



June 25, 2021

VIA E-FILING

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

Re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Upper Pottsgrove Township's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in Upper Pottsgrove Township, Montgomery County and a portion of Douglass Township, Berks County, Pennsylvania; Docket No. A-2020-3021460 et al.

Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs in the above-referenced proceeding. A copy of this filing is being served in accordance with the attached Certificate of Service.

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

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg
Enclosure

cc: Honorable Jeffrey A. Watson
Nicholas Miskanic, Legal Assistant
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
Pennsylvania Public Utility Code, 66 Pa. C.S. § :
1102(a), for approval of (1) the transfer, by sale, of :
substantially all of Upper Pottsgrove Township's :
assets, properties and rights related to its : Docket No. A-2020-3021460, *et*
wastewater collection and conveyance system to : *al.*
Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of June 2021 served a true copy of the foregoing **Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs** on the parties, listed below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Due to the COVID-19 Pandemic, Service is Being Made by E-Mail Only

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Jeffrey A. Watson**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
Pennsylvania Public Utility Code, 66 Pa. C.S. § :
1102(a), for approval of (1) the transfer, by sale, of :
substantially all of Upper Pottsgrove Township’s :
assets, properties and rights related to its : Docket No. A-2020-3021460, *et al.*
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Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

**JOINT STIPULATION OF PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDERING PARAGRAPHS**

Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement (“I&E”), the Office of Small Business Advocate (“OSBA”), Shadeland Development Corporation and Upper Pottsgrove Township (“Upper Pottsgrove”), active parties to the above-captioned proceeding (hereinafter, collectively referred to as the “Stipulating Parties”), file this Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs (“Stipulation”) in the above-captioned proceeding, pursuant to Paragraph 27 of the Joint Petition for Approval of Non-Unanimous Settlement of All Issues (the “Settlement”). In support of the Stipulation, the Stipulating Parties represent as follows:

1. Paragraphs 1 through 24 (regarding “Background”) of the Settlement are hereby incorporated by reference.

2. Consistent with Paragraph 49 of the Settlement, the Stipulating Parties have jointly prepared **Appendix A - Proposed Findings of Fact, Appendix B - Proposed Conclusions of Law and Appendix C - Proposed Ordering Paragraphs**. The Stipulating Parties agree that the facts agreed to in this Joint Stipulation are sufficient to find that the Settlement is in the public interest.

3. This Stipulation is presented by the Stipulating Parties in conjunction with the Settlement, which is intended to settle all issues among the Stipulating Parties in the above-captioned proceedings. If the Commission rejects or otherwise modifies the Settlement, the Stipulating Parties reserve their respective procedural rights to submit testimony and exhibits, and cross-examine witnesses at on-the-record evidentiary hearings.

4. This Stipulation is being presented in conjunction with the Settlement only to support the proposed resolution of the above-captioned proceedings. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party in this or any future proceeding as a consequence of this Stipulation, or any of its terms or conditions.

5. Attached hereto as **Appendix D** is a proposed “Order Granting Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs” for consideration by the Honorable Administrative Law Judge Jeffrey A. Watson.

WHEREFORE, the Stipulating Parties, by their respective counsel, respectfully request that the Honorable Administrative Law Judge Jeffrey A. Watson approve this Stipulation.

Respectfully submitted,



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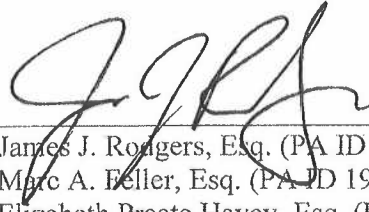
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APPENDIX A

PROPOSED FINDINGS OF FACT

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. It furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. No. 1 p. 11. As of September 30, 2020, PAWC served approximately 671,943 water customers and approximately 75,341 wastewater customers across Pennsylvania. PAWC St. No. 1 p. 12.

2. Upper Pottsgrove is a First Class Township in Montgomery County, Pennsylvania. It has approximately 5,739 residents. Upper Pottsgrove St. No. 1 pp. 4-5.

3. I&E serves as the Commission’s prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the 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).

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

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

The System

6. The System is a wastewater collection and conveyance system. Upper Pottsgrove St. No. 1 p. 5. It is not a combined sewer system, nor is it a municipal separate storm sewer system (“MS4 System”). PAWC St. No. 2 p. 4. As of December 31, 2019, the System provided service to approximately 1,447 customers, including two residents of Douglass Township.¹ PAWC St. No. 1 p. 12.

