

**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. : A-2020-3019634
C.S. § 1329, for the Acquisition of Royersford :
Borough’s Wastewater System Assets :

RECOMMENDED DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

In this application, which seeks approval from the Commission for the acquisition of a municipal wastewater system and approval of a ratemaking rate base, the parties have reached a full settlement of their dispute. The settlement permits the Pennsylvania-American Water Company-Wastewater Division to acquire substantially all of the assets of the Royersford Borough wastewater system and to establish a ratemaking rate base of \$13 million. This decision recommends that the Commission approve the settlement without modification because the settlement complies with the Pennsylvania Public Utility Code, is supported by substantial evidence and is in the public interest. The statutory deadline is May 9, 2021. The Commission’s last Public Meeting before the end of the six-month statutory deadline is May 6, 2021.

HISTORY OF THE PROCEEDING

On July 14, 2020, Pennsylvania-American Water Company – Wastewater Division (PAWC-WD), under Sections 1102 and 1329 of the Pennsylvania Public Utility Code

(the Code), 66 Pa C.S. §§ 1102(a) and 1329, filed an application for approval of: (1) the transfer, by sale, of substantially all of the wastewater system assets, properties and rights of Royersford Borough related to its wastewater collection and treatment system; (2) the right of PAWC-WD to begin to offer or furnish wastewater service to the public in Royersford Borough and portions of Upper Providence Township, Montgomery County, Pennsylvania; and (3) for approval of the use for ratemaking purposes of the lesser fair market value or the negotiated purchase price of the Royersford Borough assets related to its wastewater collection and treatment system.

On July 21, 2020, the Bureau of Investigation and Enforcement (I&E) entered the appearance of Erica McLain, Esquire.¹

On July 29, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and entered the appearance of Sharon Webb, Esquire.

On July 29, 2020, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement. It also entered the appearances of Christine Hoover, Esquire; Erin Gannon, Esquire; Harrison Breitman, Esquire and Santo Spataro, Esquire on its behalf.

On November 3, 2020, a Prehearing Conference Notice was sent to the parties scheduling a telephonic prehearing conference on December 10, 2020, and the matter was assigned to Administrative Law Judge Marta Guhl. A Prehearing Conference Order dated November 4, 2020 set forth the procedures that would be applicable for the prehearing conference.

On November 9, 2020, via Secretarial letter, the Commission accepted the Application as complete. Notice of the Application was published in the November 21, 2020 *Pennsylvania Bulletin* and advised that any protests and petitions to intervene must be filed by December 7, 2020. 50 Pa.B. 6761 (Nov. 21, 2020).

¹ On August 11, 2020, John Coogan, Esquire, also entered his appearance on behalf of I&E.

On November 12, 2020, the Borough of Royersford, through its attorneys, filed a Petition to Intervene in this matter.

On November 19, 2020, Robert Redinger, Jr. filed a Protest in this case.

On December 8, 2020, PAWC, I&E, OCA, OSBA and Royersford filed Prehearing Conference Memorandum in accordance with the November 4, 2020 Prehearing Conference Order.

Also, on December 8, 2020, PAWC filed a Petition for Protective Order which was granted by Order dated December 15, 2020.

A prehearing conference was held on December 10, 2020. Counsel for PAWC, I&E, OCA, OSBA, and Royersford participated.

The procedural schedule discussed at the Prehearing Conference on December 10, 2020, was memorialized in Prehearing Order #1 dated December 16, 2020.

On January 7, 2021, one public input hearing was held telephonically. One person presented an on-the-record statement.

On January 14, 2021, the parties informed me via email that they had reached a settlement in principle on all issues in the case. The parties requested that the evidentiary hearings be cancelled and the procedural schedule be suspended.

On January 15, 2021, I issued an Order suspending the litigation schedule and directing that settlement documents be submitted no later than January 29, 2021.

On January 29, 2021, a “Joint Petition for Approval of Settlement of All Issues” (Joint Petition or Settlement), along with Statements in Support from PAWC, OCA, I&E, OSBA

and Royersford, were filed.² On the same date, the parties also filed a Joint Stipulation for the Admission of Evidence.

