC, in the first base rate case that includes the Authority, to move the Authority's customers' rates to their cost of service or 1.46x the current Authority rate, whichever is lower; provided, however, that PAWC will not be obligated to propose Kane wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. Settlement ¶ 28. This provision limits any potential subsidization of the Authority's customers by PAWC's existing water and wastewater customers, while limiting the proposed rate increase to the Authority's customers in order to ensure gradualism. In addition, the Settlement expressly does not preclude OCA, OSBA, or I&E from asserting any position or raising any issue in a future PAWC base rate proceeding. Settlement ¶ 28. This provision allows PAWC, in the context of the first base rate case that includes the Authority, to propose the use of Act 11 of 2012 to spread a

portion of the Authority's wastewater revenue requirement to PAWC's water revenue requirement. Further, the Settlement contains no provision purporting to restrict the Commission's ultimate ratemaking authority to set "just and reasonable" rates.

In short, as modified by the terms and conditions in the Settlement, the Transaction has affirmative public benefits of a substantial nature for every impacted group. These benefits clearly outweigh any alleged detriments. Accordingly, the ALJ and the Commission should find that the Settlement is in the public interest.

3. Cost of Service Studies

In the interest of resolving this case and based on the unique circumstances of this case, PAWC will submit two cost of service studies in the first base rate case that includes the Authority's assets: (a) a cost of service study that removes all costs and revenues associated with the operation of the Authority's System; and (b) a cost of service study for the Authority's System. Settlement ¶¶ 26-27. Under the Settlement, PAWC's obligation to prepare cost of service studies extends only to the first base rate case in which the Authority's System is included in PAWC's rates. In this way, unnecessary cost of service studies can be avoided in subsequent rate cases.

The cost of service studies will be used to establish a revenue requirement for the System in the first base rate case that includes the Authority's wastewater system assets. In that case, PAWC agreed to propose moving the Authority's system to its cost of service or 1.46 times the current Authority rate, whichever is lower, based on the cost of service study for the Authority's system. However, PAWC will not be obligated to propose Authority wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. The ALJ and the Commission should find that these provisions of the Settlement are reasonable and in the public interest.

B. Section 1329 Approvals

1. Ratemaking Rate Base

PAWC's Application seeks to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the System's assets and the ratemaking rate base of those assets. PAWC St. No. 1 p. 6. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-approved UVE. The ratemaking rate base of the selling utility is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs' appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case.

PAWC proposed that the negotiated purchase price (\$17,560,000) be used as the ratemaking rate base because that amount is lower than the average of the two UVEs' appraisals ($\$24,491,405 + \$22,885,000 = \$23,688,203$). PAWC St. No. 3 p. 6. Through discovery and the development of the evidentiary record, the Parties fully evaluated whether the UVEs abused their discretion under USPAP, relied on inaccurate facts, or committed errors of law. The OCA's witness proposed several adjustments to the UVEs' appraisals, but the average of these adjusted amounts is still higher than the negotiated purchase price. OCA St. No. 1 p. 28.

In the Settlement, the Joint Petitioners compromised on certain adjustments to the UVEs' appraisal methodologies. Settlement ¶ 24. The Joint Petitioners also agreed that the \$17,560,000 purchase price will go into PAWC's rate base in its next rate case due to the acquisition of the

System. Settlement ¶ 23. This provision of the Settlement should be adopted because the agreed-upon ratemaking rate base of \$17,560,000 is supported by substantial evidence of record.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *McCloskey v. Pa. PUC*, 1624 C.D. 2017 (Pa. Cmwlth. 2018) (*New Garden*). The Commission, using the various ratemaking tools available to it, can set rates for PAWC's customers prospectively that are "just and reasonable" under Section 1301 of the Code. As discussed above, the Transaction has numerous affirmative public benefits of a substantial nature. It should not be disapproved based on speculation about future impacts on rates, as the rate impact of the Transaction was thoroughly evaluated through record evidence.