The Transaction and the Asset Purchase Agreement

7. Upper Pottsgrove sold its wastewater system pursuant to arm’s length negotiations. On February 5, 2020, Upper Pottsgrove issued the Upper Pottsgrove Township Request for Bids (“RFB”) for the sale of the wastewater system assets. On March 16, 2020, PAWC submitted a proposal to acquire the wastewater system assets and subsequently, PAWC submitted a Response to Upper Pottsgrove’s best and final offer on March 20, 2020. On April 20, 2020, Upper Pottsgrove’s Commissioners approved the sale of the wastewater system assets and execution of the Asset Purchase Agreement by and among Upper Pottsgrove Township, as Seller, and Pennsylvania-American Water Company, as Buyer (the “APA”). On April 28, 2020, Upper Pottsgrove and PAWC entered into the APA for the sale of substantially all the assets, properties, and rights of Upper Pottsgrove’s System at an agreed-upon price of \$13,750,000. PAWC St. No. 1 pp. 7-8, 10.

¹ These two customers were the subject of a Petition for Declaratory Order filed by Upper Pottsgrove at Docket No. P-2020-3021526, in which Upper Pottsgrove sought a declaratory order that service to these customers does not constitute the provision of public utility service to the public pursuant to Section 102 of the Code. The Commission issued the requested Declaratory Order on October 8, 2020.

The UVE Appraisals

8. The Application seeks to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the System assets and the ratemaking rate base of those assets. PAWC St. No. 1 p. 6. As required by Section 1329, PAWC and Upper Pottsgrove jointly retained the services of LTL Consultants and AUS Consultants to complete the Engineering Assessment Study of Upper Pottsgrove Township's Wastewater System Assets. PAWC Exhibit SDF-1 Appendix A-15-a.

9. As also required by Section 1329, the Application included the appraisals of PAWC's utility valuation expert ("UVE"), AUS Consultants, Inc. ("AUS"), and Upper Pottsgrove's UVE, Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming"). PAWC Exhibit SDF-1 Appendices A-5.1 and A-5.2.

10. AUS is registered as a utility valuation expert with the PUC. PAWC St. No. 4 p. 1. AUS prepared a fair market valuation report dated as of April 28, 2020. AUS's fair market value report utilized the cost approach, the income approach, and the market approach. PAWC Exhibit FM-1 Appendix A-5.1. AUS filed a verification that states the fair market value report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). PAWC Exhibit SDF-1 Appendix A-9.1. AUS's fair market value report concluded that the value of the Upper Pottsgrove System was \$17,023,691. PAWC St. No. 4 p. 3.

11. Upper Pottsgrove retained the services of Gannett Fleming to complete an appraisal of the System. Upper Pottsgrove St. No. 2 p. 3. Gannett Fleming is registered as a utility valuation expert with the PUC. Upper Pottsgrove St. No. 2 p. 4. Gannett Fleming issued a fair market valuation of the System as of August 31, 2020. Upper Pottsgrove St. No. 2 p. 3. Gannett Fleming's fair market value report utilized the cost approach, the income approach, and the market approach.

PAWC Exhibit SDF-1 Appendix A-5.2. Gannett Fleming filed a verification that states its fair market valuation report was prepared in compliance with USPAP. PAWC Exhibit SDF-1 Appendix A-9.2. Gannett Fleming's fair market value report concluded that the value of the Upper Pottsgrove System was \$17,617,000 (rounded). Upper Pottsgrove St. No. 2 p. 13.

PAWC's Financial Fitness

12. PAWC had total assets of approximately \$5.3 billion and annual revenues of \$689 million for 2019. For 2019, PAWC had operating income of approximately \$330 million and net income of approximately \$187 million. PAWC St. No. 3 p. 5.

13. 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. 6.

14. 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. 6. PAWC does not anticipate that the acquisition of the Upper Pottsgrove 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. 10.

15. 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. 5. 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 Upper Pottsgrove's customers and maintained for PAWC's existing customers. PAWC St. No. 3 p. 8.

PAWC's Technical Fitness

16. 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. 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. *Id.*

17. PAWC's Glen Alsace operations center is located within 15 miles from Upper Pottsgrove. PAWC's Royersford operations center is located within 10 miles from Upper Pottsgrove. These operations centers house both the local operations team and operations support staff. PAWC St. No. 2 p. 6.

18. The Upper Pottsgrove System will be managed as part of PAWC's Exeter wastewater department 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 wastewater operations in Upper Pottsgrove will be supported by common shared support services. PAWC St. No. 2 p. 6.

PAWC's Legal Fitness

19. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 p. 15. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to Upper Pottsgrove 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 Upper Pottsgrove. PAWC St. No. 1 p. 12.