On February 1, 2021, I sent a letter to Protestant Mr. Redinger regarding the Settlement and indicated that he would need to provide any comments about the Settlement by February 8, 2021. As of the date of this Recommended Decision, Mr. Redinger has not submitted any comments.

On February 5, 2021, I issued an Order granting the Joint Stipulation for the Admission of Evidence. The record closed on February 10, 2021, when responses to Mr. Redinger's comments were due.

FINDINGS OF FACT

A. Parties

1. 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. PAWC St. No. 1 p. 13.

2. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties. PAWC St. No. 1 p. 13.

3. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. No. 1 p. 13.

4. As of May 20, 2020, PAWC furnished wastewater services to approximately 74,754 customers, and furnished water services to approximately 668,658 customers, in Pennsylvania. PAWC St. No. 1 p. 14.

² Mr. Redinger was also served a copy of the Joint Petition for Settlement on January 29, 2021.

5. 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.

6. The System is a wastewater collection and treatment system. PAWC St. No. 2 p. 2.

7. The System is not a combined sewer system, nor is it a municipal separate storm sewer system (MS4 System). PAWC St. No. 2 p. 4.

8. 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.

9. The System also provided service to customers in Limerick Township via a bulk service interconnection located in Royersford. PAWC St. No. 2 p. 3.

10. 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.

11. 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.

12. 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. Asset Purchase Agreement

13. 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.

14. 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.

15. 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**).

C. Rates

16. 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.

17. 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.

18. The current average Royersford rate is \$30.00 per month based on 3,630 gallons of monthly usage. Settlement ¶ 25c.

19. 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.

20. 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.

21. Royersford is not included in PAWC's most recent base rate case. PAWC St. No. 3 p. 16.

22. At this time, it is unclear when PAWC will file its first base rate base in which Royersford will be included.

23. 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 PAWC will not be obligated to propose Royersford wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. Settlement ¶ 25c.

24. 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.

25. 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.

D. Rate Base

26. 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.

27. OCA challenged, and proposed adjustments to, the appraisals of AUS and Gannett Fleming in this proceeding.

28. 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.

29. 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

E. Rate Stabilization

30. 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.

F. Distribution System Improvement Charge, Long-Term Infrastructure Improvement Plan, Allowance for Funds Used During Construction, and Closing Costs

31. 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.

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

32. 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 (LTIP) for wastewater. Settlement ¶ 27.

33. PAWC's modified LTIP for wastewater will not reprioritize other existing capital improvements that PAWC has already committed to undertake in other service areas. Settlement ¶ 27.

34. 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.

35. 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.

36. 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.

37. 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.

G. Fitness

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. PAWC is currently the water provider within Royersford and Upper Providence Township. PAWC St. No. 2 p. 6.

47. 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.

48. 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.

49. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 p. 18.

50. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to Royersford customers. PAWC St. No. 1 p. 18.

51. 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

52. 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.

53. 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.

54. 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.

55. Since January 2019, Royersford has had nine exceedances to its National Pollutant Discharge Elimination System (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.

56. 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. Royersford St. No. 1 pp. 3-4 and 9-12; PAWC St. No. 1 p. 17.

57. The Transaction will also increase Royersford's tax base. Royersford St. No. 1 pp. 3-4 and 9-12; PAWC St. No. 1 p. 17.

58. 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.

59. 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.

60. 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.

61. At this time, PAWC expects to spend more than \$3.6 million in capital improvements during that period. PAWC Exhibit MJG-1.

62. 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.

63. Royersford's current customers also will benefit from PAWC's enhanced and proven customer service. PAWC St. No. 1 p. 16; PAWC St. No. 2 pp. 14-17; PAWC St. No. 1-R p. 8.

64. 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. PAWC St. No. 1 p. 16; PAWC St. No. 2 pp. 14-17; PAWC St. No. 1-R p. 8.

65. Access to PAWC's customer assistance programs is 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.

66. The Settlement, ¶ 31, requires PAWC to reach out to Royersford's existing customers to provide information about PAWC's low-income programs.

67. 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.

68. The Settlement also provides that PAWC will provide combined bills for Royersford wastewater customers who are also PAWC water customers. Settlement ¶ 26.

69. 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.

70. 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%). PAWC St. No. 1 p. 17; PAWC St. No. 1-R p. 16.