Furthermore, approving the Settlement is in the public interest because the Settlement furthers the legislative intent behind Section 1329. First, the Settlement allows a municipality *that wishes to do so* to monetize an asset for fair market value. Second, by establishing a rate base for the System that is greater than what would have been allowed using traditional ratemaking principles, PAWC is willing to enter into the Transaction. Section 1329 would be ineffective if a willing seller would be unable to find a willing buyer. Finally, the Settlement allows the parties to the Transaction to obtain the necessary Commission approval in a timely manner -- while protecting the interests of existing customers of the acquiring public utility. The Joint Petitioners' negotiated result is in the public interest and should be approved by the ALJ and the Commission.

2. Rates

Section 1329(d)(1)(v) of the Code requires an application to contain a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition, together with a rate stabilization plan, if applicable to the acquisition. In the APA, PAWC committed to adopt the

Authority's current customer charge and consumption charge in effect on the date of closing. PAWC St. No. 3 p. 14. In addition, the Authority's customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 3 p. 14. Authority customers are currently billed monthly. After closing, those customers will continue to be billed monthly. PAWC St. No. 1 p. 10.

In the Settlement, the Joint Petitioners agree that, upon closing, PAWC may file a tariff consistent with the *pro forma* tariff filed with the Application. Settlement ¶ 22. No Party has argued that the APA includes a rate stabilization plan. Consequently, the Settlement does not address this requirement.

The rates provisions of the Settlement are reasonable and in the public interest. They comply with the requirements of Section 1329 and should be approved.

3. Distribution System Improvement Charge

Section 1329(d)(4) of the Code permits an acquiring public utility to collect a distribution system improvement charge ("DSIC") from the date of closing on an acquisition until new rates are approved in the utility's next base rate case. In order to qualify for DSIC recovery, a utility must submit a long term infrastructure investment plan ("LTIIIP") to, and receive approval from, the Commission.

PAWC has previously received Commission approval of a wastewater LTIIIP plan, and received Commission approval of a DSIC tariff, for other portions of its wastewater system. In its Application, PAWC requested conditional approval to implement a DSIC for the Authority's service territory. Application ¶¶ 2, 17 and 43.

Under the Settlement, PAWC would not begin charging a DSIC until the eligible System plant is approved by the Commission in a modified wastewater LTIIP. PAWC's modified wastewater LTIIP will not reprioritize other existing capital improvements that PAWC has already committed to undertake in other service areas. Settlement ¶ 30.

The Settlement is consistent with the Code and *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012). The Settlement is reasonable and in the public interest. For all of these reasons, the Settlement should be approved.

4. Accrual of Allowance for Funds Used During Construction

Section 1329(f)(1) of the Code permits an acquiring public utility to accrue allowance for funds used during construction ("AFUDC") on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following events: the asset has been in service for a period of four years, or the asset is included in the acquiring utility's next base rate case. In the Application, PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 4.

PAWC has committed to make post-acquisition improvements in the Authority's System. As such, PAWC will likely accrue AFUDC for post-acquisition improvements. PAWC St. No. 3 p. 17.

The Settlement, ¶ 29, acknowledges that PAWC may include a claim for AFUDC relating to this acquisition in PAWC's first base rate case that includes the Authority's wastewater system assets. The Parties reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. This provision is reasonable and in the public interest, and so should be approved.

5. Deferred Depreciation

Similarly, Section 1329(f)(2) of the Code permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application, PAWC requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 4. PAWC introduced evidence that it intends to defer depreciation on non-DSIC-eligible post-acquisition improvements. PAWC St. No. 3 p. 17. The Settlement makes clear that the other Parties do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 31. This provision is reasonable and in the public interest, and so should be approved.

6. Transaction and Closing Costs

Section 1329(d)(1)(iv) permits an acquiring public utility to include, in its next base rate case, a claim for the transaction and closing costs incurred for the acquisition. These costs include the UVE's appraisal fee and the buyer's closing costs, including reasonable attorney's fees. PAWC St. No. 3 p. 13. In *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) p. 14, the Commission stated that there will be no Commission preapproval of the reasonableness of recovery of these costs in a Section 1329 proceeding.

The Application requested Commission permission to include a claim for transaction and closing costs in the first base rate case that includes the Authority's assets. PAWC St. No. 1 p. 4. Although the exact amount of transaction and closing costs cannot be predicted with certainty at the time of filing an application, PAWC estimated that these costs would range from \$787,000 to \$997,000. PAWC St. No. 3 p. 13.