Benefits of the Transaction and the Settlement

20. The Transaction will benefit Upper Pottsgrove by improving its financial condition and outlook and by enabling it to reallocate its administrative time to focus on other key initiatives. The Transaction will also increase Upper Pottsgrove's tax base through increased development opportunities. Upper Pottsgrove St. No. 1 p. 8-9.

21. PAWC is a large, financially-sound company that has the capacity to finance necessary capital additions and improvements that will benefit Upper Pottsgrove's customers. PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements is provided to Upper Pottsgrove's customers. PAWC St. No. 1 pp. 13-14.

22. PAWC is subject to the jurisdiction of the Commission requiring PAWC to provide adequate, efficient, safe, and reliable service at just and reasonable rates. Upper Pottsgrove is not regulated by the Commission and does not need to comply with the Code, the Commission's Regulations or Orders. PAWC St. No. 1 p. 14. After Closing on the Transaction, I&E, OCA and OSBA will be statutory representatives for Upper Pottsgrove's customers. PAWC St. No. 2 p. 16.

23. Upper Pottsgrove's current customers also will have access to additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to PAWC's customer assistance programs. Access to PAWC's customer assistance programs is particularly important during the on-going COVID-19 Pandemic. PAWC St. No. 1 p. 14; PAWC St. No. 2 pp. 13-15.

24. Although the amount that will be added to PAWC's rate base will be determined in this proceeding, any impacts on the rates of PAWC's existing customers would occur only upon Commission approval as part of a base rate proceeding. The Transaction will have no immediate rate impact on PAWC's existing customers. PAWC St. No. 3 p. 10.

25. The Transaction will add approximately 1,447 new customers to PAWC's existing wastewater customer base of approximately 75,341 customers (or an increase of more than 1.9%). PAWC St. No. 1 p. 12.

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

Ratemaking Rate Base

27. The Settlement proposes a ratemaking rate base of \$13,750,000, based on the agreed-to purchase price of \$13,750,000. This amount was less than the average of the two UVE appraisals ($\$17,023,691 + 17,617,000 = \$17,320,346$). PAWC St. No. 3 p. 7.

Rate Stabilization Plan

28. PAWC states that the APA between PAWC and Upper Pottsgrove does not contain a "rate stabilization plan" as defined by 66 Pa. C.S. § 1329(g). PAWC St. No. 3 p. 18. The Asset Purchase Agreement provides that Upper Pottsgrove wastewater rates will be reduced from \$215.00 to \$195.00 per quarter prior to closing. PAWC St. No. 3 p. 17. PAWC will adopt the

Upper Pottsgrove rates at the time of closing, of \$195.00 per quarter (\$65.00 per month). *Id.* Those rates will be addressed and adjusted, without any form of contractual restriction, in PAWC's first base rate case in which the System is included. PAWC St. No. 3 p. 18.

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

29. PAWC requested authority from the Commission to approve the collection of a distribution system improvement charge ("DSIC") related to the Upper Pottsgrove 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. 4.

30. PAWC will make post-acquisition improvements in the Upper Pottsgrove System. As such, PAWC will likely accrue allowance for funds used during construction ("AFUDC") for post-acquisition improvements. PAWC St. No. 3 p. 21. PAWC also intends to defer depreciation on non-DSIC-eligible post-acquisition improvements for book and ratemaking purposes. *Id.*

31. Transaction and closing costs that PAWC may seek to recover include the UVE's appraisal fee and the buyer's closing costs, including reasonable attorney fees. PAWC is unable to determine the exact extent of transaction and closing costs at this time. In its Application, PAWC estimated the anticipated range of transaction and closing costs as \$553,000 to \$763,000. PAWC St. No. 3 p. 15; PAWC Exhibit SDF1 Appendix A-10. Any transaction and closing costs that PAWC seeks to claim are not properly reviewed, and cannot be approved, in this Section 1329 proceeding. Instead, PAWC's transaction and closing costs are properly reviewed in its next base rate case that follows the acquisition, and they will be subject to the preponderance of evidence standard in that review. PAWC St. No. 3 p. 15; *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.

Rates

32. As required by Section 1329, PAWC included a pro forma tariff supplement in its Application. PAWC Exhibit SDF-1 Appendix A-12. Upon Closing of the Transaction, PAWC will adopt Upper Pottsgrove's current metered and unmetered rates then in effect. PAWC St. No. 3 p. 16.

33. 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. Upper Pottsgrove customers will be billed on a monthly basis and Upper Pottsgrove's existing rates will be prorated for purposes of calculating monthly billing. PAWC St. No. 3 p. 16.