71. By adding additional connections to the entire PAWC system, there will be more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. PAWC St. No. 1 p. 17; PAWC St. No. 1-R p. 16.

72. 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. PAWC St. No. 1 p. 17; PAWC St. No. 1-R p. 16.

73. 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.

74. The Transaction will not result in unnecessary duplication of operations or facilities following closing. PAWC St. No. 2 p. 7.

75. 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. PAWC St. No. 1-R p. 5.

76. 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.

77. 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. PAWC St. No. 1-R p. 6.

78. 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. Customer Notice

79. PAWC provided a non-binding estimate of possible rate impacts for existing customers and Royersford customers. PAWC Exhibit MS-1 Appendix A-18-d.

80. 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.

81. Any rate impacts of the acquisition will be determined by the Commission in future base rate proceedings. PAWC St. No. 3 p. 13.

J. Section 507 Certificates of Filing

82. 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**).

83. No party presented evidence in opposition to the issuance of the requested certificates.

DESCRIPTION OF THE SETTLEMENT

The Joint Petition includes the terms and conditions of the Settlement relating to the agreed upon fair market value for ratemaking purposes, the rate treatment of the acquired system, cost of service study, distribution system improvement charge (DSIC), long term infrastructure improvement plan (LTIP), allowance for funds used during construction, deferral of depreciation and transaction costs and other rate-related issues and the agreements necessary to effectuate the Transaction. The Joint Petition includes Exhibits 1–5:

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 Bureau of Investigation and Enforcement

TERMS OF THE SETTLEMENT

The terms of the proposed Settlement are set forth below verbatim⁴. The Terms and Conditions of the Settlement can be found in Paragraph Nos. 20-38 of the Joint Petition. *See* Joint Petition, p. 4-9. The Settlement petition also includes the usual “additional terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future cases by any position taken in this Settlement. The Joint Petitioners also agreed to waive exceptions if the Settlement is approved without modification.⁵ These additional terms and conditions will not be repeated here verbatim.

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 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.

⁴ For ease of reference, paragraph numbers and subheadings are set forth as they appear in the Settlement.

⁵ Joint Petition, p. 9, ¶¶ 34-38.

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.⁶

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:

- 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

⁶ OCA does not join in this paragraph but does not oppose PAWC's request.

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 ("LTIP") 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 LTIP, 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.

F. 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.

G. 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.

H. 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.⁷

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.

PUBLIC INPUT HEARING

At the time of the prehearing conference, there was one customer protest that had been filed. However, there were multiple letters in opposition filed with the Secretary’s Bureau and the OCA indicating that there was public interest in the case. Based on the above, I determined there was sufficient public interest in PAWC’s Application to acquire the Royersford Borough wastewater system. Accordingly, one public input hearing was held telephonically during which one person offered testimony⁸:

<u>Date/Time</u>	<u>Witnesses Testifying</u>
<u>Thursday, January 7, 2021</u> <i>6:00 p.m.</i>	1

The Honorable Katie Muth testified on behalf of her constituents in Senatorial District No. 44 of the General Assembly of Pennsylvania. Senator Muth testified that she has some concerns regarding the acquisition of Royersford Borough’s wastewater assets by PAWC. Senator Muth stated that she is concerned that once the rate freeze ends, wastewater rate increases might cause a financial burden on the constituents living on fixed incomes. Senator Muth testified that she is concerned that residents of Royersford would not have any say about any potential future rate increase sought by the Company. Senator Muth inquired as to whether

⁷ OCA does not join in this paragraph but does not oppose PAWC’s request.

⁸ One party presented an off-the-record statement at the public input hearing.

there was any way to cap any potential rate increase from the Company after the rate freeze. Senator Muth was concerned with rate shock for residents of Royersford. Senator Muth indicated that she hopes that the Borough would use the money from the sale to pay for plans that have been discussed. Senator Muth testified that it would be helpful to have a multiple-year rate chart to show to constituents so they can budget for future rate increases.⁹

LEGAL STANDARDS

In this case, the Applicant requests approval of: (1) the acquisition, by PAWC, of the wastewater system assets of Royersford Borough; and (2) an order approving the acquisition that includes the ratemaking rate base of the Royersford Borough wastewater system assets pursuant to Section 1329(c)(2) of the Code.¹⁰ Accordingly, PAWC has the burden of proof.¹¹

The acquisition of the Royersford Borough facilities by PAWC requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.¹² Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.¹³ That is, PAWC must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”¹⁴ To determine that the acquisition or merger is in the public interest, our Supreme Court has explained:

[T]he Commission is not required to secure legally binding commitments or to quantify benefits where this may be

⁹ Tr. 61-66.

