



June 2, 2020

VIA E-FILING

Jonathan P. Nase

Direct Phone 717-773-4191

Direct Fax 215-372-2340

jnase@cozen.com

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

Re: Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. Winola Water Company; Docket Nos. C-2018-2644592 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 Winola Water Company, the Office of Consumer Advocate and the Commission's Bureau of Investigation and Enforcement (together, the "Joint Petitioners"). By the Settlement, the Joint Petitioners resolve all of the issues arising in connection with this proceeding. Aqua Pennsylvania, Inc. does not oppose the Settlement.

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. Please note that, due to the COVID-19 Pandemic, the Confidential Attachment will be e-mailed separately to Secretary Chiavetta. Due to the proprietary nature of that document, we ask that it be kept in a non-public folder.

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

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase
Counsel for *Pennsylvania-American Water Company*

JPN
Enclosure

cc: Deputy Chief Administrative Law Judge Joel H. Cheskis
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement

v.

Winola Water Company

:
: Docket Nos. C-2018-2644592
: P-2018-3006216
: I-2018-3006498
:
:

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 (without confidential attachment)**, 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 CORONAVIRUS PANDEMIC, SERVICE IS BEING MADE BY E-MAIL ONLY:

Edmund J. Scacchitti, Esq.
400 Spruce Street, Suite 402
Scranton, PA 18503-1814
E-mail: scacchittilawfirm@gmail.com
Representing *Winola Water Company*

John R. Evans
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
E-mail: jorevan@pa.gov
Representing *Office of Small Business Advocate*

Scott B. Granger, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
E-mail: sgranger@pa.gov
Counsel for *Bureau of Investigation and Enforcement*

Christy M. Appleby, Esq.
Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
E-mail: cappleby@paoca.org
E-mail: choover@paoca.org
E-mail: egannon@paoca.org
Counsel for *Office of Consumer Advocate*

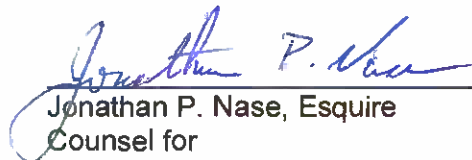
Thomas T. Niesen, Esq.
Thomas Niesen and Thomas LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
E-mail: tniesen@tntlawfirm.com
Counsel for *Aqua Pennsylvania, Inc.*

Frances P. Orth, Esq.
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
fpoorth@aquaamerica.com
Counsel for *Aqua Pennsylvania, Inc.*

Crystal Mickalowski
Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre PA 18701-1915
E-mail: cmickalows@pa.gov

Elizabeth Rose Triscari, Esq.
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
E-mail: Elizabeth.Triscari@amwater.com
Counsel for *Pennsylvania-American Water
Company*

DATED: June 2, 2020



Jonathan P. Nase, Esquire
Counsel for
Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	Docket No. C-2018-2644592
	:	P-2018-3006216
v.	:	I-2018-3006498
	:	
Winola Water Company	:	

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

**TO THE HONORABLE DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL H.
CHESKIS:**

I. INTRODUCTION

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

Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) recommend approval of, and the PUC approve, this Settlement without modification.¹

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

II. BACKGROUND AND PROCEDURAL HISTORY

1. Winola is a Commission-regulated public utility providing water service to approximately ten year-round customers and approximately twenty-five (25) seasonal customers around Lake Winola in Overfield Township, Wyoming County, Pennsylvania (the “Township”).

2. On January 26, 2018, I&E filed a formal complaint against Winola at Docket No. C-2018-2644592 alleging violations of the Pennsylvania Public Utility Code (“Code”) and Commission regulations, including but not limited to violations of 66 Pa. C.S. § 1501 for failure to furnish and maintain adequate, efficient, safe and reasonable service and facilities.

3. On October 5, 2018, the Pennsylvania Department of Environmental Protection (“DEP”) directed Winola to issue to its customers a public notification advising that water produced by Winola is not safe for consumption (the “Do Not Consume Order”).

4. On November 28, 2018, I&E filed a Petition for an Ex Parte Emergency Order requesting, *inter alia*, that the Commission (a) appoint a competent water utility as receiver for Winola’s system pursuant to 66 Pa. C.S. § 529(g), and (b) order the commencement of an investigation into whether Winola should be sold to a capable public utility pursuant to 66 Pa. C.S. § 529. This Petition was assigned Docket No. P-2018-3006216.

5. On November 29, 2018, Commissioner Norman J. Kennard signed an Ex Parte Emergency Order (“Ex Parte Emergency Order”) ordering the commencement of a Section 529

¹ Aqua Pennsylvania, Inc. (“Aqua”), which intervened in these proceedings, does not oppose the Settlement. The Joint Petitioners, together with Aqua, are referred to herein as the “Parties.”

investigation and directing PAWC to serve as the receiver (the “Receiver”) for Winola pending the outcome of that investigation. Attachment A to the Ex Parte Emergency Order outlined the powers and duties of the Receiver.

6. The OCA filed a notice of intervention and public statement on November 29, 2018.

7. The Commission ratified the Ex Parte Emergency Order at its Public Meeting of December 6, 2018 and issued a Ratification Order accordingly.

8. PAWC began serving as Receiver for Winola on December 10, 2018.

9. On December 17, 2018, PAWC provided notice to Winola’s customers of PAWC’s receivership and of the initiation of the Section 529 investigation.

10. Aqua petitioned to intervene in these proceedings on December 31, 2018.

11. By Secretarial Letter dated January 2, 2019, the Commission commenced an investigation to determine whether to order Winola to be sold to a capable public utility. This proceeding was assigned Docket No. I-2018-3006498.

12. A prehearing conference was held in these proceedings on January 7, 2019, and a scheduling order was issued on January 11, 2019 memorializing the matters agreed upon at the prehearing conference.

13. On February 7, 2019, PAWC submitted its Initial Status Report as Receiver, in compliance with the Ex Parte Emergency Order.

14. Following an informal conference call between the ALJ and the Parties, a Second Scheduling Order was issued on April 8, 2019, establishing a new procedural schedule.

15. On April 19, 2019, PAWC filed a Petition for Amendment and Deferred Accounting Treatment (“Petition for Amendment”), asking the Commission to amend the Ex

Parte Emergency Order to clarify PAWC's authority as Receiver and PAWC's right to seek recovery of expenses incurred in its role as Receiver. I&E and OCA filed Answers opposing the Petition for Amendment.

16. On May 8, 2019, the Commission issued a Secretarial Letter advising the Parties that the Office of Administrative Law Judge ("OALJ") had established a procedural schedule for these proceedings and that the Petition for Amendment was being referred to the OALJ for disposition according to the established procedural schedule.

17. On May 17, 2019, PAWC filed a Petition for Reconsideration from Actions of the Staff ("Petition for Reconsideration") pursuant to 52 Pa. § 5.44, asking the Commission to amend the Ex Parte Emergency Order as requested in the Petition for Amendment. OCA and I&E filed Answers opposing the Petition for Reconsideration.

18. In compliance with the Ex Parte Emergency Order, PAWC filed a quarterly status report on May 23, 2019.

19. By Order Granting Continuance dated June 7, 2019, the ALJ suspended the procedural schedule pending the Commission's disposition of the Petition for Reconsideration.

20. By Order entered July 11, 2019, the Commission denied PAWC's Petition for Reconsideration.

21. In compliance with the Order Granting Continuance, on August 6, 2019, PAWC submitted a status report, *inter alia*, indicating that PAWC, I&E, OCA and Aqua had agreed to a litigation schedule. This schedule was adopted by the ALJ in the Third Scheduling Order dated August 9, 2019.

22. In compliance with the Ex Parte Emergency Order, PAWC filed a quarterly status report on August 6, 2019.

23. By e-mail of October 9, 2019, counsel for PAWC notified the ALJ that PAWC, OCA, and I&E had reached a settlement in principle resolving these proceedings, pending the negotiation of an acceptable asset purchase agreement between PAWC and Winola. The ALJ was also advised that Aqua did not oppose the settlement. PAWC consequently requested that the procedural schedule be suspended to permit the negotiation of an acceptable asset purchase agreement and the drafting of a joint petition for settlement.

24. By the Fourth Scheduling Order, dated October 17, 2019, the ALJ suspended the procedural schedule.

25. DEP lifted its Do Not Consume Order on October 29, 2019.

26. In compliance with the Ex Parte Emergency Order, PAWC filed a quarterly status report on November 8, 2019.

27. In compliance with the Fourth Scheduling Order, the Parties filed a status report on December 16, 2019.

28. In compliance with the Ex Parte Emergency Order, PAWC filed a quarterly status report on February 13, 2020.

29. In compliance with the Fourth Scheduling Order, the Parties filed a status report on February 14, 2020.

30. In compliance with the Fourth Scheduling Order, the Parties filed a status report on April 14, 2020.

31. In response to the status report of April 14, 2020, the ALJ held a conference call with the Parties on April 20, 2020.

32. In compliance with the Ex Parte Emergency Order, PAWC filed a quarterly status report on May 7, 2020.

33. On May 28, 2020, PAWC entered into an Asset Purchase Agreement with Winola.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Receivership

34. PAWC will continue to serve as Receiver of Winola until Closing on the Acquisition (as those terms are hereinafter defined), pursuant to the Ex Parte Emergency Order.

35. PAWC, as Receiver, will not be liable for preexisting conditions, defects or regulatory or statutory violations occasioned by Winola, pursuant to the Ex Parte Emergency Order.

36. PAWC will comply with Winola's effective tariff for Winola's customers, consistent with Paragraph 51.

37. PAWC has authority as Receiver to make capital improvements to Winola's water system (the "System"), including but not limited to capital improvements necessary to remove the Do Not Consume Order.

38. PAWC may seek recovery of the costs it incurs as Receiver, as set forth in Paragraphs 51 to 55.

B. The Acquisition

39. These proceedings include an investigation pursuant to 66 Pa. C.S. § 529 (Power of commission to order acquisition of small water and sewer utilities). In order to resolve this

matter, PAWC has agreed to acquire substantially all of the water system assets of Winola and to provide water service to the public in the entirety of Winola's existing certificated service territory (together, the "Acquisition"). The Acquisition, however, is subject to the condition that, prior to closing on the Acquisition ("Closing"), PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from the Commission, DEP and the Township). Closing is further conditioned on the entry of a DEP Consent Order (if necessary).

40. Consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Paragraph 42 below, the Joint Petitioners request that the Commission direct PAWC to purchase substantially all of the water system assets of Winola pursuant to the Asset Purchase Agreement dated May 28, 2020 between Winola and PAWC ("the "APA"), attached hereto as **Appendix A (CONFIDENTIAL)**.

41. The Joint Petitioners request that the Commission direct PAWC to notify the Commission, OCA and I&E shortly before Closing on the Acquisition. Upon receipt of this notice, consistent with 66 Pa. C.S. § 529(d) and subject to the condition set forth in Paragraph 42 below, the Secretary's Bureau will be directed to issue certificates of public convenience evidencing Commission approval of:

- a. PAWC's acquisition of substantially all of the water system assets of Winola;
- b. PAWC's right to begin providing water service to the public in the Requested Territory, shown in **Appendix B**;
- c. Winola's sale of substantially all of its water system assets to PAWC; and,
- d. Winola's abandonment of the provision of water service to the public in Pennsylvania.

42. Pursuant to the condition contained in Section 8.1(e) of the APA, prior to Closing on the Acquisition, PAWC shall receive all necessary governmental approvals, including any required approvals from the Commission, DEP and/or the Township. Closing is further conditioned on entry of a DEP Consent Order (if necessary).

43. Due to the substantial public interest in support of this acquisition and its small size, the Joint Petitioners request that the Commission determine, pursuant to 66 Pa. C.S. § 529(e), that the purchase price contained in the APA is reasonable and that a depreciated original cost study will not be required for the assets to be acquired from Winola because the purchase price for those assets is reasonable.

C. Plan for Improvements

44. Consistent with 66 Pa. C.S. § 529(j), attached hereto as **Appendix C1** is a plan, including a timetable, for bringing the System into compliance with applicable statutory and regulatory standards (“Plan for Improvements”). OCA and I&E acknowledge that they received the Plan for Improvements, and had an opportunity to submit comments to PAWC on it, prior to the submission of this Settlement. OCA submitted comments requesting additional information about the existing facilities and the planned improvements, and PAWC provided the requested information. (PAWC’s response is attached as **Appendix C3**).

45. PAWC provided a copy of the Plan for Improvements to DEP and the Township and notified them of the opportunity to comment on it before the Commission decides whether to approve it. *Cf.* 66 Pa. C.S. § 529(l)(3) (regarding DEP objections to Plan for Improvements). DEP has provided comments to PAWC, which PAWC accepted (PAWC’s response is attached

as **Appendix C2**). The Township has no objections to the Plan for Improvements. **Appendix C4**.

46. The Joint Petitioners request that the ALJ recommend the approval of, and the Commission approve, the Plan for Improvements and allow the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service when included in a future base rate proceeding or as part of distribution system improvement charge (“DSIC”) recovery, if applicable. The Joint Petitioners further request that the ALJ and the Commission treat the Plan for Improvements as a petition for modification of PAWC’s Long Term Infrastructure Improvement Plan (“LTIIP”) for water, as approved by the Commission at Docket No. P-2017-2585707. The Plan for Improvements does not request approval to re-prioritize other existing commitments in other service territories.

47. The Joint Petitioners expressly acknowledge that (i) additional upgrades beyond those provided for in the Plan for Improvements may be necessary in the future, (ii) such upgrades shall not require an amendment of the Plan for Improvements, and (iii) rate recovery for such upgrades, absent Commission approval of an amendment to the Plan for Improvements, shall be treated in accordance with traditional ratemaking principles.

D. Rates Upon Closing

48. Consistent with 66 Pa. C.S. § 529(f), the Joint Petitioners request that the Commission permit PAWC to charge a separate tariffed rate to Winola customers.

a. Upon Closing, full-time and seasonal customers will be charged a monthly unmetered amount of \$33.23. Seasonal customers may seasonally disconnect and reconnect

service each year and will only be charged the applicable reconnection fee under PAWC's tariff in order to reconnect service.

b. Attached hereto as **Appendix D** is a *pro forma* tariff supplement that incorporates this new Rate Zone tariff into PAWC's existing water tariff. The *pro forma* tariff supplement establishes initial rates in the Requested Territory as stated above, together with all other miscellaneous fees and charges, rules and regulations, permitted by PAWC's current water tariff (other than the DSIC). The tariff supplement will be filed within 10 days of the Closing as a matter of compliance, and will be permitted to become effective as of the date of Closing.

c. PAWC's DSIC will be applicable to Winola customers after the first base rate case that includes Winola, if applicable.

d. Customers will have meters installed within one year following Closing of the Acquisition. In its first base rate case incorporating Winola after meters are installed, PAWC will propose a metered tariff rate in Winola's service territory. PAWC agrees to provide the actual metered consumption data for Winola customers to OCA and I&E during that base rate case.

E. Quality of Service

49. The Joint Petitioners will not contest that, prior to its acquisition by PAWC, Winola was a small, nonviable water system that was not providing safe, adequate and reasonable service.