Out of an abundance of caution, the Settlement acknowledges that PAWC may, in its next base rate case, include a claim for 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. The other Parties do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 32. Moreover, PAWC has committed to identify outside legal fees for the Transaction in its next base rate filing that incorporates the System assets. Settlement ¶ 33. This provision is reasonable and in the public interest, and so should be approved.

7. Miscellaneous

The APA provides that the Authority will retain \$1,000,000 of the purchase price in an escrow account for one year post-closing to secure missing easements. Authority St. No. 1 p. 5. The Settlement provides that one year after closing on the Transaction, PAWC will file a report at this docket number regarding the status of any missing easements for the Authority's system. The report will include the dollar value of each easement obtained during the year after closing. Settlement ¶ 35. This reporting requirement is reasonable and in the public interest, and so should be approved.

C. Section 507 Approvals

Section 507 of the Code requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract.

In the original Application, PAWC sought Commission approval of the APA. PAWC St. No. 1 p. 17. On December 6, 2019, PAWC filed an Amendment to the Application requesting that the Commission also approve the Agreement by and between the Borough of Kane Authority, the Township of Wetmore and the Borough of Kane, dated July 8, 1992, which PAWC will assume at closing. This Agreement provided for the financing and construction of a wastewater collection system in the Township, which connects to the Authority's System, and transports sewage to the Authority's System for treatment and disposal. Amendment to Application ¶ 7.

Approval of these agreements is necessary for PAWC to continue to provide service to all customers presently served by the System. The terms and conditions of these agreements are reasonable. Consequently, in the Settlement, the Joint Petitioners request that the Commission approve these agreements. Settlement ¶ 36. This provision of the Settlement is reasonable and in the public interest, and so should be approved.

IV. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, informal and formal discovery, evidence that was entered into the record, and extensive settlement negotiations. A fair and reasonable compromise has been achieved in this case. PAWC fully supports the Settlement and urges the ALJ and the Commission to approve it without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis recommend approval of, and

that the Commission approve, the Settlement, including all terms and conditions thereof, without modification, and enter an order consistent with the Settlement.

Respectfully submitted,



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Counsel for *Pennsylvania-American
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Dated: April 17, 2020

Appendix C

Statement in Support of the Borough of Kane Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American :
Water Company, Pursuant to the : Docket No. A-2019-3014248
Pennsylvania Public Utility Code, 66 :
Pa.C.S. § 1102(a) and 1329, For Approval :
of 1) the Transfer, by Sale, of :
Substantially all of the Borough of Kane :
Authority’s Assets, Properties and Rights :
Related To Its Wastewater Collection and :
Treatment System to Pennsylvania- :
American Water Company; 2) the Rights :
of Pennsylvania-American Water :
Company to Begin to Offer or Furnish :
Wastewater Service to the Public in the :
Borough of Kane, and in a portion of :
Wetmore Township, McKean County, :
Pennsylvania; and 3) for Approval of the :
use for Ratemaking Purposes of the Lesser :
Fair Market Value or the Negotiated :
Purchase Price of the Borough of Kane :
Authority’s Assets Related to its :
Wastewater Collection and Treatment :
System :

**THE BOROUGH OF KANE AUTHORITY’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF
SETTLEMENT OF ALL ISSUES**

The Borough of Kane Authority (“Authority” or “Seller”) files this Statement of Support of the Joint Petition for Approval of Settlement of All Issues (“Settlement” or “Joint Petition”) entered into by Pennsylvania-American Water Company (“PAWC” or “Company”), the Authority, and the Office of Consumer Advocate (“OCA”) (collectively, the “Joint Petitioners”).¹ The Authority respectfully requests that the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis (“ALJ” or “ALJ Cheskis”) recommend approval of,

¹ The Office of Small Business Advocate (“OSBA”) and the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”) do not join this Settlement, but do not oppose it. The Joint Petitioners, together with I&E and OSBA, are referred to herein as the “Parties.”

and that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve, the Settlement, including all terms and conditions thereof, without modification.

I. Background

This proceeding concerns the Application of PAWC filed with the Commission for approval of PAWC’s acquisition of the wastewater system assets (“Kane System” or “System”) of the Authority pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), 66 Pa.C.S. §§ 1102, 1329.

