



January 29, 2021

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company-Wastewater Division under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, for the Acquisition of Royersford Borough's Wastewater System Assets; Docket No. A-2020-3019634, 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. A copy of this correspondence is being served in accordance with the attached Certificate of Service.

Thank you for your attention to this filing. Please contact me if you have any question or concern.

Sincerely,

COZEN O'CONNOR

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

DPZ

Enclosure

cc: Administrative Law Judge Marta Guhl
Pamela McNeal
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company-Wastewater Division under Section 1329 :
of the Pennsylvania Public Utility Code, 66 Pa. C.S. : Docket No. A-2020-3019634
§ 1329, for the Acquisition of Royersford Borough's :
Wastewater System Assets :

CERTIFICATE OF SERVICE

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

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

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Date: January 29, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Marta Guhl**

Application of Pennsylvania-American Water :
Company-Wastewater Division under Section 1329 :
of the Pennsylvania Public Utility Code, 66 Pa. C.S. : Docket No. A-2020-3019634, *et al.*
§ 1329, for the Acquisition of Royersford :
Borough’s Wastewater System Assets :

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

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), and Royersford Borough (“Royersford”) (singularly, a “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 Administrative Law Judge Marta Guhl (the “ALJ”) recommend approval of, and the Commission approve, this Settlement without modification.¹

¹ The other active party to this case, Robert Redinger, Jr., will have an opportunity to comment on the Settlement after it is submitted to the Administrative Law Judge.

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

II. BACKGROUND

1. The Settlement pertains to the application (as amended, the “Application”) filed by PAWC on July 14, 2020, pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Royersford (the “Transaction”), related to Royersford’s wastewater collection and treatment system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

2. On July 21, 2020, Erika L. McLain, Esq., entered her appearance on behalf of I&E. John M. Coogan, Esq., entered his appearance on behalf of I&E on August 12, 2020.

3. On July 29, 2020, the OCA filed a Protest and Public Statement, together with the Notices of Appearance of Christine Maloni Hoover, Esq., Erin L. Gannon, Esq., Santo G. Spataro, Esq., and Harrison W. Breitman, Esq.

4. On July 28, 2020, the OSBA filed the Notice of Appearance of Sharon E. Webb, Esq.

5. On August 6, 2020, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by August 20, 2020). On August 20, 2020, PAWC filed the information requested by TUS.

6. On September 11, 2020, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Section 1329 Application until PAWC complied with certain service and notice requirements.

7. On October 9, 2020, PAWC filed proof of publication in local newspapers. On October 13, 2020, PAWC filed proof of service of the Application on required municipal entities, public utilities, and other offices. On October 30, 2020, PAWC notified the Commission that it had completed providing individualized notice of the Application to customers of PAWC and Royersford, and PAWC filed a verification stating that it had complied with all requirements of the Secretarial Letter of September 11, 2020.

8. Also on October 30, 2020, PAWC filed the First Amendment to the APA, together with supporting documents.

9. On November 3, 2020, the Commission notified the parties that a prehearing conference would be held on December 10, 2020. The ALJ issued her Prehearing Conference Order on November 5, 2020.

10. By Secretarial Letter dated November 9, 2020, the Commission notified PAWC that it had finally accepted the Application for filing. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* with a protest deadline of December 7, 2020. The notice was published on Saturday, November 21, 2020. 50 *Pa. B.* 6761.

11. On November 12, 2020, Royersford filed a Petition to Intervene.

12. On November 19, 2020, Robert Redinger, Jr. filed a Protest. Mr. Redinger subsequently elected active party status to this proceeding.

13. On December 3, 2020, Ronald Filippini filed a Protest. Mr. Filippini subsequently elected inactive party status.

14. On December 9, 2020, PAWC filed a Petition for Protective Order. The ALJ issued a Protective Order on December 15, 2020.

15. On December 10, 2020, the Prehearing Conference was held, as scheduled. The ALJ issued her Prehearing Order #1 on December 16, 2020.

16. A telephonic public input hearing was held at 6:00 p.m. on January 7, 2021.

17. Evidentiary hearings were scheduled for Friday, January 15 and Tuesday, January 19, 2021.

18. On January 14, 2021, the Joint Petitioners advised the ALJ that they had reached an agreement in principle to resolve this proceeding. Consequently, the ALJ cancelled the hearings scheduled for January 15 and 19, 2021. The ALJ directed the Joint Petitioners to file a Petition for Settlement and Statements in Support on or before January 29, 2021.

19. Contemporaneous with this Settlement, the Joint Petitioners are filing a Joint Stipulation for Admission of Evidence.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Approval of Application

20. The Commission should approve PAWC's acquisition of Royersford's wastewater system assets and PAWC's right to begin to offer, render, furnish, or supply wastewater service in the areas served by Royersford, as well as any other necessary approvals or certificates for the transaction, subject to approval of all of the following conditions and without modification.

B. Tariff

21. The *pro forma* tariff supplement submitted with the Application as **Appendix A-12**, as further amended by **Amended Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service, should be permitted to become effective immediately upon closing of the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

22. Pursuant to 66 Pa. C.S. § 1329, PAWC should be permitted to use \$13,000,000 for ratemaking rate base purposes for the acquired assets.²

23. With regard to the determination of the fair market value of the acquired system in future acquisitions by PAWC under 66 Pa. C.S. § 1329 filed subsequent to submission of this Settlement by the Joint Petitioners to the Administrative Law Judge, PAWC shall not support the portion of an AUS Consultants' appraisal that does not use a consistent method going forward to determine the indicated (conclusion) value under the market approach analysis; provided, however, that this prohibition shall not apply if the Commission determines, through a (a) final order in a non-PAWC proceeding, (b) regulation or (c) statement of policy, that a different method should be utilized by utility valuation experts.

D. Rates

24. Except as explicitly agreed upon in this Settlement, nothing contained herein or in the Commission's approval of the Application shall preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC proceeding.

25. In the first base rate case that includes Royersford's wastewater system assets:

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

a. PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of Royersford's system.

b. PAWC will provide a separate cost of service study for the Royersford system.

c. PAWC will propose to move the Royersford system to its cost of service or 1.7x the current Royersford wastewater rate, whichever is lower, based on a separate cost of service study for Royersford's system; provided, however, that PAWC will not be obligated to propose Royersford wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. The current average Royersford rate is \$30.00 per month based on 3,630 gallons of monthly usage.

d. PAWC may propose an effective date for new rates for Royersford wastewater customers that is different from the effective date of new rates for other customers.

e. PAWC may agree to rates other than those proposed for Royersford customers in the context of a settlement of the base rate case.

f. OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals.

26. PAWC will provide combined bills for Royersford wastewater customers who are also PAWC water customers.

E. Distribution System Improvement Charge

27. If PAWC proposes to modify its Long-Term Infrastructure Improvement Plan ("LTIIIP") to include Royersford's wastewater system, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIIIP, PAWC shall be permitted to

collect a Distribution System Improvement Charge (“DSIC”) related to Royersford’s wastewater system prior to the first base rate case in which Royersford’s assets are incorporated into rate base.

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

28. The Joint Petitioners acknowledge that the Application includes a request that (i) PAWC be permitted to accrue Allowance for Funds Used During Construction (“AFUDC”) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (ii) PAWC be permitted to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case which includes Royersford’s wastewater system assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners’ assent to this term should not be construed to operate as their preapproval of PAWC’s requests.

G. Transaction and Closing Costs

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

30. The inclusion of outside legal fees, if any, in PAWC’s transaction and closing costs under the Asset Purchase Agreement between PAWC and Royersford shall be separately identified

in PAWC's next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

H. Low Income Program Outreach

31. Within the first billing cycle following closing, PAWC shall include a bill insert to Royersford's customers regarding its low income programs and shall include such information in a welcome letter to Royersford's customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC also agrees to ongoing, targeted outreach to its Royersford-area customers regarding its low income program.

I. Approval of Section 507 Agreements

32. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation: (a) the Asset Purchase Agreement By and Between Royersford Borough, Montgomery County, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as of December 10, 2019, and (b) the First Amendment to Asset Purchase Agreement, dated as of October 27, 2020, between Royersford Borough, Montgomery County and Pennsylvania-American Water Company.³

J. Other Necessary Approvals

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

³ The OCA does not join in this paragraph but does not oppose PAWC's request.

K. Standard Settlement Conditions

34. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners 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.

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

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

37. Each Petitioner shall prepare a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest.

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

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Small Business Advocate, and Royersford Borough, by their respective counsel, respectfully request that:

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

(b) The Application filed by PAWC on July 14, 2020, be approved.

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

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

(e) The Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$13,000,000 associated with the acquisition of the System.⁴

⁴ The OCA does not join in this paragraph but does not oppose PAWC's request.

(f) The Commission approve PAWC's commitment that, in future acquisitions by PAWC under 66 Pa. C.S. § 1329, filed subsequent to the submission of this Settlement by the Joint Petitioners to the Administrative Law Judge, PAWC will not support the portion of an AUS Consultants' appraisal that does not use a consistent method going forward to determine the indicated (conclusion) value under the market approach analysis; provided, however, that this prohibition shall not apply if the Commission determines, through a (a) final order in a non-PAWC proceeding, (b) regulation or (c) statement of policy, that a different method should be utilized by utility valuation experts.

(g) The Commission approve the following, regarding the first base rate case that includes Royersford's wastewater system assets:

(1) PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of Royersford's system.

(2) PAWC will provide a separate cost of service study for the Royersford system.

(3) PAWC will propose to move the Royersford system to its cost of service or 1.7x the current Royersford wastewater rate, whichever is lower, based on a separate cost of service study for Royersford's system; provided, however, that PAWC will not be obligated to propose Royersford wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.

(4) PAWC may propose an effective date for new rates for Royersford wastewater customers that is different from the effective date of new rates for other customers.

(5) PAWC may agree to rates other than those proposed for Royersford customers in the context of a settlement of the base rate case.

(6) OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals.

(h) The Commission approve PAWC's commitment to provide combined bills for Royersford wastewater customers who are also PAWC water customers.