50. The Joint Petitioners acknowledge that 66 Pa. C.S. § 529(1) limits enforcement actions by certain state or local agencies following PUC approval of the Acquisition and the Plan

for Improvements. The Joint Petitioners further acknowledge that OCA and I&E reserve their right to institute enforcement actions that are not prohibited by Section 529(l).

F. Recovery of Costs Incurred by PAWC as Receiver until Closing

51. PAWC will make a reasonable effort to establish the financial position of Winola at the time the Receiver assumed Receivership. PAWC has, and will continue to, bill and collect amounts due from Winola's customers since November 1, 2019. PAWC will maintain an account of Winola's funds in PAWC's possession.

52. PAWC may charge Winola reasonable rates for all services rendered to or for Winola on behalf of the Receivership and may present those charges for recovery as part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

53. PAWC may establish deferred accounting treatment for expenses incurred by Winola that are payable to the Receiver and to present those expenses for recovery as a part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

54. PAWC may establish deferred accounting treatment for reasonable capital costs incurred by the Receiver to restore safe, adequate, and reasonably continuous service to Winola customers and to present those costs for recovery as a part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

55. PAWC may establish a deferred account for expenses incurred by the Receiver, including prudent and reasonable legal expenses, for presentation in PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

G. Recovery of Costs incurred by PAWC in Winola's Service Territory Post-Closing

56. The Joint Petitioners request that, from the date of Closing until PAWC's first base rate case in which Winola is included, PAWC be afforded deferred accounting treatment for accounting purposes for extraordinary operations and maintenance expenses associated with the provision of service in Winola's service territory. An example of an extraordinary incremental operations and maintenance expense would be costs incurred by PAWC for the provision of bottled water to Winola residents for an extended period of time or unusual operations and maintenance expenses resulting from an unforeseen directive from DEP as a part of the Consent Order discussed in Paragraph 42, above. The OCA and I&E agree to this paragraph only to the extent that the Commission agrees that PAWC is not required to file a separate petition for the establishment of this deferred account for accounting purposes. The OCA and I&E do not agree to recovery of any deferred incremental operations and maintenance expenses associated with the provision of service in the Requested Territory or waive any arguments that they may have in any future filing related to any deferred amounts that PAWC would claim in its first base rate case in which Winola is included.

57. In *Petition of Delaware Sewer Company for an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 (Order on Reconsideration entered April 17, 2020), the Commission decided that a company acquiring a small water company pursuant to Section 529 may establish a regulatory asset in order to claim appropriate ratemaking and revenue recovery in the first base rate case in which Winola is included of accrued depreciation and allowance for funds used during construction on those improvements that cannot otherwise be included in the

DSIC. The Joint Petitioners request that the Commission apply the final resolution of this issue in that proceeding to these proceedings.

H. Recovery of Costs in PAWC's First Base Rate Case in which Winola is Included

58. The Joint Petitioners reserve their rights to litigate any and all positions and challenge any and all claimed amounts, but will not contest PAWC's right to include a claim for:

- a. Recovery of the costs described in Paragraphs 51 to 57 above.
- b. All of PAWC's reasonable transaction and transition costs of the

Acquisition.

I. Termination of Proceedings

59. The Joint Petitioners request that the Commission terminate and close all proceedings at Docket Nos. C-2018-2644592, P-2018-3006216 and I-2018-3006498 upon the issuance of the certificates of public convenience described in Paragraph 41 and the filing of the *pro forma* tariff supplement described in Paragraph 48b, above.

J. Other Necessary Approvals

60. The Joint Petitioners request that the Commission issue any other certificates or approvals as may be appropriate, customary or necessary under the Code to consummate the Acquisition in a lawful manner.

K. Standard Settlement Conditions

61. 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 Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all 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 Joint Petitioners had fully litigated this proceeding.

62. The Settlement is proposed by the Joint Petitioners to settle all issues in these proceedings. 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 testimony and to conduct full cross-examination, briefing and argument.

63. The Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

65. The Joint Petitioners agree to diligently pursue Commission approval of the Settlement, without modification, using reasonable efforts in the ordinary course of business.

L. Record Supporting the Settlement

66. The Joint Petitioners have prepared a Joint Stipulation of Fact, which will be submitted to the ALJ contemporaneously with this Settlement.

67. The Joint Petitioners have prepared Proposed Findings of Fact (**Appendix E**), Proposed Conclusions of Law (**Appendix F**) and Proposed Ordering Paragraphs (**Appendix G**).

68. Several of the Joint Petitioners have prepared a Statement in Support of Settlement (attached as **Appendices H-J**) setting forth the bases upon which the Joint Petitioner believes the Settlement to be in the public interest.

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

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, Winola Water Company, the Office of Consumer Advocate, and the Bureau of Investigation and Enforcement respectfully request that:

1. 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.

2. The Commission order PAWC to continue to serve as Receiver of Winola until Closing on the Acquisition described in Paragraph 5, below.

3. The Commission direct PAWC, as Receiver, to comply with Winola's effective tariff for Winola's customers, consistent with Paragraph 15, below.

4. The Commission give PAWC, as Receiver, authority to make capital improvements to Winola's water system, including but not limited to capital improvements necessary to remove the Do Not Consume Order.

5. Consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Paragraph 8 below, the Commission order PAWC to purchase substantially all of the water system assets of Winola pursuant to the Asset Purchase Agreement dated May 28, 2020, between Winola and PAWC.

6. The Commission order PAWC to notify the Commission, OCA and I&E shortly before Closing on the Acquisition described in Paragraph 5.

7. Upon receipt of the notice described in Paragraph 6, and consistent with 66 Pa. C.S. § 529(d), the Commission direct the Secretary's Bureau to issue certificates of public convenience evidencing Commission approval of:

a. PAWC's acquisition of substantially all of the water system assets of Winola;

b. PAWC's right to begin providing water service to the public in the Requested Territory, shown in **Appendix B**.

c. Winola's sale of substantially all of its water system assets to PAWC.

d. Winola's abandonment of the provision of water service to the public in Pennsylvania.

8. Pursuant to the condition contained in Section 8.1(e) of the APA, prior to Closing on the Acquisition, PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from the Commission, DEP and the Township).

9. Pursuant to 66 Pa. C.S. § 529(e), the Commission determine that the purchase price contained in the Asset Purchase Agreement is reasonable.

10. The Commission determine that a depreciated original cost study will not be required for the acquired assets of Winola in PAWC's next base rate case because the purchase price is reasonable.

11. The Commission approve the Plan for Improvements attached hereto as **Appendix C1**, consistent with 66 Pa. C.S. §529(j). It is further requested that the Commission approve the Plan for Improvements as a Petition for Modification of PAWC's Long Term Infrastructure Improvement Plan for water, pursuant to 52 Pa. Code § 121.5(a).

12. Consistent with 66 Pa. C.S. § 529(f), the Commission permit PAWC to charge a separate tariffed rate to Winola's customers.

13. The Commission permit PAWC, within ten (10) days following Closing of the Acquisition, to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached hereto as **Appendix D**, to be effective as of the date of Closing.

14. The Commission order PAWC to install meters for Winola customers within one year following Closing of the Acquisition, and propose a metered tariff rate in the Requested Territory in PAWC's first base rate case incorporating Winola after meters are installed.

15. The Commission approve PAWC, as Receiver, billing and collecting amounts due from Winola's customers after the Do Not Consume Order is no longer in effect.

16. The Commission permit PAWC, as Receiver, to charge Winola reasonable rates for all services rendered to or for Winola on behalf of the receivership, and permit PAWC to present those charges for recovery as part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

17. The Commission permit PAWC, as Receiver, to establish deferred accounting treatment for expenses incurred by Winola that are payable to the Receiver and to present those expenses for recovery as a part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

18. The Commission permit PAWC, as Receiver, to establish deferred accounting treatment for reasonable capital costs incurred by the Receiver to restore safe, adequate and reasonably continuous service to Winola customers and to present those costs for recovery as a part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola.

19. Permit PAWC, as Receiver, to establish a deferred account for expenses incurred by the Receiver, including prudent and reasonable legal expenses, for presentation in PAWC's first base rate case in which Winola is included if not recoverable from Winola.

20. The Commission afford PAWC deferred accounting treatment for ratemaking purposes, from the date of Closing until PAWC's first base rate case in which Winola is included, for extraordinary operations and maintenance expenses associated with the provision of service in the Requested Territory.

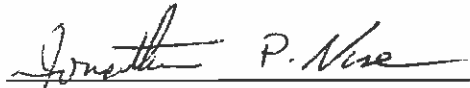
21. Consistent with *Petition of Delaware Sewer Company for an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 (Order on Reconsideration entered April 17, 2020), the Commission allow PAWC to establish a regulatory asset in order to claim appropriate ratemaking and revenue recovery in its first base rate case in which Winola is included of accrued depreciation and allowance for funds used during construction on those improvements that cannot otherwise be included in the DSIC.

22. The Commission permit PAWC to submit a claim, in the first base rate case in which Winola is included, for PAWC's reasonable transaction and transition costs of the Acquisition.

23. The Commission issue any other certificates or approvals appropriate, customary or necessary under the Code to carry out the Acquisition in a lawful manner.

24. The Commission's Secretary's Bureau close the proceedings at Docket Nos. C-2018-2644592, P-2018-3006216 and I-2018-3006498 upon issuance of the certificates of public convenience described in Paragraph 7 and the filing of the compliance tariff described in Paragraph 13.

Respectfully submitted,


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

Date: June 1, 2020

Elizabeth Rose Triscari (PA ID No. 306921)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Telephone: (717) 550-1574
E-mail: Elizabeth.triscari@amwater.com

Counsel for *Pennsylvania-American Water Company*

Christina Maloni Hoover

Date: June 1, 2020

Christine Maloni Hoover, Esquire (PA ID No. 50026)
Christy M. Appleby, Esquire (PA ID No. 85824)
Erin L. Gannon, Esquire (PA ID No. 83487)
Office of Consumer Advocate
555 Walnut St.
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
E-mail: CHoover@paoca.org
CAppeleby@paoca.org
EGannon@paoca.org

Counsel for *Office of Consumer Advocate*

Edmund J. Scacchitti, Esq.
Scacchitti Law Firm
400 Spruce Street, Suite 402
Scranton, PA 18503
Telephone: (570) 343-9000
E-mail: scacchittilawfirm@gmail.com

Counsel for *Winola Water Company*

Date: _____

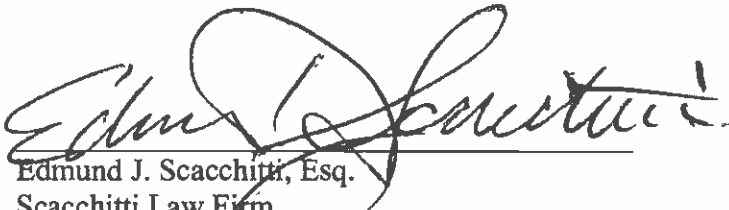
Scott B. Granger, Esquire (PA ID No. 63641)
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street, Second Floor West
Harrisburg, PA 17120
Telephone: (717) 425-7593
E-mail: sgranger@pa.gov

Counsel for *Bureau of Investigation and Enforcement*

Date: _____

Christine Maloni Hoover, Esquire (PA ID No. 50026)
Christy M. Appleby, Esquire (PA ID No. 85824)
Erin L. Gannon, Esquire (PA ID No. 83487)
Office of Consumer Advocate
555 Walnut St.
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
E-mail: CHoover@paoca.org
CAppleby@paoca.org
EGannon@paoca.org

Counsel for *Office of Consumer Advocate*



6/1/20

Edmund J. Scacchitti, Esq.
Scacchitti Law Firm
400 Spruce Street, Suite 402
Scranton, PA 18503
Telephone: (570) 343-9000
E-mail: scacchitlawfirm@gmail.com

Counsel for *Winola Water Company*

Date: _____

Scott B. Granger, Esquire (PA ID No. 63641)
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street, Second Floor West
Harrisburg, PA 17120
Telephone: (717) 425-7593
E-mail: sgranger@pa.gov

Counsel for *Bureau of Investigation and Enforcement*

Date: _____

Christine Maloni Hoover, Esquire (PA ID No. 50026)
Christy M. Appleby, Esquire (PA ID No. 85824)
Erin L. Gannon, Esquire (PA ID No. 83487)
Office of Consumer Advocate
555 Walnut St.
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
E-mail: CHoover@paoca.org
CAppleby@paoca.org
EGannon@paoca.org

Counsel for *Office of Consumer Advocate*

Edmund J. Scacchitti, Esq.
Scacchitti Law Firm
400 Spruce Street, Suite 402
Scranton, PA 18503
Telephone: (570) 343-9000
E-mail: scacchittilawfirm@gmail.com

Counsel for *Winola Water Company*



Date: June 1, 2020

Scott B. Granger, Esquire (PA ID No. 63641)
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street, Second Floor West
Harrisburg, PA 17120
Telephone: (717) 425-7593
E-mail: sgranger@pa.gov

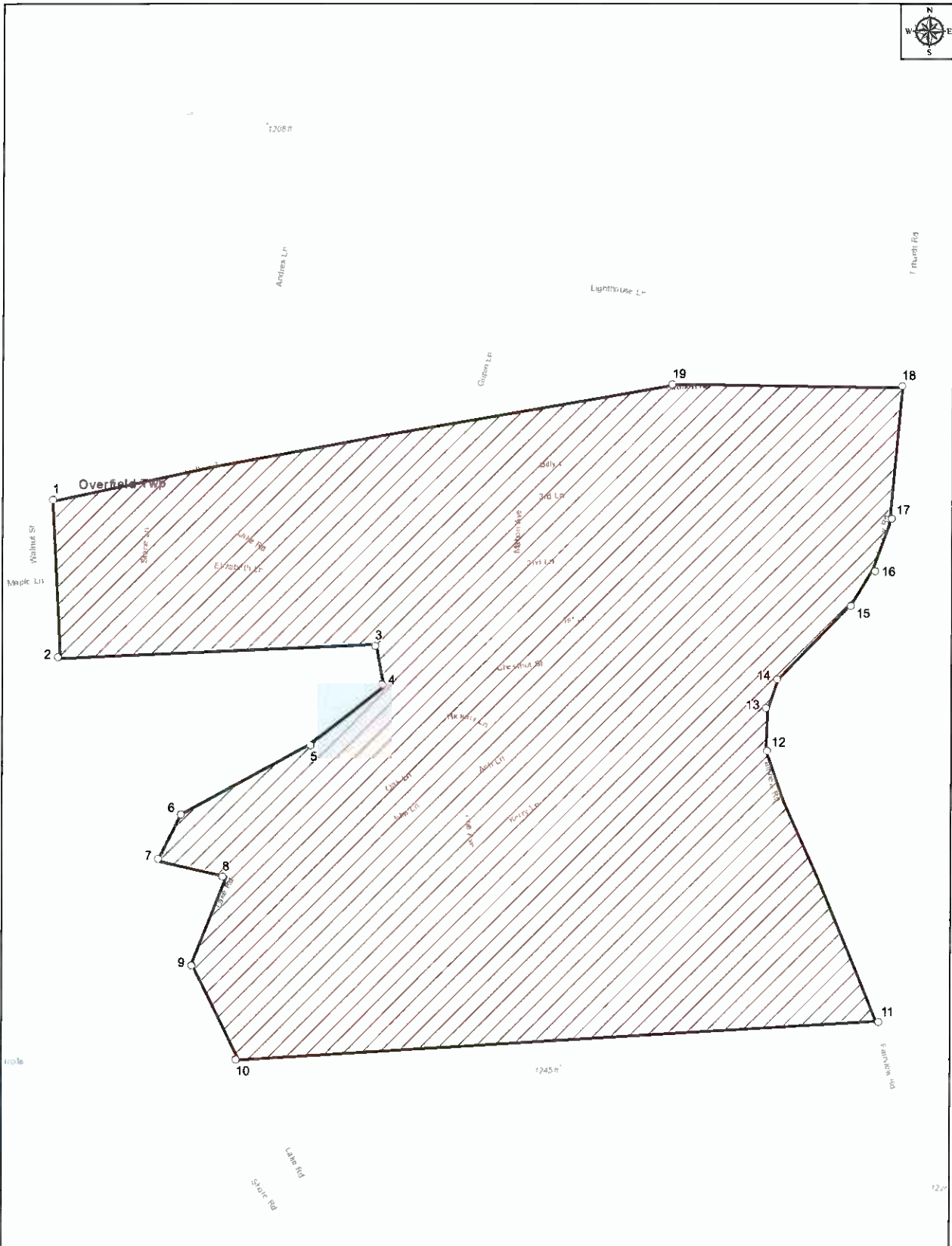
Counsel for *Bureau of Investigation and Enforcement*