By Secretarial Letter dated December 11, 2019,² the Commission, *inter alia*, conditionally accepted the Application. By Secretarial Letter dated February 6, 2020,³ the Commission, *inter alia*, accepted the Application for filing. Notice of the Application appeared in the February 22, 2020 edition of the *Pennsylvania Bulletin*⁴ with a protest deadline of March 9, 2020.⁵

ALJ Cheskis was assigned to preside over this proceeding. On March 11, 2020, a Prehearing Conference was held.⁶ The Authority filed a Petition to Intervene.⁷ During the prehearing conference, that Petition (which was not opposed) was granted. By e-mail of March 19, 2020, the ALJ sent the Scheduling Order to the Parties; that Order has not yet been served by the Commission due to the COVID-19 pandemic state of emergency.

² <http://www.puc.state.pa.us/pcdocs/1647186.docx>.

³ <http://www.puc.state.pa.us/pcdocs/1653620.docx>.

⁴ 50 *Pa. Bull* 1099, 1229 (February 22, 2020), which is available at:

<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-8/282.html>.

⁵ See Secretarial Letter dated indicating that a protest period end date of March 9, 2020 should be used to meet all customer noticing requirements for the Application. <http://www.puc.state.pa.us/pcdocs/1651841.docx>

⁶ <http://www.puc.state.pa.us/pcdocs/1653881.docx>. See also 50 *Pa. Bull* 1099, 1230 (February 22, 2020), which is available at: <http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-8/283.html>.

⁷ <http://www.puc.state.pa.us/pcdocs/1654889.pdf>.

The active parties conducted formal and informal discovery throughout the proceeding. Under the schedule established at the prehearing conference, non-Company direct testimony was due on Friday, March 27, 2020. On March 27, 2020, PAWC and I&E filed a Joint Stipulation.⁸ Also on March 27, 2020, PAWC and OSBA filed a Joint Stipulation.⁹ On that day, OCA served direct testimony.¹⁰

Evidentiary hearings were scheduled for April 20 and 21, 2020. On April 3, 2020, the Parties advised the ALJ that they had reached an agreement in principle to resolve this proceeding. Consequently, the ALJ cancelled the hearings scheduled for April 20 and 21, 2020. The ALJ directed the Parties to file a Petition for Settlement and Statements in Support on or before May 8, 2020.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED WITHOUT MODIFICATION

The Settlement is either supported or not opposed by all of the active parties. The Settlement, if approved, resolves all of the issues raised in this proceeding. For the reasons set forth herein and in the Settlement, the Authority submits that the Settlement is in the public interest, just and reasonable, and supported by substantial evidence and, therefore, should be approved without modification.

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231(a). 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

⁸ <http://www.puc.state.pa.us/pcdocs/1659347.pdf>.

⁹ <http://www.puc.state.pa.us/pcdocs/1659358.pdf>.

¹⁰ <http://www.puc.state.pa.us/pcdocs/1659354.pdf>.

preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. In order to approve a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *PUC v. Peoples TWP LLC*, Docket Nos. R-2013-23355886, et al., Opinion and Order entered December 19, 2013; *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996); *PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767, 771 (1991).

The Settlement is the result of an examination of the proposed transaction and compromise by the active parties. PAWC's and the Authority's direct testimony¹¹ were filed with the Application. In addition to informal discovery, PAWC and the Authority responded to formal discovery requests from the active parties. Prior to the due date for their direct testimony, I&E¹² and OSBA¹³ separately agreed to stipulations which state, in part, that they will not be submitting testimony in this proceeding. Only the OCA served direct testimony.¹⁴ The active parties engaged in settlement discussions and negotiations which ultimately led to the Settlement, which balances the interests of PAWC, PAWC's customers, the Authority, the Authority's customers, and all of the other active parties in this proceeding.

The Settlement adequately addresses the concerns raised by active parties. In the stipulation, PAWC agreed that, in PAWC's first base rate case that includes the Kane System, PAWC will submit (1) a cost of service study that removes all costs and revenues associated with

¹¹ Authority Testimony consists of the direct testimony of (1) Donald E. Payne on behalf of the Authority ("Authority St. No. 1") and (2) Harold Walker III, Manager Financial Studies, for Gannett Fleming Valuation and Rate Consultants, LLC on behalf of the Authority ("Authority St. No. 2"). Both Statements were filed with the Application. <http://www.puc.state.pa.us/pcdocs/1645870.pdf>.