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

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

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

(l) The Commission, pursuant to 66 Pa. C.S. § 1329(d)(iv), permit PAWC to include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of Royersford's system. Outside legal fees, if any, shall be separately identified in PAWC's next base rate case. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

(m) The Commission direct PAWC, in the first full billing cycle following closing of the Transaction, to include a bill insert to Royersford's customers regarding PAWC's low income programs and shall also include such information in a welcome letter to Royersford customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, the eligibility requirements for participation in the programs, and PAWC's contact information. PAWC will also provide ongoing, targeted outreach to its Royersford-area customers regarding its low-income program.

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

(1) the Asset Purchase Agreement By and Between Royersford Borough, Montgomery County, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as of December 10, 2019, and

(2) the First Amendment to the Asset Purchase Agreement, dated as of October 27, 2020, between Royersford Borough, Montgomery County and Pennsylvania-American Water Company.⁵

⁵ The OCA does not join in paragraphs n(1) and (n)(2) but does not oppose PAWC's request.

(o) The Commission issue any other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

[Signatures appear on next page.]

Respectfully submitted,



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List of Exhibits:

1. Statement in Support of Pennsylvania-American Water Company
2. Statement in Support of Royersford Borough
3. Statement in Support of the Office of Consumer Advocate
4. Statement in Support of the Office of Small Business Advocate
5. Statement in Support of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement

Exhibit 1
Statement in Support of
Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Marta Guhl**

Application of Pennsylvania-American Water :
Company-Wastewater Division under Section 1329 :
of the Pennsylvania Public Utility Code, 66 Pa. C.S. : Docket No. A-2020-3019634, *et al.*
§ 1329, for the Acquisition of Royersford :
Borough’s Wastewater System Assets :

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

Pennsylvania-American Water Company (“PAWC”) files this Statement in Support of the “Joint Petition for Approval of Settlement of All Issues” (“Settlement”) entered into by PAWC, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Royersford Borough (“Royersford”) (individually, a “Joint Petitioner” and collectively, the “Joint Petitioners”) in the above-captioned proceeding.¹ PAWC respectfully requests that the Honorable Administrative Law Judge Marta Guhl (the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

¹ The other active party to this proceeding, Robert Redinger, Jr., will have an opportunity to comment on the Petition after it is filed by the Joint Petitioners.

I. INTRODUCTION

The instant Settlement pertains to the application (as amended, the “Application”) filed by PAWC pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), Section 1329 of the Code, *id.* § 1329, and Section 507 of the Code, *id.* § 507, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Royersford (the “Transaction”), related to Royersford’s wastewater collection and treatment system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes. The Settlement, if approved without modification, will resolve all of the issues raised in this proceeding.

Before explaining why the Settlement should be approved without modification, this Statement in Support states the facts of the case² and the applicable legal standards.

II. FACTUAL BACKGROUND

A. Parties

PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. It furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. No. 1 p. 13. As of May 20, 2020, PAWC furnished wastewater services to approximately 74,754

² The Settlement, ¶¶ 1-19, sets forth the Procedural History of this case. This Statement in Support incorporates the Procedural History by reference.

customers, and furnished water services to approximately 668,658 customers, in Pennsylvania. PAWC St. No. 1 p. 14.

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 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 Aug. 11, 2011). I&E's analysis in this proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interests of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1 p. 1.

Royersford is a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania. It is located in Montgomery County. PAWC Exhibit MS-1 Appendix A-24-a (**CONFIDENTIAL**) p. 1.

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. The OSBA is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

B. The System

The System is a wastewater collection and treatment system. PAWC St. No. 2 p. 2. It is not a combined sewer system, nor is it a municipal separate storm sewer system ("MS4 System"). PAWC St. No. 2 p. 4. As of June 1, 2020, the System provided service to approximately 1,600 customers in the Borough of Royersford and sixteen customers in Upper Providence Township. PAWC St. No. 1 p. 14. It also provided service to customers in Limerick Township via a bulk service interconnection located in Royersford. PAWC St. No. 2 p. 3.

C. The Transaction and the Asset Purchase Agreement

On September 23, 2019, Royersford issued the Royersford Sewer System Request for Bids (“RFB”). On November 1, 2019, PAWC submitted a proposal to acquire the System.

After subsequent arms-length negotiations, on December 10, 2019, Royersford and PAWC entered into the Asset Purchase Agreement (“APA”) for the sale of substantially all of the assets, properties and rights of the System. The APA provided for a purchase price of \$13,000,000, and the signatories agreed to use the fair market valuation process of Section 1329, 66 Pa. C.S. § 1329. PAWC St. No. 1 p. 8; PAWC Exhibit MS-1 Appendix A-24-a (**CONFIDENTIAL**) pp. 29 and 11. On October 27, 2020, Royersford and PAWC entered into the First Amendment to the Asset Purchase Agreement (“First Amendment”). PAWC Exhibit MS-1 Appendix A-24-a-1 (**CONFIDENTIAL**).

D. The UVE Appraisals

PAWC’s Application seeks to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the System assets and the ratemaking rate base of those assets. PAWC St. No. 1 pp. 4-5. As required by Section 1329, PAWC and Royersford jointly retained the services of Pennoni Associates, Inc. to complete the Royersford Borough Sewerage Facilities Engineering Assessment and Original Cost. PAWC Exhibit MS-1 Appendix A-15-a. As also required by Section 1329, the Application included the appraisals of PAWC’s utility valuation expert (“UVE”), AUS Consultants, Inc. (“AUS”), and Royersford’s UVE, Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”). PAWC Exhibit MS-1 Appendices A-5.1 and A-5.2.

AUS is registered as a utility valuation expert with the PUC. PAWC St. No. 4 p. 1. AUS prepared a fair market valuation report dated as of December 10, 2019. AUS’s fair market value

report utilized the cost approach, the income approach, and the market approach. PAWC Exhibit MS-1 Appendix A-5.1. AUS filed a verification that states the fair market value report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). PAWC Exhibit MS-1 Appendix A-9.1. AUS’s fair market value report concluded that the value of the Royersford System was \$13,769,801. PAWC St. No. 4 p. 3.

Royersford retained the services of Gannett Fleming to complete an appraisal of the System. Royersford St. No. 2 p. 3. Gannett Fleming is registered as a utility valuation expert with the PUC. Royersford St. No. 2 p. 4. Gannett Fleming issued a fair market valuation of the System as of March 31, 2020. Royersford St. No. 2 p. 3. Gannett Fleming’s fair market value report utilized the cost approach, the income approach, and the market approach. PAWC Exhibit MS-1 Appendix A-5.2. Gannett Fleming filed a verification that states its fair market valuation report was prepared in compliance with USPAP. PAWC Exhibit MS-1 Appendix A-9.2. Gannett Fleming’s fair market value report concluded that the value of the Royersford System was \$13,219,000 (rounded). Royersford St. No. 2 p. 13.

E. PAWC’s Financial Fitness

PAWC had total assets of approximately \$5.3 billion as of December 31, 2019. For 2019, PAWC had operating income of approximately \$330 million and net income of approximately \$187 million. PAWC St. No. 1 p. 18; PAWC St. No. 3 p. 4.

In addition to generating positive operating cash flows, PAWC may also obtain financing through: (i) equity investments, (ii) a \$400 million line of credit through American Water Capital Corp. (“AWCC”); and (iii) long term debt financing at favorable rates from AWCC, the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) and the Pennsylvania Economic Development Financing Authority (“PEDFA”). PAWC St. No. 3 p. 5.

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

PAWC is a financially-sound business that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets. PAWC St. No. 3 p. 4. Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Royersford's customers and maintained for PAWC's existing customers. PAWC St. No. 3 pp. 6-7.

F. PAWC's Technical Fitness

PAWC currently employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting and customer service. PAWC St. No. 1 p. 13; PAWC St. No. 2 p. 8. As a subsidiary of American Water, PAWC has available to it additional resources of highly trained professionals who have expertise in various specialized areas. These operations and process experts have deep experience in the operation and maintenance of every possible type of wastewater treatment

technology, as well as the experience available to support PAWC's operations staff and facilities. PAWC St. No. 2 pp. 8-9.

PAWC is currently the water provider within Royersford and Upper Providence Township. PAWC St. No. 2 p. 6. PAWC's Royersford operations center is located less than three miles from Royersford and houses both the local operations team and operations support staff. PAWC St. No. 2 p. 6.

The Royersford System will be operated as a stand-alone system within PAWC's Southeast Area Operations. The Southeast Area provides a range of shared support services, including purchasing, environmental compliance, health and safety, meter reading, customer service work and PA One Call. The water and wastewater operations in Royersford will both be supported by common shared support services. PAWC St. No. 2 p. 6.

G. PAWC's Legal Fitness

PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 p. 18. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to Royersford customers. *Id.* PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable sewer services to the existing customers of Royersford. PAWC St. No. 1 p. 13.

H. Benefits of the Transaction and the Settlement

The Transaction will promote the Legislature's policy goals when it enacted Section 1329; the Transaction will enable a municipality that wishes to sell its water or wastewater system to receive fair market value for its system. PAWC St. No. 1-R p. 9. In addition, the Transaction will

promote the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721; PAWC St. No. 1-R pp. 9-10.

The Transaction will also produce environmental benefits. Protection of the environment is a benefit to all citizens of the Commonwealth; pollution is not contained by municipal boundaries. PAWC St. No. 1-R p. 10. PAWC is in a better position than Royersford to comply with existing, as well as increasingly stringent, environmental requirements. PAWC St. No. 2 pp. 8-10.

Since January 2019, Royersford has had nine exceedances to its NPDES permit. These exceedances are reported instances where the treatment plant discharged pollutants to the waters of the Commonwealth in excess of its permitted limits. PAWC has plans for making capital improvements and operational changes to address these issues after closing. PAWC's superior capabilities will not only benefit the System and its customers in a meaningful way but will also benefit the environment of the Commonwealth in general. PAWC St. No. 2-R p. 2.

The Transaction will benefit Royersford by improving the Borough's financial condition and outlook, and by enabling the Borough to reallocate its administrative time to focus on other key initiatives of the Borough. The Transaction will also increase Royersford's tax base. In addition, since PAWC is offering employment to Royersford's two existing wastewater system employees, the Transaction will allow the Borough to preserve all jobs related to the System. Royersford St. No. 1 pp. 3-4 and 9-12; PAWC St. No. 1 p. 17.

