PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

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|  | Public Meeting held May 6, 2021 |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora | |
| Application of Pennsylvania-American Water Company – Wastewater Division under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, for the Acquisition of Royersford Borough’s Wastewater System Assets | A-2020-3019634 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Exception of the Office of Consumer Advocate (OCA) filed on March 26, 2021, in the above-captioned proceeding. The Exception was filed in response to the Recommended Decision of Administrative Law Judge (ALJ) Marta Guhl issued on March 16, 2021. On March 29, 2021, Pennsylvania-American Water Company – Wastewater Division (PAWC or Company) filed Replies to the Exception and Royersford Borough (Royersford or Borough or Royersford Borough) filed a letter joining in the Replies to Exception of PAWC. Also, before the Commission is the Joint Petition for Approval of Settlement of All Issues (Joint Petition or Settlement) filed by PAWC, the OCA, the Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA), and Royersford on January 29, 2021. For the reasons below, we shall grant the Exception, adopt the Recommended Decision, as modified, and approve the Joint Petition, without modification, as being in the public interest.

# History of the Proceeding

This matter concerns the Application of PAWC filed on July 14, 2020, pursuant to Sections 1102 and 1329 of the Public Utility Code (Code), 66 Pa. C.S. §§ 1102 and 1329. In its Application, PAWC requests the 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; and (2) the right of PAWC to begin to offer or furnish wastewater service to the public in Royersford Borough and portions of Upper Providence Township, Montgomery County, Pennsylvania. In its Application, PAWC also requested, pursuant to Section 1329(c)(2), the Commission’s approval of a ratemaking rate base value of the assets to be acquired by the Company in the amount of $13,000,000. 66 Pa. C.S. § 1329(c)(2).

On July 21, 2020, I&E filed a Notice of Appearance.

On July 29, 2020, the OSBA filed Notices of Intervention and Appearance.

Also, on July 29, 2020, the OCA filed a Protest, a Public Statement, and a Notice of Appearance.

On October 30, 2020, PAWC filed the First Amendment to the Asset Purchase Agreement (APA), together with supporting documents.[[1]](#footnote-2)

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

On November 13, 2020, Royersford Borough filed a Petition to Intervene.

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

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

On January 14, 2021, the Parties informed ALJ Guhl that they had reached a settlement in principle on all issues in the case. On January 15, 2021, ALJ Guhl issued an Order suspending the litigation schedule.

On January 29, 2021, the Joint Petition, along with Statements in Support of the Settlement, were filed by PAWC, I&E, the OCA, the OSBA, and Royersford. Also, on January 29, 2021, the Parties filed a Joint Stipulation for the Admission of Evidence.

On February 1, 2021, ALJ Guhl 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 the Recommended Decision, Mr. Redinger had not submitted any comments.

By Order dated February 5, 2021, ALJ Guhl granted the Joint Stipulation for the Admission of Evidence and the record closed on February 10, 2021.

In the Recommended Decision issued on March 16, 2021, the ALJ recommended that the Commission approve the Settlement without modification because it is supported by substantial evidence and is in the public interest. R.D. at 1, 42, 46.

On March 26, 2021, the OCA filed its Exception indicating that it is not withdrawing from the Joint Petition but that it is submitting its Exception for the limited purpose related to one specific material, contested issue.[[2]](#footnote-3) On March 29, 2021, PAWC filed Replies to the Exception requesting that the Commission adopt the Recommended Decision approving the Application as modified by the Settlement and indicating that it has no objection to the clarification requested by the OCA in its Exceptions. R. Exc. at 2. Also, on March 29, 2021, Royersford filed a letter joining in the Replies to the Exception of the Company.

# II. Discussion

## A. Legal Standards

### Burden of Proof, 66 Pa. C.S. § 332(a)

As the proponent of a rule or order in this proceeding, PAWC has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Applicant’s evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se‑Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

### Certificate of Public Convenience, 66 Pa. C.S. §§ 1102, 1103

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate of Public Convenience (Certificate) prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa. C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a Certificate from the Commission prior to a utility or an affiliated interest of a utility to acquire or transfer, to any person or corporation by any method, property used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a Certificate required under Section 1102:

A certificate of public convenience shall be granted . . . only if the commission shall find or determine that the granting of such certificate *is necessary or proper for the service, accommodation, convenience or safety of the public*. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa. C.S. § 1103(a) (emphasis added); *see also Seaboard Tank Lines v. Pa. PUC*,502 A.2d 763, 764-65 (Pa. Cmwlth. 1985).