¹² <http://www.puc.state.pa.us/pcdocs/1659347.pdf>.

¹³ <http://www.puc.state.pa.us/pcdocs/1659358.pdf>.

¹⁴ <http://www.puc.state.pa.us/pcdocs/1659354.pdf>.

the operation of the Kane System and (2) a separate cost of service study for the Kane System.¹⁵ In its direct testimony, the OCA agreed with PAWC's proposal that the ratemaking rate base for the acquired system be set at \$17,560,000.¹⁶ That being said, the OCA contended that the PUC should approve the Application, if there are other conditions to assure that the transaction is in the public interest.¹⁷ PAWC agreed to undertake actions to mitigate OCA's concerns, as discussed and agreed upon in the Settlement.

In the Settlement, PAWC agreed to undertake actions to mitigate the OCA's concerns. In direct testimony, OCA expressed concern regarding rate shock, the preparation of cost of service studies in the PAWC's first base rate case that includes the Kane System, Allowance for Funds Used During Construction ("AFUDC"), modifications or revisions to PAWC's Long Term Infrastructure Improvement Plan ("LTIIP") and reporting on the status of missing easements, if any. Each of those concerns is addressed by terms in the Settlement,¹⁸ and OCA agreed that those terms resolve the OCA's concerns. In addition, each of the Joint Petitioners agree that the Settlement is in the public interest. Settlement at ¶ 19, 40.

The Authority fully supports the Settlement and the Application. The Borough of Kane ("Borough" or "Kane") and Wetmore Township ("Township" or "Wetmore"), as the incorporating local governments of the Authority, each desire the Authority to sell, and PAWC to purchase the System. The duly-appointed Board of the Authority and the elected officials of both the Borough and the Township believe that the sale of the Authority's wastewater system is in the best interest of the residents of their area. They therefore agreed to the sale of the System

¹⁵ See paragraphs 8 and 9 of the stipulations referenced in footnotes 12 and 13.

¹⁶ See OCA St. 1 at 14, 44-45. See also Settlement at ¶ 21.

¹⁷ See OCA St. 1 at 10-11, 45.

¹⁸ See Settlement at ¶ 23 to 26, 28, 29, 33. See also paragraphs 8 and 9 of the stipulations referenced in footnotes 12 and 13.

to PAWC pursuant to a negotiated asset purchase agreement (“Agreement” or “APA”).¹⁹ The wastewater assets are currently owned by the public, and the above-described public entities are acting to promote the best interests of their constituents.

The Application, subject to the other terms and conditions contained in the Settlement, will produce affirmative public benefits of a substantial nature. These benefits include, but are not limited to: further regionalization of wastewater operations in Pennsylvania; greater access to technical resources for operation of the System; greater access to capital for necessary investments to the System; access to PAWC’s customer assistance programs; and maintenance of the existing local workforce and operational expertise.²⁰ PAWC will also conduct outreach to former Authority customers regarding PAWC’s low income programs and shall include such information in a welcome letter to the Authority’s customers.²¹ PAWC further agreed to limitations on rate increases in the first base rate case that includes the Kane System and will not propose wastewater rates for the Authority’s former customers in excess of PAWC’s proposed Rate Zone 1 system-average rates.²² In addition, the Settlement benefits the public interest by reducing the costs the Joint Petitioners would otherwise be forced to expend in litigation, while also conserving limited administrative resources.

[Signature appears on next page]

¹⁹ The Agreement is Appendix A-24-a to the Application.

²⁰ See Authority St. 1 at 6-7; PAWC St. 1 at 12-14.

²¹ Settlement at ¶ 32.

²² Settlement at ¶ 26, 27.

III. CONCLUSION

The Authority believes that fair and reasonable compromises have been achieved in this proceeding, and respectfully requests that ALJ Cheskis and the Commission approve the Settlement without modification.

Respectfully submitted,



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Date: April 16, 2020

Attorneys for
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Appendix D

Statement in Support of the Office of Consumer Advocate

as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated December 11, 2019, the Commission conditionally accepted the Application. The Commission required individual notice to be provided to PAWC's existing water and wastewater customers, that PAWC ensure concurrent notice is provided to all current Authority wastewater customers, and that newspaper notice is provided in the Authority's area. Upon completion, PAWC was directed to file a verification that the notice has been provided.