Customer Notice

34. PAWC provided a non-binding estimate of possible rate impacts for existing customers and Upper Pottsgrove customers. PAWC Exhibit SDF-1 Appendix A-18-d. These estimates were prepared in accordance with the Commission's Order in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) ("Steelton Order"). PAWC St. No. 3 p. 11. Ultimately, any rate impacts of the acquisition will be determined by the Commission in future base rate proceedings. PAWC St. No. 3 p. 15.

35. As a condition of Closing and subject to 66 Pa. C.S. § 703(g), PAWC will require that Upper Pottsgrove acquire clear title to the sewer line of which Shadeland Development Corporation ("Shadeland") claims ownership in its Petition to Intervene (the "Sewer Line"). This result could be accomplished by: dedication to Upper Pottsgrove, determination of a court of

competent jurisdiction that dedication is not necessary, or other evidence reasonably satisfactory to PAWC. PAWC St. No. 1-R p. 4-5.

Municipal Agreements

36. In the Application, PAWC requested that the Commission approve the APA. In addition, PAWC requested that the Commission approve two contracts that Upper Pottsgrove will assign to PAWC: (i) the September 13, 2004 Sewage Treatment Service Agreement between Upper Pottsgrove Township, Borough of Pottstown and Pottstown Borough Authority; and (ii) the March 28, 1994 Joint Sewage Transportation Agreement between Upper Pottsgrove Township and Lower Pottsgrove Township Authority. Application ¶ 45. In the Settlement, the Joint Petitioners ask the Commission to approve both these agreements pursuant to 66 Pa. C.S. § 507.² Settlement ¶ 32.

37. As a condition of Closing on the Transaction and subject to 66 Pa. C.S. § 703(g), PAWC will require that Pottstown Borough Authority and the Borough of Pottstown (together, “PBA/BP”) assign the Sewage Treatment Service Agreement between Upper Pottsgrove Township, Borough of Pottsgrove and Pottstown Borough Authority (the “STSA”) to Upper Pottsgrove prior to Closing. Settlement ¶ 43.

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

APPENDIX B

PROPOSED 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). The instant settlement is in the public interest.

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). PAWC has demonstrated that it is technically, financially and legally fit.

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 corporation 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). The purchase price of \$13,750,000 is the lesser amount.

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 corporation 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 DSIC, 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 DSIC. *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.

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

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. That the Honorable Administrative Law Judge Jeffrey A. Watson recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.
2. That the Application filed by PAWC on November 24, 2020, be approved.
3. That the Commission issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of Upper Pottsgrove Township's assets, properties and rights related to its wastewater collection and treatment system to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish and supply wastewater collection and treatment service in the areas served by Upper Pottsgrove as indicated in the Application.
4. That, upon the day of Closing of the Transaction, PAWC be permitted to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement submitted with the Application as **Appendix A-12**, to be effective upon the day of Closing of the Transaction.
5. That the Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$13,750,000 associated with the acquisition of the System.
6. That, in future acquisitions by PAWC under 66 Pa. C.S. § 1329, filed subsequent to the Commission's approval of this Settlement without modification, PAWC shall clearly document the date on which it engaged or otherwise authorized its utility valuation expert to perform the fair market value appraisal of the system so as to demonstrate compliance with 66 Pa. C.S. § 1329(a)(5).

7. That PAWC be directed to ensure that, in any future Section 1329 applications it submits, the engineering assessment required under 66 Pa. C.S. § 1329(a)(4) will designate the condition of the inventory and assets appraised. Such designation of condition shall be limited to whether the categories of system assets appraised are in poor, fair, good, or very good condition

8. That PAWC and Upper Pottsgrove Township be directed to continue to work to achieve the transfer of the Real Property Rights. However, PAWC shall be permitted, in its discretion, to close without the transfer of all of the Real Property Rights, provided that an escrow is established from the Purchase Price to be used to obtain any post-Closing transfers of the Real Property Rights. PAWC will provide an update to I&E, OCA, and OSBA approximately 30 days in advance of the anticipated Closing Date and a final update before Closing regarding the status of the transfer of the Real Property Rights.

9. That PAWC be directed to require, as a condition of Closing and subject to 66 Pa. C.S. § 703(g), that Upper Pottsgrove obtain clear title to the sewer line of which Shadeland Development Corporation claims ownership in its Petition to Intervene, by dedication to Upper Pottsgrove, determination of a court of competent jurisdiction that dedication is not necessary, or other evidence reasonably satisfactory to PAWC.

10. That PAWC be directed to complete an I&I study of the Upper Pottsgrove System following Closing and provide the results of that study to I&E, OCA and OSBA upon completion. The costs of the I&I study will be subject to prudence review when they are claimed for recovery in base rates.