List of Appendices:

- A. Asset Purchase Agreement (**CONFIDENTIAL**)
- B. Requested Service Territory
- C1. Plan for Improvements
- C2. Pennsylvania-American Water Company's Response to the Comments of the Department of Environmental Protection on the Plan for Improvements
- C3. Pennsylvania-American Water Company's Response to the Comments of the Office of Consumer Advocate on the Plan for Improvements
- C4. Letter from Overfield Township Regarding the Plan for Improvements
- D. *Pro Forma* Tariff Supplement
- E. Proposed Findings of Fact
- F. Proposed Conclusions of Law
- G. Proposed Ordering Paragraphs
- H. Statement in Support of Pennsylvania-American Water Company
- I. Statement in Support of the Office of Consumer Advocate
- J. Statement in Support of the Bureau of Investigation and Enforcement



APPENDIX A
ASSET PURCHASE AGREEMENT
(CONFIDENTIAL)

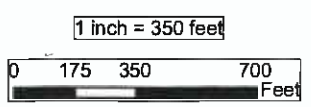
APPENDIX B
REQUESTED SERVICE TERRITORY



Pennsylvania-American Water Company
 Proposed Certificated Service Territory
 Lake Winola Water System
 Approximately 244 Acres
 Overfield Twp, Wyoming County



 Proposed Certificated Service Territory
 Bearing Points



Disclaimer: Bearings and distances were not developed as a result of physical survey completed by a Professional Licensed Surveyor, but instead completed through employment of ESRI's ArcGIS® CADD tool. The mapping data source used for the roads base mapping is from PANDA 2018. The mapping data source used for the municipal boundaries is from PA2018, 2018. *Bearings and Distances attached separately.

Starting point: At the intersection of Dalton Rd and Walnut St in Lake Winola, PA follow Dalton Rd in an Easterly direction approximatly 93 ft.

<u>From</u>	<u>To</u>	<u>Bearing</u>	<u>Distance</u>
1	2	S2°00'34"E	605.11
2	3	N87°59'57"E	1215.52
3	4	S10°07'29"E	150.88
4	5	S49°45'49"W	361.35
5	6	S61°44'10"W	560.12
6	7	S26°33'54"W	189.79
7	8	S74°13'09"E	253.58
8	9	S18°58'13"W	359.00
9	10	S25°12'04"E	398.67
10	11	N86°40'37"E	2470.85
11	12	N22°42'10"W	1127.05
12	13	N1°50'51"W	164.53
13	14	N20°51'16"E	119.21
14	15	N45°00'00"E	397.61
15	16	N35°45'14"E	163.42
16	17	N17°31'32"E	211.39
17	18	N4°10'14"E	510.61
18	19	N89°39'25"W	885.91
19	1	S79°22'49"W	2417.93

APPENDIX C1
PLAN FOR IMPROVEMENTS

Plan for Improvements

Description of System

General

On November 29, 2018, Commissioner Norman J. Kennard entered an Ex Parte Emergency Order at Docket Nos. P-2018-2644592 and C-2018-2644592, later ratified by the Pennsylvania Public Utility Commission (PUC) on December 6, 2018, directing Pennsylvania-American Water Company (PAWC) to act as the Receiver for the Winola Water Company (WWC). WWC is located in Overfield Township, Wyoming County, Pennsylvania. The system consists of two wells, Big Oaks and Middle Oaks, that provide water service to approximately 10 year-round customers and approximately 25 seasonal customers being served by the WCC. Customers are mainly residential with one light commercial (bar/restaurant). There are no industrial users on the system. There has been a decrease in customers over the years reportedly due to the lack of reliable water service and therefore, many homeowners have resorted to drilling their own wells.

Distribution System

The current distribution system is a combination of 2-inch galvanized pipe and 2-inch black plastic tubing. It appears the vast majority of the system is the original 1940 vintage materials. Due to pipe age, material, and inadequate cover (0-2 feet), the system reportedly contains significant leaks and has been the source of water quality issues (lead and cadmium).

Wells and Treatment

Discharge from the Big Oaks Well (35 gpm permitted capacity), which is the primary source of supply, enters the well house where sodium hypochlorite is added for disinfection prior to being conveyed via a 2-in. diameter line to the 32,000-gallon inground storage tank (28 feet in diameter by 7 feet deep) for adequate contact time. Well and chemical feed pump activation is controlled automatically by a float system in the reservoir. The discharge from the Middle Oaks Well (35 gpm permitted capacity) enters its well house where sodium hypochlorite is added for disinfection and travels via approximately 1,056 LF of 2-inch pipe to the same storage tank. The Middle Oaks well pump and chemical feed are activated manually. Reportedly this well is only used to help meet peak seasonal demands.

System Deficiencies

Collection System

Based on the pipe age, material, and limited cover in addition to the limited information provided by WWC, it is anticipated the entire distribution system will need to be replaced in order to provide reliable service to existing customers, but also to provide additional service to customers who may wish to come back online to the public system. PAWC Operations has been actively replacing any emergency leaks that are discovered through operation of the system during the receivership period.

Well Treatment Facilities

The overall treatment facilities were observed to be in poor condition with several sanitary defects, in addition to cadmium and lead founded in water samples, leading to the system being

placed on a “Do Not Consume” Order by PaDEP in October 2018. Reported defects by a PaDEP inspection included, but were not limited to, mold present in both wellhouses, mold present in the clear well roof, dead rodents in the clear well, and holes in the walls of the Big Oaks treatment facility.

PaDEP Permitting

The water system has a current PaDEP Public Water Supply Operations Permit for the 4-log Treatment of Viruses and lists the instantaneous maximum flow at the entry point of 70 gpm with a minimum chlorine residual requirement of 0.40 mg/l. However, it was discovered during the receivership that the PaDEP permit application was not correctly completed by WWC, and needed to be re-evaluated and permitted by the PaDEP. Initial conversations with the operator revealed there was only a single inlet/outlet pipe conveying finished water to the storage reservoir and to the distribution system. Therefore, the storage reservoir could not be counted as a segment in the 4-log Treatment of Viruses for Groundwater Sources. Preliminary assessment by PAWC removing the storage tank segment from the calculation showed the system did not meet the requirements for PaDEP’s Groundwater Rule. Permit inaccuracies from the existing Public Water Supply (PWS) permit issued from PaDEP needed to be addressed through system improvements in order to bring the system into compliance with current regulations. These improvements are outlined in the “Plan to Correct Deficiencies” Section of this report.

Preliminary Investigations

PAWC’s present understanding of the system, the compliance status of facilities and the capital improvements required to correct system deficiencies is based on system reports and operations testimony collected during the pre-acquisition investigations and receivership operations. During receivership, an initial condition assessment outlining existing deficiencies and corrective actions required was prepared for and submitted to the PUC as a part of the Ex Parte Emergency Order. This initial condition assessment report dated February 7, 2019 has been updated quarterly based on the progress of the improvements. Below outlines the improvements required and corrective actions listed in the report.

PAWC has knowledge of a total of one (1) regulatory permit issued to WWC that will be transferred as part of the acquisition. The permit consists of a PWS Permit (ID #2660004).

Plan to Correct System Deficiencies

Based on the studies and information available at the time, the following issues were identified in the initial condition assessment report to the PUC. The issues were placed into three different categories: immediate needs, short-term improvements, and long-term improvements. The issues (I), along with the corrective actions (CA) and current status (CS), are as follows:

Immediate Improvements:

I #1: The Middle Oak treatment facility site is overgrown by trees and brush making it difficult and unsafe to access on foot and impossible to access by vehicle. In addition, the only available parking for the site is along a public roadway, making it difficult and unsafe for equipment and chemical deliveries.

- CA:** Clear and grub brush and trees as needed to provide safe access. Provide a proximate parking spot for a vehicle to pull safely off of the road.
- CS:** Completed. (October 2019)
- I #2:** Poor house-keeping and rodent infestation in both well houses.
- CA:** Clean facilities and install preventive measures to prevent rodents from entering (seal buildings, set traps, etc.).
- CS:** Completed. (December 2018)
- I #3:** Inadequate Lighting and Electrical Safety: No lighting was observed outside of the Middle Oaks Treatment facility, the Big Oaks Treatment facility, or the storage reservoir; and no interior lighting in the Big Oaks Treatment facility. Additionally, the electrical facilities are antiquated and not properly identified/labeled.
- CA:** Installation of adequate perimeter lighting for all outside facility locations and inside the Big Oaks Treatment Building. Perform further inspection on electrical facilities and replace, label, etc. as needed.
- CS:** Completed. (October 2019)
- I #4:** No emergency eyewash station or shower at either treatment facility.
- CA:** Install temporary eyewash stations at each well treatment facility.
- CS:** Completed. (December 2018)
- I #5:** Water meters are broken and not functional: There are raw water meters on each of the well discharge lines that are not functional. There are no meters on the finished water line at the entry point into the system.
- CA:** Replace/install water meters so that system delivery can be adequately monitored and recorded.
- CS:** Completed. (October 2019)
- I #6:** No true raw water sample point exists on Big Oaks Well.
- CA:** Install tap on raw water line ahead of chlorine injection point.
- CS:** Completed. (December 2018)
- I #7:** The system does not meet the requirements for the DEP Safe Drinking Water Regulations Groundwater Rule (25 Pa. Code, Chapter 109). As mentioned above, it was discovered that the PWS permit application submitted by WWC, prior to PAWC's receivership was inaccurate.
- CA:** A minor permit amendment application to correct the inaccuracies of the current approved PaDEP PWS Permit needs to be completed and submitted to the PaDEP. The proposed improvements include installation of a new 42" underground ductile iron contact main at both the Big Oaks and Middle Oaks well stations in order to provide adequate contact time. Two entry points will also be established, one at each well, including an entry point sampling location for compliance monitoring/reporting.
- CS:** Completed. (October 2019)

I #8: The driveway and parking area to the Big Oaks Well facility is unsafe due to ruts, potholes, and poor drainage.

CA: Regrade driveway for drainage and repair ruts/potholes.

CS: Completed. (October 2019)

I #9: Existing chlorine feed pumps are antiquated and under-sized with no reliable backup/stand-by pumps available for either treatment facility.

CA: Regrade driveway for drainage and repair ruts/potholes.

CS: Completed. (October 2019)

In addition to the immediate improvements listed above, PAWC has been collecting the monthly distribution Bac-T samples and submitting a monthly compliance report to DEP. PAWC continues to issue the Public Notification notice every 30 days as required by DEP for exceedance of lead and cadmium in the system.

Short-Term Improvements:

I #1: Both the Middle Oaks and the Big Oaks Treatment facilities are in need of remediation/proper ventilation due to the presence of mold.

CA: Install vents for proper ventilation in both facilities.

CS: Completed. (October 2019)

I #2: Replace/rehabilitate/install adequate chemical feed and water quality analyzer/monitoring equipment.

CA: As a part of requirements for the PWS permit improvements, install adequate chemical feed and water quality analyzer/monitoring equipment.

CS: Completed. (October 2019)

I #3: Historical water quality sampling indicates that high levels of cadmium and lead are present in the distribution system.

CA: Implement chemical sequestration/corrosion inhibitor treatment in order to coat the distribution mains and customer service lines to prevent corrosion and subsequently reduce cadmium and lead levels in the distribution system.

CS: Draft copy of the corrosion control study has been submitted to PaDEP for the initial review. Once comments are received, the final copy will be submitted for approval. Once approval is received, the approved sequestration/corrosion inhibitor treatment will be added to the system. (May 2020-ongoing)

I #4: There are no alert systems in place to notify PAWC staff of alarm conditions.

CA: Installation of communications/alarm notification system (SCADA, auto-dialer, or similar) to alert operators of alarm conditions.

CS: This work is scheduled to be completed after PAWC assumes ownership. (September 2020)

I #5: The existing reservoir has presence of mold/fungus and allows for rodents and debris to enter and contaminate the finished water supply.

CA: As a part of requirements for the PWS permit improvements, install a new storage tank to ensure a clean and safe finished water supply.

CS: Completed. (October 2019)

I #6: There are visible leaks in the existing distribution system. In some areas, there are exposed pipes that are susceptible to damage/breaks.

CA: Repair leaks as they become apparent and brought to PAWC operation's attention.

CS: Completed and ongoing. As new issues arise, PAWC operations is taking corrective action for replacing the distribution system. (December 2018-ongoing)

Future Improvements:

I #1: The existing distribution system is of mix media, unknown age, exposed to the elements, and, in some areas, leaking.

CA: Full replacement of the distribution system.

CS: This work is scheduled to be completed after PAWC assumes ownership. (Tentative 2021/2022)

I #2: The age, material, and condition of customer service lines are unknown.

CA: Replace customer service lines.

CS: This work is scheduled to be completed after PAWC assumes ownership. The extent is to be dictated by PUC rules and regulations. (Tentative September 2021)

I #3: There are no customer meters to meter usage.

CA: Install customer meters.

CS: This work is scheduled to be completed after PAWC assumes ownership. (Tentative September 2021)

I #4: As the system continues to operate, the condition of the wells, treatment facilities, and storage will continue to deteriorate.

CA: Well, treatment facilities, and storage improvements as dictated by operation experience and regulatory requirements.

CS: This work is scheduled to be completed after PAWC assumes ownership and as needed/required. (Tentative 2023)

Estimated Cost for Capital Improvements

At this time, the majority of the capital expenditures to date have been to correct existing deficiencies to bring the system into PaDEP regulatory compliance. The estimated future capital expenditures are for the replacement of the distribution system, installation of an alert/communication system (SCADA), and installation of customer meters.