On December 27, 2019, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement. On January 22, 2020, PAWC filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the December 11, 2019, Secretarial Letter. By Secretarial Letter dated February 6, 2020, the Commission informed PAWC that it had accepted the Application for filing. The OCA filed a Protest and Public Statement on February 6, 2020. On February 10, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On February 18, 2020, the Borough of Kane Authority filed a Petition to Intervene. More than 18 individuals, including Authority customers and existing PAWC water and wastewater customers, filed written objections to the Application.¹

On March 6, 2020, Governor Tom Wolf issued a Disaster Proclamation in response to COVID-19.² A prehearing conference was held on March 11, 2020 before Administrative Law Judge (ALJ) Joel J. Cheskis, at which time the Stipulation Regarding Discovery Rule Modifications provided by the parties on March 2, 2020 was formally adopted. In addition, the ALJ granted the OCA's request to hold a public input hearing.

¹ One filing contains the signatures of 15 customers.

² <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees and the closing of all state offices in Dauphin County and the Capitol Complex.³ As a result, the Commission's offices and the statutory parties' offices in Harrisburg were closed. On March 19, 2020, the ALJ issued a Scheduling Order adopting a litigation schedule. The OCA submitted written direct testimony, including exhibits, in accordance with the litigation schedule on March 27, 2020.⁴

Since April 1, 2020, residents of all 67 Pennsylvania counties are under stay-at-home orders.⁵ On April 3, 2020, ALJ Cheskis advised the parties that, due to the extraordinary circumstances resulting from the COVID-19 pandemic, it would not be possible to hold a telephonic public input hearing for an indeterminable period. On April 6, 2020, the parties informed the ALJ they had reached an agreement to request that the customer objections filed in the public comment folder be admitted into the evidentiary record, in lieu of a public input hearing. Based on the progress of settlement discussions, the ALJ granted the parties request to suspend the litigation schedule. On April 17, 2020, the parties filed a Joint Petition for Approval of Settlement of All Issues. On the same date, the parties filed a Joint Stipulation for Admission of Evidence, which requested admission into evidence, *inter alia*, of the OCA's testimony and the 18 written objections by customers.

³ <https://www.governor.pa.gov/newsroom/gov-wolf-puts-statewide-covid-19-mitigation-efforts-in-effect-stresses-need-for-every-pennsylvanian-to-take-action-to-stop-the-spread>.

⁴ Direct Testimony of Ralph C. Smith, OCA Statement 1, including exhibits, on behalf of the Office of Consumer Advocate.

⁵ <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread>

II. TERMS AND CONDITIONS OF JOINT PETITION FOR SETTLEMENT

The terms of the proposed Settlement address matters raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into the acquiring utility's revenue requirement, the rate impact for existing PAWC customers and the acquired customers, the agreed upon adjustments to the appraisals, the application of the Distribution System Improvement Charge (DSIC), outreach to low income customers, and post-acquisition improvement, transaction and closing costs, as follows:

1. Ratemaking Rate Base, Settlement ¶21.

As part of this proceeding, PAWC sought to establish the ratemaking rate base for this acquisition pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329. Based on appraisals presented by PAWC and the Authority (\$24,491,405 and \$22,885,000, respectively), PAWC sought a ratemaking rate base of \$17,560,000, which was the price PAWC agreed to pay for the Authority's system. The OCA's recommended adjustments to the appraisals resulted in an average appraisal amount that is higher than the \$17,560,000 purchase price. See OCA St. 1 at 45. Thus, the OCA agreed that the ratemaking rate base should be \$17,560,000.

2. Cost of Service Study and Rates, Settlement ¶¶24-26.

In this proceeding, the OCA identified the need for PAWC to provide – in the first base rate case in which it includes the Authority's assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of Kane's wastewater system, as well as a separate cost of service study for the Kane system. OCA St. 1 at 11. These studies will provide information to establish rates that reflect the costs for the Kane system.