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the pubic in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will affirmatively benefit the public.” *Id*. (overruling in part, *Northern Pennsylvania Power Co*. *v. Pa. PUC*, 333 Pa. 265, 267, 5 A.2d 133, 134).

The Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be 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.

*Popowsky v. Pa. PUC*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) *(Popowsky).* Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Id*. at 617‑618, 937 A.2d at 1061. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa. C.S. § 1103(a).

One of the factors that the Supreme Court identified in the *City of York* for the Commission to consider, in determining whether there is an affirmative public benefit is:

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.

*City of York*, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court recently held that the Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, *including the impact on rates*, to determine if there is a substantial public benefit.” *McCloskey v. Pa. PUC*,195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), *appeal denied*,207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). While *McCloskey* held that rate impact must be addressed, it recognized that “the Commission is charged with deciding whether the impact of rates…is outweighed by … other positive factors that…served [as] a substantial public benefit.” 195 A.3d at 1067.

The Commission and the courts have held that granting a certificate need not be “absolutely necessary” in order to be in the public interest.  *See* *Hess v. Pa. PUC*,107 A.3d 246. 262 (Pa. Cmwlth. 2014). The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.” *Id.* In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “*all affected parties*, and not merely one particular group or geographic subdivision.” *Middletown Twp. v. Pa. PUC*,482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis in original); *see also*, *Dunk v. Pa. PUC*,232 A.2d 231, 234-35 (Pa. Super. 1967), *aff’d*, 252 A.2d 589 (1969) (where public benefit included companies and customers other than the proponent utility).

An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*,601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). It is the protestant’s burden to rebut that presumption. *Lehigh Valley Transp.* Where an Applicant is both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

### Ratemaking Rate Base Value, 66 Pa. C.S. § 1329

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. 66 Pa. C.S. § 1329.[[3]](#footnote-4) Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility’s rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the “fair market value” of the selling utility’s system. 66 Pa. C.S. § 1329(c)(2).

The fair market valuation process under Section 1329 where the acquiring utility and the seller must elect and agree to have the fair market value of the seller’s assets established through separate, independent appraisals conducted by Utility Valuation Experts (UVEs) is voluntary. 66 Pa. C.S. § 1329(a). The Commission maintains a list of qualified UVEs from which the acquiring utility and seller must choose their respective appraisers. 66 Pa. C.S. §§ 1329(a)(1), (2).

The UVEs must prepare an appraisal of the seller’s system assets in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), employing the cost, market and income approaches. 66 Pa. C.S. § 1329(a)(3). The fair market value of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3). 66 Pa. C.S. § 1329(g).

The Applicant must provide to the Commission copies of the appraisals; the purchase price; the ratemaking rate base; the closing costs; and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1).

### General Standards

In the Recommended Decision, the ALJ made eighty-three Findings of Fact and reached twenty-one Conclusions of Law. *See* R.D. at 4-16, 42-25. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC*,625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef) Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

## B. Transaction Overview

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 furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in thirty-six counties and serves a combined population of over 2,400,000 customers across the Commonwealth. 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. 1 at 13-14.

Royersford is a body corporate and politic, organized and existing under the laws of the Commonwealth and is located in Montgomery County. As of June 1, 2020, the Borough’s wastewater collection and treatment system (the System) provided service to approximately 1,600 customers in Royersford and 16 customers in Upper Providence Township. In addition, the System provided service to customers in Limerick Township via a bulk service interconnection located in Royersford. PAWC Exh. MS-1, App. A‑24‑a (CONFIDENTIAL) at 1; PAWC St. 1 at 14; PAWC St. 2 at 3.[[4]](#footnote-5)

On December 10, 2019, PAWC and Royersford entered into an 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 use of the fair market valuation process of Section 1329 of the Code. On October 27, 2020, PAWC and Royersford entered into the First Amendment to the Asset Purchase Agreement (First Amendment). PAWC Exh. MS-1, App. A-24-a-1 (CONFIDENTIAL). As required by Section 1329, PAWC and Royersford jointly retained the services of Pennoni Associates, Inc., to complete the engineering assessment and original cost of the System. PAWC selected AUS Consultants, Inc. (AUS), and Royersford selected Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming), as their respective UVEs to prepare fair market value appraisals of the System. AUS’s fair market value report concluded that the value of the System was $13,769,801; Gannett Fleming’s fair market value was approximately $13,219,000. Both appraisals were prepared using the USPAP employing the cost, income, and market approaches to value. PAWC St. 4 at 1-3; Royersford St. 2 at 3-4, 13.