¹⁰ 66 Pa.C.S. § 1329(c)(2).

¹¹ 66 Pa.C.S. § 332.

¹² 66 Pa.C.S. § 1102(a)(3).

¹³ 66 Pa.C.S. § 1103(a).

¹⁴ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.^[15]

Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission, nevertheless, has discretion to impose conditions which it deems to be just and reasonable. In an acquisition context, when the Commission considers the public interest it is contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision.¹⁶

Additionally, pursuant to Section 1103 of the Code, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Royersford Borough.¹⁷ As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness.^{18, 19}

Section 1329 sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. Section 1329 addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge (DSIC). Section 1329 also enables a public

¹⁵ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*); also see, 66 Pa.C.S. §1103(a).

¹⁶ *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa.Cmwlt. 1984).

¹⁷ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762, 764 (Pa.Cmwlt. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa.Super. 1958).

¹⁸ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa.Cmwlt. 1992).

¹⁹ 66 Pa.C.S. § 1329.

utility or other acquiring entity's post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an "acquiring public utility" and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa.C.S. § 1329(d)(1). For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.

PAWC also seeks approval of an asset purchase agreement (APA) and other connected agreements pursuant to Section 507 of the Public Utility Code.²⁰ Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission

²⁰ 66 Pa.C.S. § 507.

grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

The Commission encourages parties in contested on-the-record proceedings to settle cases.²¹ Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.²²

DISCUSSION

In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves all of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

After a full consideration of the terms of the Settlement and the statements in support, it is recommended that the Commission adopt the proposed Settlement without modification. Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners' statements in support did not address each and every aspect of the Settlement.

²¹ See 52 Pa.Code § 5.231.

²² *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). See also *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

A. Sections 1102 and 1103 Approvals

1. Fitness

Even before the Joint Petitioners reached a settlement on this Application, no party disputed PAWC's technical, legal and financial fitness to render wastewater service. Indeed, as a certificated public utility, it enjoys a presumption of fitness.²³ I&E, OSBA and OCA did not put forth any arguments that PAWC did not meet the fitness requirements under Sections 1102 and 1103 of the Public Utility Code. The findings of fact support this conclusion.

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 AWCC; and (iii) long term debt financing at favorable rates from AWCC, PENNVEST and 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.

Further, 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

²³ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992). 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. PUC 138 (1975). No party has contested the need for wastewater service in the Royersford Borough and portions of Upper Providence Township.

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.

Moreover, PAWC has the technical fitness in this instance. It 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.

Lastly, PAWC has the legal fitness required by the Public Utility Code. 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.

2. Affirmative Public Benefits

The Joint Petitioners have agreed that it is appropriate for the Commission to grant PAWC a certificate of public convenience to acquire the assets of Royersford Borough and to begin to render public utility service to its customers. OSBA, OCA and I&E did not discuss the issue in their Statements in Support.

PAWC argues that 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. PAWC notes that 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. (PAWC Statement in Support at 21).

PAWC also contends that the transaction benefits the public-at-large due to its environmental benefits. PAWC introduced evidence of nine NPDES permit exceedances at the Royersford Borough 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. PAWC also notes that it will provide 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. (PAWC Statement in Support at 21).

PAWC contends that the record evidence in this proceeding demonstrates that it is better able to make the necessary improvements to the System to protect Pennsylvania's water and environment. PAWC maintains that it has access to lines of credit and equity markets that

are unavailable to Royersford. PAWC St. No. 3 pp. 4-5. PAWC asserts it 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. PAWC argues that there is an over-arching public interest (*i.e.*, “for the benefit of all the people”) in correcting the Borough’s system environmental deficiencies as promptly and efficiently as possible. PAWC also argues that approval of the transaction would be consistent with the Commission’s obligation under the Environmental Rights Amendment.²⁴ (Royersford Statement in Support at 22).