The settlement adopts the OCA's recommendation. Paragraph 24 provides that, in its first base rate case in which PAWC includes the Authority's assets in rate base, PAWC will submit a

wastewater cost of service study that removes all costs and revenues associated with the Kane system. Paragraph 25 provides that the Company will also provide a separate cost of service study for the Kane system. Paragraph 26 provides that, in the first rate case in which PAWC includes the Authority's assets in rate base, PAWC will propose to move the Authority's system to its cost of service (based on the separate cost of service study), unless such increase is more than 1.46 times current rates; provided that such rates do not exceed the proposed Zone 1 wastewater rate.⁶ These settlement terms will provide a means for the parties to use the cost of service data to set rates for the Authority's customers that differ, as appropriate, from rates established for other wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the Kane service area.

3. Distribution System Improvement Charge, Settlement ¶28.

The parties to the proposed Settlement agreed that PAWC may apply the DSIC to customers in the Authority's service area prior to the first base rate case in which the system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) if certain conditions are met. In particular, Paragraph 28 states that PAWC will revise its Long Term Infrastructure Improvement Plan (LTIIP) to include the Borough of Kane Authority and related projects before it begins charging the DSIC to those customers. Further, Paragraph 28 provides PAWC's commitment that it will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. This provision addresses the concern raised by the OCA that projects for the Authority's customers should be in addition to, and not

⁶ The current average Borough of Kane Authority rate is \$51.87 per month based on 3,360 gallons of monthly usage. Settlement ¶27; Application, App. A-18-d. The current average PAWC rate for a residential wastewater customer using 3,360 gallons per month in Zone 1 is \$64.93. Application, App. A-18-d.

reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers. OCA St. 1 at 11, 45. This settlement term also allows for Borough of Kane Authority customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects.

Paragraph 28 also provides that, if PAWC seeks to modify its LTIP to include the Kane system, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. These terms help to ensure that projects and expenditures already planned for existing PAWC wastewater customers will not be given less priority as a result of the Kane acquisition.

4. Appraisal Adjustments, Settlement ¶22.

The OCA's witness identified several adjustments in the Utility Valuation Expert appraisals as well as the use of assumptions and adjustments that were unreasonable or inconsistent with financial and utility ratemaking practices and recommended corrective adjustments. OCA St. 1 at 24-43. The proposed Settlement reflects the Parties' acceptance of two of the OCA's adjustments. Specifically, the parties agree that, if "comparable acquisitions" are used in determining market value, the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order. Additionally, the parties agreed that, if the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified. These adjustments reflect accepted financial and ratemaking principles and help to improve the reliability of data used in appraisals and the integrity of the result. Paragraph 22 also preserves the OCA's right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings.

5. Low Income Program Outreach, Settlement ¶32.

PAWC has agreed to provide information about PAWC's low income programs in a welcome letter to the Borough of Kane Authority system customers and in a bill insert or onsert, in the first full billing cycle commencing within 30 days following closing. The information will describe the available programs, eligibility requirements and contact information for PAWC. The OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Kane customers.

6. Allowance for Funds Used During Construction (AFUDC), Deferral of Depreciation, Transaction Costs, and Legal Fees, Settlement ¶29.

The OCA's witness recommended that any claims for AFUDC and deferred depreciation should be addressed in PAWC's next base rate case rather than an unspecified future case as proposed by PAWC. See OCA St. 1 at 11. Under the terms of the settlement, any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Kane's wastewater system assets. Further, the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. The OCA's assent to Paragraph 29 should not be construed to operate as preapproval of PAWC's future requests. Paragraph 29 preserves all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims. Further, to facilitate the parties' review in PAWC's next base rate case, Paragraph 31 reflects PAWC's agreement to separately identify any outside legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between PAWC and the Borough of Kane Authority and specify amounts expended by PAWC on behalf of the Authority.

7. Missing Easements, Settlement ¶33.

The OCA's witness noted that \$1,000,000 of the proceeds from the proposed transaction will be retained for up to one year following the closing date for the purposes of missing easements even though the Authority indicated that there are no easements missing. OCA St. 1 at 16. PAWC has agreed to provide a report regarding the status of any missing easements. The report will also include the dollar value of each easement obtained during the year after closing. Providing this information will help the parties and Commission to ensure that the proceeds from the proposed transaction are being allocated in furtherance of the public interest.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement should be approved.

Respectfully Submitted,

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Dated: April 17, 2020

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