Winola Water Company Cost Estimate of Improvements

1	Installation chemical sequestration	\$	10,000.00
2	Communication/Alarm installation (SCADA)	\$	10,000.00
3	Customer meter installation	\$	17,500.00
4	Service Lateral Replacement	\$	52,500.00
5	Replacement distribution system	\$	1,300,000.00
6	Treatment facilities upgrades	\$	250,000.00

SUBTOTAL	\$	1,640,000.00
-----------------	-----------	---------------------

Permitting, Engineering and Design (10%)	\$	164,000.00
AFUDC and Overheads (10%)	\$	164,000.00
Contingency (10%)	\$	164,000.00

TOTAL	\$	2,132,000.00
--------------	-----------	---------------------

Operations

PAWC personnel have been and will continue to staff this operation with the support from the Abington District. These personnel have been handling the daily operations and will continue to assist in the identification of system deficiencies and in addressing customer service issues.

Schedule

The following schedule for implementation of system improvements is based on system needs, expected time frames for construction, and the spend profile submitted to the PUC for PAWC's rate case.

ESTIMATED TIMELINE FOR IMPROVEMENTS

ID	Task Name	2020			2021				2022				2023			
		Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1	Installation Chemical Sequestration															
2	Communication/Alarm System (SCADA)															
3	Customer Meter Installation															
4	Service Lateral Replacement															
5	Replacement Distribution System															
6	Treatment Facilities Upgrades															

APPENDIX C2
PENNSYLVANIA-AMERICAN WATER
COMPANY'S RESPONSE TO THE
COMMENTS OF THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION ON THE
PLAN FOR IMPROVEMENTS



Elizabeth Rose Triscari
Director, Corporate Counsel
Pennsylvania-American Water Company
852 Wesley Drive, Mechanicsburg, PA 17055
P: 717.550.1574 F: 717.531.3399 C: 717.585.1934
elizabeth.triscari@amwater.com

May 20, 2020

Crystal Mickalowski
Department of Environmental Protection
Safe Drinking Water Program
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Winola Water Company; PUC Docket Nos. I-2018-3006498 *et al.*

Pennsylvania-American Water Company's Plan for Improvements to the Water System Currently Owned by Winola Water Company

Dear Ms. Mickalowski:

On May 12, 2020, Pennsylvania-American Water Company ("PAWC") e-mailed the proposed settlement in this case to the Pennsylvania Department of Environmental Protection ("DEP"). That document included the Plan for Improvements to the water system currently owned by the Winola Water Company ("Winola"). PAWC explained that the Plan for Improvements was being provided to DEP for review and comment pursuant to 66 Pa. C.S. § 529(j).

On May 19, 2020, PAWC received a response from DEP. According to that response, DEP only had one comment on the Plan for Improvements.

In the section on Short-Term Improvements, the Plan for Improvement states:

- I #3:** Historical water quality sampling indicates that high levels of cadmium and lead are present in the distribution system.
- CA:** Implement chemical sequestration/corrosion inhibitor treatment in order to coat the distribution mains and customer service lines to prevent corrosion



and subsequently reduce cadmium and lead levels in the distribution system.

CS: Draft copy of the corrosion control study has been submitted to PaDEP for the initial review. Once comments are received, the final copy will be submitted for approval. Once approval is received, the approved sequestration/corrosion inhibitor treatment will be added to the system. (May 2020-ongoing)

DEP commented that the approval mentioned in the last paragraph quoted above . . . is the issuance of the construction permit not the feasibility study approval. The sequestration/corrosion inhibitor treatment cannot be added to the system until after a construction permit is issued to the system. The feasibility study was due to be submitted to the Department by March 30, 2020. Once the final copy is submitted, it needs to be reviewed and approved. Once that occurs, a permit application will need to be submitted to the Department for the proposed changes detailed in the feasibility study. Once the permit application is reviewed and construction permit issued, then the treatment can be installed.

PAWC agrees with DEP's clarification and will not add the sequestration/corrosion inhibitor treatment until after the permit application is reviewed and a construction permit is issued.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Rose Triscari". The signature is written in a cursive style.

Elizabeth Rose Triscari

APPENDIX C3
PENNSYLVANIA-AMERICAN WATER
COMPANY'S RESPONSE TO THE
COMMENTS OF THE OFFICE OF
CONSUMER ADVOCATE ON THE PLAN
FOR IMPROVEMENTS



Elizabeth Rose Triscari

Director, Corporate Counsel

Pennsylvania-American Water Company

852 Wesley Drive, Mechanicsburg, PA 17055

P: 717.550.1574 F: 717.531.3399 C: 717.585.1934

elizabeth.triscari@amwater.com

June 1, 2020

VIA ELECTRONIC MAIL

Christine Maloni Hoover, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Winola Water Company; PUC Docket Nos. I-2018-3006498 *et al.*

Pennsylvania-American Water Company's Plan for Improvements to the Water System Currently Owned by Winola Water Company

Dear Ms. Hoover:

On May 12, 2020, Pennsylvania-American Water Company ("PAWC") e-mailed the proposed settlement in this case to the Office of Consumer Advocate ("OCA"). That document included the Plan for Improvements to the water system currently owned by the Winola Water Company ("Winola").

On May 29, 2020, PAWC received comments from the OCA regarding the Plan for Improvements. Specifically, the OCA requested certain information from PAWC. The requested information is provided below:

1. Existing pipe sizes: On the far side of the lake, customers are served by 1¼" galvanized steel pipes. On Ash and Elm Streets, customers are believed to be served by 2" plastic pipe.
2. Placement pipe sizes and planned locations: 2"- 4" mains will be installed on State Road and 2" pipes will be installed on side roads.

3. Amount of each size pipe that is planned to be installed: Approximately 3,608 ft. of 4" main and approximately 2,950 ft. of 2" pipe.
4. Pressure testing results for the existing pipe sizes: Please see attached.

Thank you for your assistance in this matter.

Sincerely,



Elizabeth Rose Triscari



Permit to Not Exceed 35 GPM

PLANT =

Middle Oak

WEEK ENDED

MAY 17, 2020

DATE	MTR READING	CL2 ANALYZER	GPM PACKING	PSI HR METER	TOTAL DEL	CHL RES.	APPLI CL WT.
5-11	32 15 17 <input type="checkbox"/> 32 11 63 <input type="checkbox"/> 3,54		28	50#	3,540	1.89 1300	22
5-12	32 18 69 <input type="checkbox"/> 32 15 17 <input type="checkbox"/> 3,52		28	50#	3,520	1.86 1330	21 ³ / ₄
5-13	32 22 25 <input type="checkbox"/> 32 18 69 <input type="checkbox"/> 3,56		28	50#	3,560	1.58 1500	18
5-14	32 25 73 <input type="checkbox"/> 32 22 25 <input type="checkbox"/> 3,5		25	50#	3,530	1.42 1540	16
5-15			28	50#		1.35 1540	14 19
5-16							
5-17	32 36 32 <input type="checkbox"/> 3,50				3,500	1.68 1310	14

PLANT =

Big Oak

WEEK ENDED

MAY 17, 2020

DATE	MTR READING	CL2 ANALYZER	GPM PACKING	PSI HR METER	TOTAL DEL	FCL RES.	CL WT.
5-11	201154 <input type="checkbox"/> 199858 <input type="checkbox"/> 1296		28	1 3/4 1 1/8	12,960	1.91 1240	20 1/2
5-12	202229 <input type="checkbox"/> 201154 <input type="checkbox"/> 1075	Power outage Reset	28	1 3/4 / 6	10,750	1.76 1300	14 1/2 24 1/2
5-13	203166 <input type="checkbox"/> 202229 <input type="checkbox"/> 937	Time clock ?	28 / 30 Stop watch	2# / 5 1/2	9,370	1.88 1430	19
5-14	204616 <input type="checkbox"/> 203166 <input type="checkbox"/> 1450		30	2# / 9 1/2	14,500	1.84 1315	14 1/2 24 1/2
5-15	204616 <input type="checkbox"/>		30	3 1/4# / 5	7,350	1.85 1530	18 / 28
5-16	106194 <input type="checkbox"/> - <input type="checkbox"/> 245				8,430	1.75	
5-17	207017 <input type="checkbox"/> 1771 577		30 / 30	2 / 2 1/2 / 4	8,250	1.80 1245 1345	19 1/2 15 1/2

APPENDIX C4
LETTER FROM OVERFIELD TOWNSHIP
REGARDING THE PLAN FOR
IMPROVEMENTS

Overfield Township
775 Lower Mill City Road
Dalton, PA 18414

Jonathan P. Nase, Esq.
Cozen O'Connor
17 North Second Street
Suite 1410
Harrisburg, PA 17101

RE: Plan For Improvements of the Water System Currently Owned by the Winola Water Company

Dear Mr. Nase:

Overfield Township is in receipt of your letter of May 18, 2020, which enclosed a copy of Pennsylvania-American Water Company's Plan for Improvements to the water system currently owned by the Winola Water Company ("WWC's System"). We understand that the parties to the case are presently negotiating a settlement of a proceeding before the Pennsylvania Public Utility Commission ("PUC"), and the Plan for Improvements will be part of the settlement submitted to the PUC for its approval.

Overfield Township has reviewed the Plan for Improvements. This document describes the steps (including a timetable) that PAWC will take to bring the WWC System into compliance with statutory and regulatory requirements. Overfield Township has no objection to the Plan for Improvements.

Thank you for your attention to this matter.

Respectfully,

 6/2/2020
Donald Ames
Chairman, Board of Supervisors

cc: Elizabeth Rose Triscari, Esq.

APPENDIX D
PRO FORMA TARIFF SUPPLEMENT

PENNSYLVANIA-AMERICAN WATER COMPANY
(hereinafter referred to as the "Company")
D/B/A
Pennsylvania American Water

RATES, RULES AND REGULATIONS

GOVERNING THE DISTRIBUTION AND SALE OF
WATER SERVICE

IN CERTAIN MUNICIPALITIES AND TERRITORIES LOCATED ADJACENT THERETO IN:

ADAMS, ALLEGHENY, ARMSTRONG, BEAVER, BERKS, BUCKS,
BUTLER, CENTRE, CHESTER, CLARION, CLEARFIELD, CLINTON, COLUMBIA,
CUMBERLAND, DAUPHIN, FAYETTE, INDIANA, JEFFERSON, LACKAWANNA,
LANCASTER, LAWRENCE, LEBANON, LUZERNE, MCKEAN, MONROE, MONTGOMERY,
NORTHAMPTON, NORTHUMBERLAND, PIKE, SCHUYLKILL, SUSQUEHANNA,
UNION, WARREN, WASHINGTON, WAYNE, **WYOMING**, AND YORK COUNTIES. (C)

Issued: xxxxxx xx, xxxx

Effective: xxxxxx xx, xxxx

Issued by:
F. Michael Doran, President
Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055

<https://www.amwater.com/paaw/>

NOTICE

**The tariff authorizes Pennsylvania-American Water Company to furnish water service to the public in portions of Overfield Township, Wyoming County.
(Refer to pages 1, 2, 4, 5, 10, 16.8 and 35.)**

PENNSYLVANIA-AMERICAN WATER COMPANY

LIST OF CHANGES

This tariff supplement authorizes Pennsylvania-American Water Company to begin to offer or furnish water service to the public in the Township of Overfield, Wyoming County, as previously served by Winola Water Company, in accordance with the Pennsylvania Public Utility Commission Order at Docket Nos. C-2018-2644592, P-2018-3006216 and I-2018-3006498, entered xxxxx xx, xxxx.

PENNSYLVANIA-AMERICAN WATER COMPANY

TABLE OF CONTENTS

	<u>Page</u>		
	<u>Number</u>		
Title Page	1	Supplement No. XX	(C)
List of Changes	2	XXXXX Revised Page	(C)
List of Changes (cont'd)	3	First Revised Page	
Table of Contents	4	XXXXX Revised Page	(C)
Table of Contents (cont'd)	5	XXXXX Revised Page	(C)
Table of Contents (cont'd)	6	First Revised Page	
Table of Contents (cont'd)	7	Second Revised Page	
Reserved Page for Future Use	8	First Revised Page	
List of Territories Served	9	Third Revised Page	
List of Territories Served (cont'd).....	10	XXXXX Revised Page	(C)
List of Territories Served (cont'd).....	11	First Revised Page	
List of Territories Served (cont'd).....	12	First Revised Page	
List of Territories Served (cont'd).....	13	First Revised Page	
List of Territories Served (cont'd).....	14	First Revised Page	
Reserved Page for Future Use	15	First Revised Page	

Schedule of Rates

General Service

Rate Zone 1 – Metered – All Classes except Industrial	16.1	First Revised Page	
Rate Zone 1 – Metered – Industrial.....	16.2	First Revised Page	
Rate Zone 1 – Unmetered – Residential only.....	16.3	First Revised Page	
Rate Zone 2 – Metered (Nittany, Sutton Hills, All Seasons, Balsinger and Berry Hollow)	16.4	First Revised Page	
Rate Zone 3 – Metered (McEwensville)	16.5	First Revised Page	
Rate Zone 4 – Metered (Turbotville).....	16.6	Original Page	
Rate Zone 5 – Metered (Steelton).....	16.7	Original Page	
Rate Zone 6 – Unmetered (Winola).....	16.8	Original Page	(C)
Low-Income Rider – Residential	17	First Revised Page	

Curtailment, Standby and Demand Based Riders

Industrial Curtailment Rate	18	First Revised Page	
Industrial Curtailment Rate (cont'd).....	19	First Revised Page	
Industrial Standby Rate	20	First Revised Page	
Industrial Standby Rate (cont'd)	21	First Revised Page	
Industrial Standby Rate (cont'd)	22	First Revised Page	
Resale and Electric Generation Standby Rate.....	23	First Revised Page	
Resale and Electric Generation Standby Rate (cont'd)	24	First Revised Page	
Rider DIS - Demand Based Industrial Service	25	First Revised Page	

(C) means Change

PENNSYLVANIA-AMERICAN WATER COMPANY

TABLE OF CONTENTS

**Page
 Number**

Schedule of Rates (cont'd)

Rider DRS - Demand Based Resale Water Service	26	First Revised Page
Rider DGS – Demand Based Governmental Water Service.....	27	First Revised Page
Rider EGS – Electric Generation Service	28	First Revised Page

Fire Protection Service

Private Fire Service – Unmetered	29	Second Revised Page
Private Fire Service – Unmetered (cont'd).....	30	Second Revised Page
Private Fire Service – Metered.....	31	First Revised Page
Public Fire Service	32	Third Revised Page

Surcharges and Fees

State Tax Adjustment Surcharge	33	First Revised Page
PENNVEST Surcharge	34	First Revised Page
Distribution System Improvement Charge (DSIC)	35	XXXXX Revised Page (C)
Distribution System Improvement Charge (DSIC) (cont'd)..	36	First Revised Page
Distribution System Improvement Charge (DSIC) (cont'd)..	37	First Revised Page
Distribution System Improvement Charge (DSIC) (cont'd)..	38	First Revised Page
Miscellaneous Fees	39	First Revised Page
TCJA Voluntary Surcharge	40	Second Revised Page

Rules and Regulations

1. The Water Tariff.....	41	First Revised Page
2. Definitions.....	42	First Revised Page
Definitions (cont'd).....	43	First Revised Page
Definitions (cont'd).....	44	First Revised Page
3. Application for Service and Street Service Connection.....	45	First Revised Page
4. Service Pipes.....	46	First Revised Page
Service Pipes (cont'd).....	47	First Revised Page
5. Meters and Meter Installations	48	First Revised Page
Meters and Meter Installations (cont'd).....	49	First Revised Page
6. Meter Tests.....	50	First Revised Page

(C) means Change

PENNSYLVANIA-AMERICAN WATER COMPANY

TERRITORIES SERVED

**(By State Region and Company Water District)
(All territories are subject to Rate Zone 1 unless otherwise noted)**

Northeastern Pennsylvania

Abington District

Lackawanna County

The Boroughs of Clarks Green, Clarks Summit and Dalton and the Townships of Waverly and Glenburn and adjacent territory in South Abington and Abington Townships

Wyoming County

Portions of the Township of Overfield

(C)

Bangor Water District

Northampton County – Rate Zone 1 and Rate Zone 2 (Berry Hollow)

The Boroughs of Bangor and Roseto and the Townships of Plainfield, Upper Mt. Bethel and Washington and portions of the Township of Lower Mt. Bethel.