PAWC argues that the transaction will improve Royersford’s financial condition and outlook by increasing its reserve fund balance, allowing Royersford to mitigate 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, PAWC asserts that Royersford will be able to reallocate its administrative time to focus on other key initiatives. *Id.* (PAWC Statement in Support at 22-23).

PAWC maintains that 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.

²⁴ “[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 (Pa. 2017) (*citing Robinson Twp. v. Cmwlth. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

- 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.

(PAWC Statement in Support at 23).

Further, PAWC argues that 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. (PAWC Statement in Support at 23).

PAWC maintains that the transaction benefits its existing wastewater customers in the same way that it benefits all other members of the public-at-large. In addition, PAWC notes that the transaction has specific benefits for the Company'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.

(PAWC Statement in Support at 23).

Finally, PAWC argues that the transaction benefits its 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." (PAWC Statement in Support at 23-24).

Royersford argues that PAWC will not just be able to take over operations of the Borough's system, but that PAWC also 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. Royersford notes that 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.* (Royersford Statement in Support at 4).

Royersford also argues that its customers will benefit greatly from PAWC's technical experience and fitness in deploying resources towards capital improvements. 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. Royersford maintains that customers will benefit from PAWC's administration of these improvements. (Royersford Statement in Support at 4).

The Borough also contends that its 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. The Borough also notes that its 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. Royersford states that its customers will have access to its customer assistance program "H2O Help to Others Program," which offers grants up to \$500 per year and a 15% discount on total wastewater charges. *Id.*, p. 15. The Borough notes that 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. (Royersford Statement in Support at 5).

Royersford also maintains that the transaction will greatly improve the Borough's financial condition by providing the Borough with a significantly increased reserve fund balance. Royersford asserts that 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). Royersford Statement No. 1, p. 10. 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, the Borough notes that 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. (Royersford Statement in Support at 5-6).

B. Section 1329 Approvals

1. Ratemaking Rate Base, Fair Market Value

Section 1329 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. 66 Pa.C.S. § 1329(c)(2). Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).”

In the Settlement, PAWC notes that 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.²⁵ Settlement ¶ 22. PAWC indicates that through discovery and the development of the evidentiary record, the Joint Petitioners fully evaluated whether the UVEs abused their discretion under the Uniform Standards of Professional Appraisal Practice (USPAP), relied on inaccurate facts, or committed errors of law. PAWC maintains that 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. (PAWC Statement in Support at 25).

²⁵ OCA did not join this paragraph of the Settlement but does not oppose it.

PAWC notes that 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), *app. den.*, 207 A.3d 290 (Pa. 2019) (*New Garden*). PAWC asserts that 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. PAWC also argues that the Application should not be disapproved based on speculation about future impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated through record evidence. (PAWC Statement in Support at 25-26).

Furthermore, PAWC maintains that approving the Settlement is in the public interest because the Settlement furthers the legislative intent behind Section 1329. PAWC argues that the Settlement allows a municipality to monetize an asset for fair market value. PAWC also contends that by establishing a rate base for the System that is greater than what would have been allowed using traditional ratemaking principles, the Company is willing to enter into the Transaction. PAWC claims that Section 1329 would be ineffective if a willing seller would be unable to find a willing buyer. PAWC states that the Settlement allows the parties to the Application to obtain the necessary Commission approval in a timely manner while protecting the existing customers of the acquiring public utility. (PAWC Statement in Support at 25-26).

Royersford argues that PAWC and it negotiated a purchase price of \$13,000,000 for the wastewater system, which was the result of voluntary arm's length negotiations. Royersford notes that it engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett) to provide a fair market value appraisal in accordance with the USPAP, utilizing the cost, market and income approaches. Royersford Statement No. 2, p. 3. PAWC engaged AUS Consultants, Inc.- (AUS) for the same purpose. PAWC Statement No. 4, p. 1. (Royersford Statement in Support at 9).

Royersford states that 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.* (Royersford Statement in Support at 9).

Royersford notes that 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. Settlement ¶ 22. (Royersford Statement in Support at 9).