In its Application, PAWC proposes a ratemaking rate base of $13,000,000 based on the agreed-to purchase price of $13,000,000. This amount is less than the average of the two UVE appraisals (($13,769,801 + $13,219,000)/2 = $13,494,401). PAWC St. 3 at 6.

The OCA challenged and proposed adjustments to the appraisals of AUS and Gannett Fleming. The OCA’s proposed adjustments would have reduced the average of the two UVE appraisals to $9,957,330. OCA St. 1 at 10.

## C. Settlement

As stated above, the Parties reached a Settlement in this proceeding. In the Joint Petition filed by PAWC, I&E, the OCA, the OSBA, and Royersford, all of the issues that were the subject of litigation in this proceeding were resolved. The Joint Petition contained proposed Findings of Fact, proposed Conclusions of Law and proposed Ordering Paragraphs. The Joint Petition also referenced any filings needed to complete the Settlement, including (without limitation) the PAWC-proposed Tariff which had been appended to PAWC’s Application.

**1. Terms of the Settlement**

The terms of the Settlement are set forth below, as submitted by the Parties in the Joint Petition. The original paragraph numbers and subheadings have been retained.

1. **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.

1. **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.

1. **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.[[5]](#footnote-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.

1. **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 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.

1. **Distribution System Improvement Charge**

27. If PAWC proposes to modify its Long-Term Infrastructure Improvement Plan (“LTIIP”) to include Royerford’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 LTIIP, PAWC shall be permitted to collect a Distribution System Improvement Charge (“DSIC”) related to Royersford’s wastewater system prior to the first base rate case in which Royersford’s assets are incorporated into rate base.

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

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

**G. Transaction and Closing Costs**

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

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

**H. Low-Income Program Outreach**

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

low income program.

**I. Approval of Section 507 Agreements**

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

**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.

Joint Petition at 4-8.

**D. Recommended Decision**

The ALJ summarized the positions of the Parties pertaining to the contested issues in this case and the resolution of them in the Settlement. The ALJ explained that not every issue was of equal concern to the Parties and, thus, each of the statements in support did not address each aspect of the Settlement. Specifically, the ALJ summarized the Parties’ positions as to the following issues:

* Sections 1102 and 1103 Approvals – Fitness
* Sections 1102 and 1103 Approvals – Affirmative Public Benefits
* Section 1329 Approvals – Ratemaking Rate Base and Fair Market Value
* Section 1329 Approvals – Cost of Service Study
* Section 1329 Approvals – Rates
* Section 1329 Approvals – Distribution System Improvement Charge
* Section 1329 Approvals – Allowance for Funds Used During Construction and Deferral of Depreciation and Transaction Costs
* Section 1329 Approvals – Low Income Customer Outreach

**1. Fitness**

The ALJ began by noting that as an existing, certificated public utility, the Company enjoys a presumption of fitness in this proceeding. Here, no Party presented evidence to challenge PAWC’s fitness. Regarding financial fitness, PAWC asserted that it had total assets of $5.3 billion as of December 31, 2019. For 2019, the Company had operating income of approximately $330 million and net income of $187 million. PAWC highlighted its ability to generate positive operating cash flows and to obtain financing through equity investments, lines of credit and long term debt financing at favorable rates. PAWC will initially fund the transaction with short-term debt and later replace it with a combination of long-term debt and equity capital. R.D. at 26 (citing PAWC St. 1 at 18, PAWC St. 3 at 4-5).

In addition, PAWC testified that the Company does not anticipate that the acquisition of the System will have a negative impact on PAWC’s cash flows, credit ratings or access to capital. Rather, given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC asserted that it is well positioned from a financial perspective to ensure that high quality wastewater service meeting all federal and state requirements will be provided to Royersford’s customers and maintained for PAWC’s existing customers. R.D. at 26-27 (citing PAWC St. 3 at 4, 6-7, 9).