11. That, in the first base rate case that includes Upper Pottsgrove's wastewater system assets:

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

b. PAWC will provide a separate cost of service study for the Upper Pottsgrove System.

c. PAWC will propose to move the Township's system to its cost of service, based on a separate cost of service study for the Township's system; provided, however, that PAWC will not propose Upper Pottsgrove wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that PAWC may agree to rates other than those proposed for Township customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and Upper Pottsgrove reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case.

12. That, pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to collect a DSIC prior to the first base rate case in which the Upper Pottsgrove service area plant-in-service is incorporated into rate base; provided, however, that such permission shall be conditioned upon (i) PAWC's filing of an amended wastewater Amended LTIP which does not re-prioritize other existing commitments in other services areas, (ii) the Commission's approval of the Amended LTIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates Upper Pottsgrove into its existing DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIP.

13. That PAWC shall be permitted to (a) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) defer depreciation related to post acquisition improvements not recovered through the DSIC for book

and ratemaking purposes. 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 Upper Pottsgrove'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.

14. That PAWC shall be permitted to claim transaction and closing costs associated with the Transaction. The Joint Petitioners 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.

15. That, if the transaction does not close, and PAWC does not recoup all of its \$90,000 engineering fee/legal fee deposit from Upper Pottsgrove as referenced in Section 3.01 of the APA, then PAWC will not seek to recover any unrecouped portion of the deposit from its ratepayers in any proceeding.

16. That the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA between PAWC and Upper Pottsgrove shall be separately identified in PAWC's next base rate case and amounts expended by PAWC on behalf of Upper Pottsgrove will be separately identified. The OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

17. That, within the first billing cycle following Closing, PAWC shall include a bill insert to Upper Pottsgrove's customers regarding its low income programs and shall include such information in a welcome letter to Upper Pottsgrove'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 will also provide ongoing, targeted outreach to its Upper Pottsgrove-area customers regarding its low income program.

18. That, in the same welcome packet referenced above, PAWC will explicitly inform acquired customers that they are being converted to monthly billing. PAWC's letter should also direct acquired customers to contact PAWC with any questions about the conversion and/or to discuss low-income programming options that may be available.

19. That, pursuant to 66 Pa. C.S. § 507, the Commission issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation: (1) the Sanitary Sewer Asset Purchase Agreement By and Between Upper Pottsgrove Township, Montgomery County as Seller and Pennsylvania-American Water Company as Buyer, dated as of April 28, 2020; (2) the Sewage Treatment Service Agreement between Upper Pottsgrove Township, Borough of Pottsgrove and Pottstown Borough Authority; and, (3) the Joint Sewage Transportation Agreement between Upper Pottsgrove Township and Lower Pottsgrove Township.³

20. That the contracts listed in Schedule 4.13 of the APA including but not limited to the Sewage Treatment Service Agreement referenced in Paragraph 42 of the Settlement, which are subject to approval by the Commission under 66 Pa. C.S. § 507, are material to the Commission's approval of the Transaction (singularly, a "Material Agreement") and that PAWC will require, subject to 66 Pa. C.S. § 703(g), Upper Pottsgrove to obtain assignment of all Material Agreements as a condition of Closing.

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

21. That the Commission issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the transaction contemplated in the Application in a lawful manner.

APPENDIX D

**FORM OF ORDER GRANTING
JOINT STIPULATION OF
PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDERING PARAGRAPHS**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
Pennsylvania Public Utility Code, 66 Pa. C.S. § :
1102(a), for approval of (1) the transfer, by sale, of :
substantially all of Upper Pottsgrove Township’s :
assets, properties and rights related to its : Docket No. A-2020-3021460, *et al.*
wastewater collection and conveyance system to :
Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

**ORDER GRANTING JOINT STIPULATION
OF PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDERING PARAGRAPHS**

In connection with the Joint Petition for Approval of Non-Unanimous Settlement of All Issues (the “Settlement”), filed on June 25, 2021, Pennsylvania-American Water Company, Upper Pottsgrove Township, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Office of Small Business Advocate and Shadeland Development Corporation (collectively, the “Stipulating Parties”) also filed a Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs (“Stipulation”) in the above-captioned proceeding. Each of the Stipulating Parties agreed that the facts agreed to in the Stipulation are sufficient to find that the Settlement is in the public interest. The Stipulation is attached to this Order.

As this request is reasonable, it will be granted.

THEREFORE, IT IS ORDERED:

That the Stipulation, filed on June 25, 2021, is APPROVED.

Date: _____

Jeffrey A. Watson
Administrative Law Judge