In furtherance of settlement, OCA did not join in this provision but did not oppose PAWC's request. (OCA Statement in Support at 3).

I&E argues that PAWC witness Jerome Weinert used a market approach analysis inconsistent with his market approach analyses in previous § 1329 proceedings.²⁶ When questioned by I&E, PAWC witness Weinert did not provide any rationale for this variation.²⁷ 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. (I&E Statement of Support at 9).

I&E notes that PAWC witness Weinert did not explicitly agree to I&E's recommendation, he 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.²⁸ 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

²⁶ I&E St. No. 1, pp. 4-7.

²⁷ I&E Ex. No. 1, Sch. 1, pp. 4-5.

²⁸ PAWC St. No. 4-R, p. 30.

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. (I&E Statement in Support at 9).

2. Cost of Service Study

OCA argues that it 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. OCA contends that these studies will provide information to establish rates that reflect the costs for the Royersford system. (OCA Statement in Support at 3).

OCA maintains that the Settlement adopts the OCA's recommendation and 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, OCA notes that Paragraph 25(b) of the Settlement provides that the Company will also provide a separate cost of service study for the Royersford system. OCA asserts that Paragraph 25(c) of the Settlement 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, which 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 system-average rates.²⁹ (OCA Statement in Support at 3-4).

OCA argues that it 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. OCA contends the length of time that existing PAWC wastewater and water customers

²⁹ 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.

subsidize the shortfall is a concern. However, OCA asserts that 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. (OCA Statement in Support at 4).

OCA states that 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. OCA indicates that this will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the Royersford's service area. (OCA Statement in Support at 4-5).

In the interest of resolving this case and based on the unique circumstances of this case, PAWC notes that it 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. (PAWC Statement in Support at 24).

3. Rates

PAWC notes that the Settlement would ensure that it will charge rates after closing that are equal to Royersford's existing rates. PAWC states that the Settlement requires it, 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. Specifically, PAWC indicates that 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.* PAWC asserts that 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. (PAWC Statement in Support at 26).

PAWC indicates that the Settlement permits the Company to propose a different effective date for increased rates to Royersford than to other customers, so that it may comply with the APA provision prohibiting rate increases in Royersford until two years after the date of closing. However, PAWC states that 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. (PAWC Statement in Support at 26-27).

OSBA initially identified the issue of whether the APA impermissibly freezes rates for Royersford wastewater customers to the detriment of PAWC's existing customers. OSBA notes that it submitted testimony focusing on this issue, and spent extensive time in settlement discussions attempting to resolve this issue. OSBA does not oppose the terms in the Settlement related to Royersford Rates (*See* Section D Paragraph 25 (a) through (f)) as it 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, OSBA argues that the settlement is reasonable and in the interests of the Company's and Royersford's Small Commercial and Industrial customers. (OSBA Statement in Support at 3).

I&E avers that PAWC's commitment to providing the requested cost of service study is in the public interest. I&E maintains that the cost of service study will protect PAWC, its customers, the parties to this proceeding, and the Commission. I&E argues that 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. I&E states that 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. I&E indicates that 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. (I&E Statement in Support at 10).

Further, I&E contends that 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. I&E maintains that 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. I&E asserts that PAWC's commitment to not increase Royersford's rates more than 1.7 times the current rates insulates those customers from rate shock. Furthermore, I&E argues that the term preserves the rights of the other parties to address PAWC's rate proposals fully, and to make other rate proposals. (I&E Statement in Support at 10-11).

4. Distribution System Improvement Charge

Section 1329(d)(4) of the Code permits an acquiring public utility to collect a distribution system improvement charge (DSIC) from the date of closing on the transaction until new rates are approved in the utility's next base rate case. To qualify for DSIC recovery, a utility must submit a long-term infrastructure improvement plan (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 LTIP 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. (PAWC Statement in Support at 27-28).

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 argues that this term serves the public interest because PAWC has agreed that existing commitments will not be reprioritized as a result of this term. I&E asserts that Royersford's customers will benefit from improved wastewater infrastructure, promoting safer and more reliable service. I&E indicates that the improvements already identified and planned for existing PAWC ratepayer will not be jeopardized by PAWC's commitment to Royersford. (I&E Statement in Support at 11-12).