As to technical fitness, PAWC proffered that it currently employs 1,100 professionals with expertise in all areas of water and wastewater utility operations. Moreover, PAWC, as a subsidiary of American Water, has additional resources to support PAWC in their operations. Moreover, PAWC is currently the water provider within Royersford and Upper Providence Township. Lastly, the System will be operated as a stand-alone system within PAWC’s Southeast Area Operations with the support of PAWC’s operations which provides a range of shared support services, including purchasing, environmental compliance, health and safety, meter reading, customer service work and PA One Call. R.D. at 27 (citing PAWC St. 1 at 13, PAWC St. 2 at 6, 8-9). Next, the ALJ summarized the Company’s evidence pertaining to its legal fitness explaining that there are no pending legal proceedings challenging PAWC’s ability or propensity to operate safely and legally and that PAWC has a good compliance history with the Commission. *Id*. (citing PAWC St. 1 at 13, 18).

**2. Affirmative Public Benefits**

The ALJ initially explained that 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 the System and to begin to render public utility service to the Borough’s customers. R.D. at 28.

PAWC argued 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; the existing customers of Royersford’s System; and the existing customers of PAWC. The Company contended that the transaction benefits members of the public-at-large by promoting the Commission’s policy favoring regionalization and consolidation of water and wastewater systems and the public policy goals in Section 1329 of the Code. R.D. at 28 (citing 52 Pa. Code § 69.721(a); PAWC St. 1 at 15, 18; PAWC St. 1-R at 9-10).

PAWC also contended that the transaction provides environmental benefits noting the evidence of nine National Pollutant Discharge Elimination System permit exceedances at the System in recent years, which resulted in pollutants being discharged into waters of the Commonwealth. The Company asserted that it has plans for making capital improvements and operational changes to address these issues after closing. Moreover, PAWC contended that it will provide enhanced technical, operational, and engineering support to the operations staff at Royersford to optimize operations of the treatment processes. R.D. at 28 (citing PAWC St. 1-R at 11; PAWC St. 2-R at 2).

PAWC further contended that it is better able to make the necessary improvements to the System to protect Pennsylvania’s water and environment due to its access to lines of credit and equity markets and its technical expertise. The Company also proffered that the transaction will improve the ultimate financial condition and outlook of the Borough and will allow Royersford the flexibility to undertake non-System related capital projects and other key initiatives. R.D. at 29 (citing PAWC St. 2 at 8-10; Royersford St. 1 at 3-4).

PAWC also addressed the transaction benefits to Royersford’s existing customers including the protections of the System becoming a Commission-regulated utility and of having access to PAWC’s enhanced customer services. In support, the Company cited to its plans to invest millions of dollars to improve the System. R.D. at 29-30 (citing PAWC St. 1-R at 7-8; PAWC St. 2 at 8, 14-17; PAWC Exh. MJG-1; PAWC St. 2-R at 2; Royersford St. 1 at 4).

Further, PAWC argued that the Settlement requires the Company 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. R.D. at 30 (citing Settlement ¶ 31).

Regarding the benefits to PAWC’s existing customers, the Company highlighted the addition of new customers to PAWC’s wastewater customer base who can share the cost of operating the entire PAWC wastewater system. PAWC also emphasized the elimination of duplicate equipment between the System and PAWC’s system by the sharing of local resources that cannot currently be shared without approval of the Application. R.D. at 30 (citing PAWC St. 1 at 17; PAWC St. 1-R at 5).

As a final argument, PAWC stated that the transaction will only result in an increase in rates for its existing 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. R.D. at 30 (citing PAWC Statement in Support at 23-24).

The ALJ also summarized Royersford’s similar arguments pertaining to the managerial, technical, and financial resources and benefits of PAWC. See R.D. at 30-32.

**3.** **Ratemaking Rate Base and Fair Market Value**

The ALJ summarized the arguments of PAWC and Royersford who asserted that there is agreement among the Joint Petitioners that the $13,000,000 purchase price will go into PAWC’s rate base in its next rate case due to the acquisition of the System. Here, the ALJ noted that, although the OCA did not join in Settlement ¶ 22 pertaining to the $13,000,000 going into the PAWC’s rate base in its next rate case, the OCA does not oppose it. According to PAWC, 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. In addition, PAWC asserted 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*. Moreover, PAWC contended 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. R.D. at 32-33 (citing PAWC St. 1-R at 3).

In addition, the ALJ summarized PAWC’s arguments pertaining to the legislative intent behind Section 1329 of the Code. The ALJ also noted the assertions of Royersford about the establishment of the UVEs and how the ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is $13,000,000, which is the lesser of the negotiated purchase price of $13,000,000 and the average of the UVEs ($13,494,401). R.D. at 33-34.