The Transaction will benefit the existing customers of Royersford because PAWC is a large, financially-sound company that has the capacity to finance necessary capital additions and improvements that will benefit Royersford's customers. PAWC St. No. 1 p. 16. In the APA, PAWC made a commitment to invest at least \$1,000,000 in capital improvements to the System

during the first five years of ownership. PAWC St. No. 1 p. 11. At this time, PAWC expects to spend more than \$3.6 million in capital improvements during that period. PAWC Exhibit MJG-1.

PAWC is subject to the jurisdiction of the Commission and must comply with the Code, the Commission's Regulations and Orders. Royersford is not regulated by the Commission and does not need to comply with the Code, the Commission's Regulations or Orders. After closing on the Transaction, I&E, OCA and OSBA will be ombudsmen for Royersford's customers. PAWC St. No. 1-R pp. 7-8; PAWC St. No. 2 p. 17.

Royersford's current customers also will benefit from PAWC's enhanced and proven customer service. This includes additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to PAWC's customer assistance programs. Access to PAWC's customer assistance programs is particularly important during the on-going COVID-19 Pandemic. PAWC St. No. 1 p. 16; PAWC St. No. 2 pp. 14-17; PAWC St. No. 1-R p. 8. The Settlement, ¶ 31, requires PAWC to reach out to Royersford's existing customers to provide information about PAWC's low income programs.

After closing on the Transaction, PAWC's customers in Royersford will be able to call the same company for water or wastewater service. PAWC St. No. 1-R pp. 13-14. In addition, the Settlement provides that PAWC will provide combined bills for Royersford wastewater customers who are also PAWC water customers. Settlement ¶ 26.

The Transaction will have no immediate rate impact on PAWC's existing customers. Any impacts on the rates of PAWC's existing customers would occur only upon Commission approval as part of a base rate proceeding. PAWC St. No. 3 p. 8. The Transaction will add approximately 1,600 new customers to PAWC's existing wastewater customer base of approximately 74,754 customers (or an increase of more than 2.1%). By adding additional connections to the entire

PAWC system, there are more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of increased environmental requirements, is essential to the continued success and longevity of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 p. 17; PAWC St. No. 1-R p. 16.

The Transaction will not result in unnecessary duplication of operations or facilities following closing. PAWC St. No. 2 p. 7. Instead, the Transaction will result in economies of scale, benefitting all customers of PAWC's system. After closing, PAWC will be able to share local resources that currently cannot be shared. For example: (a) PAWC will eliminate the duplication of services between the Royersford System and PAWC's system (e.g., PA One Call Response, billing and call center); and (b) PAWC will eliminate the duplication of equipment between the Royersford System and PAWC's system by utilizing equipment in nearby systems for collection system maintenance, televising, flushing and emergency repair. In addition, PAWC will be able to coordinate water and wastewater projects, saving money for ratepayers and reducing disruption for Borough residents from projects in public rights-of-way. PAWC St. No. 1-R p. 5.

Economies of scale will also be achieved because PAWC has supply chain personnel dedicated to obtaining favorable pricing and terms. PAWC, partnered with American Water, has greater purchasing power due to its larger size, resulting in favorable purchasing contracts for chemicals, materials, supplies and waste disposal. Benefits of this increased purchasing power

include below-market pricing, price stability, improved warranties, and secure supply channels. PAWC St. No. 1-R p. 6.

I. Ratemaking Rate Base

PAWC and Royersford proposed a ratemaking rate base of \$13,000,000, based on the agreed-to purchase price of \$13,000,000. This amount was less than the average of the two UVE appraisals ($\$13,769,801 + \$13,219,000 = \$13,494,401$). PAWC St. No. 3 p. 6. The OCA challenged, and proposed adjustments to, the appraisals of AUS and Gannett Fleming in this proceeding. The OCA's proposed adjustments would have reduced the average of the two UVE appraisals to \$9,957,330. OCA St. No. 1 p. 10. The rate base agreed-to by the Joint Petitioners in the Settlement is \$13,000,000, Settlement ¶ 22, which is within the range of the Joint Petitioners' litigation positions.³

J. Rate Stabilization Plan

The APA between PAWC and Royersford does not contain a "rate stabilization plan" as defined by 66 Pa. C.S. § 1329(g). PAWC St. No. 3 p. 15.

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

PAWC requested authority from the Commission to approve the collection of a distribution system improvement charge ("DSIC") related to the Royersford System in the future, prior to the first base rate case in which the System plant-in-service is incorporated into rate base. PAWC St. No. 4 p. 16. PAWC would not begin charging a DSIC until the eligible System plant is approved by the Commission in a modified Long-Term Infrastructure Improvement Plan ("LTIIIP") for wastewater. Settlement ¶ 27. PAWC's modified LTIIIP for wastewater will not reprioritize other

³ The OCA did not join or oppose Settlement ¶ 22.

existing capital improvements that PAWC has already committed to undertake in other service areas. *Id.*

PAWC has committed to make post-acquisition improvements in the Royersford System. As such, PAWC will likely accrue allowance for funds used during construction (“AFUDC”) for post-acquisition improvements. PAWC St. No. 3 p. 17. PAWC also intends to defer depreciation on non-DSIC-eligible post-acquisition improvements for book and ratemaking purposes. PAWC St. No. 3 pp. 17-18.

Transaction and closing costs that PAWC may seek to recover include the UVE’s appraisal fee and the buyer’s closing costs, including reasonable attorney fees. PAWC is unable to determine the exact extent of transaction and closing costs at this time. In its Application, PAWC estimated the anticipated range of transaction and closing costs as \$605,650 to \$815,000. PAWC St. No. 3 pp. 13-14; PAWC Exhibit MS-1 Appendix A-10. Any transaction and closing costs that PAWC seeks to claim are not properly reviewed, and cannot be approved, in this Section 1329 proceeding. Instead, PAWC’s transaction and closing costs are properly reviewed in its next base rate case that follows the acquisition, and they will be subject to the preponderance of evidence standard in that review. PAWC St. No. 3 pp. 13-14; *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) (“*Final Implementation Order*”) p. 14.

L. Rates

As required by Section 1329, PAWC included a *pro forma* tariff supplement in its Application. PAWC Exhibit MS-1 Appendix A-12, as amended by Amended Appendix A-12. Upon closing of the Transaction, PAWC will adopt Royersford’s current minimum charge and

consumption charge then in effect. PAWC St. No. 3 p. 8. The current average Royersford rate is \$30.00 per month based on 3,630 gallons of monthly usage. Settlement ¶ 25c.

After PAWC closes on the Transaction, System customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to miscellaneous fees and charges, rules and regulations for wastewater service. Royersford customers will be billed on a monthly basis and monthly rates will be converted from cubic feet into gallons. PAWC St. No. 1 p. 12.

PAWC made a commitment in the APA that it will not increase base rates for Royersford customers until after the second anniversary of the closing date. PAWC St. No. 1 p. 12. Royersford is not included in PAWC's pending base rate case. PAWC St. No. 3 p. 16. At this time, it is unclear when PAWC will file its first base rate base in which Royersford will be included.

The Settlement provides that, in the first PAWC base rate case in which Royersford is included, PAWC will propose to move the Royersford system to its cost of service or 1.7 times the current Royersford wastewater rate, whichever is lower, provided, however, that PAWAC will not be obligated to propose Royersford wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. Settlement ¶ 25c. This increase is consistent with the customer notice sent to Royersford customers, which indicated that the acquisition could possibly result in a 69.8% rate increase. PAWC Exhibit MS-1 Appendix A-18-d. As PAWC customers, the cost of service to Royersford customers can be allocated among a larger group of customers, thereby mitigating the per-customer impact of capital improvements and increases in operating costs. PAWC St. No. 3 p. 8.

M. Customer Notice

PAWC provided a non-binding estimate of possible rate impacts for existing customers and Royersford customers. PAWC Exhibit MS-1 Appendix A-18-d. These estimates were prepared in accordance with the Commission's Order in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) ("*Steelton Order*"). PAWC St. No. 3 p. 9. Ultimately, any rate impacts of the acquisition will be determined by the Commission in future base rate proceedings. PAWC St. No. 3 p. 13.

N. Municipal Agreements

In the Application, PAWC requested that the Commission approve the APA. Application ¶ 43. PAWC subsequently filed the First Amendment. PAWC Exhibit MS-1 Appendix A-24-a-1 (**CONFIDENTIAL**). In the Settlement, the Joint Petitioners ask the Commission to approve both the APA and the First Amendment.⁴ Settlement ¶ 32.

III. LEGAL STANDARDS

A. General

The Commission must have jurisdiction over the subject matter of, and the parties to, this proceeding. 66 Pa. C.S. §§ 1102, 1103, 1329. Additionally, the Commission's order must be supported by substantial evidence in the record. 66 Pa. C.S. § 332(b). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980). Evidence is

⁴ The OCA does not join or oppose Settlement ¶ 32.

substantial when relevant and of a nature that a reasonable mind might accept as adequate to support a conclusion. *Lancaster County v. Pa. Lab. Rel. Bd.*, 82 A.3d 1098, 1109-10 (Pa. Cmwlth. 2013).

B. Legal Standards for Approving a Settlement

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).

C. Legal Standards for an Application Pursuant to Sections 1102 and 1103

A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1). In addition, a certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825,

828 (1972). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. The primary objective of the law in this regard is to serve the interests of the public. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

An applicant for a certificate of public convenience also must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). The fitness of a currently certificated public utility is presumed, however. *See, e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

Financial fitness means that the applicant should possess the financial resources to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982). Technical fitness means that the applicant should have sufficient staff, facilities and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982); *Merz White Ways Tours v. Pa. Pub. Util. Comm'n*, 201 A.2d 446 (Pa. Super. 1964). Legal fitness means that the applicant has a propensity to obey the Code and the Commission's regulations. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982).

The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a). In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

D. Legal Standards for an Application Pursuant to Section 1329

For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure set forth in 66 Pa. C.S. § 1329, the application is to contain a tariff equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. 66 Pa. C.S. § 1329(d)(1)(v). A rate stabilization plan is defined as “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa. C.S. § 1329(g).