Blue Mountain Lake District

Monroe County

The Townships of Smithfield and Stroud

Lehman Pike District

Pike County – Rate Zone 1 and Rate Zone 2 (All Seasons)

Portions of the Townships of Delaware, Lehman and West Fall

Mid-Monroe District

Monroe County

Township of Middle Smithfield

Nazareth District

Monroe County

The Townships of Hamilton and Ross

Northampton County

The Boroughs of Nazareth, Pen Argyl, Stockertown, Tatamy and Wind Gap and the Townships of Bushkill, Forks, Lower Nazareth, Palmer, Plainfield and Upper Nazareth

Poconos District

Lackawanna County

Portions of the Township of Jefferson

Monroe County

The Borough of Mount Pocono, the Township of Coolbaugh and the Village of Tobyhanna

Wayne County

Portions of the Township of Salem

(C) means Change

PENNSYLVANIA-AMERICAN WATER COMPANY

SCHEDULE OF RATES

RATE ZONE 6 – GENERAL UNMETERED SERVICE

APPLICABILITY

The rates as set forth below apply in the Winola service territory served under this tariff for service rendered on and after the Effective Date shown at the bottom of this page.

AVAILABILITY

The rates under this schedule are available to customers in all Customer Classes.

FLAT RATE SERVICE

All water supplied by the Company under this rate schedule will be billed the flat rate listed below. The Company may install a meter of appropriate size at the customer's premise based on the Company's meter installation schedule as determined by the Company and in compliance with the Settlement at Docket Nos. C-2018-2644592, P-2018-3006216 and I-2018-3006498. Upon installation of a meter at the customer's service address by the Company, the flat rate will remain in effect.

RATE

Service Charge For All Rate Classes

The following monthly rate for service shall apply: \$33.23 per month

PENNSYLVANIA-AMERICAN WATER COMPANY

SCHEDULE OF RATES

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

EXCEPT PUBLIC FIRE PROTECTION

In addition to the net charges provided for in this Tariff, a charge of 4.11% will apply to all bills rendered with an ending read date on and after the Effective Date shown on the bottom of this page. This charge applies to all Rate Zones except Rate Zone 4 – Turbotville, Rate Zone 5 – Steelton and Rate Zone 6 – Winola.

(C)

The above charge will be recomputed quarterly using the elements prescribed by the Commission as shown on pages 36, 37 and 38 of this tariff.

(C) means Change

APPENDIX E
PROPOSED FINDINGS OF FACT

PROPOSED FINDINGS OF FACT

THE PARTIES

1. Winola is a Commission-regulated public utility (Utility Code 210106) providing water service to the public for compensation in Overfield Township, Wyoming County, Pennsylvania (the “Township”).

2. PAWC is a regulated public utility corporation (Utility Codes 212285 (water) and 230073 (wastewater)) duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service is furnished by PAWC to the public in a service territory encompassing more than 400 communities across the Commonwealth with a combined population of over 2,400,000.

3. I&E serves as the Commission’s prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code (“Code”) and Commission Regulations and Orders. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

4. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

5. Aqua is a regulated public utility company (Utility Code 210104), duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua furnishes water service to over 430,000 customer accounts in Pennsylvania (representing a population of

approximately 1.4 million people). Aqua's existing service territory covers various counties throughout Pennsylvania, including parts of Wyoming County.

WINOLA'S WATER SYSTEM

6. Winola owns and operates a water system (the "System") providing water service to approximately ten year-round customers and approximately twenty-five (25) seasonal customers in the Township. The assets of the System include two wells, an inground storage tank, a distribution system and associated appurtenances.

7. On October 5, 2018, the Pennsylvania Department of Environmental Protection ("DEP") directed Winola to issue to its customers a public notification advising that water produced by Winola is not safe for consumption (the "Do Not Consume Order"), due to high levels of cadmium and lead in the water.

8. On November 28, 2018, I&E filed a Petition for an Ex Parte Emergency Order alleging, *inter alia*, that Winola had failed to remedy the high levels of cadmium and lead in the water and failed to comply with a DEP directive to provide an alternative source of potable water to its customers. I&E further alleged that Winola's facilities are in serious need of repair and maintenance that Winola did not intend to address. Finally, I&E alleged that Winola did not have the resources and expertise to address these maintenance issues.

9. On November 29, 2018, Commissioner Norman J. Kennard signed an Ex Parte Emergency Order ("Ex Parte Emergency Order") ordering the commencement of a Section 529 investigation and directing PAWC to serve as the receiver (the "Receiver") for Winola pending the outcome of that investigation. Attachment A to the Ex Parte Emergency Order outlined the powers and duties of the Receiver.

10. The Commission ratified the Ex Parte Emergency Order at its Public Meeting of December 6, 2018 and issued a Ratification Order accordingly.

THE RECEIVER'S AUTHORITY

11. PAWC began serving as Receiver for Winola on December 10, 2018, and continues to serve as Receiver.

12. Appendix A to the Ex Parte Emergency Order lists the powers and duties of the Receiver. Appendix A provides at Paragraph 1.c. that PAWC shall:

Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.

13. PAWC has expressed concern that Paragraph 1.c. of Appendix A to the Ex Parte Emergency Order does not explicitly give PAWC authority, as Receiver, to make capital improvements to the System, including but not limited to the capital improvements necessary to address the Do Not Consume Order. Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment at ¶¶ 13-16.

14. PAWC has completed capital improvements to the System, including but not limited to the improvements necessary to address the Do Not Consume Order, which was lifted on October 29, 2019. *See, e.g.*, PAWC's Status Reports filed February 7, 2019, May 23, 2019 and August 6, 2019.

15. The Settlement would clarify PAWC's authority, as Receiver, to make capital improvements to the System, including but not limited to capital improvements necessary to remove the Do Not Consume Order.

16. Appendix A to the Ex Parte Emergency Order also states that PAWC, as Receiver, is to assume Winola's billing and collection functions, Paragraph 1.i., and comply with Winola's effective tariff for Winola's customers. Paragraph 1.l.

17. PAWC has expressed concern about its authority, as Receiver, to charge Winola's customers for water service during the period that the Do Not Consume Order was in effect. Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment at ¶¶ 17-24.

18. PAWC, as Receiver, did not bill Winola's customers during the period that the Do Not Consume Order was in effect.

19. PAWC, as Receiver, began billing Winola's customers on November 1, 2019.

20. The Settlement would clarify PAWC's authority, as Receiver, to not bill customers of Winola while the Do Not Consume Order was in effect and to bill customers after the Do Not Consume Order was lifted.

21. Appendix A to the Ex Parte Emergency Order further states that PAWC, as Receiver, has the duty and responsibility to:

“Establish a deferred expense account for expenses incurred by [Winola] that are payable to the Receiver.” Paragraph 1.s.

“Charge [Winola] reasonable rates for all services rendered to or for [Winola] on behalf of the receivership.” Paragraph 1.w.

“Establish a deferred expense account for expenses incurred by the receiver resulting from this order, including prudent and reasonable legal fees.” Paragraph 2.b.

22. PAWC has expressed concern about its ability to seek recovery in rates of any costs it incurs as Receiver that are not paid by Winola. Petition of Pennsylvania-American Water Company for Amendment and Deferred Accounting Treatment at ¶¶ 25-33.

23. PAWC, as Receiver, has incurred considerable operations and maintenance expenses as well as capital expenditures. *See, e.g.*, PAWC's Status Reports filed February 7, 2019, May 23, 2019 and August 6, 2019.

24. PAWC, as Receiver, is to make reasonable efforts to establish the financial position of Winola as of the date that PAWC assumed Receivership of the System, Ex Parte Emergency Order Paragraph 1.r., and to maintain financial and accounting records for Winola. *Id.*, Paragraph 1.h.

25. Based on the financial records that PAWC has maintained as Receiver, it appears unlikely that Winola will be able to pay the operations and maintenance costs and the capital expenses that PAWC has incurred as Receiver.

26. The Settlement would clarify the accounting treatment of certain types of expenses that PAWC has incurred as Receiver, and would clarify PAWC's ability to seek recovery in rates of those expenses, in the event that Winola is unable to pay those costs in full.

PAWC'S ACQUISITION OF WINOLA

27. The Commission has authority, pursuant to 66 Pa. C.S. § 529(a), to order a small water utility to be sold to a proximate capable public utility if the Commission makes certain determinations.

28. Winola is a small water utility, as defined in 66 Pa. C.S. § 529(m).

29. PAWC is a capable public utility, as defined in 66 Pa. C.S. § 529(m), that is proximate to Winola's System.

30. At the time PAWC was named Receiver of Winola, the System was in violation of statutory or regulatory standards affecting the safety, adequacy, efficiency or reasonableness of the service provided by Winola, as demonstrated by the Do Not Consume Order.

31. Between October 5, 2018 and November 28, 2018, Winola took no actions to lift the Do Not Consume Order.

32. The Do Not Consume Order would not have been lifted in October 2019 if the Commission had not named PAWC as Receiver in December, 2018.

33. If PAWC would cease to operate as Receiver, and Winola would resume operating the System, Winola could not reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

34. Maintaining PAWC as Receiver of the System on a long-term basis is not a practical or economically feasible alternative to the acquisition of Winola.

35. Other alternatives to acquisition (such as reorganization, merger, and acquisition by a municipality or municipal authority), have been considered by the Joint Petitioners, but found to be impractical or not economically viable.

36. As an existing public utility, PAWC is presumed to be legally, technically and financially fit to own and operate Winola's system.

37. As Receiver, PAWC has demonstrated that it is legally, technically and financially capable of acquiring and operating Winola's system.

38. In view of the large number of customers in PAWC's water system, and the relatively modest cost for PAWC to acquire the System and implement the Plan for Improvements (as hereinafter defined), the rates that PAWC charges its preacquisition customers will not increase unreasonably because of the acquisition of Winola.

THE PURCHASE PRICE OF THE SYSTEM

39. PAWC and Winola have entered into an Asset Purchase Agreement by which PAWC will acquire the System for \$1.00, subject to certain conditions, including but not limited to the receipt of all necessary governmental approvals, including approvals from the Commission, DEP and the Township.

40. In view of the poor condition of the System, as noted in I&E's complaint at C-2018-2644592, the acquisition price is reasonable. 66 Pa. C.S. § 529(e).

PAWC'S PLAN FOR IMPROVEMENTS

41. In order to expedite the final resolution of these proceedings, PAWC has submitted a plan, including a timetable, for bringing Winola's System into compliance with applicable statutory and regulatory standards (the "Plan for Improvements"). Settlement, **Attachment C1**.

42. OCA and I&E have had an opportunity to review and comment on the Plan for Improvements. OCA requested additional information about the existing facilities and planned improvements, and PAWC provided the requested information. Settlement, **Appendix C3**.

43. PAWC provided a copy of the Plan for Improvements to DEP and the Township, and notified them of the opportunity to comment on it before the Commission decides whether to approve it. DEP has submitted comments to PAWC and PAWC has accepted those comments. Settlement, **Appendix C2**. The Township has no objections to the Plan for Improvements. Settlement, **Appendix C4**.

RATES UPON CLOSING

44. 66 Pa. C.S. § 529(f) permits the Commission to allow an acquiring capable public utility to charge and collect rates from the customers of the acquired small water utility pursuant to a separate tariff.

45. The rates proposed in the Settlement at ¶ 48b. are Winola's existing rates. Since those rates are not found in PAWC's existing tariff, the Settlement would permit PAWC to charge Winola's existing customers pursuant to a separate tariff.

46. Winola's customers do not presently have meters. Consequently, they do not have metered rates. The Settlement would provide for the installation of meters and the establishment of metered rates in the future.

APPENDIX F
PROPOSED CONCLUSIONS OF LAW

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this investigation. 66 Pa. C.S. § 529.

2. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.

3. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401.

4. 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).

5. The Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

6. At the time that the Pennsylvania Public Utility Commission ordered Pennsylvania-American Water Company to become the receiver of Winola Water Company, Winola Water Company was in violation of statutory or regulatory standards enforced by the Pennsylvania Department of Environmental Protection which affect the safety, adequacy, efficiency or reasonableness of the service provided by Winola Water Company. 66 Pa. C.S. § 529(a)(1).

7. When the Pennsylvania Public Utility Commission ordered Pennsylvania-American Water Company to become the receiver of Winola Water Company, Winola Water Company had failed to comply, within a reasonable period of time, with an order of the

Pennsylvania Department of Environmental Protection concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2).

8. If Pennsylvania-American Water Company would cease to be the receiver of Winola Water Company, Winola Water Company cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. 66 Pa. C.S. § 529(a)(3).

9. Alternatives to the acquisition of Winola Water Company have been considered and the Pennsylvania Public Utility Commission determines they are impractical or not economically feasible. 66 Pa. C.S. § 529(a)(4).

10. Pennsylvania-American Water Company is financially, managerially and technically capable of acquiring and operating Winola Water Company. 66 Pa. C.S. § 529(a)(5).

11. The rates that Pennsylvania-American Water Company charges its preacquisition customers will not increase unreasonably because of the acquisition of Winola Water Company. 66 Pa. C.S. § 529(a)(6).

12. Based on the findings contained in Conclusions of Law 6-11, the Commission orders Pennsylvania-American Water Company to acquire Winola Water Company. 66 Pa. C.S. § 529(d).

13. The acquisition of Winola Water Company by Pennsylvania-American Water Company affirmatively benefits the public interest in a substantial way. 66 Pa. C.S. § 1103.

14. Considering that Pennsylvania-American Water Company is acquiring the water system currently owned by Winola Water Company as a result of a Section 529 proceeding, in its next base rate case, Pennsylvania-American Water Company is not required to submit a depreciated original cost study for the assets to be acquired from Winola Water Company.

15. The Commission may allow Pennsylvania-American Water Company to charge rates from the customers of Winola Water Company pursuant to a separate tariff. 66 Pa. C.S. § 529(f).

16. The rates set forth in the *Pro Forma* Tariff Supplement, attached as **Appendix D** to the Joint Petition for Approval of Settlement of All Issues, charges the rates currently charged by Winola Water Company, together with all other fees and surcharges permitted by Pennsylvania-American Water Company's current water tariff.