OCA maintains that 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. OCA notes that Paragraph 27 of the Settlement states that PAWC will revise its LTIP 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. OCA argues that this provision addresses the concern raised by it 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. Moreover, OCA states that this settlement term also allows for Royersford customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects. (OCA Statement in Support at 5).

5. Allowance for Funds Used During Construction, Deferral of Depreciation and Transaction Costs

Section 1329(f)(1) of the Code permits an acquiring public utility to accrue an allowance for funds used during construction (AFUDC) on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following events: the asset has been in service for a period of four years, or the asset is included in the acquiring utility's next base rate case. 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. 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.

PAWC notes that in the Application ¶ 2, it requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 5. PAWC also requests permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 pp. 4-5. PAWC notes that 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. PAWC states that the Settlement is in the public interest because it makes clear that the other Joint Petitioners do not oppose these requests and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶¶ 28-29. (PAWC Statement in Support at 28-29).

Although the Joint Petitioners agree that they will not contest these requests in this proceeding, I&E notes that they reserve their rights to litigate their positions fully in future rate cases. I&E endorses these terms 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. (I&E Statement in Support at 12-13).

OCA notes that its 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. OCA indicates that its assent to Paragraph 28 should not be construed to operate as preapproval of PAWC's future

requests. OCA argues that Paragraphs 28 and 29 of the Settlement preserve all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims. OCA also asserts that Paragraph 30 reflects PAWC's agreement to separately identify any outside legal fees included in its transaction and closing costs pursuant to the APA between PAWC and Royersford and specify amounts expended by PAWC on behalf of the Borough. (OCA Statement in Support at 6).

6. Low Income Customer Outreach

OCA notes that PAWC has agreed to provide information about its 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. OCA states that the information will describe the available programs, eligibility requirements and contact information for PAWC. OCA also notes that PAWC agreed to ongoing-targeted outreach to its Royersford-area customers regarding its low income program. OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Royersford customers. (OCA Statement in Support at 5).

Although I&E did not take a position on this issue during this proceeding, I&E also supports this term. I&E contends that 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. I&E states that 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. (I&E Statement in Support at 13-14).

RECOMMENDATION

Viewed in totality, the Settlement represents a fair compromise of competing views and interests and should be approved without modification. The modifications to the Transaction permitting the acquisition of the Royersford Borough wastewater system by PAWC, as agreed upon in the Settlement, are provisions which adequately protect the competing

interests of PAWC's existing customers and stockholders, the customers in the Royersford Borough service area and the general public. The agreed upon ratemaking rate base value is within the range of proposals made by the parties during the litigation and is consistent with the mandates of Section 1329. Importantly, the rate treatment of Royersford Borough wastewater system and its customers and existing PAWC customers as well as the cost of service studies are critical to protecting PAWC's existing customers from potential cross-subsidization or other negative rate impacts. The Settlement addresses some of the concerns indicated at the public input hearing. The Settlement provides that there will be a cap on the potential rates when PAWC files its next base rate case for current Royersford system customers. Further, the Settlement mandates that PAWC will reach out to low-income customers served by the Royersford system. It should also be noted that Royersford system customers will have the opportunity to file complaints and testify at public input hearings, when PAWC does file its next base rate case. Finally, acceptance of the Settlement will negate the need for further litigation, including possible appeals. The avoidance of further rate case expense serves the interests of PAWC, the parties, and PAWC's customers.

After considering the Joint Petition for Complete Settlement, including the various agreements described above and the savings achieved by not litigating the case fully, it is my opinion that the settlement is fair, just, reasonable and in the public interest. I wish to commend the parties. The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. It shows the diligence and good faith effort every party expended to arrive at a reasonable, workable arrangement. The fact that the Settlement agreement is unopposed is further evidence of its reasonableness. For these reasons, and the reasons discussed above, it is recommended that the Joint Petition for Complete Settlement be approved without modification by the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa.C.S. §§ 1102, 1103, 1329.

2. Pennsylvania-American Water Company has the burden of proof in this proceeding. 66 Pa.C.S § 332(a).

3. Commission policy promotes settlement. 52 Pa.Code § 5.231.

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

5. 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 Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

6. 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) (“Procedure to obtain certificates of public convenience”).