Section 1329(d)(5) permits a public utility acquiring a municipal wastewater system to collect a distribution system improvement charge prior to the first base rate case in which the municipal system is included in its rate base. Section 1329 permits an acquiring public utility’s post-acquisition improvements, which are not included in a DSIC, to accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility’s next base rate case, whichever is earlier. 66 Pa. C.S. § 1329(f)(1). Section 1329 permits an acquiring public utility to defer depreciation on post-acquisition improvements, which are not included in a DSIC. 66 Pa. C.S. § 1329(f)(2).

Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base during its next base rate case. 66 Pa. C.S. § 1329(d)(2). Transaction and closing costs include the UVE’s appraisal fee, the buyer’s share of the costs related to the engineer’s assessment, and the buyer’s closing costs, including reasonable attorney fees. These costs are properly reviewed in PAWC’s next base rate case that follows the acquisition; the Commission will not approve these costs during the 1329 proceeding. *Final Implementation Order* p. 14.

E. Legal Standards for Approving a Contract Pursuant to Section 507

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

IV. THE SETTLEMENT IS IN THE PUBLIC INTEREST

The Joint Petitioners have agreed to a settlement of all of the issues in this proceeding. This includes issues arising under Sections 1102, 1103, 1329 and 507 of the Code. 66 Pa. C.S. §§ 1102, 1103, 1329, and 507. The following sections explain why PAWC believes the settlement is in the public interest and should be approved without modification.

A. The Settlement is a Compromise by Diverse Parties to Resolve all Issues

As an initial matter, the fact that the Settlement resolves all of the issues in this proceeding is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest – particularly given the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this complex case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329. Through the collaborative efforts of the Joint Petitioners and effective case management by the ALJ, the Application is in a position to be decided by the Commission in less than six months.

It should be noted that the Joint Petitioners and their counsel and experts, have considerable experience in acquisition proceedings generally and Section 1329 proceedings in particular. Their knowledge, experience and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the issues. The Joint Petitioners, their counsel and experts fully explored all the issues in this case.

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

B. Section 1103 Approvals

1. Fitness

PAWC must demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness.⁵ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its technical, financial, and legal fitness.

With respect to technical fitness, PAWC is the Commonwealth's largest water and wastewater provider. It furnishes service to more than 400 communities in 36 counties, serving a combined population in excess of 2,400,000. PAWC St. No. 1 p. 13. PAWC employs

⁵ Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager et al.*, 49 Pa. P.U.C. 138 (1975). No party has contested the continued need for wastewater collection and treatment service in the Royersford service territory.

approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations. *Id.* In addition, as a subsidiary of American Water, PAWC has available to it additional highly-trained professionals with expertise in specialized areas. These operations and process experts have deep experience in the operation and maintenance of different types of wastewater technologies. PAWC St. No. 2 pp. 8-9. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. *Id.* p. 9.

With respect to legal fitness, PAWC has a record of environmental compliance, a commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable sewer service to the existing customers of Royersford. PAWC has a good compliance history with the Commission and there are currently no legal proceedings that would suggest that PAWC is not legally fit to provide service in Royersford. PAWC St. No. 1 p. 13.

With respect to financial fitness, PAWC had total assets of approximately \$5.3 billion as of December 31, 2019. In addition, it had a net income of approximately \$187 million for the 12 months ending December 31, 2019. PAWC St. No. 1 p. 18. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and/or equity investments. PAWC St. No. 3 p. 5.

2. Public Benefit

PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the Royersford System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). An acquisition provides an affirmative benefit if the benefits of

the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

The Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large; the Borough of Royersford (as seller of the System); the existing customers of Royersford's System; and, the existing customers of PAWC. The Transaction benefits members of the public-at-large in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a); PAWC St. No. 1 p. 15; PAWC St. No. 1-R pp. 9-10. In addition, the Transaction benefits members of the public-at-large by promoting the public policy goals embodied in Section 1329. PAWC St. No. 1 p. 18; PAWC St. No. 1-R p. 9.

The Transaction also benefits the public-at-large due to its environmental benefits. PAWC introduced evidence of nine NPDES permit exceedances at the System in recent years, which resulted in pollutants being discharged into waters of the Commonwealth. These discharges affect the residents of Royersford as well as the residents of other municipalities. PAWC St. No. 1-R p. 11; PAWC St. No. 2-R p. 2. PAWC has plans for making capital improvements and operational changes to address these issues after closing. In addition, PAWC will provide greatly enhanced technical, operational and engineering support to the operations staff at Royersford to optimize operations of the treatment processes. PAWC St. No. 2-R p. 2.

As long as these environmental deficiencies are present in the System, their impact will not be limited to the Royersford area. In this regard, Article I, Section 27 of the Pennsylvania Constitution states:

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

PA. CONST. Art. I, § 27 (“Environmental Rights Amendment”). The record evidence in this proceeding unquestionably demonstrates that PAWC is better able to make the necessary improvements to the System to protect Pennsylvania’s “pure water” and the “natural, scenic, historic and esthetic values of the environment.” This is partly due to PAWC’s having greater financial resources than Royersford. PAWC has access to lines of credit and equity markets that are unavailable to Royersford. PAWC St. No. 3 pp. 4-5. PAWC is also in a better technical position than Royersford to make the necessary improvements and operate the System going forward due to its greater expertise in wastewater operations. PAWC St. No. 2 pp. 8-10. There is an over-arching public interest (*i.e.*, “for the benefit of all the people”) in correcting the System’s environmental deficiencies as promptly and efficiently as possible. Approval of the Transaction would be consistent with the Commission’s obligation under the Environmental Rights Amendment.⁶

In addition to benefiting the public-at-large, the Transaction benefits Royersford Borough (as seller of the System). Among other things, the Transaction will improve Royersford’s financial condition and outlook by increasing its reserve fund balance, allowing Royersford to mitigate

⁶ “[T]he Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties.” *Pa. Env. Defense Foundation v. Cmwlth.*, 161 A.3d 911, 933 (2017) (citing *Robinson Twp. v. Cmwlth. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

against the risk of revenue shortfalls and allowing it the flexibility to undertake necessary future non-System related capital projects. Royersford St. No. 1 pp. 3-4. In addition, Royersford will be able to reallocate its administrative time to focus on other key initiatives. *Id.*

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

- The System will become a Commission-regulated utility, and its customers will gain the protection of the Code, the Commission, I&E, OCA, and the OSBA. PAWC St. No. 1-R pp. 7-8; Royersford St. No. 1 p. 4.
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance program (H2O Help to Others) and customer dispute resolution process. PAWC St. No. 2 pp. 14-17; Royersford St. No. 1 p. 4.
- PAWC plans to invest millions of dollars to improve the wastewater system. PAWC St. No. 2 p. 8 and PAWC Exhibit MJG-1; PAWC St. No. 2-R p. 2.

The Settlement contains additional public benefits for Royersford's existing customers. It requires PAWC to provide information to Royersford's customers regarding PAWC's low-income programs within the first billing cycle following closing and in a welcome letter to Royersford's customers. Settlement ¶ 31.

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

- In the long term, the Transaction will benefit PAWC's existing wastewater customers because it will add new customers to PAWC's wastewater customer base, who can share the cost of operating the entire PAWC wastewater system. PAWC St. No. 1 p. 17.
- PAWC will eliminate the duplication of equipment between the Royersford System and PAWC's system by sharing local resources that cannot currently be shared. PAWC St. No. 1-R p. 5.

Finally, the Transaction benefits PAWC's existing *water* customers in the same way that it benefits all other members of the public-at-large. In addition, it will only result in an increase

in rates for these customers, pursuant to 66 Pa. C.S. § 1311(c), if in a future rate case the Commission determines that an allocation of PAWC’s wastewater requirement to water customers is “in the public interest.”

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

3. Cost of Service Studies

In the interest of resolving this case and based on the unique circumstances of this case, PAWC will submit two cost of service studies in the first base rate case that includes the Royersford System: (a) a cost of service study that removes all costs and revenues associated with the operation of the Royersford System; and (b) a cost of service study for the Royersford System. Settlement ¶¶ 25a-b. Under the Settlement, PAWC’s obligation to prepare cost of service studies extends only to the first base rate case in which Royersford is included. In this way, unnecessary cost of service studies can be avoided in subsequent rate cases. Accordingly, the ALJ and the Commission should find that the Settlement is in the public interest.

C. Section 1329 Approvals

1. Ratemaking Rate Base

PAWC and Royersford agreed to use the procedure set forth in Section 1329 for the Transaction. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-approved UVE. The ratemaking rate base of the selling utility is the lesser of: (1) the purchase

price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs' appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case.

In the Settlement, the Joint Petitioners agreed that \$13,000,000 (the purchase price) will go into PAWC's rate base in its next rate case due to the acquisition of the System.⁷ Settlement ¶ 22. Through discovery and the development of the evidentiary record, the Joint Petitioners fully evaluated whether the UVEs abused their discretion under USPAP, relied on inaccurate facts, or committed errors of law. The agreed-upon ratemaking rate base of \$13,000,000 is supported by substantial record evidence and is within the range of the litigation positions of the Parties. The Settlement should be adopted because it produces a result that is preferable, in the eyes of each of the Joint Petitioners, to what could have resulted from litigation – including the possibility of appeals and the attendant delay to closing of the Transaction that would have occurred.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 207 A.3d 290 (Pa. 2019) (“*New Garden*”). The evidence of record supports a conclusion that the Commission, using the various ratemaking tools available to it, can set rates for PAWC's customers prospectively that are “just and reasonable” under Section 1301 of the Code. *See* PAWC St. No. 1-R p. 3. The Transaction has numerous other affirmative public benefits of a substantial nature. *See, e.g.*, PAWC St. No. 1 pp. 15-18; PAWC St. No. 1-R pp. 9-17; PAWC St. No. 2 pp. 14-17; Royersford St. No. 1 pp. 1-4; Royersford St. No. 1-R pp. 2-3. It should not be disapproved based on speculation about future

⁷ The OCA did not join this paragraph of the Settlement, but does not oppose it.

impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated through record evidence.