17. The Commission has authority to approve a Plan for Improvements, including a timetable, by which a capable public utility will bring a small water utility into compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(j).

18. Both the Department of Environmental Protection and Overfield Township have been provided with, and have had a reasonable opportunity to comment on, the Plan for Improvements. The Commission has considered the comments submitted by the Department of Environmental Protection (and Pennsylvania-American Water Company's response thereto), and the letter submitted by the Township, in approving the Plan.

APPENDIX G
PROPOSED ORDERING PARAGRAPHS

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement of All Issues executed by Pennsylvania-American Water Company, Winola Water Company, the Office of Consumer Advocate, and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement is approved without modification.

2. That Pennsylvania-American Water Company continue to serve as Receiver of Winola Water Company until Closing on the Acquisition described in Paragraph 5, below.

3. That Pennsylvania-American Water Company, as Receiver, shall comply with the effective tariff for Winola Water Company's customers, consistent with Paragraph 15, below.

4. That Pennsylvania-American Water Company, as Receiver, shall have authority to make capital improvements to Winola Water Company's water system, including but not limited to capital improvements necessary to remove the Do Not Consume Order.

5. That, consistent with 66 Pa. C.S. § 529(d), and subject to the condition set forth in Paragraph 8 below, Pennsylvania-American Water Company shall purchase substantially all of the water system assets of Winola Water Company pursuant to the Asset Purchase Agreement dated May 28, 2020, between Winola Water Company and Pennsylvania-American Water Company.

6. That Pennsylvania-American Water Company shall notify the Commission, OCA and I&E shortly before Closing on the Acquisition described in Paragraph 5.

7. That, upon receipt of the notice described in Paragraph 6, and consistent with 66 Pa. C.S. § 529(d), the Secretary's Bureau shall issue certificates of public convenience evidencing Commission approval of:

a. Pennsylvania-American Water Company's acquisition of substantially all of the water system assets of Winola Water Company;

b. Pennsylvania-American Water Company's right to begin providing water service to the public in the Requested Territory, shown in **Appendix B**.

c. Winola Water Company's sale of substantially all of its water system assets to Pennsylvania-American Water Company.

d. Winola Water Company's abandonment of the provision of water service to the public in Pennsylvania.

8. That, pursuant to the condition contained in Section 8.1(e) of the Asset Purchase Agreement, prior to Closing on the Acquisition, Pennsylvania-American Water Company shall receive all necessary governmental approvals (including, but not limited to, approvals from the Public Utility Commission, the Department of Environmental Protection and Overfield Township).

9. That, pursuant to 66 Pa. C.S. § 529(e), the Commission finds that the purchase price contained in the Asset Purchase Agreement is reasonable.

10. That no depreciated original cost study will be required for the acquired assets of Winola Water Company in Pennsylvania-American Water Company's next base rate case because the purchase price is reasonable.

11. That the Plan for Improvements attached hereto as **Appendix C1** is approved, consistent with 66 Pa. C.S. §529(j), and that the Plan for Improvements is approved as a Petition for Modification of Pennsylvania-American Water Company's Long Term Infrastructure Improvement Plan for water, pursuant to 52 Pa. Code § 121.5(a).

12. That, consistent with 66 Pa. C.S. § 529(f), Pennsylvania-American Water Company may charge a separate tariffed rate to Winola Water Company's customers.

13. That Pennsylvania-American Water Company may, within ten (10) days following Closing of the Acquisition, issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached hereto as **Appendix D**, to be effective as of the date of Closing.

14. That Pennsylvania-American Water Company shall install meters for Winola Water Company customers within one year following Closing of the Acquisition, and shall propose a metered tariff rate in the Requested Territory in Pennsylvania-American Water Company's first base rate case incorporating the Winola Water Company system after meters are installed.

15. That Pennsylvania-American Water Company, as Receiver, may bill and collect amounts due from Winola's customers after the Do Not Consume Order is no longer in effect.

16. That Pennsylvania-American Water Company, as Receiver, may charge Winola Water Company reasonable rates for all services rendered to or for Winola Water Company on behalf of the receivership, and permit Pennsylvania-American Water Company to present those charges for recovery as part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola Water Company.

17. That Pennsylvania-American Water Company, as Receiver, may establish deferred accounting treatment for expenses incurred by Winola Water Company that are payable to the Receiver and to present those expenses for recovery as a part of PAWC's first base rate case in which Winola is included, if not recoverable from Winola Water Company.

18. That Pennsylvania-American Water Company, as Receiver, may establish deferred accounting treatment for reasonable capital costs incurred by the Receiver to restore safe, adequate and reasonably continuous service to Winola Water Company customers and to present those costs for recovery as a part of PAWC's first base rate in which Winola is included, if not recoverable from Winola Water Company.

19. That Pennsylvania-American Water Company, as Receiver, may establish a deferred account for expenses incurred by the Receiver, including prudent and reasonable legal expenses, for presentation in PAWC's first base rate case in which Winola is included, if not recoverable from Winola Water Company.

20. That Pennsylvania-American Water Company shall be afforded deferred accounting treatment for ratemaking purposes for extraordinary operations and maintenance expenses associated with the provision of service in the Requested Territory.

21. That, consistent with *Petition of Delaware Sewer Company for an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 (Order on Reconsideration entered April 17, 2020), Pennsylvania-American Water Company may establish a regulatory asset in order to claim appropriate ratemaking and revenue recovery in PAWC's first base rate case in which Winola is included of accrued depreciation and allowance for funds used during construction on those improvements that cannot otherwise be included in the Distribution System Improvement Charge.

22. That Pennsylvania-American Water Company may submit a claim, in the first base rate case in which the Winola Water Company system is included, for Pennsylvania-American Water Company's reasonable transaction and transition costs of the Acquisition.

23. That the Secretary's Bureau close the proceedings at Docket Nos. C-2018-2644592, P-2018-3006216 and I-2018-3006498 upon issuance of the certificates of public convenience described in Paragraph 7 and the filing of the compliance tariff described in Paragraph 13.

APPENDIX H
STATEMENT IN SUPPORT OF
PENNSYLVANIA-AMERICAN
WATER COMPANY

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	Docket No. C-2018-2644592
	:	P-2018-3006216
v.	:	I-2018-3006498
	:	
Winola Water Company	:	

**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, Winola Water Company (“Winola”), the Office of Consumer Advocate (“OCA”), and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“PUC” or “Commission”) (singularly, a “Joint Petitioner” and collectively, the “Joint Petitioners”).¹ PAWC respectfully requests that the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

¹ The other party to these proceedings, Aqua Pennsylvania, Inc. (“Aqua”), does not oppose the Settlement. The Joint Petitioners, together with Aqua, are referred to herein as the “Parties.”

I. INTRODUCTION

The Settlement pertains to several proceedings concerning Winola, a small, troubled water utility in Overfield Township, Wyoming County, Pennsylvania (the “Township”). In order to resolve these matters, PAWC has agreed to acquire substantially all of the water system assets (the “System”) currently owned by Winola (the “Transaction”). The Transaction, however, is subject to the condition that, prior to closing on the Transaction (the “Closing”), PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from the Commission, the Pennsylvania Department of Environmental Protection (“DEP”) and the Township).

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).

As an initial matter, the fact that the Settlement resolves all issues is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest – particularly given the diverse interests of the Joint Petitioners and the active role that they have taken in this proceeding. 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 complex case.

It should be noted that the Joint Petitioners, and their counsel and experts, have considerable experience in Commission 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 all 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 Pennsylvania Public Utility Code (“Code”). For these reasons, and the reasons set forth below, the Settlement is in the public interest and should be approved without modification.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Receivership

In the Settlement, PAWC agrees to continue to serve as Receiver of Winola until Closing on the Transaction. PAWC has served as Receiver since December 10, 2018, and has made the capital improvements necessary to lift the DEP’s “Do Not Consume” Order. PAWC also provided customers with bottled water from December 10, 2018 until after the “Do Not Consume” order was lifted.

The Settlement resolves a number of issues regarding PAWC’s authority and potential liability as the Receiver of Winola. For example, the Settlement would make clear that PAWC had authority, as Receiver, to make capital improvements in the System and to comply with Winola’s effective tariff. It would also make clear that PAWC is not liable, as Receiver, for preexisting conditions or violations.

The Settlement also resolves several significant issues regarding PAWC's ability to recover the costs it has incurred as Receiver. For example, PAWC may establish deferred accounting treatment for expenses incurred by Winola that are payable to the Receiver, and to present those expenses for recovery as in PAWC's first base rate case that includes Winola, if not recoverable from Winola. It also permits PAWC to establish deferred accounting treatment for reasonable capital costs incurred by it, as Receiver, to restore safe, adequate and reasonably continuous service to Winola customers and to present those costs for recovery in PAWC's first base rate case that includes Winola, if not recoverable from Winola. Finally, PAWC may establish a deferred account for expenses incurred by it, as Receiver, and to present those expenses for recovery as a part of PAWC's first base rate case that includes Winola, if not recoverable from Winola.

These provisions of the Settlement are in the public interest, are reasonable, and should be approved without modification. It is in the public interest for a capable public utility, such as PAWC, to serve as the receiver of a troubled water or wastewater system, but capable public utilities may not be willing to serve in that capacity if they do not believe they will recover the costs of their service as Receiver. The Settlement promotes the public interest by requiring Winola to pay the costs incurred by PAWC, to the extent Winola is able to do so, but allowing PAWC to include a claim for any shortfall from its service as Receiver in its next base rate case.

B. Acquisition of System

PAWC and Winola have entered into an Asset Purchase Agreement ("APA") by which PAWC will acquire the System for a purchase price of \$1.00. Significantly, a condition contained in Section 8.1(e) of the APA requires PAWC to obtain all necessary governmental approvals prior

to Closing on the Transaction. PAWC will notify the Commission, I&E and OCA shortly before Closing. Upon Closing, Winola shall cease providing water service in the Commonwealth.

Consistent with 66 Pa. C.S. § 529(e), the Joint Petitioners specifically request a Commission determination that the purchase price contained in the APA is reasonable. They also request a Commission determination that a depreciated original cost study will not be required for the assets to be acquired from Winola because the purchase price for those assets is reasonable.

In the Settlement and the Joint Stipulation of Facts, the Joint Petitioners agree that Winola meets the criteria set forth in Section 529(a) of the Code for the Commission to order the System to be acquired by a capable public utility. They also agree that (i) PAWC is a capable public utility, financially, managerially and technically capable of acquiring Winola and operating it in compliance with applicable statutory and regulatory standards, and (ii) the rates charged by PAWC to its pre-existing customers will not increase unreasonably because of the acquisition of Winola. Additionally, OCA and I&E will not contest PAWC's right to include a claim in PAWC's first base rate case in which Winola is included for reasonable transaction and transition costs of the Acquisition.

These provisions of the Settlement are in the public interest because PAWC will take over the ownership and operation of a system that has been troubled for some time. PAWC has been acting as Receiver of the System, so PAWC is well acquainted with the acquired system. These provisions of the Settlement are reasonable and in the public interest, and should be approved without modification.

C. Plan for Improvements

Consistent with 66 Pa. C.S. § 529(j), the Settlement includes a plan for improvements (“Plan for Improvements”), including a timetable, for bringing the System into compliance with applicable statutory and regulatory standards. OCA and I&E have received copies of the Plan for Improvements and had an opportunity to comment on it before the submission of the Settlement. The OCA submitted comments requesting additional information regarding the existing facilities and the planned improvements, and PAWC has submitted the requested information.

In addition, PAWC provided a copy of the Plan for Improvements to DEP and the Township, and notified them of the opportunity to submit comments. DEP submitted comments to PAWC, and PAWC has agreed to those comments. The Township has no objections to the Plan for Improvements.

The Settlement requests approval of the Plan for Improvements and permission for the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service. The Settlement also requests that the Plan for Improvements be treated as a petition for modification of PAWC’s Long Term Infrastructure Improvement Plan (“LTIIP”) for water, as approved by the Commission at Docket No. P-2017-2585707. The Commission’s approval of the Plan for Improvements is important because it protects PAWC from liability and enforcement actions as a result of statutory or regulatory violations by Winola. 66 Pa. C.S. § 529(k)(3) and (l)(3).

These aspects of the Settlement are in the public interest because they will result in improvements in the quality of water service currently being rendered in Winola’s service territory. Additionally, these provisions are in the public interest because PAWC’s existing customers will share the cost of bringing the System into compliance with statutory and regulatory standards. If

the existing customers of the System had to finance these improvements alone, their rates would increase substantially.

D. Rates Upon Closing

Consistent with 66 Pa. C.S. § 529(f), the Settlement includes a request that PAWC be permitted to charge a separate tariffed rate to Winola customers. PAWC will charge initial rates of \$33.23 per month for unmetered service, together with all other fees and surcharges permitted by PAWC's current water tariff (other than the Distribution System Improvement Charge ("DSIC")). The Joint Petitioners agree that the tariff supplement will be filed within ten days of the Closing as a matter of compliance, and request that it be permitted to become effective as of the date of the Closing.

The Settlement requests that the Commission order PAWC to install meters for Winola customers within one year after Closing. In its first base rate case including Winola after meters are installed, PAWC will propose a metered tariffed rate in Winola's service territory.

These provisions are in the public interest because they are consistent with law. They are also in the public interest because they promote rate stability for the existing customers of Winola.

E. Recovery of Costs incurred by PAWC in Winola's Service Territory after Closing

The Joint Petitioners reached a settlement in principle several months before the Commission issued its April 17, 2020 Order on Reconsideration in *Petition of Delaware Sewer Company for an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 ("*Delaware Sewer*"). The Joint Petitioners agreed to apply the Commission's decision in

Delaware Sewer to this case. The Commission has now decided that case, ruling that a capable public utility acquiring a small water company in a Section 529 Investigation may establish a regulatory asset to claim appropriate ratemaking and revenue recovery in its next base rate proceeding of accrued depreciation and allowance for funds used during construction on those improvements that cannot otherwise be included in a DSIC.

This part of the Settlement is in the public interest because it allowed the Joint Petitioners to avoid litigating an issue that was already pending before the Commission. In addition, by prospectively adopting the Commission's decision in *Delaware Sewer*, the Joint Petitioners ensured that the Settlement is consistent with current law.

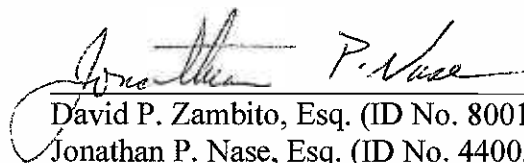
Additionally, the Settlement requests that, from the date of Closing until PAWC's first base rate case in which Winola is included, PAWC be afforded deferred accounting treatment for extraordinary operations and maintenance expenses associated with the provision of service in Winola's service territory. An example of an extraordinary incremental operations and maintenance expense is costs incurred by PAWC for the provision of bottled water to Winola residents for an extended period of time. The OCA and I&E do not waive any arguments that they may have in any future filing related to any deferred amounts that PAWC would claim in PAWAC's first base rate case in which Winola is included.