Royersford also noted that the determination of the ratemaking rate base was a matter of controversy between PAWC, I&E, and the OCA – with the OCA proposing adjustments to reduce the average of the UVEs’ appraisals to $9,957,330. However, the Borough emphasized that the Joint Petitioners agreed to the rate base amount of $13,000,000 with all the 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. R.D. at 33-34.

Additionally, the ALJ summarized I&E’s argument that PAWC witness Jerome Weinert used a market approach analysis inconsistent with his market approach analyses in previous Section 1329 proceedings. According to I&E, PAWC witness Weinert did not provide any rationale for this variation. 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. R.D. at 34 (citing I&E St. 1 at 4-7, Sch. 1 at 4-5).

Specifically, I&E noted that PAWC witness Weinert did not explicitly agree to I&E’s recommendation and 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. R.D. at 34 (citing PAWC St. 4-R at 30). However, the ALJ noted that in the Settlement, PAWC agrees it will not support the portion of an AUS appraisal that does not use a consistent method to determine a conclusion under the market approach analysis, unless otherwise directed by the Commission. The ALJ cited I&E’s support of this settlement term because it serves the public interest by ensuring a consistent application of methodology in future cases filed by PAWC. R.D. at 34-35.

**4. Cost of Service Study**

The ALJ summarized the OCA’s arguments about the need for future cost of service studies. Specifically, the OCA identified the need for PAWC to provide – in the first base rate case in which it includes the Borough’s assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of Royersford wastewater system, as well as a separate cost of service study for the Royersford system. The OCA contended that these studies will provide information to establish rates that reflect the costs for the Royersford system. R.D. at 35 (citing OCA St. 1 at 50).

The ALJ further emphasized the Company’s willingness, in the interest of resolving this case, to conduct the requested cost of service studies. Pursuant to Settlement ¶¶ 25a-b, PAWC will submit two cost of service studies in the first base rate case that includes the Royersford System: (a) a cost of service study that removes all costs and revenues associated with the operation of the Royersford System; and (b) a cost of service study for the Royersford System. PAWC’s obligation to prepare cost of service studies would only extend to the first base rate case in which Royersford is included. According to PAWC, unnecessary cost of service studies can be avoided in subsequent rate cases by these Settlement terms. R.D. at 36 (citing PAWC Statement in Support at 24).

**5. Rates**

In summarizing PAWC’s position about the rate impact, the ALJ noted that the Settlement would ensure that the Company will charge rates after closing that are equal to Royersford’s existing rates. PAWC stated that Paragraph 25c of the Settlement requires it, in the first base rate case that includes Royersford, to propose moving Royersford’s customer rates toward the cost of service and, thereby, limiting any potential subsidization of Royersford’s customers by PAWC’s existing water and wastewater customers. Specifically, PAWC indicated 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. PAWC asserted 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. R.D. at 36-37 (citing PAWC Statement in Support at 26).

Additionally, the ALJ noted the assertions of PAWC 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 contended that the Settlement does not preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding, pursuant to Settlement ¶ 25f. Further, the Company indicated that the Settlement contains no provision purporting to restrict the Commission’s ultimate ratemaking authority to set “just and reasonable” rates. R.D. at 37 (citing PAWC Statement in Support at 26-27).

The ALJ further summarized the positions of the OSBA and I&E indicating that the Settlement is reasonable and in the public interest for various reasons including the fact that the Parties have preserved the right to make rate proposals concerning the System in the first base rate case following acquisition. R.D. at 37-38.

**6. Distribution System Improvement Charge**

The ALJ explained that 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, the ALJ added, a utility must submit a long-term infrastructure improvement plan (LTIIP) to, and receive approval from, the Commission. R.D. at 38.

The ALJ noted that PAWC had 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. R.D. at 38 (citing Application ¶ 2; PAWC St. 1 at 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. R.D. at 38 (citing Settlement at ¶ 27). According to PAWC, the Settlement recognizes the Commission’s authority to modify PAWC’s LTIIP submission. Finally, the Company contended that 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, PAWC argued that the Settlement is in the public interest and should be approved. R.D. at 39 (citing PAWC Statement in Support at 27-28).

The ALJ summarized the positions of I&E and the OCA that the Settlement provision pertaining to the DSIC serves the public interest and addresses prior concerns such as ensuring that projects for the Borough’s customers should be in addition to any capital improvements that PAWC was already committed to undertake for existing customers. R.D. at 39.