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

2. Rates

In terms of rates, the Settlement is in the public interest because it would ensure that PAWC will charge rates after closing that are equal to Royersford’s existing rates. In addition, the Settlement requires PAWC, in the first base rate case that includes Royersford, to propose moving Royersford’s customers rates toward the cost of service, Settlement ¶ 25c, limiting any potential subsidization of Royersford’s customers by PAWC’s existing water and wastewater customers. The Settlement nevertheless limits the proposed rate increase to Royersford customers in order to ensure gradualism. Specifically, the Settlement limits the proposed rate increase to no more than 1.7 times Royersford’s customers’ initial rate, or PAWC’s proposed Rate Zone 1 system-average rates, whichever is lower. *Id.* This increase is consistent with the customer notice sent to Royersford customers, which indicated that the acquisition could possibly result in a 69.8% rate increase. PAWC Exhibit MS-1 Appendix A-18-d.

The Settlement permits PAWC to propose a different effective date for increased rates to Royersford than to other customers, so that PAWC may comply with the APA provision prohibiting rate increases in Royersford until two years after the date of closing. However, the Settlement does not preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding. Settlement ¶ 25f. Further, the Settlement contains no provision purporting to restrict the Commission’s ultimate ratemaking authority to set “just and reasonable” rates.

3. DSIC

Section 1329(d)(4) of the Code permits an acquiring public utility to collect a DSIC from the date of closing on the Transaction until new rates are approved in the utility’s next base rate case. In order to qualify for DSIC recovery, a utility must submit an LTIIP to, and receive approval from, the Commission.

PAWC has previously received Commission approval of a wastewater LTIIP, and received Commission approval of a DSIC tariff, for other portions of its wastewater system. In its Application, PAWC requested conditional approval to implement a DSIC for the Royersford service territory. Application ¶ 2; PAWC St. No. 1 p. 4. Pursuant to the Settlement, PAWC may file an amended LTIIP for the Royersford service territory that does not reprioritize other existing capital improvements that PAWC has already committed to undertake in other service areas. Following Commission approval of that amended LTIIP, PAWC could make a tariff supplement compliance filing, which would include the Royersford service territory in PAWC’s existing DSIC tariff. Settlement ¶ 27.

The Settlement recognizes the Commission’s authority to modify PAWC’s LTIIP submission. Finally, the Settlement is consistent with the Code and *Implementation of Act 11 of*

2012, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012). For these reasons, the Settlement is in the public interest and should be approved.

4. Accrual of AFUDC

Section 1329(f)(1) of the Code permits an acquiring public utility to accrue AFUDC on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following events: the asset has been in service for a period of four years, or the asset is included in the acquiring utility's next base rate case. In the Application ¶ 2, PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 5. The Settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 28.

5. Deferred Depreciation

Similarly, Section 1329(f)(2) of the Code permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application ¶ 2, PAWC requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 pp. 4-5. The Settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 28.

6. Transaction and Closing Costs

Section 1329(d)(1)(iv) permits an acquiring public utility to include, in its next base rate case, a claim for the transaction and closing costs incurred for the acquisition. In the *Final Implementation Order* p. 14, the Commission stated that there will be no Commission preapproval of the reasonableness of recovery of these costs in a Section 1329 proceeding. Out of an abundance

of caution, the Settlement acknowledges that PAWC may, in the first base rate case that includes the Royersford System, include the transaction and closing costs incurred in this proceeding. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time. The Settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 29.

D. Section 507 Approvals

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

In this proceeding, PAWC seeks Commission approval of (i) the APA, and (ii) the First Amendment. The Settlement is in the public interest because it establishes that none of the other Joint Petitioners objects to the Commission's approval of these agreements pursuant to Section 507.⁸ Settlement ¶ 32.

V. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, discovery

⁸ The OCA did not join this paragraph of the Settlement, but does not oppose it.

responses, evidence that was entered into the record, and extensive settlement negotiations. A fair and reasonable compromise has been achieved in this case. PAWC fully supports the Settlement and urges the ALJ and the Commission to approve it without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judge Marta Guhl 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 and the specific paragraphs set forth in its "Request for Relief."

Respectfully submitted,



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Dated: January 29, 2021

Exhibit 2
Statement in Support of
Royersford Borough

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl

**Application of Pennsylvania-American :
Water Company Pursuant to Sections :
1102, 1329, and 507 of the Public Utility : Docket No. A-2020-3019634
Code for Approval of its Acquisition of the :
Wastewater System Assets of Royersford :
Borough :**

STATEMENT OF ROYERSFORD BOROUGH IN SUPPORT OF SETTLEMENT

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Royersford Borough (“Royersford” or the “Borough”), by its attorneys, submits this statement in support of the Joint Petition for Approval of Settlement of All Issues (“Settlement”) submitted to the Public Utility Commission (“Commission”) by Pennsylvania-American Water Company (“PAWC” or “Company”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Royersford.¹ Royersford respectfully requests that the Honorable Administrative Law Judge Marta Guhl recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. Introduction

This proceeding concerns PAWC’s Application, filed with the Commission on July 14, 2020, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”), for approval of its acquisition of the wastewater system assets of Royersford. On January 29, 2021, the Joint

¹ PAWC, I&E, OCA, OSBA and Royersford are, hereinafter, referred to, collectively, as “Joint Petitioners.”

Petitioners filed the Settlement proposing a resolution of all issues in the proceeding. Royersford supports the Settlement and submits that it should be approved without modification because the settlement will further the public interest.

II. The Proposed Settlement is in the Public Interest

The Settlement should be approved because it resolves all issues in this proceeding and is in the public interest. Whether the terms and conditions of the settlement are in the public interest is the main issue for the Commission's consideration. *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985)

In *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Pennsylvania Supreme Court explained that in the context of a utility merger, the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. Here, this is indeed the case, as the terms of the settlement are in the public interest. The Settlement should thus be approved without modification.

A. The Proposed Settlement Minimizes Litigation and Administrative Burden

As a threshold matter, the proposed settlement should be approved because it is consistent with the Commission's policy to promote settlements over costly litigation. 52 Pa. Code § 5.231(a). Indeed, the Commission has explicitly stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401.

This would unequivocally be the case here. The proposed settlement allows the transaction at issue to proceed without further litigation or administrative review. It is thus consistent with well-established Commission policy.

B. PAWC is Undoubtedly Fit to Own and Operate Royersford's System

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). Here, there is no dispute that PAWC has the requisite technical, financial and legal fitness to own and operate the Royersford system. Indeed, PAWC's fitness is presumed because it is a certificated provider of utility service. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

To show legal fitness, PAWC must demonstrate that it has obeyed the Code, and Commission Regulations and Orders. *Re Perry Hassman*, 55 PA PUC 661 (1982). Here, PAWC is a public utility operating under certificates of public convenience granted by the Commission with a good compliance history. PAWC Statement No. 1, p. 18. Additionally, there are no pending legal proceedings that would suggest that PAWC is not legally fit to provide safe and adequate service. PAWC thus satisfies the criteria for legal fitness. *Id.*

To show financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Here, PAWC—a subsidiary of American Water Works Company, Inc.—is the largest water and wastewater provider in Pennsylvania, with total assets of \$5.3 billion and annual revenues of \$689 million in 2019. *See* PAWC Statement No. 1, p. 18; PAWC Statement No. 3, p. 4. PAWC also has a \$400 million line of credit, long-term debt financing at favorable interest rates and payment terms, and may obtain additional equity investments all through American Water Capital Corp. PAWC Statement No. 3, p. 4–5. As such, PAWC thus satisfies this criterion as well.

Finally, to show technical/managerial fitness, PAWC must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Again, PAWC easily

satisfies this standard here. As the largest investor-owned water and wastewater utility in the Commonwealth, PAWC will seamlessly integrate the operation of the Royersford system into its current operations. *See* PAWC Statement No. 1, p. 18.

C. The Public Will Benefit as a Result of the Settlement.

There is substantial evidence in support of the settlement and the public benefits resulting from the acquisition.

1. The Transaction Provides Considerable Public Benefit for Royersford and its Customers.

For purposes of this statement, Royersford will focus primarily on the considerable benefits that will directly impact its residents and customers.

First, PAWC will not just be able to take over operations of the Borough's system, but has the managerial, technical and financial resources to continue to operate, maintain and improve the Royersford system in a safe, reliable and efficient manner now and in the future. PAWC Statement No. 2, p. 8. This is particularly important given the increasing environmental compliance requirements and issues facing the Borough's system, and PAWC's demonstrated ability to address these issues on a cost-effective basis. *Id.*

Second, Royersford customers will benefit greatly from PAWC's technical experience and fitness in deploying resources towards capital improvements. For example, PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$275 million to \$300 million per year for the next five years. *Id.*, p. 9. As a part of this Transaction, PAWC committed to contribute at least \$1,000,000 towards water and wastewater infrastructure and development projects. PAWC Statement No.1, p. 11. Customers will certainly benefit from PAWC's administration of these improvements.

Third, the Borough's customers will benefit from enhanced customer service and operational functions through PAWC's extended call center hours, additional bill payment options, and access to PAWC's customer assistance programs. PAWC Statement No. 2, p. 14. For example, PAWC provides customer service through a toll-free number that customers can call from 7:00AM-7:00PM, Monday through Friday, as well as emergency support 24 hours a day, seven days a week. *Id.* With respect to Royersford, customers will have the option to receive bills through the mail or review their bills electronically via PAWC's "My H2O" on-line portal. *Id.*, p. 15. No matter which option customers choose, they can pay their bill by mail, online, or over the phone with a debit or credit card. *Id.* PAWC also has customer compliance teams and customer advocacy teams located in its Mechanicsburg office that are responsible for addressing customer disputes/escalated concerns and ensuring that any customer dispute and/or complaint is resolved in compliance with Chapter 14 of the Code and Commission regulations. *Id.* pp. 16–17. Lastly, as new PAWC customers, Royersford's customers will have access to its customer assistance program "H2O Help to Others Program," which offers grants up to \$500 per year and a 5% discount on total wastewater charges. *Id.*, p. 15. Customers that qualify for this program may also receive a water saving kit that includes a low-flow shower head and low-flow faucet aerators. *Id.*, pp. 15–16.