7. 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).

8. 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).

9. An applicant for a certificate of public convenience 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 Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n, 138 A.2d 240, 243 (Pa.Super. 1958).

10. The fitness of a currently certificated public utility is presumed. *See e.g.*,
South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992).

11. 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).

12. 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).

13. For an acquisition in which a municipal authority and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa.C.S. § 1329, the ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the parties or the fair market value of the selling utility. 66 Pa.C.S. § 1329(c)(2).

14. “Fair market value” is defined as “the average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa.C.S. § 1329(g).

15. For an acquisition in which a municipal authority and the acquiring public utility agree to use the valuation procedure delineated 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).

16. During the period that the *pro forma* tariff supplement is in effect, an acquiring public utility may collect a distribution system improvement charge, as approved by the Commission. 66 Pa.C.S. § 1329(d)(4).

17. A wastewater utility must submit a long-term infrastructure improvement plan to, and receive approval from, the Commission prior to collecting a distribution system improvement charge. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012).

18. 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).

19. 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).

20. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa.C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

21. A contract between a municipality and a public utility (other than a contract to furnish service at regular tariff 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 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.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Settlement of All Issues filed on January 29, 2021, by Pennsylvania-American Water Company, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, the Office of Small Business Advocate and Royersford Borough, at Docket No. A-2020-3019634, including all terms and conditions thereof, be approved without modification.

2. That the Application filed by Pennsylvania-American Water Company on July 20, 2020 be granted, subject to the following conditions, which are consistent with the Joint Petition for Approval of Settlement:
 - a. That, in the first base rate case in which PAWC includes the Borough's assets in rate base, PAWC will provide a separate cost of service study for the Royersford Borough system.
 - b. PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of Royersford's system.
 - c. PAWC will provide combined bills for Royersford wastewater customers who are also PAWC water customers.
 - d. 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.
 - e. 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.

3. That the Secretary's Bureau shall issue Certificates of Public Convenience under Sections 1102(a)(1) and 1102(a)(3) authorizing: (a) the transfer, by sale, of substantially all of the wastewater system assets of Royersford Borough situated Montgomery County, Pennsylvania to Pennsylvania-American Water Company; (b) Pennsylvania-American Water Company's right of to begin to offer, render, furnish and supply wastewater service to the public in Royersford Borough and portions of Upper Providence Township, Montgomery County, Pennsylvania consistent with the Application's Appendix A-16-c and Appendix A-16-d-e.

4. That within ten (10) days after closing of the acquisition, Pennsylvania-American Water Company shall file a tariff supplement in the form attached to the Application as Appendix A-12, as further amended by Amended Appendix A-12, implementing rates for Royersford Borough customers post-closing, to be effective upon at least one day's notice.

5. That pursuant to 66 Pa.C.S. § 1329(c), the Commission approve a rate base addition of \$13,000,000 associated with Pennsylvania-American Water Company's acquisition of the Royersford Borough wastewater system.

6. That Pennsylvania-American Water Company may apply the distribution system improvement charge to customers in the Royersford service area prior to the first base rate case in which the system's plant in service is incorporated into Pennsylvania-American Water Company's rate base, subject to the following conditions:

a. Pennsylvania-American Water Company must file an amended wastewater long term infrastructure improvement plan incorporating the Royersford Borough and related projects before it begins charging the distribution system improvement charge to customers in the Royersford service area.

b. Pennsylvania-American Water Company's amended wastewater long term infrastructure improvement plan incorporating the Royersford area must not re-prioritize other existing commitments in other service areas.

c. Pennsylvania-American Water Company must file a compliance tariff supplement incorporating the Royersford service territory into Pennsylvania American Water Company's existing wastewater Distribution System Improvement Charge tariff provisions.

7. That the Secretary's Bureau shall issue certificates of filing pursuant to Section 507 for the following agreements between Pennsylvania-American Water Company, and a municipal corporation:

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.

8. That the Protest of Robert Redinger Jr. is denied and dismissed.

9. That the proceeding at Docket No. A-2020-3019634 be terminated and marked closed.

Date: March 12, 2021

_____/s/
Marta Guhl
Administrative Law Judge