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

The ALJ explained that 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. R.D. at 40.

The ALJ stated that PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC also requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. *Id*. (citing PAWC St. 1 at 4-5). PAWC asserted 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. According to PAWC, 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. R.D. at 40 (citing PAWC Statement in Support at 28‑29).

The ALJ noted that I&E and the OCA did not contest the Settlement provisions pertaining to these issues and that they asserted the right to address them in future rate cases. R.D. at 40-41.

**8. Low Income Customer Outreach**

The ALJ summarized that PAWC has agreed to provide information about its low income programs in a welcome letter to the Borough customers and in a bill insert in the first billing cycle following closing. In response to this Settlement provision, the OCA stated that the information will describe the available programs, eligibility requirements and contact information for PAWC. The OCA also noted that PAWC agreed to ongoing, targeted outreach to its Royersford-area customers regarding its low income program. According to the OCA, this provision is reasonable and will provide timely information that may be helpful to some of the Royersford customers. R.D. at 41 (citing OCA Statement in Support at 5). In addition, the ALJ cited to I&E’s assertion that this term of the Settlement is in the public interest. *Id.* (citing I&E Statement in Support at 13-14).

**9. ALJ’s Recommendation**

The ALJ reasoned that when viewed in totality, the Settlement represents a fair compromise of the competing views and interests and should be approved without modification. Considering the modifications to the transaction permitting the acquisition of the System by PAWC, as agreed upon in the Settlement, the ALJ determined that the provisions adequately protect the competing interests of PAWC’s existing customers and stockholders, the customers in the Royersford service area and the general public. R.D. at 41-42.

The ALJ noted that 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 the Borough’s 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 ALJ submitted that the Settlement addresses some of the concerns indicated at the public input hearing. For example, 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 ALJ credited the Settlement mandates that PAWC will reach out to low-income customers served by the Royersford system. Moreover, the ALJ noted that the System customers will have the opportunity to file complaints and testify at public input hearings, when PAWC files its next base rate case. Finally, the ALJ emphasized that acceptance of the Settlement will negate the need for further litigation, including possible appeals. The ALJ explained that avoidance of further rate case expense serves the interests of PAWC, the Parties, and PAWC’s customers. *Id*. at 42.

In summary, the ALJ stated:

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.

R.D. at 42.

**E. Exception and Replies**

As noted above, the OCA filed an Exception seeking clarification of two of the ALJ’s Findings of Fact, while supporting adoption of the Joint Petition without modification.[[6]](#footnote-7) Specifically, the OCA avers that certain factual findings by the ALJ are inaccurate, as they reference matters which were contested, but were ultimately not addressed in the Joint Petition. As such, the OCA maintains that the references are extraneous to, and unnecessary, for the adoption of the Joint Petition without modification. The OCA submits that for purposes of clarification the specific references should be deleted from the Recommended Decision and that the proposed deletions will not alter the adoption of the Joint Petition without modification. Exc. at 2.

Specifically, the OCA proposes that the Recommended Decision be clarified by deleting the following Findings of Fact:

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.

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.

R.D. at 14.

The OCA submits that it filed testimony containing compelling evidence to dispute these findings. The OCA adds that its expert witnesses directly challenged the general statement that the proposed acquisition would benefit existing customers by spreading costs over a larger customer base because its witnesses found that the transaction resulted in increased costs, not declining average costs. Exc. at 3 (citing OCA St. 2 at 15-16; OCA St. 2-S at 8-9).

If the case had proceeded to litigation, the OCA asserts that it would have briefed this contested issue. However, the Parties reached a Settlement. According to the OCA, settlements allow flexibility in reaching amicable resolutions as long as the settlement is in the public interest. The OCA argues that the Joint Petition purposefully did not address the testimony by PAWC or the testimony by the OCA on this contested issue. Moreover, the OCA notes that it has filed similar Exceptions in two prior Section 1329 proceedings which the Commission has granted. Exc. at 4 (citing *Application of PAWC for the Acquisition of the Water Assets of Steelton Borough Authority*, Docket No. A-2019-3006880 (Order entered October 3, 2019); and *Application of PAWC for the Acquisition of the Wastewater Assets of Exeter Township*, Docket No. A-2018-3004933 (Order entered October 3, 2019)).

According to the OCA, the OSBA supports the OCA’s request and I&E does not oppose it. Exc. at 4.