Fourth, the Transaction will greatly improve the Borough's financial condition by providing the Borough with a significantly increased reserve fund balance. For example, the Borough's current reserve fund is approximately \$200,000. Royersford Statement No. 1, p. 10. The Transaction will increase the Borough's current reserve fund by \$9,800,000 – more than three times the Borough's typical yearly revenue (approximately \$3.1 million). *Id.* This increased liquidity provided by the Transaction is important now more than ever as the Borough continues to weather the COVID-19 pandemic and its anticipated revenue shortfalls as a result of the

pandemic. *Id.* Additionally, these funds will be allocated to redevelopment opportunities that are otherwise unattainable. *Id.* This enhanced financial stability will help both eliminate debt and mitigate against the risk of any future revenue shortfalls. *Id.*, pp. 10–11.

Lastly, given the time and economic impact on the Borough from dealing with the wastewater system, the Transaction will permit the Borough administration to reallocate administration time to focus on other key initiatives in Royersford. *Id.*, p. 11.

2. The Transaction Provides Other Benefits As Well

Other considerable benefits of the proposed transaction exist as well, particularly for PAWC’s existing customers. Most notably, there will be no immediate rate impact on PAWC’s existing customers. PAWC Statement No. 1, p. 17. Additionally, with an increased customer base, there are more customers to share future infrastructure investment costs that promote stable rates across the entire PAWC system in the long-term. *Id.* In a time with increased environmental requirements, the ability to spread the costs of maintaining a public wastewater system over a growing customer base is primary. *Id.*

Further, the Transaction fosters the Commission’s stated goal of regionalizing wastewater systems within the Commonwealth and providing both greater environmental and economic benefits to all customers. Lastly, PAWC has committed to preserving all jobs related to Royersford’s system. *See* Royersford Statement No. 1, p. 11; PAWC Statement No. 1, p. 17.

D. The Conditions Agreed-to by PAWC Further Ensure that the Transaction Provides Considerable Public Benefit

PAWC has agreed, in the settlement, to several conditions to be imposed by the Commission on approval of the transaction. The imposition of conditions is consistent with Section 1103(a) of the Code. The conditions include:

- As part of PAWC’s first base rate case including Royersford’s wastewater system assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of Royersford’s system, as well as a separate cost of service study for the Royersford system. Settlement ¶ 25(a)–(b).
- In the first base rate case that includes Royersford’s wastewater system assets, PAWC will propose to move the Royersford system to its cost of service or 1.7x the current Royersford wastewater rate—whichever is lower—based on a separate cost of service study for Royersford’s system; provided, however, that PAWC will not be obligated to propose Royersford wastewater rates in excess of PAWC’s proposed Rate Zone 1 system-average rates. The current average Royersford rate is \$30.00 per month based on 3,630 gallons of monthly usage. *Id.* ¶ 25(c).
- In the first base rate case that includes Royersford’s wastewater system assets, PAWC may propose an effective date for new rates for Royersford wastewater customers that is different from the effective date of new rates for other customers. *Id.* ¶ 25(d).
- PAWC may agree to rates other than those proposed for Royersford customers in the context of a settlement of the base rate case, and the statutory advocates reserve their rights to address PAWC’s rate proposals fully, and to make other rate proposals. *Id.* ¶ 25 (e)–(f).
- PAWC will provide combined bills for Royersford wastewater customers who are also PAWC water customers. *Id.* ¶ 26.
- Upon approval of PAWC’s modified Long Term Infrastructure Improvement Plan that includes Royersford’s wastewater system assets, PAWC shall be permitted to collect a Distribution System Improvement Charge (“DSIC”) related to the Royersford wastewater system prior to the first base rate case in which the Borough’s assets are incorporated into

rate base, although PAWC will not reprioritize other existing capital improvements that it already committed to undertake in other service areas. *Id.* ¶ 27.

- Any claims for Allowance for Funds Used During Construction (“AFUDC”) and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case that includes Royersford’s wastewater system assets—where the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. *Id.* ¶ 28.
- PAWC will send a welcome letter to Royersford’s wastewater customers within the first billing cycle following the transaction closing, which will include—at a minimum—a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC’s contact information. PAWC also committed to ongoing targeted outreach to Royersford-area customers regarding its low income programs. *Id.* ¶ 31.
- In its next base rate case, PAWC will separately identify outside legal fees included in its transaction and closing costs under the Asset Purchase Agreement, with the statutory advocates reserving the right to challenge the reasonableness, prudence, and basis for these fees. *Id.* ¶ 30.

Via these conditions, Joint Petitioners have reached resolution on all outstanding issues in order to ensure that the transaction provides public benefit.

III. Fair Market Valuation

Section 1329 addresses the valuation of assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. It is a voluntary process to determine the fair market value of an acquired water or

wastewater system at the time of acquisition, and provides that the ratemaking rate base will be the lesser of the fair market value (*i.e.*, the average of the buyer's and seller's independently conducted appraisals) or the negotiated purchase price.

For the transaction at issue, PAWC and Royersford negotiated a purchase price of \$13,000,000 for the wastewater system, which was the result of voluntary arm's length negotiations. Royersford engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett") to provide a fair market value appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), utilizing the cost, market and income approaches. Royersford Statement No. 2, p. 3. PAWC engaged AUS Consultants, Inc. for the same purpose. PAWC Statement No. 4, p. 1.

Gannett's fair market value appraisal is \$13,219,000. Royersford Statement No. 2, p. 13. AUS's fair market value appraisal is \$13,769,801. PAWC Statement No. 4, p. 3. The average of the two is \$13,494,401. *Id.*, p. 6. As a result, the ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$13,000,000, the lesser of the negotiated purchase price of \$13,000,000 and the average of \$13,494,401. *Id.*

The determination of ratemaking rate base was a matter of controversy between PAWC, I&E, and OCA with OCA proposing adjustments to reduce the average of the UVE's appraisal to \$9,957,330. OCA Statement No. 1, p. 10. Nonetheless, in the Settlement, the agreed-upon rate base is \$13,000,000—with all parties reserving their rights to litigate PAWC's rate proposals and make other proposals in the first base rate case that includes Royersford's wastewater system assets.² Settlement ¶ 22.

IV. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

² The OCA did not join or oppose this particular term of the Settlement.

A. Section 507 Approval Should Be Given

Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. The Settlement asks that the Commission issue Certificates of Filing, pursuant to Section 507, for the Asset Purchase Agreement By and Between Royersford Borough, Montgomery County, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as of December 10, 2019, and the First Amendment to Asset Purchase Agreement, dated as of October 27, 2020, between Royersford Borough, Montgomery County and Pennsylvania-American Water Company.³ *Id.* ¶ 32.

B. Other Approvals, Certificates, Registrations and Relief

As a final matter, Royersford respectfully requests that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to PAWC's acquisition of the Royersford wastewater system assets. *Id.* ¶ 33.

V. CONCLUSION

Royersford respectfully requests that the Honorable Administrative Law Judge Marta Guhl recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Settlement without modification.

³ The OCA did not join or oppose this particular term of the Settlement.

Respectfully submitted,

/s/ Thomas Wyatt

Thomas Wyatt, Esquire (PA I.D. 89342)

Matthew S. Olesh, Esquire (PA I.D. 206553)

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Counsel for Royersford Borough

Date: January 29, 2021

Exhibit 3
Statement in Support of
Office of Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American Water :
Company Pursuant to Sections 507, 1102, and 1329 of :
the Public Utility Code for Approval of its Acquisition : Docket No. A-2020-3019634
of Wastewater System Assets of Royersford Borough :

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Settlement (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

I. INTRODUCTION

On July 14, 2020, Pennsylvania-American Water Company (PAWC) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the Borough of Royersford's (Borough or Royersford) wastewater collection and treatment system, the right of PAWC to provide wastewater service in the areas served by the Borough, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated September 11, 2020 the Commission conditionally accepted the Application. The Commission required individual notice to be provided to PAWC's existing water and wastewater customers, that PAWC ensure concurrent notice is provided to all current Borough wastewater customers, and

that newspaper notice is provided in the Borough's area. Upon completion, PAWC was directed to file a verification that the notice has been provided.

On July 21, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Protest and Public Statement on July 29, 2020. The Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement on July 29, 2020. On August 11, 2020, I&E filed a second Notice of Appearance. On October 30, 2020, PAWC filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the September 11, 2020 Secretarial Letter. By Secretarial Letter dated November 9, 2020, the Commission informed PAWC that it had accepted the Application for filing. On November 12, 2020, the Borough of Royersford filed a Petition to Intervene. On November 19, 2020 Mr. Robert Redinger, Jr. filed a Protest. On December 3, 202, Mr. Ronald Filippini filed a Protest. Additionally, three individuals, including existing PAWC water and wastewater customers, filed written objections to the Application.

A telephonic prehearing conference was held on December 10, 2020 before Administrative Law Judge (ALJ) Marta Guhl, at which time a litigation schedule and discovery modifications were adopted. In addition, the ALJ discussed the challenges presented by the pandemic in regard to holding public input hearings. On December 26, 2021, the ALJ issued a Prehearing Conference Order, granting the Borough of Royersford's Petition to Intervene and determining that one telephonic public input hearing was sufficient. A telephonic public input hearing was held on January 7, 2021. On January 14, 2021, the OCA, I&E, OSBA, and PAWC (Joint Petitioners) advised the ALJ that they had reached an agreement in principle on all issues.

II. TERMS AND CONDITIONS OF JOINT PETITION FOR SETTLEMENT

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

1. Ratemaking Rate Base, Settlement ¶22.

As part of this proceeding, PAWC sought to establish the ratemaking rate base for this acquisition pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329. Based on appraisals presented by PAWC and the Borough (\$13,769,801 and \$13,494,401, respectively), PAWC sought a ratemaking rate base of \$13,000,000, which was the price PAWC agreed to pay for the Borough's system. The OCA's recommended adjustments to the appraisals resulted in an average appraisal amount of \$9,957,330. See OCA St. 1 at 10. The Settlement adopts a \$13,000,000 ratemaking rate base for the Borough's system. In furtherance of settlement, the OCA did not join in this provision but did not oppose PAWC's request.