This provision is in the public interest because it ensures that PAWC will be able to submit a claim to recover these expenses, while preserving the rights of other parties to litigate their positions in response to that claim. This provision is reasonable and should be approved.

III. Conclusion

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,



David P. Zambito, Esq. (ID No. 80017)

Jonathan P. Nase, Esq. (ID No. 44003)

Cozen O'Connor

17 North Second Street, Suite 1401

Harrisburg, PA 17101

Telephone: 717-703-5892

Facsimile: 215-989-4216

E-mail: dzambito@cozen.com

E-mail: jnase@cozen.com

Elizabeth Rose Triscari (PA ID No. 306921)

Pennsylvania-American Water Company

852 Wesley Drive

Mechanicsburg, PA 17055

Telephone: (717) 550-1574

E-mail: Elizabeth.triscari@amwater.com

*Counsel for Pennsylvania-American Water
Company*

Dated: June 1, 2020

APPENDIX I
STATEMENT IN SUPPORT OF THE
OFFICE OF CONSUMER ADVOCATE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	Docket Nos. C-2018-2644592
	:	P-2018-3006216
v.	:	I-2018-3006498
	:	
Winola Water Company	:	

**OFFICE OF CONSUMER ADVOCATE’S STATEMENT IN SUPPORT
OF JOINT PETITION FOR APPROVAL OF SETTLEMENT OF ALL ISSUES**

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Settlement of All Issues (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (PUC or Commission). This request is based upon the OCA’s conclusion that the proposed Settlement is in the interest of the customers of Winola Water Company (Winola) and in the interests of the public as a whole.

Background

On January 26, 2018, the Bureau of Investigation and Enforcement (I&E) filed a formal complaint against Winola (Docket No. C-2018-2644592) alleging violations of the Pennsylvania Public Utility Code and Commission regulations, for failure to furnish and maintain adequate, efficient, safe and reasonable service and facilities. Winola provides service to approximately ten year-round customers and approximately twenty-five seasonal customers in Overfield Township, Wyoming County.

On October 5, 2018, the Department of Environmental Protection (DEP) directed Winola to issue a public notification advising that water produced by Winola is not safe for consumption (Do Not Consume Order). On November 28, 2018, I&E filed a Petition for an Ex Parte Emergency Order (Docket No. P-2018-3006216) requesting, *inter alia*, that the Commission appoint a competent water utility as receiver for Winola's system pursuant to 66 Pa. C.S. § 529(g), and order the commencement of an investigation into whether Winola should be sold to a capable public utility pursuant to 66 Pa. C.S. § 529. On November 29, 2018, Commissioner Kennard signed an Ex Parte Emergency Order ordering the commencement of a Section 529 investigation and directing Pennsylvania-American Water Company (PAWC) to serve as the receiver pending the outcome of the Section 529 investigation. The OCA filed a notice of intervention and public statement on November 29, 2018. The Commission ratified the Ex Parte Emergency Order at its Public Meeting of December 6, 2018.

PAWC began serving as Receiver for Winola on December 10, 2018. On December 17, 2018, PAWC provided notice to Winola's customers of PAWC's receivership and of the initiation of the Section 529 investigation. Aqua petitioned to intervene in these proceedings on December 31, 2018.

By Secretarial Letter dated January 2, 2019, the Commission commenced an investigation to determine whether to order Winola to be sold to a capable public utility (Docket No. I-2018-3006498). On April 19, 2019, PAWC filed a Petition for Amendment and Deferred Accounting Treatment (Petition for Amendment), asking the Commission to amend the Ex Parte Emergency Order to clarify PAWC's authority as Receiver and PAWC's right to seek recovery of expenses incurred in its role as Receiver. I&E and OCA filed Answers opposing the Petition for Amendment.

On May 8, 2019, the Commission issued a Secretarial Letter advising the Parties that the Office of Administrative Law Judge (OALJ) had established a procedural schedule for these proceedings and that the Petition for Amendment was being referred to the OALJ for disposition according to the established procedural schedule.

On May 17, 2019, PAWC filed a Petition for Reconsideration from Actions of the Staff (Petition for Reconsideration), asking the Commission to amend the Ex Parte Emergency Order as requested in the Petition for Amendment. OCA and I&E filed Answers opposing the Petition for Reconsideration.

In compliance with the Ex Parte Emergency Order, PAWC filed a quarterly status report on May 23, 2019. The ALJ suspended the procedural schedule pending the Commission's disposition of the Petition for Reconsideration. June 7, 2019 Order Granting Continuance. By Order entered July 11, 2019, the Commission denied PAWC's Petition for Reconsideration.

On August 6, 2019, PAWC submitted a status report, *inter alia*, indicating that PAWC, I&E, OCA and Aqua had agreed to a litigation schedule. This schedule was adopted by the ALJ in the Third Scheduling Order dated August 9, 2019.

On October 9, 2019, counsel for PAWC notified the ALJ that PAWC, OCA, and I&E had reached a settlement in principle resolving these proceedings, pending the negotiation of an acceptable asset purchase agreement between PAWC and Winola. The ALJ was also advised that Aqua did not oppose the settlement. PAWC requested that the procedural schedule be suspended to permit the negotiation of an acceptable asset purchase agreement and the drafting of a joint petition for settlement. On October 17, 2019, the ALJ suspended the procedural schedule.

DEP lifted its Do Not Consume Order on October 29, 2019 and PAWC began to bill Winola customers on November 1, 2019.

PAWC filed quarterly status reports, in compliance with the Ex Parte Emergency Order and the Fourth Scheduling Order, on November 8, 2019, December 16, 2019, February 13, 2020, February 14, 2020, and April 14, 2020, and May 7, 2020.

On May 28, 2020, PAWC entered into an Asset Purchase Agreement (APA) with Winola. Settlement Appendix A (confidential). Throughout this process, the parties to this Settlement participated in extensive discussions to reach an agreement on terms to resolve the remaining issues and accomplish the transfer of the system to PAWC.

Terms of Settlement

Purchase Price: The signatory parties agree that PAWC should acquire the assets of Winola for \$1.00, Winola should be permitted to abandon service, and PAWC should be permitted to serve the public in the existing Winola service territory. Settlement ¶¶ 39-40. This agreement avoids the delay and cost of further litigation of the Section 529 proceeding. Closing is conditioned on PAWC receiving Commission approval and all necessary approvals from DEP and from Overfield Township. Settlement ¶ 42. PAWC has agreed to notify the Commission, OCA, and I&E shortly before closing. Settlement ¶ 41.

Plan for Improvements: The Settlement requests that the PUC approve PAWC's Plan for Improvements. Settlement ¶¶ 44-47, Appendix C1. The Plan is separated into three categories: immediate needs, short-term improvements, and long-term improvements. See Settlement Appendix C1, Plan at 2. Immediate improvements include a number of tasks that PAWC has already completed while it has functioned as Receiver. Plan at 2-4. Short-term improvements include submission of a corrosion control study to DEP. Once approval is received, the approved sequestration/corrosion inhibitor can be added to the system to prevent corrosion and, subsequently, to reduce cadmium and lead levels in the distribution system. Plan at 4. Future

improvements include replacing the entire distribution system and installing customer meters. Plan at 4-5. PAWC estimates that the cost of the improvements, including engineering and contingency costs will be \$2,132,000. Plan at 6. The estimated time frame to complete all tasks that have been identified is the end of 2023. Plan at 7. The meter installation is scheduled to be completed in 2021 and the distribution system replacement is projected to be completed by the end of 2022.

PAWC provided the Plan to DEP and to Overfield Township for comment. Settlement ¶ 45; 66 Pa. C.S. § 529 (l)(3). PAWC's response to DEP's comments on the Plan is attached to the Settlement. Appendix C2. PAWC also provided the Plan to OCA and I&E. PAWC's response to OCA's comments is attached to the Settlement. Appendix C3.

The Joint Petitioners request that the Plan for Improvements be treated as a Petition for modification of PAWC's Long Term Infrastructure Improvement Plan (LTIIP). Settlement ¶ 46. PAWC agrees that it has not reprioritized other existing LTIIP commitments in other service territories. Id. The Plan for Improvements, with the additional information provided by PAWC in response to DEP and to OCA, provides a reasonable plan for addressing the quality of service issues presented by the Winola system.

Usage Rates/Meters: Under the proposed Settlement, after acquisition, Winola full-time and seasonal customers will pay \$33.23 per month. Settlement ¶ 48, Appendix D. Thus, the monthly usage rate will stay the same for full-time customers. Seasonal customers will be able to disconnect and reconnect each year and will be charged the applicable reconnection fee under PAWC's tariff. Id. These rate provisions are reasonable considering the transfer of service to a capable public utility.

PAWC's DSIC will be applicable to the Winola customers after the first base rate case that includes Winola customers. Settlement ¶ 48(c). This provision is reasonable and generally consistent with the existing PAWC tariff regarding the applicability of the Distribution System Improvement Charge (DSIC).

PAWC will install meters for the Winola customers within one year following closing. Settlement ¶ 48(d). PAWC also agrees to provide metered consumption data for the Winola customers to OCA and I&E. The metering of the Winola customers and the establishment of a metered rate will allow each Winola customer to pay rates that reflect their actual usage. The provision of the metered consumption data will permit the OCA to begin to analyze the reasonableness of the proposed metered rate.

Accounting Issues: PAWC has asked that it be afforded deferred accounting treatment for operations and maintenance expenses associated with the provision of service as Receiver in the Requested Territory, along with capital costs, and legal costs incurred as Receiver. Settlement ¶¶ 53-55.

In addition, PAWC may seek recovery of extraordinary operation and maintenance costs incurred post-Closing and until the first base rate case in which Winola is included. Settlement ¶ 56. The parties have tried to identify the type of claim that would be covered by this provision. Id. The OCA has reserved its rights to address recovery of any of the deferred costs operations and maintenance expenses, capital costs, legal costs, and extraordinary operation and maintenance costs contained in the deferred accounts that PAWC may claim in its first base rate case that includes Winola.

In addition, PAWC may establish a regulatory asset to claim accrued depreciation and allowance of funds used during construction for improvements that cannot be included in the DSIC following the first base rate case in which Winola is included. Settlement ¶ 57.

The requests for approval to defer costs and to establish a regulatory asset in this proceeding are for accounting purposes only and eliminate the need for PAWC to file separate petitions given the circumstances in this case, including that PAWC has been acting as Receiver since December 2018. As provided for in the Settlement, the OCA has reserved its rights to address recovery of any costs reflected in paragraphs 51-57. Settlement ¶ 58.

The Settlement is in the public interest and is in accordance with Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. The OCA submits that the Settlement is the result of extensive negotiations of parties with different interests to achieve a desired result to benefit Winola's customers. The result of the Settlement should be an improvement to water service. Approval of this Settlement serves the public interest by avoiding the delay, uncertainties and cost of further litigation.

Conclusion

For all of the foregoing reasons, the OCA submits that the terms and conditions of the Settlement are in the public interest and should be approved by the Commission.

Respectfully Submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGanon@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Dated: June 1, 2020

289324

APPENDIX J
STATEMENT IN SUPPORT OF THE
BUREAU OF INVESTIGATION
AND ENFORCEMENT

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	C-2018-2644592
Bureau of Investigation and Enforcement	:	P-2018-3006216
	:	I-2018-3006498
v.	:	
	:	
Winola Water Company	:	

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

**TO: DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
JOEL H. CHESKIS:**

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Scott B. Granger, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Settlement of All Issues (“Joint Petition” or “Settlement”) are in the public interest and represent a fair, just, and reasonable balance of the interests of the Winola Water Company (“Winola”); the current Winola customers; the Pennsylvania American Water Company (“PAWC”); and the current PAWC customers.

To summarize, I&E is charged with representing the public interest in Commission proceedings related to investigations, enforcement actions, formal complaints, petitions, applications and other Commission proceedings affecting rates and the public interest.

In negotiated settlements, it is incumbent upon I&E to identify how amicable resolution of any such proceeding may benefit the public interest and to ensure that the public interest is served. Based upon I&E's analysis of the entirety of its investigation regarding the acquisition of Winola by PAWC, acceptance of this proposed Settlement is in the public interest and I&E recommends that the Deputy Chief Administrative Law Judge and the Commission approve the Settlement without modification.

II. BACKGROUND AND PROCEDURAL HISTORY

1. The full background and procedural history has been set forth in the Joint Petition at Paragraphs 1 through 33 and is incorporated herein by reference.

2. Briefly, as stated in the Joint Petition, Winola is a Commission-regulated public utility providing water service to approximately ten (10) year-round customers and approximately twenty-five (25) seasonal customers around Lake Winola in Overfield Township, Wyoming County, Pennsylvania ("Overfield" or the "Township").

3. On January 26, 2018, I&E filed a formal complaint against Winola at Docket No. C-2018-2644592 alleging violations of the Pennsylvania Public Utility Code ("Code") and Commission regulations, including but not limited to violations of 66 Pa. C.S. § 1501 for failure to furnish and maintain adequate, efficient, safe and reasonable service and facilities.

4. On October 5, 2018, the Pennsylvania Department of Environmental Protection (“DEP”) directed Winola to issue to its customers a public notification advising that water produced by Winola is not safe for consumption (the “Do Not Consume Order”).

5. On November 28, 2018, I&E filed a Petition for an Ex Parte Emergency Order requesting, *inter alia*, that the Commission (a) appoint a competent water utility as receiver for Winola’s system pursuant to 66 Pa. C.S. § 529(g), and (b) order the commencement of an investigation into whether Winola should be sold to a capable public utility pursuant to 66 Pa. C.S. § 529. This Petition was filed at Docket No. P-2018-3006216.

6. On November 29, 2018, Commissioner Norman J. Kennard signed an Ex Parte Emergency Order (“Ex Parte Emergency Order”) ordering the commencement of a Section 529 investigation and directing PAWC to serve as the receiver (the “Receiver”) for Winola pending the outcome of that investigation. Attachment A to the Ex Parte Emergency Order outlined the powers and duties of the Receiver.

7. The Commission ratified the Ex Parte Emergency Order at its Public Meeting of December 6, 2018 and issued a Ratification Order accordingly. PAWC began serving as Receiver for Winola on December 10, 2018.

8. By Secretarial Letter dated January 2, 2019, the Commission commenced an investigation to determine whether to order Winola to be sold to a capable public utility. This proceeding was assigned Docket No. I-2018-3006498.

9. A prehearing conference was held in these proceedings on January 7, 2019 with Deputy Chief Administrative Law Judge Joel H. Cheskis (“ALJ”).

10. With consideration to Commission policy encouraging settlements at 52 Pa. Code § 5.231 and § 69.401 as they often achieve results preferable to a fully litigated proceeding, I&E participated in multiple settlement discussions with the parties to the proceeding.

11. Nine months later and after extensive negotiations, on October 9, 2019, counsel for PAWC notified the ALJ that PAWC, OCA, and I&E had reached a settlement in principle resolving the issues and concerns raised in these proceedings, pending the negotiation of an acceptable asset purchase agreement between PAWC and Winola.

12. In May of 2020, PAWC entered into an Asset Purchase Agreement with Winola to purchase the system. The details of the full settlement of all issues is set forth in detail in the Joint Petition.