In its Replies to the Exception, PAWC asserts that it continues to believe that the preponderance of the evidence supports Findings of Fact Nos. 71 and 73 and that the ALJ properly adopted these findings. However, in the interest of compromise and to expedite the final resolution of the proceeding, the Company does not object to the OCA’s request in its Exception. PAWC contends that even without these Findings of Fact, there is substantial evidence in the record, as agreed-to by the Parties, to support a Commission determination that the Settlement is in the public interest and that the transaction will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. R. Exc. at 2 (citing *City of York*). As noted above, the Borough joins in the Company’s Replies to the Exception.

**F. Disposition**

With respect to the OCA’s Exception requesting modification of the Recommended Decision *via* limited deletions of references to findings that were contested on the record and not expressly resolved by the terms and conditions of the Joint Petition, we agree with the OCA. We note that the Parties either support or do not object to the OCA’s Exception and that the deletions requested for purposes of clarification do not interfere with the adoption of the terms and conditions of the Joint Petition. Rather, the proposed deletions of Findings of Fact Nos. 71 and 73 would appear to delete *dicta* from the Recommended Decision, which is immaterial to our review and decision whether to adopt the Joint Petition.

Therefore, we will grant the OCA’s Exception, and modify the ALJ’s Recommended Decision to delete Findings of Fact Nos. 71 and 73.

With respect to the Joint Petition seeking approval of PAWC’s Application, as summarized above, the ALJ recommended approval of each of the settlement terms, without modification, as being in the public interest. We concur.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7.

Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Id.*

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

The Joint Petition reflects the consensus of the Parties that the terms and conditions benefit all interested parties, including securing a lower rate increase than might have otherwise resulted from protracted litigation. The Joint Petition resolves the issues necessary for the ultimate resolution of the present proceeding. It also removes several potentially contentious issues that would have prolonged or required further litigation or administrative proceedings. The benefits of approving the Joint Petition are numerous and will result in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Joint Stipulation provides regulatory certainty with respect to the disposition of issues which benefits all Parties.

We agree with the ALJ’s analysis and conclusion that the provisions of the Joint Petition are in the public interest. Accordingly, we shall adopt the ALJ’s recommendation and approve the Joint Petition, without modification.

# III. Conclusion

Upon review, we shall adopt the ALJ’s recommendation that grants the Joint Petition and approve the terms and conditions of PAWC’s Application as modified by the Settlement. Further, we shall grant the Exception of the OCA, and modify the ALJ’s Recommended Decision for purposes of clarification, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exception of the Office of Consumer Advocate filed on March 26, 2021, to the Recommended Decision of Administrative Law Judge Marta Guhl issued on March 16, 2021, is granted, and the Recommended Decision shall be modified for clarification purposes, by deleting Finding of Fact Nos. 71 and 73, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Marta Guhl issued on March 16, 2021, is adopted as modified, consistent with this Opinion and Order.

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

4. 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 in Montgomery County, Pennsylvania to Pennsylvania-American Water Company – Wastewater Division; (b) Pennsylvania-American Water Company – Wastewater Division’s right 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.

5. That within ten (10) days after closing of the acquisition, Pennsylvania-American Water Company – Wastewater Division 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 immediately upon closing of the Transaction.

6. That, pursuant to 66 Pa. C.S. § 1329(c), a rate base addition of $13,000,000 associated with Pennsylvania-American Water Company – Wastewater Division’s acquisition of the Royersford Borough wastewater system is approved.

7. That the Application filed by Pennsylvania-American Water Company – Wastewater Division on July 20, 2020, is approved, subject to the following conditions, which are consistent with the Joint Petition for Approval of Settlement of All Issues:

1. That, in the first base rate case in which Pennsylvania-American Water Company includes the Royersford Borough’s assets in rate base:

(i) Pennsylvania-American Water Company shall provide a separate cost of service study for the Royersford Borough system.

(ii) Pennsylvania-American Water Company shall submit a cost of service study that removes all costs and revenues associated with the operation of Royersford’s system.

(iii) Pennsylvania-American Water Company shall 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 Pennsylvania-American Water Company will not be obligated to propose Royersford wastewater rates in excess of Pennsylvania-American Water Company’s proposed Rate Zone 1 system-average rates.

(iv) Pennsylvania-American Water Company 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.

(v) Pennsylvania-American Water Company may agree to rates other than those proposed for Royersford customers in the context of a settlement of the base rate case.