2. Cost of Service Study and Rates, Settlement ¶25.

In this proceeding, the OCA identified the need for PAWC to provide – in the first base rate case in which it includes the Borough's assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of Royersford wastewater system, as well as a separate cost of service study for the Royersford system. OCA St. 1 at 50. These studies will provide information to establish rates that reflect the costs for the Royersford system.

The Settlement adopts the OCA's recommendation. Paragraph 25(a) provides that, in its first base rate case in which PAWC includes the Borough's assets in rate base, PAWC will submit

a wastewater cost of service study that removes all costs and revenues associated with Royersford's system. Further, Paragraph 25(b) provides that the Company will also provide a separate cost of service study for the Royersford system. Paragraph 25(c) provides that, in the first rate case in which PAWC includes the Borough's assets in rate base, PAWC will propose to move the Borough's system to its cost of service (based on the separate cost of service study), unless such increase is more than 1.7 times the current Royersford wastewater rate, whichever is lower, based on a separate cost of service study for Royersford's system; provided, however, that PAWC will not be obligated to propose Royersford wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.¹

The OCA identified that at existing rates, revenues generated by the Royersford system are not sufficient to offset the cost of PAWC ownership. OCA St. 2 at 10-14; OCA St. 2S at 8. Thus, the length of time that existing PAWC wastewater and water customers subsidize the shortfall is a concern. Paragraph 25(f) of the Joint Petition addresses this concern by reserving the rights of the OCA and other statutory advocates to challenge any proposal by PAWC to set a different effective date for new rates for Royersford wastewater customers than for other customers.

Taken together, these Settlement terms will provide a means for the parties to use the cost of service data to set rates for the Borough's customers that reflect the cost of service, or movement towards the cost of service for the Borough's customers and that may differ, as appropriate, from rates established for other wastewater customers. This will help to mitigate the potential level of

¹ The current average Royersford rate is \$30.00 per month based on 3,630 gallons of monthly usage. Settlement ¶25(c); Application, App. A-18-d. The current average PAWC rate for a residential wastewater customer using 3,360 gallons per month in Zone 1 is \$64.93. Application, App. A-18-d.

subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the Royersford's service area.

3. Distribution System Improvement Charge, Settlement ¶27.

The parties to the proposed Settlement agreed that PAWC may apply the DSIC to customers in the Borough's service area prior to the first base rate case in which the system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) if certain conditions are met. In particular, Paragraph 27 states that PAWC will revise its Long Term Infrastructure Improvement Plan (LTIIP) to include the Borough of Royersford and related projects before it begins charging the DSIC to those customers. Further, Paragraph 27 provides PAWC's commitment that it will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. This provision addresses the concern raised by the OCA that projects for the Borough's customers should be in addition to, and not reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers. OCA St. 1 at 50. This settlement term also allows for Borough of Royersford customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects.

4. Low Income Program Outreach, Settlement ¶31.

PAWC has agreed to provide information about PAWC's low income programs in a welcome letter to the Borough of Royersford system customers and in a bill insert in the first billing cycle following closing. The information will describe the available programs, eligibility requirements and contact information for PAWC. PAWC further agreed to ongoing- targeted outreach to its Royersford-area customers regarding its low income program. The OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Royersford customers.

5. Allowance for Funds Used During Construction (AFUDC), Deferral of Depreciation, Transaction Costs, and Legal Fees, Settlement ¶¶28-30.

The OCA's witness recommended that any claims for AFUDC and deferred depreciation should be addressed in PAWC's next base rate case rather than an unspecified future case as proposed by PAWC. See OCA St. 2 at 3. Under the terms of the settlement, any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Royersford's wastewater system assets. Further, the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. The OCA's assent to Paragraph 28 should not be construed to operate as preapproval of PAWC's future requests. Paragraphs 28 and 29 preserve all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims. Further, to facilitate the parties' review in PAWC's next base rate case, Paragraph 30 reflects PAWC's agreement to separately identify any outside legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between PAWC and the Borough of Royersford and specify amounts expended by PAWC on behalf of the Borough.

III. CONCLUSION

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

Respectfully Submitted,

/s/ Christine Maloni Hoover
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Dated: January 29, 2021

Exhibit 4
Statement in Support of
Office of Small Business Advocate

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water Company Pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Royersford Borough :
:
: **Docket No. A-2020-3019634**
:
:
:

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE JOINT PETITION FOR APPROVAL OF SETTLEMENT**

I. INTRODUCTION

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) is participating as a party to this proceeding to ensure that the interests of small commercial and industrial (“Small C&I”) customers of the Pennsylvania American Water Company (“PAWC” or the “Company”) and the Borough of Royersford (“Royersford”) are adequately represented and protected.

II. PROCEDURAL BACKGROUND

PAWC filed an Application (“Application”) pursuant to Sections 1102, 1329, and 507 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 1102(a), 1329, 507 on July 14, 2020. In its Application, PAWAC requested approval of the transfer, by sale, of all of the Borough of Royersford’s assets, properties and rights related to its wastewater collection and treatment systems.

On July 29, 2020 the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement.

On July 29, 2020, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed its Notices of Appearance on July 21, 2020 and August 11, 2020.

On November 9, 2020, the Commission issued a Secretarial Letter accepting PAWC’s Application for filing.

On November 12, 2020, the Borough of Royersford filed a Petition to Intervene.

A Protest was filed by Mr. Robert Redinger, Jr. on November 19, 2020. A Protest was filed by Mr. Ronald Filippini on December 3, 2020.

A Prehearing Conference was held on December 10, 2020, before Administrative Law Judge (“ALJ”) Marta Guhl, at which time the parties agreed upon a procedural schedule and discovery modifications, memorialized in a prehearing order issued on December 16, 2020.

On December 22, 2020, the OSBA, OCA, and I&E served direct testimony and exhibits.

A Public Input Hearing was held on January 7, 2021.

Rebuttal testimony was served by the Company on January 6, 2021.

On January 13, 2021, the OSBA, OCA, and I&E served surrebuttal testimony and exhibits.

Throughout this proceeding, the parties engaged in extensive formal and informal discovery.

The parties engaged in settlement discussions and a settlement was reached by the parties, on or about January 14, 2021.

The OSBA actively participated in the negotiations that led to the proposed settlement, and is a signatory to the Joint Petition for Approval of Settlement of All Issues (“Settlement”). The OSBA submits this statement in support of the Settlement.

III. STATEMENT IN SUPPORT OF SETTLEMENT

In its testimony, the OSBA initially identified the issue of whether the Asset Purchase Agreement impermissibly freezes rates for Royersford wastewater customers to the detriment of PAWC’s existing customers. The OSBA submitted testimony focusing on this issue, and spent extensive time in settlement discussions attempting to resolve this issue. The OSBA does not oppose the terms in the Settlement related to Royersford Rates (*See* Section D Paragraph 25 (a) through (f) as the OSBA has preserved its right to fully address and make rate proposals concerning the Royersford system in the first base rate case following acquisition. As such, the OSBA has concluded that the settlement is reasonable and in the interests of the Company’s and Royersford’s Small C&I customers.

IV. CONCLUSION

Settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Such costs are borne not only by the Company and the Borough of Royersford, but ultimately by the Company’s and Royersford’s wastewater customers as well. Avoiding

further litigation of this matter will serve judicial efficiency, and will allow the OSBA to more efficiently employ its resources in other areas.

For the reasons set forth in the Settlement, as well as the additional factors enumerated in this statement, the OSBA supports the proposed Settlement and respectfully requests that ALJ Guhl and the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
Forum Place
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Dated: January 29, 2021

Exhibit 5
Statement in Support of
Pennsylvania Public Utility Commission's
Bureau of Investigation and Enforcement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company Pursuant to Sections 507, 1102 and :
1329 of the Public Utility Code for Approval : Docket No.: A-2020-3019634
of its Acquisition of the Wastewater System :
Assets of Royersford Borough :

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

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutors, Erika L. McLain and John M. Coogan, hereby respectfully submit that the terms and conditions of the foregoing Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Pennsylvania-American Water Company (“PAWC”), I&E, the Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), and Royersford Borough (“Royersford”), the parties to the above-captioned proceeding (collectively, the “Joint Petitioners”).¹

I. BACKGROUND

1. PAWC filed its Application on July 14, 2020 pursuant to 66 Pa. C.S. §507, §1102, and §1329. The Application requested that the Pennsylvania Public Utility

¹ As noted in the Joint Petition, the other active party to this case, Robert Redinger, Jr., will have an opportunity to comment on the Settlement after it is submitted to the Administrative Law Judge.

Commission approve the transfer, by sale, of substantially all Royersford Borough's assets, properties and rights related to its wastewater system.

2. On July 21, 2020, I&E filed its Notice of Appearance in this case.

3. On July 29, 2020, the Office of Consumer Advocate ("OCA") filed a Protest and Public Statement and the Office of the Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement.

4. The Commission notified PAWC, by Secretarial Letter on September 11, 2020, that its Amended Application had been conditionally accepted for filing.

5. On October 30, 2020, PAWC served the Commission's Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of September 11, 2020; therefore, PAWC requested that its Application be accepted for filing.

6. By way of a Secretarial Letter of November 9, 2020, the Commission informed PAWC that its Application was accepted for filing.

7. On November 12, 2020, Royersford Borough filed a Petition to Intervene.

8. On November 21, 2020, the Commission published notice of PAWC's Application in the Pennsylvania Bulletin, and it established a protest deadline of December 7, 2020.

9. PAWC's Application was assigned to the Office of Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission's consideration.

10. A Prehearing Conference was held on December 10, 2020 with Administrative Law Judge Marta Guhl (“ALJ Guhl”) presiding. At the hearing ALJ Guhl approved the litigation schedule that was mutually agreed upon by the parties prior to the Prehearing Conference, which provided for the filing of testimony, hearings and briefs as follows:

Other Parties’ Direct Testimony	December 22, 2020
Rebuttal Testimony	January 6, 2021
Surrebuttal Testimony	January 13, 2021
Evidentiary Hearings	January 15 and 19, 2021
Main Briefs	January 29, 2021
Reply Briefs	February 10, 2021

11. After continued negotiations, counsel for the parties were successful in reaching a settlement in this proceeding.

12. On January 14, 2021, counsel for PAWC informed ALJ Guhl of the unanimous settlement and requested that the evidentiary hearings be cancelled and that testimony and exhibits be entered into the evidentiary record via Joint Stipulation of Fact.