III. SETTLEMENT

13. “The prime determinant in the consideration of a proposed Settlement is whether the settlement is in the public interest.”¹ The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”²

14. Finally, settlements conserve precious administrative resources and provide regulatory certainty with respect to the disposition of issues with results that are often

¹ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

² *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

preferable to those achieved at the conclusion of a fully-litigated proceeding; and, provide a final resolution of adversarial proceedings which, in the Commission's judgement, is preferable.³ The very nature of a settlement requires a review and discussion of all issues raised by the parties' and a negotiated compromise on the part of all parties.

15. I&E submits that this Settlement balances the interests of Winola, PAWC, the affected ratepayers, and the Joint Petitioners in a fair and equitable manner and presents a resolution for the Commission's adoption that best serves the public interest. Accordingly, and, in order to achieve the full scope of benefits addressed in the Settlement, I&E requests that the Settlement be recommended by the ALJ and approved by the Commission in its entirety and without modification.

16. The terms of this Settlement are specific to the unique position of Winola and the circumstances surrounding this receivership and acquisition. And, while this Settlement may serve as a template for future receiverships and Section 529 acquisitions; I&E unequivocally reserves all rights to challenge or oppose any of the terms set forth in this Joint Petition if they are proposed in future proceedings.

A. RECEIVERSHIP (Joint Petition ¶¶ 34-38):

In the Settlement, the Joint Petitioners agreed to settlement terms regarding the ongoing receivership. The settlement terms regarding the receivership are summarized as follows:

³ See generally 52 Pa. Code § 5.231 and § 69.401.

PAWC will continue to serve as Receiver of Winola until Closing on the Acquisition (as those terms are hereinafter defined) pursuant to the Ex Parte Emergency Order. As Receiver, PAWC will not be liable for preexisting conditions, defects or regulatory or statutory violations occasioned by Winola, pursuant to the Ex Parte Emergency Order. PAWC will comply with Winola's effective tariff for Winola's customers. PAWC has authority as Receiver to make capital improvements to Winola's water system (the "System"), including but not limited to capital improvements necessary to remove the Do Not Consume Order. And, PAWC may seek recovery of the costs it incurs as Receiver as set forth in the Joint Petition.

I&E fully supports the Settlement terms regarding the PAWC receivership. I&E believes the settled upon terms regarding the receivership are a full and fair compromise which balance the interests of all parties; provide the parties with regulatory certainty; and, which support the Commission stated preference favoring negotiated settlements as in the public interest.

B. THE ACQUISITION (Joint Petition ¶¶ 39-43):

In the Settlement, and in order to resolve this matter, PAWC has agreed to acquire substantially all of the water system assets of Winola and to provide water service to the public in the entirety of Winola's existing certificated service territory (together, the "Acquisition"). The Acquisition, however, is subject to the condition that, prior to closing on the Acquisition ("Closing"), PAWC shall receive all necessary governmental approvals (including, but not limited to, approvals from the Commission, DEP and the

Township). The Closing is further conditioned on the entry of a DEP Consent Order (if necessary).

I&E fully supports the settled upon terms of the Acquisition as a full and fair compromise that provides stability to PAWC and provides all parties protection from volatility should the Acquisition not occur; all of which is in the public interest. The final negotiated terms of the Acquisition reflect a full and fair compromise. Further, I&E believes that the terms of the Acquisition maintain the proper balance of the interests of all parties. Accordingly, I&E submits that the proposed Acquisition is in the public interest.

C. PLAN FOR IMPROVEMENTS (Joint Petition ¶¶ 44-47):

In the Settlement, and consistent with 66 Pa. C.S. § 529(j), PAWC proposes a plan for improvements (attached to the Joint Petition as **Appendix C**), which also includes a timetable, for bringing the System into compliance with applicable statutory and regulatory standards (“Plan for Improvements”). OCA and I&E acknowledge that they received the Plan for Improvements, and had an opportunity to submit comments to PAWC on it, prior to the submission of this Settlement.

Further, in the Settlement, the Joint Petitioners request that the ALJ recommend the approval of, and the Commission approve, the Plan for Improvements and allow the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service when included in a future base rate proceeding or as part of distribution system improvement charge (“DSIC”) recovery. The Joint Petitioners further request that the ALJ and the

Commission treat the Plan for Improvements as a petition for modification of PAWC's Long Term Infrastructure Improvement Plan ("LTIP") for water, as approved by the Commission at Docket No. P-2017-2585707. Additionally, the Plan for Improvements does not request approval to re-prioritize other existing commitments in other service territories.

I&E supports the settled upon terms regarding the plan for improvements as stated in the Joint Petition as a full and fair compromise of the parties which is in the public interest. I&E participated in the negotiations regarding the settlement terms for the plan for improvements and reviewed the proposals offered by the various parties throughout the settlement negotiations. I&E shares the interests and concerns regarding these issues raised by some of the Joint Petitioners. I&E also expressed interests and concerns regarding these issues as they pertain to the effect they may have on the existing Winola ratepayers and the existing PAWC rate payers. Nevertheless, I&E supports the settled upon terms for the plan for improvements.

D. RATES UPON CLOSING (Joint Petition ¶¶ 48):

In the Settlement, the Joint Petitioners agreed that consistent with 66 Pa. C.S. § 529(f), the Commission permit PAWC to charge a separate tariffed rate to Winola customers.

To summarize the Settlement would establish that, upon Closing, full-time and seasonal customers will be charged a monthly unmetered amount of \$33.23. Seasonal customers may seasonally disconnect and reconnect service each year and will only be charged the applicable reconnection fee under PAWC's tariff in order to reconnect

service. Additionally, attached to the Joint Petition as **Appendix D**, is a *pro forma* tariff supplement that incorporates this new Rate Zone tariff into PAWC's existing water tariff. The *pro forma* tariff supplement establishes initial rates in the Requested Territory as stated above, together with all other miscellaneous fees and charges, rules and regulations, permitted by PAWC's current water tariff (other than the DSIC). Also, PAWC's DSIC will be applicable to Winola customers after the first base rate case that includes Winola.

I&E shares the interests and concerns regarding the issues raised by some of the Joint Petitioners as they pertain to the effect the new rate structure may have on the existing Winola customers. I&E participated in the negotiations regarding these settlement terms and reviewed the proposals offered by the various parties throughout the settlement negotiations. Nevertheless, I&E supports the settled upon terms regarding the rates upon closing as stated in the Joint Petition as a full and fair compromise of the parties which is in the public interest.

E. QUALITY OF SERVICE (Joint Petition ¶¶ 49-50):

In the Settlement, the Joint Petitioners agreed the Joint Petitioners will not contest that, prior to its acquisition by PAWC, Winola was a small, nonviable water system that was not providing safe, adequate and reasonable service. Further, the Joint Petitioners acknowledge that 66 Pa. C.S. § 529(l) limits enforcement actions by certain state or local agencies following PUC approval of the Acquisition and the Plan for Improvements. The Joint Petitioners further acknowledge that OCA and I&E reserve their right to institute enforcement actions that are not prohibited by Section 529(l)

I&E participated in the negotiations regarding the quality of service settlement terms and reviewed the proposals offered by the various parties throughout the settlement negotiations. I&E fully supports the settled upon terms regarding quality of service as stated in the Joint Petition as a full and fair compromise that provides the parties with regulatory certainty and a resolution of these issues which is in the public interest.

F. RECOVERY OF COSTS INCURRED BY PAWC AS RECEIVER UNTIL CLOSING (Joint Petition ¶¶ 51-55):

In the Settlement, the Joint Petitioners agree that PAWC will make a reasonable effort to establish the financial position of Winola at the time the Receiver assumed Receivership, and PAWC will bill and collect amounts due from Winola's customers after the Do Not Consume Order is no longer in effect. Further, to summarize the Joint Petition, PAWC will maintain an account of Winola's funds in PAWC's possession. PAWC may charge Winola reasonable rates for all services rendered to or for Winola on behalf of the Receivership. PAWC may establish deferred accounting treatment for expenses incurred by Winola that are payable to the Receiver and for reasonable capital costs incurred by the Receiver to restore safe, adequate, and reasonably continuous service to Winola customers. Also, PAWC may establish a deferred account for expenses incurred by the Receiver, including prudent and reasonable legal expenses, for presentation in a subsequent rate proceeding

I&E played an active role in the settlement negotiations and I&E shares the interests and concerns regarding the recovery of costs by a receiver as they pertain to the effect they may have on the existing Winola rate payers and PAWC. Nevertheless, I&E supports the settled upon terms, as stated in the Joint Petition. As a full and fair

compromise, the Settlement terms provide a proper balance of the interests of the affected parties and provide the parties with resolution of the recovery of costs by a receiver issue; all of which is in the public interest.

G. RECOVERY OF COSTS INCURRED BY PAWC IN WINOLA'S SERVICE TERRITORY POST CLOSING (Joint Petition ¶¶ 56-57):

In the Settlement, the Joint Petitioners request that, from the date of Closing until PAWC's first post-Closing base rate case, PAWC be afforded deferred accounting treatment for accounting purposes for extraordinary operations and maintenance expenses associated with the provision of service in Winola's service territory. An example of an extraordinary incremental operations and maintenance expense would be costs incurred by PAWC for the provision of bottled water to Winola residents for an extended period of time or unusual operations and maintenance expenses resulting from an unforeseen directive from DEP as a part of the Consent Order discussed in Paragraph 42 of the Joint Petition. The OCA and I&E agree to Paragraph 56 of the Joint Petition only to the extent that the Commission agrees that PAWC is not required to file a separate petition for the establishment of this deferred account for accounting purposes. The OCA and I&E do not agree to recovery of any deferred incremental operations and maintenance expenses associated with the provision of service in the Requested Territory or waive any arguments or objections that they may have in any future filing related to any deferred amounts that PAWC would claim in its first post-Closing base rate case.

Further, in *Petition of Delaware Sewer Company for an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 (Order on Reconsideration

entered April 17, 2020), the Commission decided that a company acquiring a small water company pursuant to Section 529 may establish a regulatory asset in order to claim appropriate ratemaking and revenue recovery in its next base rate proceeding of accrued depreciation and allowance for funds used during construction on those improvements that cannot otherwise be included in the DSIC. The Joint Petitioners request that the Commission apply the final resolution of this issue in that proceeding to these proceedings.

I&E played an active role in the settlement negotiations and I&E shares the interests and concerns regarding the recovery of costs incurred by PAWC in Winola's service territory post-Closing as they pertain to the effect they may have on the existing Winola ratepayers and PAWC. I&E supports the settled upon terms, as stated in the Joint Petition. As a full and fair compromise, the Settlement terms provide a proper balance of the interests of the affected parties and provide the parties with regulatory certainty and a resolution of these issues; all of which is in the public interest.

**H. RECOVER OF COSTS IN PAWC'S FIRST BASE RATE CASE
IN WHICH WINOLA IS INCLUDED (Joint Petition ¶ 58):**

In the Settlement, the Joint Petitioners reserve their rights to litigate any and all positions and challenge any and all claimed amounts, but will not contest PAWC's right to include a claim for:

- a. Recovery of the costs described in Paragraphs 51 to 56 of the Joint Petition.
- b. All of PAWC's reasonable transaction and transition costs of the Acquisition.

I&E played an active role in the settlement negotiations and I&E shares the interests and concerns regarding the parties' reservation of their rights to litigate any and all positions and challenge any and all claimed amounts. This reservation of the parties' rights is vital as it pertains to the rights of the existing Winola and PAWC rate payers. I&E supports the settled upon terms, as stated in the Joint Petition. I&E recognizes PAWC's right to include the specified claims while I&E and the parties reserve their rights to challenge the just and reasonableness of claimed amounts. As a full and fair compromise, the Settlement terms provide a proper balance of the interests of the affected parties and provide the parties with resolution of these issues; all of which is in the public interest.

I. TERMINATION OF PROCEEDINGS (Joint Petition ¶ 59):

The Joint Petitioners request that the Commission terminate and close all proceedings at Docket Nos. C-2018-2644592, P-2018-3006216 and I-2018-3006498 upon the issuance of the certificates of public convenience described in Paragraph 41 of the Joint Petition and the filing of the *pro forma* tariff supplement described in Paragraph 48b of the Joint Petition.

I&E fully supports the Settlement terms regarding the termination of the proceedings. I&E believes the settled upon terms regarding the termination of the proceedings are a full and fair compromise which balance the interests of all parties, provide the parties with regulatory certainty, and support the Commission's stated preference favoring negotiated settlements as in the public interest.

J. OTHER NECESSARY APPROVALS (Joint Petition ¶ 60):

The Joint Petitioners request that the Commission issue any other certificates or approvals as may be appropriate, customary or necessary under the Code to consummate the Acquisition in a lawful manner.

I&E fully supports the Settlement terms regarding other necessary approvals. I&E believes the settled upon terms regarding the other necessary approvals balance the interests of all parties, provide the parties with regulatory certainty, and support the Commission's stated preference favoring negotiated settlements as in the public interest.

K. STANDARD SETTLEMENT CONDITIONS (Joint Petition ¶¶ 61-64):

I&E has set forth its standard settlement conditions in Section III The Settlement Satisfies the Public Interest, *infra*.

**L. RECORD SUPPORTING THE SETTLEMENT
(Joint Petition ¶¶ 65-67):**

The Joint Petitioners have prepared a Joint Stipulation of Fact and Proposed Findings of Fact, which will be submitted to the ALJ contemporaneously with this Settlement. Further, I&E has prepared this Statement in Support of Settlement (attached as Appendix J to the Joint Petition) setting forth the bases upon which the Joint Petitioner believes the Settlement to be in the public interest.

III. THE SETTLEMENT SATISFIES THE PUBLIC INTEREST

17. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The very nature of a settlement requires compromise on the part of all parties. Joint Petitioners have carefully discussed and negotiated all issues raised in this

proceeding, and specifically those addressed and resolved in this Settlement. I&E represents that the Settlement is a fair and equitable compromise that maintains the proper balance of the interests of all parties.

18. I&E submits that the acceptance of this Settlement negates the need for evidentiary hearings, which would compel the extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses, the preparation of Main and Reply Briefs, the preparation of Exceptions and Replies, and the potential of filed appeals, all yielding substantial savings for all parties and ultimately all customers. Moreover, the Settlement provides regulatory certainty with respect to the disposition of issues and final resolution of this case which all parties agree benefits their discrete interests.

19. The Settlement is conditioned upon the Commission's approval of all terms without modification. Should the Commission fail to grant such approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by the Company, I&E, or any other Joint Petitioner.

20. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the Settlement.

21. If the ALJ recommends that the Commission adopts the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E does not waive its right to file Replies to Exceptions with respect to any modifications to the terms and

conditions of the Settlement or any additional matters that may be proposed by the ALJ in his Recommended Decision. I&E also does not waive the right to file Replies in the event any party files Exceptions.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition for Settlement as being in the public interest and respectfully requests that Deputy Chief Administrative Law Judge Joel H. Cheskis recommends, and the Commission approves, the terms and conditions contained in the Joint Petition for Settlement.

Respectfully Submitted,



Scott B. Granger
Prosecutor
PA Attorney I.D. # 63641

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 787-4887

Dated: May 29, 2020