(vi) The Office of Consumer Advocate, the Office of Small Business Advocate and the Bureau of Investigation and Enforcement reserve the right to address the rate proposals fully and to make other rate proposals.

1. Pennsylvania-American Water Company shall provide combined bills for Royersford wastewater customers who are also Pennsylvania-American Water Company water customers.

c. Within the first billing cycle following closing, Pennsylvania-American Water Company 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 Pennsylvania-American Water Company’s contact information. Pennsylvania-American Water Company shall further provide ongoing, targeted outreach to its Royersford-area customers regarding its low-income program.

d. In future acquisitions by Pennsylvania-American Water Company under 66 Pa. C.S. § 1329, filed subsequent to the Joint Petition for Approval of Settlement of All Issues filed in this proceeding, Pennsylvania-American Water Company 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 final Order in a non-Pennsylvania-American Water Company proceeding, a Commission Regulation, or statement of policy, that a different method should be used by utility valuation experts.

e. That Pennsylvania-American Water Company is permitted to 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:

(i) Pennsylvania-American Water Company shall 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.

(ii) Pennsylvania-American Water Company’s amended wastewater long term infrastructure improvement plan incorporating the Royersford area shall not re-prioritize other existing commitments in other service areas.

(iii) Pennsylvania-American Water Company shall file a compliance tariff supplement incorporating the Royersford service territory into Pennsylvania American Water Company’s existing wastewater distribution system improvement charge tariff provisions.

f. That pursuant to 66 Pa. C.S. § 1329(f), Pennsylvania-American Water Company is permitted to accrue allowance for funds used during construction for post-acquisition improvements not recovered through the distribution system improvement charge for book and ratemaking purposes; provided, however, that the Joint Petitioners to the Joint Petition for Approval of Settlement of All Issues reserve their rights to fully litigate their positions in future rate cases when this issue is ripe for review.

g. That pursuant to 66 Pa. C.S. § 1329(f), Pennsylvania-American Water Company is permitted to defer depreciation related to post-acquisition improvements not recovered through the distribution system improvement charge for book and ratemaking purposes; provided, however, that the Joint Petitioners to the Joint Petition for Approval of Settlement of All Issues reserve their rights to fully litigate their positions in future rate cases when this issue is ripe for review.

h. That pursuant to 66 Pa. C.S. § 1329(d)(iv), Pennsylvania-American Water Company is permitted to include in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Royersford Borough system; provided that outside legal fees, if any, shall be separately identified in Pennsylvania-American Water Company’s next base rate case; and provided further that the Joint Petitioners to the Joint Petition for Approval of Settlement of All Issues reserve their rights to fully litigate their positions in future rate cases when this issue is ripe for review.

8. That the Secretary’s Bureau shall issue certificates of filing pursuant to 66 Pa. C.S. § 507 for the following agreements between Pennsylvania-American Water Company – Wastewater Division, and a municipal corporation: (a) 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.

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

10. That the proceeding at Docket No. A-2019-3015173 be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 6, 2021

ORDER ENTERED: May 7, 2021

1. On December 10, 2019, PAWC and Royersford had entered into the original APA. [↑](#footnote-ref-2)
2. Specifically, the OCA requests that Finding of Fact Nos. 71 and 73 not be adopted by the Commission because they are disputed and are not necessary for the approval of the Joint Petition. Exc. at 1. [↑](#footnote-ref-3)
3. Governor Wolf signed into law Act 12 of 2016 on April 14, 2016. This Act amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2019. 66 Pa. C.S. § 1329. [↑](#footnote-ref-4)
4. The System is not a combined sewer system, nor is it a municipal separate storm sewer system. PAWC St. 2 at 4. [↑](#footnote-ref-5)
5. The OCA does not join in this paragraph but does not oppose PAWC’s request. [↑](#footnote-ref-6)
6. By the terms of the Settlement, the Joint Petitioners, including the OCA, agreed to waive the right to file Exceptions to the ALJ’s Recommended Decision, if the recommendation approved the Joint Petition without modification. R.D. at 17. Although the OCA filed an “Exception” to the Recommended Decision, the Exception does not seek modification of any stipulated terms of the settlement. Rather, the OCA seeks clarification of the ALJ’s factual findings which were, in the OCA’s view, inaccurate and unnecessary for the recommendation to adopt the stipulations. Therefore, we shall address the OCA’s “Exception” and treat it as a Request for Clarification of the Recommended Decision. [↑](#footnote-ref-7)