13. On January 14, 2021, ALJ Guhl granted the requests and issued an Order cancelling the Evidentiary Hearings.

II. LEGAL STANDARDS

A. Legal Standard for Section 1102 Approval

14. The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interest.² The standards for the

² 66 Pa. C.S. §1103.

issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. A Certificate of Public Convenience shall be granted “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”³ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁴ Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Royersford.⁵ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”⁶ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.⁷

B. Legal Standard for Section 1329 Approval

15. Section 1329 of the Public Utility Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and

³ 66 Pa. C.S. §1103(a).

⁴ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁵ *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmmw. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

⁶ *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmmw. 1984).

⁷ 66 Pa. C.S. §1103(a).

wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility as the lesser of either the purchase price or the fair market value as established by two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”⁸

C. Legal Standard for Section 507 Approval

16. PAWC’s request to assume enumerated municipal contracts currently held by Royersford is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.

III. TERMS AND CONDITIONS OF SETTLEMENT

17. It is the policy of the Commission to encourage settlements.⁹

⁸ 66 Pa. C.S. §1329(d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

⁹ 52 Pa. Code §5.231.

18. For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code.

19. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Petitioners have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJ and the Commission without modification:

A. APPROVAL OF THE APPLICATION (Joint Petition ¶ 20)

Subject to all terms of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa. C.S. 1102(a). PAWC's Application requests permission for it to acquire substantially all of Royersford's assets, properties, and rights related to Royersford's wastewater collection and treatment system and to obtain the Certificates of Public Convenience necessary for it to begin to offer wastewater service to the public in the Service Area. In total, through this acquisition, PAWC is seeking to provide service to Royersford's approximately 1,600 customers.¹⁰ The record supports

¹⁰ PAWC Application, Appendix A-14, St. No. 1, p. 14.

the findings that PAWC is technically, legally, and financially fit to acquire Royersford Borough's wastewater services.

B. TARIFF (Joint Petition ¶ 21)

Pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff supplement, which is attached to the Application as Appendix A-12, as further amended by Amended Appendix A-12, shall be permitted to become effective immediately upon closing of the transaction. The Joint Petitioners support the *pro forma* tariff supplement, under which Royersford's current rates would be initially adopted. Accordingly, the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of PAWC's wastewater service, and this full and accurate disclosure of rates is in the public interest.

C. FAIR MARKET VALUE FOR RATEMAKING RATE BASE PURPOSES (Joint Petition ¶ 22)

PAWC requested that the ratemaking rate base value of Royersford's assets be established at \$13 million.¹¹ The \$13 million figure represented the negotiated purchase price between PAWC and Royersford.¹² As part of the Settlement, the Joint Petitioners agreed¹³ that PAWC will be permitted to use \$13 million for ratemaking rate base purposes for the acquired assets. I&E does not oppose PAWC's request as it did not address PAWC's requested ratemaking rate base in its case.

¹¹ PAWC Application, Appendix A-14, St. No. 1, p. 11.

¹² PAWC Application, Appendix A-14, St. No. 1, p. 8.

¹³ It should be noted that the OCA did not join in this paragraph but did not oppose PAWC's request.

D. FAIR MARKET VALUATION METHODOLOGY (Joint Petition ¶ 23)

PAWC witness Jerome Weinert used a market approach analysis inconsistent with his market approach analyses in previous § 1329 proceedings.¹⁴ When questioned by I&E, PAWC witness Weinert did not provide any rationale for this variation.¹⁵ Therefore, to avoid inconsistent application of methods causing a higher ratemaking rate base, I&E recommended AUS use a consistent method going forward to determine its market approach analysis conclusion.

PAWC witness Weinert did not explicitly agree to I&E's recommendation, but indicated that the market analysis methodology used in this proceeding (i.e., purchase price to replacement cost new less depreciation) has become mature enough to place reliance on it.¹⁶ With this settlement term, PAWC agrees it will not support the portion of an AUS Consultants' appraisal that does not use a consistent method to determine a conclusion under the market approach analysis, unless otherwise directed by the Commission. I&E supports this settlement term because it reflects I&E's position and asserts it serves the public interest by ensuring a consistent application of methodology in future cases filed by PAWC.

E. RATES (Joint Petition ¶¶ 24-26)

Pursuant to the Settlement, at the time of its next base rate case, PAWC has agreed to submit a cost of service study that removes all costs and revenues associated with the operation of the Royersford System. PAWC also agrees to provide a separate cost of

¹⁴ I&E St. No. 1, pp. 4-7.

¹⁵ I&E Ex. No. 1, Sch. 1, pp. 4-5.

¹⁶ PAWC St. No. 4-R, p. 30.

service study for the Royersford System at the time of the filing of PAWC's next base rate case. I&E fully supports this term which is consistent with its recommendation in this proceeding.

I&E avers that PAWC's commitment to providing the requested cost of service study is in the public interest. The cost of service study will protect PAWC, its customers, the parties to this proceeding, and the Commission. Specifically, the results of the cost of service study PAWC committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit PAWC's ratepayers as well, because if PAWC's Application is approved, PAWC's existing customers will bear the rate impact. In this case, the cost of service study for the Royersford System would help the Commission determine Royersford's revenue requirement to provide service to its different customer classes, and extend rate making options that may not exist without such a study. Absent the cost of service study, the Commission's ability to evaluate any cost spreading from the perspective of cost causation would be compromised, but pursuant to the Settlement, the study will be available to preserve future ratemaking options.

The Settlement also provides that PAWC will propose to move Royersford wastewater rates to Royersford's cost of service in the first base rate case that includes Royersford wastewater system assets unless such increase is more than 1.7 times current rates and provided that PAWC will not be obligated to propose Royersford wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. This term is in the public interest because a goal of ratemaking is to charge customers rates equal to the

cost to serve those customers. Here, PAWC is proposing to move Royersford customers' rates to Royersford's cost of service but will not increase Royersford's rates more than 1.7 times the current rates which insulates those customers from rate shock. Furthermore, it preserves the rights of I&E, OCA and OSBA to address PAWC's rate proposals fully, and to make other rate proposals.

**F. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (Joint
Petition ¶ 27)**

The Joint Petitioners have agreed that consistent with Section 1329, PAWC shall be permitted to collect a distribution system improvement charge ("DSIC") prior to the first base rate case in which the Royersford assets are incorporated into rate base, subject to certain conditions. These conditions include: (1) PAWC's filing of amended long term infrastructure improvement plan ("LTIIP") to include the Royersford System and (2) PAWC not reprioritizing other existing capital improvements already committed to undertake in other service areas.

I&E took no position regarding PAWC's request for approval to collect a DSIC as permitted under Section 1329, as this request appeared to simply memorialize PAWC's intention to employ certain provisions of Section 1329. However, I&E reserves the right to address these issues in future proceedings, when additional information and facts are available and when these issues are ripe for review. While I&E still reserves its rights, I&E nevertheless opines that this term serves the public interest because PAWC has agreed that existing commitments will not be reprioritized as a result of this term. With this in mind, Royersford's customers will benefit from improved wastewater infrastructure, promoting safer and more reliable service. At the same time, the

improvements already identified and planned for existing PAWC ratepayer will not be jeopardized by PAWC's commitment to Royersford. Therefore, I&E opines that this term is in the public interest.

G. ACCRUAL OF ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION AND DEFERRED DEPRECIATION (Joint Petition ¶ 28)

Through the Settlement, the Joint Petitioners acknowledge that PAWC's Application includes a request to (i) accrue allowance for funds used during construction ("AFUDC") for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Although the Joint Petitioners agree that they will not contest this request in this proceeding, they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it enables PAWC to memorialize its intent to employ certain provisions of Section 1329, it also empowers parties to review PAWC's proposal in a future base rate case. Preserving the ability to litigate the proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

H. TRANSACTION AND CLOSING COSTS (Joint Petition ¶¶ 29-30)

Joint Petitioners acknowledge that PAWC's Application includes a request to claim transaction and closing costs associated with the Transaction. Although the Joint

Petitioners agree that they will not contest this request in this proceeding, they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it enables PAWC to memorialize its intent to employ certain provisions of Section 1329, it also empowers parties to review PAWC's proposal in a future base rate case. Preserving the ability to litigate the proposal to defer depreciation for post-acquisition improvements protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

I. LOW INCOME PROGRAM OUTREACH (Joint Petition ¶ 31)

Pursuant to the Settlement, PAWC has agreed that within the first billing cycle following closing, it will include a bill insert to Royersford's customers regarding its low-income programs and include such information in a welcome letter to Royersford's customers. These materials will include a description of the available low-income programs, the eligibility requirements for participation in the programs, and PAWC's contact information.

Although I&E did not take a position on this issue during this proceeding, I&E nonetheless supports this term. Ensuring that low-income customers are aware of available opportunities for financial assistance is in the public interest because it will better facilitate these customers' access to wastewater service. Increasing access to

wastewater service is consistent with the Code's policy to ensure that service remains available to all customers on reasonable terms and conditions.¹⁷

J. APPROVAL OF SECTION 507 AGREEMENTS (Joint Petition ¶ 32)

Pursuant to the Settlement, the Joint Petitioners agree that the Commission should issue Certificates of filing or approvals for the underlying Asset Purchase Agreement, i.e., the enumerated municipal agreements appearing in Paragraph 32 of the Settlement. For the reasons stated herein, I&E avers this transaction satisfies the conditions of Sections 1102 and 1329, and therefore I&E recommends that the Commission approve all the enumerated contracts under Section 507 of the Code.

IV. CONCLUSION

20. Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

21. 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 if the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding.

22. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions

¹⁷ 66 Pa. C.S. §1402(3).

of the Settlement, or any additional matters, that may be proposed by the ALJ in her Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the instant Settlement as being in the public interest and respectfully requests that Administrative Law Judge Marta Guhl and that the Commission approve the terms and conditions contained in the foregoing Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



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